

# **MRS**

**Materials Reference System  
Index and Summaries**

**October 2014**



## To NALC Grievance Handlers

A collective bargaining agreement's provisions concerning wages, benefits, and working conditions are only as good as the grievance handlers who enforce them. One of NALC's greatest strengths has always been the effectiveness of its grievance handlers at all levels, from the newest shop steward to our most experienced arbitration advocates.

An NALC shop steward must research the facts and the contract before constructing an effective grievance. Then he or she needs to articulate the correct arguments at the very earliest steps of the grievance procedure. To do these jobs well, a shop steward requires deeper and more detailed information than either the National Agreement or the *Joint Contract Administration Manual (JCAM)* provide. The *Materials Reference System* or *MRS* is one of our most effective tools for making the required information easily available to union activists at all levels.

The *MRS* is a collection of contract administration materials assembled by NALC Headquarters' Contract Administration Unit. The *MRS* contains summaries and, in some cases, the full text of many important national-level materials, including settlements of Step 4 grievances, national-level pre-arbitration settlements, memorandums, USPS policy statements, NALC publications and more. The *MRS* also contains cross-references to significant national and regional arbitration awards.

NALC grievance handlers should review, use and submit these source documents when enforcing the contract. The *MRS* summaries are not substitutes for copies of the actual Step 4 settlements, arbitration decisions or other original source documents which can be easily printed. The *MRS* is updated and reissued periodically to add new materials. Users can check the NALC website for information about the latest edition.

We believe you will find this updated publication easier to use and more comprehensive than ever before. Our goal is to help you build the kind of case files that will provide the best chance for resolution at the lowest possible step of the grievance procedure.



Sincerely and fraternally,

Fredric V. Rolando  
President, National Association of Letter Carriers

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# USING THE MATERIALS REFERENCE SYSTEM (MRS)

The *Materials Reference System* or *MRS* is a collection of contract administration materials assembled by the NALC Headquarters' Contract Administration Unit. It has been designed to assist all NALC representatives who enforce and administer the National Agreement. The *MRS* should be used as a supplement to the *Joint Contract Administration Manual (JCAM)* which is authoritative and controlling in the case of any ambiguities or contradictions.

The *MRS* contains summaries and, in some cases, the full text of many important national-level materials, including settlements of Step 4 grievances, national-level pre-arbitration settlements, memorandums, USPS policy statements, NALC publications and more. The *MRS* also contains cross-references to significant national and regional arbitration awards.

The written text of this publication is over three hundred pages in length. If necessary, it can be printed out, in whole or in part. However, it has been published as an electronic document since its real value is that it contains imbedded hyperlinks to assist navigating around the document and to access more than 2,000 arbitration awards, national level settlements, court cases and NALC publications totaling over 10,000 pages.

NALC contract enforcers should review, use and submit these source documents when enforcing the contract. The *MRS* summaries are not substitutes for copies of the actual Step 4 settlements, arbitration decisions or other original source documents, which can be easily printed. The *MRS* is updated and reissued periodically to add new materials. Users should check the NALC website for information about the latest edition. Users should note that the materials collected in the *MRS* **do not necessarily reflect NALC's position**. To resolve doubts concerning the current applicability of any item, contact your NALC national business agent.

The document contains both a table of contents and a more detailed index. To find material and navigate around the document, it is usually simplest to go to the table of contents and click on the desired section. A more detailed index is found at the end of the publication.

The document text contains thousands of imbedded hyperlinks. Simply click on any link to go to the desired section or document.

The [green links](#) within the manual will take you to another section of the document, for example: [Remedies](#).

The [blue links](#) within the manual will take you to an external document in PDF format such as an arbitration award, national level settlement, or article in an NALC publication, for example: [C-10635](#) or [M-01476](#).

Excerpts from the National Agreement are indicated by gray shading.

Excerpts from the JCAM are indicated by blue shading.

## Using the Adobe Acrobat Reader

This publication and all the linked documents are in Adobe Acrobat format. Using Adobe tools you can search the individual documents and “cut and paste” text for use in a word processing document.

Users should modify the Adobe tools found at the top of each page as it is displayed. The “Next Page/Previous Page,” “Previous View/Next View” “First Page/Last Page,” “Go to Page,” “Search,” and “Block” tools can all be very helpful. It is very important to have the “Previous View and “Next View” commands. They will allow you to return to where you left off in this document after you have viewed an external PDF file, such as an arbitration award. To add these commands in Adobe Reader XI, go to the “View” menu at the top of Adobe Reader. Select “Show/Hide”, then “Toolbar Items”, then “Page Navigation” and select the toolbar commands that you desire. For additional help using PDF documents or if these instructions do not work on your version of Adobe Acrobat Reader, consult the Adobe Reader's help files.

## Note to Readers

The NALC *Materials Reference System* was first published over twenty-five years ago and has been revised and updated many times since. It summarizes years of experience by NALC officers, national business agents, staff and arbitration advocates. It will never be complete and we expect it to continue to grow and improve.

You can help us improve future editions by bringing any suggestions you have to the attention of the NALC Contract Administration Unit. The suggestions can be as simple as reporting typographical errors or broken hyperlinks. However, we would especially welcome your suggestions for additional material to include or sections that can be improved, clarified or expanded.

204Bs are temporary supervisors. The term 204(b) itself is a long obsolete reference to a section of Public Law 68 passed in June 1955, long before the Postal Reorganization Act of 1971.

The hybrid nature of 204b assignments can raise complicated contractual issues and occasionally cause friction with fellow employees. This is because 204Bs are supervisors able to issue discipline; yet they remain members of the bargaining and the union has a legal obligation to represent them in grievances arising under the terms of the collective bargaining agreement. See, for example, [C-16778](#). Employees used as 204Bs also have certain bidding rights, although they are limited by the provisions of Article 41, Section 1.A.2.

## 204B—Definition, Eligibility

### **M-00249 Step 4**

**July 9, 1982, H1N-5D-C 3290**

An O.I.C. assignment is regarded as a temporary detail to a supervisory position (204b assignment) within the meaning of Article 41, Section 1.A.2 of the National Agreement.

### **M-00824 Step 4**

**February 26, 1988, H4N-5E-C 36561**

The term immediate supervisor as written in Article 15, Section 2, Step 1(a) of the National Agreement may be an acting supervisor (204b).

### **M-00087 APWU Step 4**

**November 15, 1984, H1C-1Q-C 31822**

Temporary assignment as an ad hoc EEO Counselor is not a supervisory position. The duty assignment should not be posted for bid under the provisions of Article 37, 3.A.7.

### **M-00685 Step 4**

**July 29, 1983, H1N-3P-C 20590**

A customer services representative (EAS-15) is not a supervisory position within the meaning of Article 41, Section 1.A.2.

### **C-10430 Regional Arbitrator Sobel**

**November 11, 1990, S7N 3U-C 27345**

Management did not violate the contract by failing to compensate at the 204b rate two intermittent temporary supervisors when it called them into a supervisors meeting for forty-five minutes, because the 204b's "performed no supervisory functions; issued no instructions."

## Selection

### **M-00058 Step 4, July 8, 1983, H1N-1M-C 6017**

It is management's prerogative to select employees who will be assigned as 204b supervisors.

### **C-11185 Regional Arbitrator Grabb**

**October 29, 1987, C4C-4C-C 6899**

Management violated the contract when it ceased using grievant as an acting supervisor because she was active in the union.

### **C-21881 Regional Arbitrator Rosen**

**April 9, 2011**

Management improperly denied the Grievant's bid for the T-6 position. The bid she submitted clearly contained all the requested information necessary for management to determine she was the successful bidder. Management shall rectify this matter by treating her as a T-6 effective November 6, 1999, and it shall make her whole for all losses of pay and benefits caused by that denial.

## Seniority

### **C-03227 NALC National Arbitrator Mittenthal**

**April 23, 1981 N8-NA-0383**

Under the 1978 National Agreement temporary supervisors continue to accrue seniority during time which they serve as temporary supervisors (204b).

## Pay

See also [Higher Level Pay](#)  
[Out of Schedule Pay](#)

### **C-00580 National Arbitrator Mittenthal, January 27, 1982, A8-W-939**

Employees working as 204Bs are entitled to receive the out-of-schedule overtime premium when applicable under Article 8, Section 4.B. See also C-00938, APWU National Arbitrator Gamser, January 31, 1978.

## Schedules, Notification, Form 1723

### **M-00357 Step 4, December 31, 1985**

When an employee is detailed to a higher level (204b) by executing a Form 1723, the beginning and ending dates of the assignment are effective unless otherwise amended by a premature termination of the higher level assignment.

### **M-00789 Pre-arb**

**November 13, 1987, H1N-3U-C 34332**

1) A craft employee may work less than a full day on a 204b assignment (temporary supervisory position).

2) Form 1723 shall be used in detailing letter carriers to temporary supervisory positions. Pursuant to Article 41.1.A.2, the Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

3) Management may prematurely terminate a 204b assignment.

4) In the event a 204b assignment is prematurely terminated, a revised form 1723 will be furnished to the union at the local level as soon as practicable.

**M-00755 Step 4**

**May 22, 1987, H4N-4U-C 26041**

In accordance with Article 41, Section 1.A.2, of the National Agreement, Form 1723 "shall be provided to the union at the local level showing the beginning and ending times of the detail." Such copies of Form 1723 should be provided to the union in advance of the detail or modification thereto.

**M-00537 Step 4**

**May 1, 1985, H1N-3U-C 37182**

Management may use a craft employee in a 204b assignment for less than a full day. See also [M-00095](#).

**M-00030 Step 4, February 9, 1977, NCS 9638**

Local management will, at the request of the Union, make available the information as to when an employee is detailed to a 204b position and when the employee returns from that detail in accordance with applicable provisions of Article XV and XXXI.

## Four Month Rule

Article 41.1.A.2 provides the following:

**41.1.A.2.** Letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant Letter Carrier Craft duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b detail and returning to their craft position. Upon return to the craft position, such employees may exercise their right to bid on vacant letter carrier craft duty assignments. The duty assignment of a full-time carrier detailed to a supervisory position, including a supervisory training program in excess of four months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return to the craft the carrier will become an unassigned regular. A letter carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of Section 1.A.2. Form 1723, Notice of Assignment, shall be used in detailing letter carriers to temporary supervisor positions (204b). The Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

Note that Article 41.1.A.2 was changed effective July 21, 1978 to read that duty assignments left vacant for periods in excess of four months must be posted. Those Step 4 decisions issued prior to that date, although referring to a period of six months, may now be understood to mean four months.

**C-18743 National Arbitrator Snow**

**E94N 4E-C 96060312, October 2, 1998**

An employee who remains in a 204b status and whose assignment is posted for bid under the provisions of Article 41.1.A.2 may be assigned to a residual vacancy following completion of a bidding cycle.

**M-00194 Step 4, October 2, 1974, NBC 2335**

Although the language of Article 41, Section 1.A.2. provides that duty assignments left vacant for periods in excess of six months must be posted, it is our determination that the total pattern of conduct revealed in this case violates the intent of the National Agreement.

**C-05230 Regional Arbitrator Jacobowski**

**October 16, 1985, C1N-4C-C 33108**

A letter carrier returning to craft work for one week in a four month period did not break the continuity of the 204b assignment. Article 41.1.A.2 therefore requires that the route be declared vacant and posted for bid. See also C-23918, C-10181B.

**C-13823 Regional Arbitrator Searce**

**July 15, 1994, N90N-4H-C 94022684**

It is simply too convenient that [the 204-B] would be needed up to just before the four month limit would take effect. I am persuaded that the return to his bid assignment for a two week period before returning him to the 204-B post was a pretextual attempt to avoid the application of Article 41, Section 1.A.2.. His bid assignment is to be posted per Article 41 and filled and, given no alternative action, he is to be an unassigned regular.

**C-10454 Regional Arbitrator Byars**

**December 3, 1990, S7N-3N-C 28399**

The return of a 204b to his letter carrier assignment for one day in a four-month period was not for the purpose of circumventing 41.1.A.2.

**M-00195 Step 4, October 31, 1974, NBW 1603**

An employee bid on his former assignment while still detailed to a supervisory position in which he had served for over six months. This was not consistent with applicable provisions of the National Agreement.

**M-00011 Step 4, October 27, 1977, NCW 8287**

Management will not return a carrier to his bid position for short periods of time merely to circumvent the intent of Article 41.1.A.2 of the National Agreement.

## Bidding, In General

The JCAM provides the following under Article 41, Section 1.A.2:

While city letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant city letter car-

rier craft duty assignments while so detailed, they may bid on the multi-craft positions of VOMA or Examination Specialist while on detail (National Arbitrator Aaron, H1N-4J-C 8187, March 19, 1985, C-04925).

**M-00535 Step 4**

**March 11, 1985, H1N-1J-C 34481**

An employee in a 204b position should not be precluded from bidding for choice vacation periods.

**C-04925 National Arbitrator Aaron**

**March 19, 1985, H1N-4J-C 8187**

A letter carrier in a 204b status may bid for a vacant VOMA assignment.

## Bidding for Bargaining Unit Positions

**C-03288 National Arbitrator Fasser**

**June 30, 1977, NBS 6859**

A 204B who has served less than six months in a supervisory position may not bid upon posted city letter carrier assignments while serving as a 204B.

**M-00552 Step 4**

**October 24, 1983, H1N-4B-C 16840**

While an employee is in a 204B supervisory status, he or she cannot exercise a bid preference for a temporary assignment available under Article 41, Section 2.B.3 or 2.B.4.

**M-00195 Step 4, October 31, 1974, NBW 1603**

Employee bid on his former assignment while still detailed to a supervisory position in which he had served for over six months. This was not consistent with applicable provisions of the National Agreement. Accordingly, the appropriate postal officials are being instructed to take the necessary steps to see that the assignment in question is awarded to the bidder who would have received that assignment had it not been awarded to the employee with whom this grievance is concerned.

**M-00331 Step 4, February 12, 1973, NE 1653**

An employee who is a probationary supervisor cannot bid for a craft position until after his return to the bargaining unit.

**M-00680 Step 4, February 4, 1977, NCW 3549**

If a letter carrier is detailed for six months or longer to a 204B assignment he must return to the craft as an unassigned regular and therefore, he would not be eligible to bid for a letter carrier position while on 204B detail.

**M-00711 Step 4, July 9, 1980, N8-S- 0355**

The record indicates that the grievant was not on a 204B assignment when he submitted his bid for the vacant T-6 route. Moreover, the fact that he was serving in a 204B assignment on the closing date of the bid is of no contractual consequence.

**M-00016 Pre-arb, NC-NAT-8581**

Letter carriers temporarily detailed to a supervisory position (204B) may not bid on vacant Letter Carrier Craft duty assignments while so detailed.

## Hold-Down Assignments

**C-09187 National Arbitrator Britton**

**July 21, 1989, H4N-1W-C 34928**

A part-time flexible city letter carrier on a hold-down who accepts a 204b detail retains the contractual right to the hold-down until the hold-down is awarded to another carrier pursuant to the provisions of Article 41, Section 2B4 of the National Agreement; and under the language of Article 41, Section 1A1, within five working days of the day that the hold-down becomes vacant as a result of a carrier accepting a 204b detail, the hold-down must be reposted for the duration of the remainder of the original vacancy.

## Bargaining Unit Work

The JCAM provides the following under Article 1, Section 6.A:

The prohibition against supervisors performing bargaining unit work also applies to acting supervisors (204b). The PS Form 1723, which shows the times and dates of the 204b detail, is the controlling document for determining whether an employee is in a 204b status. A separate PS Form 1723 is used for each detail. A single detail may not be broken up on multiple PS Forms 1723 for the purpose of using a 204b on overtime in lieu of a bargaining unit employee. Article 41.1.A.2 requires that a copy of the PS Form 1723 be provided to the union at the local level.

**M-01397 Step 4**

**November 18, 1999, F94N-4F-C 99098126**

This issue in this case is whether management violated the National Agreement by allowing an employee to work overtime on either the day preceding or the day following a 204-B assignment. After reviewing this matter we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that the Form 1723 will accurately reflect the dates the employee will be in a 204-B status.

**M-00747 Step 4**

**April 15, 1987, H4N-3N-C 38394**

A 204B letter carrier who anticipates returning to the bargaining-unit and desires to work overtime within the applicable quarter, must initially sign the OTDL, in accordance with Article 8, Section 5.A, of the 1984 National Agreement. However, a letter carrier in 204B status is not eligible to perform bargaining-unit work. PS Form 1723 is the controlling document to determine whether the letter carrier is in a 204B status. See also [M-00496](#), [M-00507](#)

**M-00116 Step 4****March 28, 1985, H1N-1-C 23759**

A letter carrier on the Overtime Desired List (OTDL) is precluded from performing overtime work in the carrier craft only when that carrier is actually in a 204b status. Any overtime the carrier accrues while working as a supervisor is not recorded on the craft overtime desired list. Carriers who serve as temporary supervisors are not entitled to make up overtime opportunities for the overtime opportunities missed while serving as a supervisor.

**M-00021 Step 4****September 27, 1983, H1N-5C-C 12781**

Except in accordance with Article 1, Section 6, of the National Agreement, an employee in a training status as a supervisor shall not perform bargaining-unit work while he or she is in the training status. Form 1723 is the controlling document to be used in determining when the employee is in a supervisory training status.

**C-09470 Regional Arbitrator Martin****October 26, 1989, C7N-4U-C 12574**

Where management consistently refused to furnish the local union with 1723s showing 204b details, the appropriate remedy is pay for PTF carriers who worked less than eight hours on a tour when a 204b served.

**Bargaining Unit Overtime**

The JCAM Provides the following under Article 1, Section 6.A:

An acting supervisor (204b) may not be used in lieu of a bargaining unit employee for the purpose of bargaining-unit overtime. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail on the day he/she was in a 204b status unless all available bargaining unit employees are utilized. However, an employee may work bargaining-unit overtime, otherwise consistent with the provisions of Article 8, on the day before or the day after a 204b detail. (Step 4, H0N-5R-C 13315, August 30, 1993, [M-01177](#))

**M-00213 Pre-arb****December 9, 1981, H8N-4C-C 22286**

Normally an employee who is detailed as an acting supervisor will not perform bargaining unit work prior to the workday immediately following the termination of the detail. The senior employee who was on the Overtime Desired list on the day of the dispute and did not work overtime will be compensated 2 hours of back pay.

**M-00891 Pre-arb****January 12, 1989, H1N-5H-C 26031**

1) An employee serving as a temporary supervisor (204b) is prohibited from performing bargaining unit work, except to the extent otherwise provided in Article 1, Section 6, of the National Agreement. Therefore, a temporary supervi-

sor is ineligible to work overtime in the bargaining unit while detailed, even if the overtime occurs on a non-scheduled day.

2) Form 1723, which shows the times and dates of a 204b detail, is the controlling document for determining whether an employee is in 204b status.

3) Management may prematurely terminate a 204b detail by furnishing an amended Form 1723 to the appropriate union representative. In such cases, the amended Form 1723 should be provided in advance, if the union representative is available. If the union representative is not available, the Form shall be provided to the union representative as soon as practicable after he or she becomes available.

4) The grievant in this case will be paid eight (8) hours at the overtime rate. See also [M-00893](#), [M-00023](#)

**M-00306 Step 4****March 21, 1985, H1N-4K-C 31235**

Carriers, who serve as temporary supervisors, are not entitled to make-up overtime opportunities for the overtime opportunities missed while serving as a supervisor. Article 8, section 5.C.2.b should be applied to these carriers on a ratio basis to the time served as carriers during the quarter.

**M-01397 Step 4****November 18, 1999, F94N-4F-C 99098126**

This issue in this case is whether management violated the National Agreement by allowing an employee to work overtime on either the day preceding or the day following a 204-B assignment. After reviewing this matter we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that the Form 1723 will accurately reflect the dates the employee will be in a 204-B status.

**M-01359 Step 4****March 17, 1983, H1N-4C-11833**

When an employee is detailed to 204b status, the employee will not perform bargaining-unit overtime except as provided for in Article 1, Section 6 of the 1981 National Agreement during the period of the 204b assignment.

**M-00450 Step 4****January 22, 1982, H8C-2F-C 10327**

This employee was in the supervisory status for all work time included. He should not work craft overtime during the period covered by the assignment order.

**C-09944 Regional Arbitrator P.M. Williams****April 2, 1990, S7N-3W-C 24484**

Management did not violate the contract when it permitted a 204B to sign the OTDL.

**M-00344 Step 4****October 31, 1984, H1N-3U-C 34249**

An acting supervisor 204B shall not be utilized in lieu of a bargaining-unit employee for the purpose of bargaining-unit overtime. PS Form 1723 is the controlling document which shows the approximate time and date(s) an employee begins and ends the detail.

**M-00687 Step 4****March 23, 1979, ACS 23828**

A craft employee in a 204B status would not be returned to the craft for an overtime assignment as long as another craft employee is available and qualified to perform the assignment, notwithstanding the fact that the employee in the 204B status is on the Overtime Desired List as a craft employee.

**M-00506 Pre-arb****March 2, 1983, H1C-5G-C 5929**

An acting supervisor (204B) will not be utilized in lieu of a bargaining-unit employee for the purpose of bargaining-unit overtime. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail unless all available bargaining-unit employees are utilized.

**M-01177 Step 4****August 30, 1993, H0N-5R-C 13315**

The issue in this case is whether management violated the national agreement when an employee who had been working in a 204-B assignment earlier in the day worked bargaining unit overtime at the conclusion of his shift.

During our discussion, we agreed to the following:

1. An acting supervisor (204-B) will not be utilized in lieu of a bargaining-unit employee for the purpose of bargaining-unit overtime.
2. The PS Form 1723 shall determine the time and date an employee begins and ends the detail.
3. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail unless all available bargaining-unit employees are utilized.

Due to the variety of situations that could arise, each case should be decided based on the particular facts and circumstances involved.

**M-01426 Step 4****April 8, 1999, D94N-4D-C 98119515**

The issue in this grievance is whether management violated the National Agreement when an Acting Supervisor (204-B) performed craft overtime on a day immediately following a higher level detail.

We also agreed that this issue has been settled between the parties through numerous Step 4 decisions as well as the pre-arbitration settlement of Case Number HON-5R-C 13315 (M-01177).

We further agreed, the 204B detail has ended and therefore the employee was not prohibited from performing bargaining unit overtime on the day following the termination of the detail.

**Discipline – Initiating****C-20992, APWU National Arbitrator Zumas****October 4, 1984**

A 204B Supervisor has the right and obligation to perform any managerial work assigned, including the right to recommend disciplinary action.

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Contrary to the assertion of the Service, this would not necessitate an additional review procedure for 204B Supervisors. It is entirely consistent with the Agreement between the parties that before any disciplinary action in the form of suspension or discharge is imposed, such recommendation, made by either a permanent Supervisor or 204B Supervisor, receive review and concurrence. These procedures merely limit the right of a 204B Supervisor access to the Level 2 - Supervisor's Personnel Records unless there is a "need to know" brought about by circumstances outlined above.

See also [Vehicle Accidents](#), below

Employees have accidents. But simply having an accident is never, by itself, sufficient grounds for discipline. This is not just NALC's position; it is official Postal Service policy. Senior Assistant Postmaster General Carl Ulsacker wrote in [M-00744](#) that:

*Accidents or compensation claims, even when in a manager's view excessive, are not in themselves an appropriate basis for discipline. What must be cited in any such disciplinary action are the actions of an employee in a specific situation which are violations of a Postal Service safety rule or regulation.*

See also [M-00486](#), [M-00743](#), [C-06871](#) and [C-07300](#)

Furthermore, platitudes and generalized "instructions" such as "walk safely" "drive safely" or "watch out for dogs" do not qualify as safety rules or regulations. See, for example [C-06871](#).

## National Level Settlements, USPS Policy Statements

**M-00744 Letter, April 7, 1980**

This will reemphasize the need for careful attentions to situations in which disciplinary action for safety rule violation is considered. While Article XVI of the National Agreement clearly makes discipline for such a cause appropriate, we must be mindful of the requirements of the Federal Employees Compensation and our policies which prohibit taking action discouraging the reporting of an accident or filing a claim for compensable injury with the Office of Workers' Compensation Programs.

Accidents or compensation claims, even when in a manager's view excessive, are not in themselves an appropriate basis for discipline. What must be cited in any such disciplinary action are the actions of an employee in a specific situation which are violations of a Postal Service safety rule or regulation.

**M-00229 Step 4**

**February 10, 1982, H8N-5G-C 21570**

An employee may be required to report an accident on the day it occurs; however, completion of the appropriate forms will be in accordance with applicable rules and regulations and need not be on the day of the accident.

**M-00744 Letter, April 7, 1980**

The Federal Employees Compensation Act and Postal Service policy prohibit taking action discouraging the reporting of an accident or the filing of a claim for compensable injury with the Office of Workers Compensation Programs.

**M-00743 Letter, May 15, 1981**

Accidents or compensation claims are not in themselves an appropriate basis for discipline. See also [M-00486](#)

**M-00408 Step 4**

**May 13, 1983, H1N-1E-C 665**

There is no contractual provision for the grievant or his steward to attend an internal management meeting, whether called an accident review board or any other name. However, such a committee should not make recommendations for discipline of individual employees.

**M-00912 Step 4**

**March 23, 1989, H7N-4M-C 7533**

The issue in this grievance is whether the National Agreement was violated by the issuance of an accident incident letter. Letters such as these are not appropriate. Management will discontinue using these letters.

**M-01254 Step 4**

**October 30, 1996, G94N-4G-C-96027492**

The issue in this grievance is whether district management is in violation of the National Agreement by issuing a local "Zero-Tolerance-Rollaway/Runaway Accidents" policy.

The parties are of the mutual understanding that local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement; hence, discipline taken for such accidents must meet the "just cause" provisions of Article 16.

**M-01289 Step 4**

**June 18, 1997, D94N-4D-C 97027016**

The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement. Discipline imposed for cited safety rule violations must meet the "just cause" provisions of Article 16 of the National Agreement. Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29.

## Arbitration Case Examples

### **C-01311, Regional Arbitrator Levak September 24, 1982**

[T]he Service has failed to charge the Grievant with a dischargeable offense. The reason given by the service for the removal of the Grievant is both void for vagueness and an obvious attempt to discharge the Grievant for being "accident prone," a non offense.

The Service may properly charge an employee with physical inability to perform assigned duties, with psychological disabilities to perform assigned duties or with specific acts of negligence or violations of established safety standards. However, the Service is not entitled to concoct a bastardized form of infraction in order to remove employees it considers to be accident prone.

### **C-06871, Regional Arbitrator Sobel, March 7, 1987**

This automatic linkage of an accident with carelessness would imply that any employee who has an accident is subject to discipline without regard to proof of a violation of any specific safety regulation or practice. In fact, the danger of such an interpretation prompted Assistant Postmaster General Carl S. Ulsaker to write the following in 1980 to all "Regional Directors of E/LR":

"What must be cited in any such disciplinary action (for Safety Rule Violations) are the actions of an employee in a specific situation which are violations of a Postal Service Rule or Regulation."

In short, a platitudinous statement devoid of specific content was defined for purposes of establishing a bases for discipline as an "instruction" The apparent logical sequence is that the two falls-*ipso facto* were linked by the grievant's failure to watch where he was walking.

Generalized instructions which neither offer specific guides to conduct, nor even inform what specific actions are in violation of such regulations, cannot be used as proof of violation of an equally generalized regulation such as "Obey the instructions of your manager." In short, a statement such as "watch where you are walking" even when delivered by a Supervisor do not, by this token, acquire that degree of specificity requisite to establishing them as "instructions", as that term is understood. For instance, what does "watch where you are walking" mean specifically when you are also instructed to be simultaneously fingering mail?

### **C-07300, Regional Arbitrator Britton July 20, 1987**

Nowhere does the Employer explain what the Grievant was expected to have done under the circumstances. Nor is there any reference in the notice of suspension to indicate what rule or regulation, if any, the Grievant violated.

According to a statement made by Senior Assistant Postmaster General Carl C. Ulsaker in his memorandum to regional directors dated April 7, 1980, in a disciplinary action based upon a safety-related incident, "What must be cited. . . . are the actions of an employee in a specific situation which are violations of a Postal Service safety rule or regulation" Seemingly, therefore, the procedure used by the Employer in this instance conflicts with the requirement that management state with specificity the rule or regulation that the employee failed to follow.

### **C-08977, Regional Arbitrator Britton March 12, 1988**

In brief, management cannot, after the fact, automatically declare that conduct is unsafe merely because injury has resulted there from. In the present instance, the Employer has failed to abide by the directive that requires a disciplinary notice to cite ". . . . the actions of an employee in a specific situation which are violations of a postal service safety rule or regulation." It is not the view of the Arbitrator that in order to be deemed unsafe, all unsafe actions of an employee are required to be spelled out in a rule or regulation, for such a task would be both impractical and unnecessary. However, under the facts presented in this matter, the Arbitrator finds that the charges against the Grievant are deficient as a result of the failure of management to show that the conduct with which the Grievant is charged is likely to result in injury to an employee who engages in such conduct.

### **C-10307, Regional Arbitrator Johnston September 18 1990.**

It is difficult if not impossible for the Arbitrator to feel that for a letter carrier to be bitten by a dog is a result of carelessness or negligence. To do so would be to leave out the fact that the dog was the aggressor in the affair.

### **C-24169, Regional Arbitrator Lurie April 17, 2003**

However, given the transient nature of the events that occurred on those steps; the sense of urgency that the Grievant exhibited and the disruption of his normal routine that morning, the Arbitrator finds that the Grievant's failure to use the handrail was likely not a matter of willful non-adherence to the safety rule, but rather was a matter of his distraction by extraordinary matters, and of his obliviousness to the risk. The Arbitrator finds that the Grievant lacked the presence of mind to grab the handrail but that, in view of these extenuating circumstances, his failure was of insufficient materiality or willfulness to constitute just cause for discharge. (C-24169)

Vehicle accidents are particularly likely to result in discipline ordered by higher management in violation of the provisions of Article 16, Section 8. Many installations have had written or unwritten policies requiring the removal of employees involved in "at fault" vehicle accidents. See [M-00267](#), [M-01254](#), [M-01289](#), [C-16436](#), [C-18938](#) and [C-26204](#). Remember that Union officials investigating such cases have broad investigatory and information rights. This includes copies of all correspondence and emails (see [C-26204](#)) concerning the proposed discipline.

Article 41.3.P provides that "The Employer shall promptly notify the local Union President of any job-related vehicle accidents involving city letter carriers." In [C-20980](#) a management failure to comply with this provision prevented the Union from conducting its own investigation. The arbitrator held that "this failure on the part of the Postal Service results in it not having just cause for the removal of the Grievant."

### National Level Settlements

#### **M-01254 Step 4**

**October 30, 1996, G94N-4G-C-96027492**

The issue in this grievance is whether district management is in violation of the National Agreement by issuing a local "Zero-Tolerance-Rollaway/Runaway Accidents" policy.

The parties are of the mutual understanding that local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement; hence, discipline taken for such accidents must meet the "just cause" provisions of Article 16.

#### **M-00899 Step 4**

**February 7, 1989, H1N-5G-C-28042**

Pursuant to statutory and judicial mandates, government (postal) employees are protected from liability for vehicle accidents arising out of their negligence while acting in the scope of their employment. Accordingly, the letter of demand will be rescinded.

#### **M-00267 Step 4**

**August 17, 1982, H8N-3W-C 33178**

The question raised in this grievance involves a Vehicle Accident Control Program. It was mutually agreed that the following would represent a full settlement of this case:

The local notice cannot alter, amend or in any way supersede the disciplinary standard for "at fault" vehicle accidents provided by the National Agreement and Methods Handbook, Series M-52. Methods Handbook, Series M-52 and the National Agreement provides the disciplinary standards for "at fault" accidents and will control the disposition of a grievance filed in behalf of a carrier who is disciplined for such an accident. Any local vehicle acci-

dent control program may not deviate in its purpose from the M-52 and National Agreement. We are unaware of the existence of any discipline standards for "at fault" vehicle accidents, hence any discipline taken must meet the "just cause" provisions of Article XVI of the National Agreement.

#### **M-00408 Step 4**

**May 13, 1983, H1N-1E-C 665**

There is no contractual provision for the grievant or his steward to attend an internal management meeting, whether called an accident review board or any other name. However, such a committee should not make recommendations for discipline of individual employees.

#### **M-00667 Step 4**

**August 31, 1977, NC-W-7464**

Management did not improperly deny local union officials an appointment on the committee to investigate motor vehicle accidents involving craft employees. Local management has the option of considering placing a member of the union on the committee but it may not be mandated to do so.

#### **M-00247 Step 4**

**October 21, 1975, NB-N-5940**

A tire which ultimately becomes flat due to the side-walls being worn down during the course of normal vehicle use is viewed as "normal wear and tear" and is not considered an "accident" which requires a completion of accident reports, Forms 91 and 1769.

#### **M-01334 Pre-arbitration Settlement**

**July 16, 1998, H90N-4H-C 96029292**

The issue in this grievance is whether management violated the National Agreement by developing a local form which was not approved in accordance with the ASM. The development of local forms is governed by the ASM. This grievance concerns a letter which is being issued to employees locally, entitled, "Accident Repeater Alert!!!"

During our discussion, we mutually agreed that the development of local forms is governed by the ASM. Therefore, the issuance of the "Accident Repeater Alert!!!" letter will be discontinued.

## Arbitration Case Examples

### **C-01261 Regional Arbitrator Schedler**

**June 3, 1982**

Mr. Urban was faced with defending himself against a nebulous faceless Board that rendered a decision to suspend him without allowing him to be present or represented by a Union representative. The procedures followed by the Board were very nearly a "star chamber proceedings" and I find that the 14 day suspension was not for just cause

Discipline of an employee is solely a management function. A supervisor that disciplines an employee should do so after following sound management rules and, when a supervisor follows the recommendations of a board to impose discipline, the supervisor merely uses the recommendations as a shield against the hard realities of making an independent decision. I do not agree with such a practice.

### **C-17353 Regional Arbitrator Roberts**

**Sept.10, 1997**

The Union advocate asked each of the Employer's witnesses a number of specific questions about the accident including distances and whether or not either of the drivers were cited. The employer's witnesses stated there were no measurements taken at the scene of the accident. Other questions could not be answered. Being unable to answer many of the questions about the accident, the testimony of the Employer's witnesses cast a shadow of doubt as to whether or not a thorough investigation of the accident was conducted.

### **C-20036, Regional Arbitrator Bajork**

**October 18, 1999**

The effect of using the Grievant's past safety record in combination with the stated cause of action, a single event, is to shield from arbitral scrutiny the truth and accuracy of the Employer's claim that they also were "preventable" as to their final disposition. Any incidence of unfairness associated with the Employer's investigation of the December 18 accident however pales in significance to the flawed NOR. If the Employer's case against the Grievant is one of safety based on the Grievant's entire record, then it was incumbent on the Employer to have so charged. After all, past elements of Page 6 discipline are routinely included in the Employer's statement of charges. Because they are, the Employer must stand the burden of showing their contribution toward its decision for discipline or removal. I therefore hold that the Employer's charge against the Grievant is limited to exactly the December 18 accident which it claims was preventable. And, as a stand alone charge like the Union argues, the question is one of just cause for the removal the merits issue.

### **C-20980 Regional Arbitrator Johnston**

**August 14, 2000**

Based on all of the above, it is my finding that the Postal Service did not comply with the requirements of Article 41, Section 3.P, in that it did not promptly notify the Local Union President of the vehicle accident that the Grievant, Julius Williams, was involved in on June 18, 1999. This failure to comply with the clear language of the above-cited Section 3.P of Article 41 is, in my opinion, under all the circumstances in this case, a material failure on the part of the Postal Service to give to the Grievant his due process rights. This failure on the part of the Postal Service results in it not having just cause for the removal of the Grievant.

### **C-21062 Regional Arbitrator DiLauro**

**Sept. 11, 2000**

The grievant was an employee with approximately 12 years of service when the accident occurred. No evidence was produced by the Postal Service to show that the grievant had ever been disciplined for working unsafely and that he, in any way, failed to follow all the rules and regulations, let alone demonstrate a "blatant disregard for rules and regulations." There is no doubt that a rollaway/runaway accident is a serious matter in that it could result in injury and even death. However, the Postal Service cannot discriminate against an employee in assessing discipline in these types of cases unless it can show a variation in the circumstances. Having failed to do so in this case, the discipline of discharge was discriminatory. Accordingly, the Postal Service is directed to reduce the discipline of discharge to a seven-day suspension.

### **C-21561, Regional Arbitrator Britton**

**December 30, 2000**

Supervisor Branson additionally testified that although the fact that the Grievant put in 80 hours the previous week was an important factor, the Grievant had time between shifts. In this connection, Ms. Gamble testified that the Grievant got off at 4:30 on the day prior to the accident and the accident the next day was at 10:10, which is almost 17 hours between shifts. It seems to the Arbitrator, however, that even though the Grievant might have been off approximately 17 hours between shifts, it is at least questionable whether having worked at the level here described that this period of rest was sufficient to eliminate the Grievant's fatigue as a contributing factor to the accident.

### **C-25100 Regional Arbitrator Levak**

**March 10, 2004**

As a general principle, where the issue before an arbitrator is related to some science, profession or occupation beyond the competence of the average layman, an expert may be used; and where such an expert is utilized, deference ordinarily will be given to an expert opinion. In the instant case, the Union utilized an expert. Moreover, the individual who investigated the accident for management had no specific training in accident reconstruction and no substantial experience in that field or area. Therefore, the Arbitrator feels compelled to accept Heffuer's patently valid report as legitimate.

### **C-25994 Regional Arbitrator Irving**

**June 10, 2005**

The Arbitrator was particularly troubled by Manager Shields who apparently held that the damage incurred was the determinant to measure the appropriate discipline to impose. It must be pointed out it is not the amount of damages, but the amount of negligence on the Grievant's part that must be the foundation of the discipline to impose.

### **C-10351 Regional Arbitrator Sobel**

**October 15, 1990**

The Safe Driving Committee's classification of the grievant's accident as "preventable" was improper.

### **C-09732 Regional Arbitrator Mitrani**

**July 12, 1989,**

Management violated the contract when it failed to render Form 1768 within 10 working days after a vehicle accident.

### **M-01377 Step 4**

**February 22, 1999, G94N-4G-C 97067155**

AMS function is a managerial function which may be delegated and regardless of the methodology employed to change the information contained on Form 313, the actual work associated with making such changes on Form 313 is letter carrier work.

### **M-01274 Step 4**

**January 2, 1997, E94N-4E-C 96073621**

The parties did agree that the Address Management Systems Specialist position description, in Item #4, provides for maintaining route delivery line of travel information, however, this does not include making unilateral changes in the carrier's line of travel.

### **M-01376 Step 4**

**February 22, 1999, H94N-4H-C 98076450**

The issue in these grievances is whether management violated the National Agreement when AMS duties were added to the position of Growth Management Coordinator. After reviewing these matters, we mutually agreed that no national interpretive issue is fairly presented in this case. There is no nationally recognized position of Growth Management Coordinator. Therefore, we agreed that the AMS function is a managerial function which may be delegated.

See also [Remedies](#)  
[Grievance Procedure](#)

**M-01649 Memorandum**  
**September 11, 2007**  
**Re: Arbitration Task Force**

The parties have a shared interest in reducing the cost and improving the efficiency of the arbitration process. Therefore, it is agreed to establish a national level Task Force to evaluate the impact of modifying the manner by which we handle the arbitration process to achieve our goals of reduced cost and improved efficiency.

The Task Force will consist of three members appointed by the NALC and three members appointed by the Postal Service. The Task Force is authorized to test alternate methods of administering the arbitration process, to include the following: district arbitration panels, a centralized scheduling center, and the procedures used to hire and compensate arbitrators. The Task Force is prohibited from implementing any test on any of these components without the agreement of the NALC President and the Vice President of Labor Relations.

The Task Force will function during the term of the 2006 National Agreement. The Task Force will provide semi-annual reports and recommendations to the NALC President and the Vice President, Labor Relations, or their designees on a quarterly basis.

**M-01372 Step 4**  
**January 13, 1999, B94N-4B-C-97024116**

The issue in this grievance is whether a regular arbitrator is bound by national awards. After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agreed to the following, which is an excerpt from case HIN-IJJ-C 23247 (C-07233);

“The whole purpose of the national arbitration is to establish a level of definitive rulings on contract interpretation questions of general applicability. National decisions bind the regional arbitrations, and not the reverse.”

**C-07233 National Arbitrator Bernstein**  
**August 7, 1987, H1N-1J-C 23247**

A National Arbitrator is not bound in any way by awards issued by regional arbitrators. National decisions bind regional arbitrations, but not the reverse

**C-10826 APWU National Arbitrator Dobranski**  
**December 14, 1990, H4C-4A-C 7931**

Where both parties agreed that a grievance in national arbitration presented no interpretive issue the national arbitrator had no jurisdiction and remanded the case for regional arbitration.

**C-16371 National Arbitrator Snow**  
**July 20, 1994, H0C-3W-C 4833**

National Level Arbitration is not an appropriate forum for resolving a grievance addressing the adequacy of a local hazardous materials training program.

**C-00431 National Arbitrator Mittenthal**  
**January 18, 1983, H8C-4C-C 12764**

A grievance may be withdrawn from regional level arbitration and referred to Step 4 even after the case has been presented to the arbitrator.

**C-03236 National Arbitrator Mittenthal**  
**February 24, 1981 N8-NA-0220**

A grievance concerning the content of a regional directive that was published but not yet implemented is "ripe" for an arbitrator's decision where an interpretive issue is raised.

**M-01517 USPS LETTER**  
**May 31, 2002**

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

**M-01253 Step 4**  
**October 31, 1996, Q90N-4Q-C-96081524**

We agreed that the parties' practice on a national basis has been that the same arbitrator who determined the arbitrability of the case, is scheduled to hear the merits; assuming that the arbitrator in question is still on the appropriate panel and is otherwise available. This practice is to be followed by all field processing centers.

**M-01330 Pre-arbitration Settlement**  
**June 2, 1998, Q94N-4Q-C 97078760**

The issue in this case is whether there was a violation of Article 15, Section 5 of our National Agreement, as it pertains to providing the Union with quarterly reports which contains information covering the operation of the arbitration procedure. After reviewing this matter, the parties mutually agreed to settle this case with the following understanding: Orderly and accurate reports will be provided to the union within three weeks of the close of the quarter.

**M-00382 Letter**  
**October 3, 1975**

It was agreed that, beginning with the date of this letter, no requests or motions for reconsideration of arbitration awards would be filed by any Union signatory to the 1975 National Agreement or by the Postal Service.

## **M-00877 Step 4**

**November 22, 1988, H4N-3E-D 56574**

When NALC appeals a disciplinary grievance to regional arbitration, it need not indicate whether the grievance, in its opinion, should be directed to either the regular regional panel or the expedited regional panel.

When management receives an appeal of a disciplinary grievance to regional arbitration, it will docket the grievance according to the following:

Pursuant to Article 15, Section 4.C.1, disciplinary cases of 14 days suspension or less shall be placed on the list of cases pending expedited regional arbitration.

Pursuant to Article 15, Section 4.B.1, removals and cases involving suspensions for more than 14 days shall be placed on the list of cases pending regular arbitration.

If, after a disciplinary case of 14 days suspension or less has been appealed to arbitration, either management or NALC concludes that the issues involved are of such complexity or significance as to warrant reference to the regular regional panel, the party so concluding may refer the case to the regular panel, pursuant to Article 15, Section 4.C.2, provided notice is given to the other party at least twenty-four hours prior to the scheduled time for hearing of the case in expedited arbitration.

## **M-01595 Interpretive Step Settlement**

**December 26, 2006**

Arbitration scheduling of NALC disputes in the Nevada Sierra District will be accomplished consistently with Article 15 and with the procedure in place before the change that gave rise to this dispute. See [M-01582](#).

## **Intervention**

### **C-08730 National Arbitrator Britton**

**March 16, 1989, H4N-4J-C 18504**

The NRLCA is allowed to intervene in the arbitration of an NALC grievance concerning the assignment of delivery territory to rural delivery.

### **C-20300 National Arbitrator Snow**

**Q94N-4Q-C 98062054, January 1, 2000**

The NALC, when it has intervened in a area-level arbitration case, has a right to refer the case to Step 4 of the grievance procedure.

## **M-01196 Step 4**

**June 27 1994, E90N-6E-C 94042837**

During our discussion, we mutually agreed that upon intervention at a hearing, the intervening union becomes a full party to the hearing. As a party, the intervening union has the right to refer a grievance to Step 4.

## **M-01295 Prearbitration Settlement**

**September 16, 1997, H94N-4H-C 97019400**

As a result of that discussion it was mutually agreed that the U.S. Postal Service will reaffirm the instructions on intervention contained in the memorandum dated October 17, 1989, "Intervention in Jurisdictional (Work Assignment) Arbitrations." See file for complete text of memorandum.

## **Transcripts**

### **C-00539 National Arbitrator Aaron**

**H1C-NA-C 52, May 4, 1985**

Article 15, Section 4.B(7) of the 1981-1984 National Agreement does not preclude either party from ordering a verbatim transcript of a regular arbitration hearing at the regional level without the consent of the other, so long as reasonable advance notice is provided.

The Postal Service did not violate Article 15, Section 4.B(7) of the 1981-1984 National Agreement by ordering a verbatim transcript of all regular arbitration hearings at the regional level before one particular arbitrator.

## **Briefs**

### **C-15480 National Arbitrator Snow**

**H4C-3W-C 8590, February 18, 1993**

Article 15.4.B(7) provides each party with the procedural right to file a post-hearing brief after notifying the other party and the arbitrator of its intent to do so

## **Evidence**

### **M-01373 Step 4**

**January 7, 1999, G94N-4G-D 98042998**

The Joint Contract Administration Manual (JCAM) does not constitute argument or evidence; rather, the JCAM is a narrative explanation of the Collective Bargaining Agreement and should be considered dispositive of the joint understanding of the parties at the national level. If introduced into arbitration, the local parties are to allow the document to speak for itself and not seek testimony on the content of the document from the national parties.

### **M-01384 Step 4**

**July 13, 1999, H94N-4H-D 98113787**

The issue in this case is whether a settlement made on a non-citable, non-precedent basis on a letter of warning can be introduced in an arbitration, to counter management relying on the letter of warning in an arbitration hearing on subsequent discipline citing the letter of warning as an element of past record.

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in this case. We also agreed that a non-citable, non-precedent settlement may be cited in arbitration to enforce its own terms.

We further agreed that the subject letter of warning cannot be cited as a past element because it was removed from the grievant's record and reduced to a discussion via the September 3, 1998 settlement.

## Safety and Health

### **M-01433 Step 4**

**February 20, 2001, F94N-4F-C 97024971**

The Step 4 issue in these grievances is whether any grievance, which has as its subject safety or health issues, may be placed at the head of the appropriate arbitration docket at the request of the union.

The parties agree that Article 14.2 of the National Agreement controls. It states in part:

Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.

The fact that the union alleges that the grievance has as its subject a safety or health issue does not in and of itself have any bearing on the merits of such allegations. Accordingly, placement of a case at the head of the docket does not preclude the Postal Service from arguing the existence of the alleged "safety" issue or that the case should not have been given priority. The Postal Service will not refuse to schedule a case in accordance with Article 14.2 based solely upon the belief that no safety issue is present.

## New evidence or argument at arbitration

### **C-03319 National Arbitrator Aaron**

**April 12, 1983, H8N-5B-C 17682**

If the parties do not raise arguments or facts at Steps 2, 3 and 4 of the grievance procedure they may not raise such arguments or introduce such facts for the first time at arbitration.

### **C-03206 National Arbitrator Mittenthal**

**September 21, 1981, N8-W-0406**

If the parties do not raise arguments at Steps 2, 3 and 4 of the grievance procedure they may not raise such arguments for the first time at arbitration.

### **C-15699 National Arbitrator Snow**

**B90N-4B-C 94027390, August 20, 1996**

It is inappropriate for the [national level] arbitrator to consider any claims or arguments beyond those set forth in the Step 4 decision

### **C-04085 National Arbitrator Aaron**

**25 January, 1984, NCE 11359**

The principle that the parties to an arbitration are barred from introducing evidence or argument not presented at preceding steps of the grievance procedure must be strictly observed. The spirit of the rule, however, should not be diminished by excessively technical construction

### **C-00539 National Arbitrator Aaron**

**H1C-NA-C 52, May 4, 1985**

"Whenever the meaning of contract language is in dispute, the parties are automatically on notice that the relevant bargaining history may come up in an [national level] arbitration hearing."

### **C-03002 National Arbitrator Gamser**

**November 3, 1976, NBS 5674**

Where an issue is not raised until the filing of a party's brief, the arbitrator will not dispose of the issue.

### **C-12924 Regional Arbitrator Lurie**

**April 1, 1993, S0N-3C-C 15012**

"The Service's claim - that the Union failed to timely argue the violation of Article 30, Item 2 of the LMOU - is in the nature of an affirmative defense, for which the Service has the burden of proof."

### **C-10679 Regional Arbitrator Zumas**

**July 16, 1990, N4C-1A-C 25151**

A claim that grievant's due process rights have been violated may be raised for the first time at any step of the grievance procedure, including arbitration.

### **C-16161 Regional Arbitrator Britton**

**November 13, 1996, C94N-4c-D 96035565**

During the arbitration of a removal grievance, the arbitrator refused to consider as a prior element a 14 day suspension that had not yet been adjudicated. He further stated that this issue "involved the principle of due process which is jurisdictional and therefore may be raised at any time during the grievance and arbitration procedure."

### **C-09889 Regional Arbitrator Stoltenberg**

**March 5, 1990, E7N-2H-D 21126**

Management may not raise for the first time at arbitration a claim that a grievance was filed by an uncertified representative.

### **M-00773 Step 4**

**August 16, 1979, N8N-0027**

We mutually agree that the disclosure provisions set forth in Article 15, 17 and 31 of the 1978 National Agreement intend that any and all information which the parties rely on to support their positions in a grievance is to be exchanged between the parties representatives to assure that every effort is made to resolve grievances at the lowest possible level.

## Ex parte Communication

### **M-00815 Memorandum of Understanding**

**April 11, 1988**

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that in order to maintain the integrity of the arbitral process, the parties and their agents, employees and representatives should avoid the least appearance of impropriety when making contact with an arbitrator. The parties must maintain an arms length relationship with the arbitrator at all time.

Ex parte communication with an arbitrator regarding the merits of a dispute, whether oral or written, shall not be permitted. Whenever it is necessary to contact an arbitrator relative to the merits of a matter in a dispute, the contact must in all instances be made jointly or with the concurrence of both parties. Ex parte communications made in the ordinary course of business regarding necessary, routine scheduling matters are permissible.

Any dispute arising from the constraints of this agreement must be brought to the attention of the parties signing this Agreement at the national level.

### **C-20301 National Arbitrator Snow F94N-4F-D 97049958, January 4, 2000**

The Employer violated the National Agreement when it engaged in ex parte communication with a regional arbitrator during an in camera inspection of evidence in the presence of only the Employer's advocate. An in camera review of evidence, if protested by a party, constitutes improper ex parte communication with the arbitrator

### **M-01473 Prearbitration Settlement November 19, 2002, Q94N-4Q-C-99189739**

The interpretive issue in this case is whether a unilaterally initiated written communication to an arbitrator on which the other party is copied violates the April 11, 1998 Memorandum of Understanding on ex parte communication.

After reviewing this matter, we mutually agree to resolve this issue with the following understanding:

Ex parte communications made in the ordinary course of business regarding necessary routine, scheduling matters are permissible.

Other ex parte communications with an arbitrator, whether oral or written, without advance agreement with the other party are not permitted. A unilaterally initiated written communication to an arbitrator with a copy provided to the other party is specifically included in this proscription.

In the event of a violation of the above understanding, any arbitrator receiving a prohibited communication will receive a letter signed by the parties at the national level di-

recting that the contents of the prohibited communication be disregarded.

### **M-01315 Pre-arbitration Settlement**

**May 21, 1998, G94N-4G-D 96088399**

The issue in this grievance is whether a party who chooses to file a post-hearing brief may be excluded from an arbitration hearing during the time in which the other party presents oral closing arguments.

In this case, the regular arbitrator issued a ruling that would have excluded the employer's representative from the hearing room during the Union's oral closing statement.

During our discussion, we mutually agreed to settle the issue represented as follows:

In the absence of a contractual provision to the contrary, an arbitrator has inherent authority to decide procedural questions raised at the arbitration hearing. At the same time the arbitrator has no authority to contradict procedural rules that the parties themselves have bargained for and made a part of their Collective Bargaining Agreement.

In this particular case, the MOU on ex parte communication would prohibit the ruling made by this particular arbitrator. In light of the above, this grievance will be remanded to regional arbitration in accordance with the memo on Step 4 procedures.

### **M-01100 Joint Letter All Regional Arbitrators**

It has come to our attention that some arbitrators have made personal visits to regional offices. As you are aware, your employment contracts prohibit unilateral contact with either party, except for matters regarding scheduling, unless the parties agree in advance to an exception. Since such visits may project the wrong image, in the eyes of either party, we ask that you refrain from making such visits to either Postal Service or union offices, except to conduct hearings.

## Postponement, Cancellation

### **C-19372 National Arbitrator Snow E94N-4E-D 96075418, April 19, 1999**

Article 15.4.B.4 does not preclude an arbitrator from granting a continuance in a removal hearing pending resolution of an underlying disciplinary grievance.

### **M-00945 Pre-arb September 19, 1989, H7N-3A-D-8257**

Except as provided under the National Agreement, neither Management nor the Union may unilaterally cancel the hearing of a grievance scheduled for arbitration.

Once the NALC has appealed a grievance to the regional level, it may be settled or withdrawn only by the NALC Regional Official who initiated the appeal, his designee, or the advocate assigned to represent the NALC at the arbitration

**C-06249 Regional Arbitrator Levak**  
**May 24, 1986, W4N-5L-D 13493**

The arbitrator ordered a postponement of the hearing, despite objections by the Postal Service, since the grievant had been advised by his attorney not to testify until after the adjudication of his case by the U.S. District Court.

## Payment of Witnesses

**C-04657 National Arbitrator Mittenthal**  
**February 15, 1985, H1N-NA-C 7**

The Postal Service is not required to pay Union witnesses for time spent traveling to and from arbitration hearings.

**M-00101 Step 4**  
**September 8, 1976, NCN 2064**

The National Agreement requires that employee witnesses shall be on Employer time when appearing at the arbitration hearing, provided the time is during the employee's regular working hours. There is no distinction made in this section as to whether testimony is given or whether such testimony is relevant.

## Grievant as Management Witness

**C-08975 Regional Arbitrator Snow**  
**June 26, 1989, W7N-5K-8451**

"At the arbitration hearing, management called the grievant as its first witness. The Union vigorously objected, and the arbitrator ruled at the hearing that the grievant would not be compelled to testify until the employer had put forth a prima facie case in support of the grievant's removal. The employer strongly objected to the ruling and requested an opportunity to submit a post-hearing brief on the issue, which request the arbitrator granted.

Although the arbitrator received no post-hearing brief on this issue, it is a matter which has been raised and must be addressed. It is well established in arbitration that, as a general rule, the grievant need not testify until a prima facie case has been established against him or her. (See, for example, *General Industries, Inc.* 82 LA 1161, 1164 (1984); *Arizona Aluminum Company*, 78 LA 766 (1982); and Report of the New York Tri-Partite Committee, Proceedings of the Nineteenth Annual Meeting, National Academy of Arbitrators, 99, BNA Books (1967)).

The reason for this rule is sound. Management has acted to remove an employee and, when challenged, should be expected to explain its decision. Such an explanation should not present the grievant as the chief witness

against the grievant. In a removal case, the Employer has the burden of proof and "burden of proof" is a term connoting two distinct meanings.

One aspect of "burden of proof" refers to the burden of going forward with the evidence, that is, producing evidence to support a particular decision. Some scholars have referred to this as the "production burden." (See, *McNaughton, "Burden of Production of Evidence,"* 68 Harv. L. Rev. 1382, 1384 (1955)). In reality, this burden more accurately could be described as the risk of non-production. Management has borne the responsibility of furnishing evidence which justified its decision of removal. In arbitration, the Employer has the burden of producing evidence to show the reasonableness of its decision, and the party with this burden that fails to offer persuasive evidence in arbitration will not prevail. In other words, the "production burden" imposes on one party the risk of the consequences of the nonproduction of evidence.

By permitting the Employer to call the grievant in a removal case as its first witness, in effect, shifts the burden of production to the Union. This causes the Union to bear the risk of the consequence of the nonproduction of evidence. Accordingly, it has been traditional among arbitrators, in the absence of special circumstances, to require an employer to make a prima facie case (one with sufficient internal consistency to justify management's action) before requiring a grievant to testify as a part of an employer's case in chief. The Employer in this case has presented no reason for the arbitrator to change his earlier ruling with regard to this matter"

## Remedies, Changed

**C-06871 Regional Arbitrator Sobel**  
**March 7, 1987, S4N-3R-D 35445**

An arbitrator is not bound by and limited to the Union's requested "Corrective Action" in fashioning an appropriate remedy. Arbitrators may modify or revise Union requests in an upward direction. See also [C-08895](#)

**C-06142 Regional Arbitrator Britton**  
**May 9, 1986, S1N-3W-C 48118**

Article 15, Section 2 of the National Agreement does not preclude the Union from requesting a remedy at the arbitration hearing different from that which was requested at Step 2 of the grievance procedure.

**C-01694 Regional Arbitrator Holly**  
**August 28, 1981, S8N-3D-C 14268**

An arbitrator will consider only those remedies requested at Step 2.

## Interest as Remedy

Interest is paid automatically for arbitration decisions that award back pay for a disciplinary suspension or removal. However, for arbitration decisions that are unrelated to a disciplinary suspension or removal, interest is not paid unless it is specifically required by the award.

These regulations are found in section 436.7 of the Employee and Labor Relations Manual (ELM) which provides in relevant part:

### *ELM 436.71 Purpose*

*This section establishes procedures for paying interest that the Postal Service is obligated to pay pursuant to the law, court order, arbitration or federal agency decision, national labor agreement, or Postal Service settlement agreement. This section does not create any Postal Service obligation to pay interest on back pay claims.*

### *436.72 Availability of Interest*

*Interest is paid on back pay only under the following circumstances:*

*a. Decisions — awards resulting from legally binding determinations by courts of law, administrative agencies, or the grievance and arbitration process. They are handled as follows:*

*(1) Merit Systems Protection Board (MSPB). Interest is paid automatically by the Accounting Service Center (ASC).*

*(2) Equal Employment Opportunity Commission (EEOC). Interest is paid automatically by the ASC.*

*(3) National Labor Relations Board (NLRB). Interest is paid automatically by the ASC.*

*(4) Court Decisions. Interest is not paid unless specifically awarded in the decision.*

*(5) Arbitration Decisions. Interest is paid automatically for arbitration decisions that award back pay for a disciplinary suspension or removal for employees represented by the National Postal Mail Handlers' Union (NPMHU) for cases heard after February 20, 1991, and for employees represented by the National Association of Letter Carriers (NALC) and the American Postal Workers' Union (APWU) for cases heard after June 12, 1991.*

*Note: For arbitration decisions that are unrelated to a disciplinary suspension or removal, interest is not paid*

*unless it is specifically required by the award.*

*b. Settlements — awards resulting from agreements between a representative of the Postal Service and an authorized employee representative that are reached through negotiation. Interest is not paid unless it is specifically required by the settlement agreement.*

### **Memorandum of Understanding**

#### **1990 National Agreement, June 12, 1991**

RE: Interest on Back Pay. Where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Employer shall pay interest on such back pay at the Federal Judgment Rate. This shall apply to cases heard in arbitration after the effective date of the 1990 Agreement.

#### **C-04519 National Arbitrator Aaron**

##### **December 19, 1984, H1N-5F-D 2560**

An Arbitrator is authorized by the National Agreement, in his discretion, to award interest as part of a back-pay award when sustaining a disciplinary grievance.

#### **C-00955 National Arbitrator Mittenthal**

##### **April 7, 1988, H4C-5A-C 13378**

The Postal Service acknowledged in this case that an arbitrator may order interest added to a back pay award because of a post-award delay in making payment. See also [C-05949](#)

#### **M-00895 Pre-arb**

##### **February 1, 1989, H4N-4B-C 26109**

Whether interest is an appropriate remedy to a subsequent grievance alleging an unreasonably late payment of a prior grievance settlement must be determined on a case-by-case basis, according to the facts of the individual case. See also [M-00928](#)

#### **M-00475 Pre-arb**

##### **September 24, 1986, H4N-5F-D 2426**

The parties recognize the contractual entitlement of the grievant's to file a grievance protesting an unreasonable delay in implementation of a grievance settlement or arbitration award and to request interest as a remedy.

## Bifurcation

#### **M-01447 Step 4**

##### **October 9, 2001, D94N-4D-C 98102097**

The issue in this case is whether an arbitrator may approve or deny a request by one of the parties to bifurcate and arbitration proceeding, hear only procedural issues on the first hearing date and postpone a hearing on the merits until the procedural issues are decided.

During our discussion we mutually agreed that an arbitrator has the discretion to approve or deny such a request to

bifurcate the hearing of a case.

## Arbitrability

There are two different types of challenges to arbitrability—procedural and substantive.

**Procedural arbitrability.** A challenge to procedural arbitrability is a claim that the grievance may not be arbitrated because of a defect in the way it was handled. The most common attack on procedural arbitrability is a claim that a grievance was untimely filed, appealed or filed by an improperly certified union representative.

**Substantive arbitrability.** A substantive arbitrability challenge is a claim that the subject matter of a particular dispute is not arbitrable—that the arbitrator has no power to hear a dispute on the particular subject raised by the grievance. For example, a grievance protesting the denial of a compensation claim by the Office of Workers' Compensation Programs (OWCP) would not be arbitrable.

### M-01253 Step 4

**October 31, 1996, Q90N-4Q-C-96081524**

We agreed that the parties' practice on a national basis has been that the same arbitrator who determined the arbitrability of the case, is scheduled to hear the merits; assuming that the arbitrator in question is still on the appropriate panel and is otherwise available. This practice is to be followed by all field processing centers.

## Procedural Arbitrability

### Claims of Untimeliness

#### C-04187 Regional Arbitrator Leventhal

**March 23, 1984, W1N 5D-C 7034**

"In the absence of a contractual definition requiring that the date an event occurs, irrespective of the time during that date, is to be counted as day one, the usual standard is not to count the day the event occurred because the intent of a contractual time limit to grieve is to give the parties full not partial days in which to act."

#### C-11176 Regional Arbitrator Snow

**January 1, 1986, W1C-5G-C 11272**

"Arbitrators long have been inclined to conclude that grievances have been filed in a timely manner when a complaint has been filed after the parties have been engaged in prolonged negotiations from the time of the alleged infraction and filing the complaint."

#### C-00533 Regional Arbitrator J.E. Williams

**December 12, 1984, S1C-3U-C 20398**

It is "the arbitral standard that it is not the day of the posting of the rule, order, policy, etc., which begins the tolling of time limits for filing a grievance. It is only when the policy is clearly put into effect, and the Union has been made

aware of it, that the time limits begin to toll."

#### C-00970 Regional Arbitrator Bowles

**April 18, 1983, MN-8020**

"[E]ven in those instances where time limits are clear, late filing will be excused if the circumstances are such that it would be unreasonable to demand strict compliance. Moreover, if both parties have been lax in the observance of time limits in the past, the Arbitrator hesitates to enforce strict time limits until or unless notice has been given by a party of the intent to demand strict adherence."

#### C-10198 National Arbitrator Britton

**August 13, 1990, H7N-3S-C 21873**

Where representative grievances are ruled untimely, the cases held for disposition of the representative grievances are nonetheless arbitrable.

#### C-03277 National Arbitrator Fasser

**November 21, 1978, NCE 11737**

By failing to file a grievance concerning maximization for a four-year period NALC slept on its rights. The grievance finally filed, therefore, is untimely.

#### C-11193 Regional Arbitrator Zack

**December 27, 1985, N1T-1J-D 37462**

Grievance is timely although filed five months after employee was given Separation/Disqualification on 92nd day of employment; employee was told he had no appeal rights and union filed grievance within 14 days of learning of the separation.

#### C-01270 Regional Arbitrator Leib

**June 14, 1982, E8N-2B-C 9742**

An employee claim filed several days late is arbitrable, where neither the supervisor nor the employee was familiar with the claims procedure and where the proper form was not immediately available.

#### C-00535 Regional Arbitrator Roukis

**October 31, 1984, N1C-1N-D-17325**

A grievance filed 32 days after receipt of the notice of removal is arbitrable, where the grievant became depressed after receiving the notice and took a month of sick leave; "the grievant's illness provides sufficient mitigation for excusing her belated appeal."

#### C-00150 Regional Arbitrator Cushman

**September 9, 1985, E4V-2U-C 394**

Grievance is untimely where filed more than 14 days after facts occurred giving rise to grievance but within 14 days of learning that national union believed such facts constituted violation of the contract.

#### C-09460 Regional Arbitrator P.M. Williams

**October 25, 1989, S7N-3A-D 22432**

Grievance is timely where filed within 14 days of grievant's receipt of removal notice, although notice had been mailed

to last known address two months earlier and grievant had not updated Form 1216.

**C-00798 Regional Arbitrator McConnell  
March 19, 1985, E1C-2D-D 10991**

Although the appeal to arbitration was made 11 months late, "the matter [is] arbitrable simply because the issue is removal for just cause."

**C-08842 Regional Arbitrator Goodman  
May 3, 1989, W7N-5D-D 10075**

A grievance filed within 14 days of when the union learned of its cause, although longer than 14 days after the grievant learned of its cause, is timely.

**C-00749 National Arbitrator Bloch  
May 12, 1983, H1C-NA-C 5**

The certification to arbitration of a dispute concerning an amendment to the ELM, made more than 60 days after the union's receipt of the notice of proposed amendment, was untimely.

**C-12205 Regional Arbitrator Britton  
SON-3W-D 04320, July 17, 1992**

Where the union filed the Step 2 appeal two days late the grievance is nonetheless arbitrable: "arbitrators have generally taken the view that a minor breach of a filing deadline may be forgiven, particularly where the other side is unable to demonstrate that it has been prejudiced in any way."

## Notice of proposed action vs. notice of decision

Under the MSPB procedures, preference eligible employees must first be issued a letter of proposed discipline and then a final decision letter after they have been given the opportunity to respond to the charges. A grievance should be filed at the time a preference eligible employee receives a Letter of Proposed Discipline. It is not necessary to file a separate grievance concerning the Decision Letter.

The American Postal Workers Union (APWU) has agreed in a national level settlement (M-01137) that for employees in the APWU bargaining units, the time limits of Article 15, Section 2 run from the proposed discipline notice, not from the decision letter.

NALC was not party to that settlement and has a different bargaining history concerning this issue (See M-00939). It is NALC's position that, for letter carriers, a grievance filed within fourteen days of receipt of the decision letter is timely.

Although arbitrators have ruled both for and against NALC's position on this issue, NALC believes Regional Ar-

bitrator Britton ruled correctly in finding that the APWU/USPS memo did not apply in an NALC case, and that a grievance filed protesting a letter of decision was arbitrable. See C-12205.

However, the Postal Service's position concerning this issue is currently unsettled and NALC's position has never been tested at national level arbitration. Unless this issue is resolved, stewards should never wait until receipt of the decision letter to file a grievance. No one would want his/her grievance to become a national level test case.

**M-00939 Step 4  
September 26, 1974, NB-E-1681**

This grievance involves the refusal on managements part to accept a grievance pertaining to a Notice of Charges-Proposed Removal from a steward prior to the time that a decision had been rendered on the previously mentioned proposal. A grievance may be filed upon receipt of a Notice of Proposed Removal.

**M-01137 APWU Step 4  
September 16, 1992, H7V-1F-D 39176**

The issue in this grievance concerns the time limits that must be met in order to grieve a proposed suspension of more than fourteen days and whether a decision letter must be grieved. During our discussion we mutually agreed to close this case based upon the following understanding:

1. For the purpose of grievance procedure appeals, the time limits of Section 2 of Article 15 of the National Agreement shall run from the proposed suspension notice, not from a decision letter on the proposed suspension.
2. Once a grievance on a notice of proposed suspension is filed, it is not necessary to file a grievance on the decision letter.
3. Receipt of a notice of proposed suspension starts the 30 day advance notice period of Section 5 of Article 16 of the National Agreement.

**M-01038 APWU Memorandum of Understanding, August 12, 1991**

This memorandum addresses the time limits that must be met in order to grieve a proposed removal.

1. For the purpose of grievance procedure appeals, the time limits of Section 2 of Article 15 of the National Agreement shall run from the proposed removal notice, not from a decision letter on the proposed removal.
2. Once a grievance on a notice of proposed removal is filed, it is not necessary to file a grievance on the decision letter.
3. Receipt of a notice of proposed removal starts the 30

day advance notice period of Section 5 of Article 16 of the National Agreement.

**C-12205 Regional Arbitrator Britton**  
**S0N-3W-D 04320, July 17, 1992**

APWU/USPS memo providing that a grievance must be filed concerning a notice of proposed removal is "of questionable application" in an NALC arbitration -- grievance filed protesting notice of decision is arbitrable.

**C-03723 Regional Arbitrator Dworkin**  
**August 8, 1983, C1N-4F-D 8380**

A grievance filed protesting a letter of decision is untimely.

**C-01181 Regional Arbitrator Epstein**  
**June 10, 1982, C8N-4E-D 34803**

A grievance must be filed within 14 days of receipt of a notice of proposed removal, and is not timely if filed protesting a notice of decision.

**C-09730 Regional Arbitrator Howard**  
**July 18, 1989, E7N-2B-D 3329**

Removal grievance was timely where filed within 14 days of Notice of Decision.

**C-10485 Regional Arbitrator Sobel**  
**December 14, 1990, S7N 3C-C 30102**

Grievance filed protesting termination of light duty assignment is untimely where filed within 14 days of "notice of decision"; grievance should have been filed within 14 days of "notice of proposed denial of continued light duty."

## Claims that management waived timeliness

**C-01198 Regional Arbitrator Seidman**  
**August 5, 1982, C8N-4H-C 29101**

Because management did not raise timeliness at Step 2 it waived the issue.

**C-01300 Regional Arbitrator Levak**  
**September 9, 1982, W8N-5C-C 14769**

Although at the Step 2 meeting management may have orally claimed the grievance was untimely, by failing to raise the issue in its written Step 2 decision it waived the claim.

**C-03031 Regional Arbitrator Dworkin**  
**February 24, 1983, C1N-4A-D 10382**

Although management raised timeliness in its Step 2 decision, its failure to raise it orally at the Step 2 meeting constituted a waiver of the issue.

**C-09093 National Arbitrator Aaron**  
**July 7, 1982, H8T-5C-C 11160**

By failing to repeat at Steps 3 and 4 its claim first raised at Step 2 that the grievance was untimely management

waived the claim.

**C-08352 Regional Arbitrator P.M. Williams**  
**September 23, 1988, S4N-3U-D 64115**

Because management failed at Step 3 to continue to defend against the grievance on the basis of untimeliness, management waived the claim.

## Because of its actions—or inactions—management should not be permitted to assert that a grievance is untimely

**C-01536 Arbitrator Aaron**  
**April 29, 1974, G-22467**

"[T]he Postal Service cannot, through one of its agents, refuse to accept a properly filed employee grievance and then seek to have the grievance dismissed because the grievance was not accepted."

**C-00009 Regional Arbitrator Cohen**  
**January 18, 1982, C8C-4B-C 22777**

Grievance is arbitrable where there was no Step 1 meeting, where management frustrated the union's attempts to have such a meeting.

**C-03941 Regional Arbitrator Walsh**  
**November 21, 1983, W1N-5K-C 9361**

Where management refused to disclose information and refused to allow a letter carrier to confer with his steward, management is barred from asserting that a grievance is untimely.

**C-03543 Regional Arbitrator Goldstein**  
**May 9, 1983, C8N-4M-C 19875**

Even if a high level labor relations representative told NALC's NBA: "don't file a grievance, I'll try to take care of the problem, if I can't you can file a grievance later," NALC's late filed grievance is not arbitrable.

**C-01625 Regional Arbitrator Dobranski**  
**September 29, 1981, C8N-4A-C 9520**

An extension of time limits is not implied when a supervisor declines to discuss a grievance because he is busy.

**C-06766 Regional Arbitrator Parkinson**  
**December 24, 1986, E4N-2B-C 4499**

Where an employee wrote to the MSC manager asking to discuss a problem, but where the MSC manager does not respond, management may not later claim that a grievance filed by the employee is untimely; management should mention a claim of untimeliness at Step 3, if it wishes to preserve an earlier claim.

## Postmarks and mailing

### **C-01552 Regional Arbitrator Mittenthal** **February 13, 1974, N-C-4170-D**

Regional level award: The date of a mailed grievance appeal is determined by the postmark.

### **C-08831 Regional Arbitrator Nolan** **May 17, 1989, S7N-3S-D 18251**

An appeal is filed when mailed.

### **C-04494 Regional Arbitrator Dworkin** **October 24, 1984, C1N-4D-D 30942**

An appeal is made as of the date it is mailed; a postmark does not prove date of mailing.

### **C-00005 Regional Arbitrator Cohen** **July 3, 1979, ACC 23533**

There is a presumption of arbitrability; grievance is ruled timely where union representative testified appeal was timely mailed, even where the postmark would show the appeal to have been untimely.

### **C-04941 Regional Arbitrator Levak** **May 26, 1985, W1N-5B-D 31519**

"[U]nder normal circumstances... [management fulfills its duty to provide notice] by effecting delivery of the Notice to the employee's official mailing address, and that such an employee shall be deemed to reasonably be expected to learn of the Notice upon the date of such delivery."

### **C-05204 Regional Arbitrator Rentfro** **October 1, 1985, W4N-5D-D 89**

An appeal is made when it is mailed; a postmark is not controlling as to date of mailing.

### **C-06464 Regional Arbitrator Collins** **September 5, 1986, N4N-1A-D 15722**

The presumption of proper mailing was effectively rebutted when grievant credibly testified that he did not receive the Notice of Removal and demonstrated the signature on the certified mail receipt was not his.

## Claims that the grievance is not untimely because it protests a continuing violation

The 2009 JCAM explains continuing violations as follows on 15-2:

Continuing violations are an exception to the general rule stated above. In H1N-5D-C 297, June 16, 1994 (C-13671), National Arbitrator Mittenthal explained the theory of continuing violations as follows:

Assume for the moment, consistent with the federal court rulings, that the Postal Service incorrectly calculated FLSA overtime for TCOLA recipients under the ELM. Each such error would have been a separate and distinct violation. We are not dealing here with a single, isolated occurrence. Management was involved in a continuing violation of the ELM. The affected employees (or NALC) could properly have grieved the violation on any day the miscalculation took place and such grievance would be timely provided it was submitted within the fourteen-day time limit set forth in Article 15. This is precisely the kind of case where a "continuing violation" theory seems applicable. To rule otherwise would allow an improper pay practice to be frozen forever into the ELM by the mere failure of some employee initially to challenge that practice within the relevant fourteen-day period.

### **C-00101 Regional Arbitrator Epstein** **January 11, 1982, C8C-4F-C 14683**

Grievance is not timely where filed eight months after schedule change, even when union claims violation is of continuing nature.

### **C-11176 Regional Arbitrator Snow** **January 6, 1986, W1C-5G-C 11272**

Grievance filed six months after new policy is timely, since the alleged violation would have imposed a continuing infringement on rights of the grievant.

### **C-00533 Regional Arbitrator J.E. Williams** **December 12, 1984, S1C-3U-C 20398**

A grievance filed four months after management published a notice changing the past practice concerning break length is timely, because it protests a continuing violation.

### **C-08862 Regional Arbitrator Axon** **May 16, 1989, W7N-5E-C 815**

Management's failure to comply with a settlement did not give rise to a "continuing" grievance, because that failure was an "isolated and completed transaction"; a grievance filed eight months later, therefore, was untimely.

### **C-00546 Regional Arbitrator Caraway** **February 12, 1985, S1C-3Q-C 26607**

Management's July 11th refusal to provide light duty was timely grieved on September 1st because "the light duty request was a continuing one."

### **C-04076 Regional Arbitrator Scarce** **January 24, 1984, S1N-3W-C 12023**

A grievance concerning management's duty to maximize was "continuing."

### **C-10134 Regional Arbitrator Skelton** **July 23, 1990, S7N-3S-C 88049**

Grievance protesting failure to timely adjust routes is "con-

tinuing."

**C-03921 Regional Arbitrator Rentfro  
November 7, 1983, W1N-5F-C 1548**

A grievance protesting management's refusal to provide light duty is "continuing"; remedy, however, will extend only to 14 days prior to filing.

**C-00938 National Arbitrator Gamser  
August 25, 1976, ABS 1659**

While constituting a "continuing" violation, retroactivity for failure to make out-of-schedule overtime payments may only go back to fourteen days prior to the date on which the Union and the grievant learned of the violation.

## Claims that arbitration is barred because technical requirements of the grievance procedure were not met

**C-00167 Regional Arbitrator Levak  
December 14, 1982, W1C-5G-C 2019**

Grievance is arbitrable even assuming that the union failed to submit copies of the standard grievance form and the Step 2 decision with its Step 3 appeal.

**C-00054 Regional Arbitrator Cohen  
February 23, 1979, ACC 24104D**

Attorney's letter to Postmaster requesting "appeal of adverse action" did not satisfy requirement for Step 1 meeting; grievance is not arbitrable.

**C-00325 Regional Arbitrator Haber  
October 13, 1983, C1C-4E-D 16000**

Grievance is arbitrable where employee was removed and grieved removal, but where management rescinded and reissued removal and second removal was not made the subject of a separate grievance.

**C-11196 Regional Arbitrator Cohen  
December 31, 1985, C1C-4A-D 37562**

Appeal was properly made where signed by another "for" the authorized union representative.

**C-09464 Regional Arbitrator Condon  
October 23, 1989, E7N-2H-D 17295**

Grievance is not arbitrable where filed by a steward not properly certified in writing.

**C-09929 Regional Arbitrator Zumas  
March 21, 1990, E7N-2H-D 22196**

Grievance mistakenly appealed to the Division -- rather than the Region -- is arbitrable.

**C-10798 Regional Arbitrator Foster  
April 23, 1991**

Where the union representative did not appear for a Step 2

hearing he failed to meet "the prescribed time limits of the steps of this [grievance] procedure" and the grievance he was scheduled to discuss was, therefore, waived.

## Claims that a grievance filed concerning an emergency or indefinite suspension did not reach a subsequent removal

**C-01427 Regional Arbitrator Cohen  
March 30, 1979, NCC 13547D**

Ordinarily separate grievances must be filed when an employee receives an indefinite suspension followed by a removal, and in this case a written grievance was filed only concerning the suspension. The removal is nonetheless subject to arbitral review since the union and management orally discussed the removal at the Step 2b hearing of the suspension grievance.

**C-09975 Regional Arbitrator Goldstein  
April 5, 1990, C7N-4D-D 15801**

Where an emergency suspension was followed by a removal, the grievance filed concerning the suspension cannot be read to include the removal.

## Claims that arbitration is barred because appeal was made to the Merit Systems Protection Board (or, previously, to CSC)

### Article 16, Section 9. Veterans' Preference

A preference eligible is not hereunder deprived of whatever rights of appeal are applicable under the Veterans' Preference Act. If the employee appeals under the Veterans' Preference Act, however, the time limits for appeal to arbitration and the normal contractual arbitration scheduling procedures are not to be delayed as a consequence of that appeal; if there is an MSPB appeal pending as of the date the arbitration is scheduled by the parties, the grievant waives access to the grievance-arbitration procedure beyond Step B.

**MSPB Dual Filings.** The Veterans' Preference Act guarantees "preference eligible" employees certain special rights concerning their job security. (Federal law defines a "preference eligible" veteran at Title 5 United States Code Section 2108; see EL-312, Section 483). A preference eligible employee may file both a grievance and an MSPB appeal on a removal or suspension of more than fourteen days. However, Article 16.9 provides that an employee who exercises appeal rights under the Veterans' Preference Act waives access to arbitration when they have an MSPB appeal pending as of the date the grievance is scheduled for arbitration by the parties. The date of the arbitration scheduling letter is considered "the date the

arbitration is scheduled by the parties” for the purposes of Article 16.9.

This language has been modified to reflect the parties’ agreement that an employee should receive a hearing on the merits of an adverse action. It supersedes the 1988 Memorandum of Understanding on Article 16.9.

While a preference eligible city letter carrier may appeal certain adverse actions to the MSPB, as well as file a grievance on the same action, the employee is not entitled to a hearing on the merits in both forums. This provision is designed to prevent the Postal Service from having to defend the same adverse action in an MSPB hearing as well as in an arbitration hearing. If a city letter carrier has an MSPB appeal pending on or after the date the arbitration scheduling letter is dated, the employee waives the right to arbitration.

The parties agree that the union will be permitted to reactivate an employee’s previously waived right to an arbitration hearing if that employee’s appeal to the MSPB did not result in a decision on the merits of the adverse action, or the employee withdraws the MSPB appeal prior to a decision on the merits being made. It is understood that this agreement does not preclude the parties from raising other procedural issues from the original arbitration appeal. Additionally, the Union is not precluded from raising as an issue in arbitration whether any Postal Service backpay liability should include the period between the time the right to arbitration was waived by the employee and the time the Union reactivated the arbitration appeal.

**EEO and EEO/MSPB Mixed Cases—Dual Filings.** Article 16.9 does not bar the arbitration of a grievance where a grievant has asserted the same claim in an Equal Employment Opportunity (EEO) complaint. Nor does it apply where a preference eligible grievant has appealed the same matter through the EEOC and then to the MSPB under the “mixed case” federal regulations. (National Arbitrator Snow, D90N-4D-D 95003945, April 24, 1997, C-16650)

**C-01103 National Arbitrator Gamser  
October 26, 1976, ABW 11369**

Where a grievant files timely grievances under Article XV and also files a timely “appeal” with the Federal Employee Appeals Authority but withdraws that “appeal” prior to the arbitration hearing and in advance of any hearing by the Federal Appeals Authority and in advance of any 2B decision, the grievant does not waive the right to arbitrate.

**C-18158 APWU National Arbitrator Das  
H7N-3R-C 5691, November 12, 1997**

The provisions of Article 16, Section 9 apply to all “adverse actions” as defined by 5 USC §7512, not just to discipline cases.

**C-16650 National Arbitrator Snow  
January 1, 1997, D90N-4D-D 95003945**

Article 16, Section 9 does not apply where a preference eligible grievant has appealed the same matter in the grievance procedure and to EEOC and then to the MSPB under mixed case federal regulations.

**C-01518 National Arbitrator Gamser  
November 30, 1977, NCW-4391D**

A preference eligible’s filing of an appeal of a discharge with the Federal Employee Appeals Authority subsequent to the denial of his grievance in Step 2B which is denied as untimely filed does not waive access to arbitration under the National Agreement.

**C-00021 National Arbitrator Gamser  
April 21, 1977, ACN 8662D**

Preference eligible employee waived access to any procedure beyond step 2B of the National Agreement by securing full adjudication of his discharge from the Civil Service Commission.

**C-11262 Regional Arbitrator Klein**

Although grievant had an MSPB appeal pending at the time his grievance was appealed to arbitration, the grievance is nonetheless arbitrable because MSPB failed to address the merits of his case.

**C-10489 Regional Arbitrator Cushman  
December 7, 1990, E7N-2P-D 24653**

A non-preference eligible who appealed discharge to MSPB did not thereby waive access to arbitration, because Article 16, Section 9 pertains only to preference eligibles.

**C-09937 Regional Arbitrator Skelton  
April 5, 1990, S7N-3A-C 7899**

Where both a grievance and an MSPB appeal were filed concerning a denial of light duty, the grievant’s settlement of the MSPB appeal precludes arbitration of the grievance.

## Claims that arbitration is barred because appeal was made to EEOC

**C-16650 National Arbitrator Snow  
January 1, 1997,)**

Article 16.9 does not bar the arbitration of a grievance where a grievant has asserted the same claim in an Equal Employment Opportunity (EEO) complaint. Nor does it apply where a preference eligible grievant has appealed the same matter through the EEOC and then to the MSPB under the “mixed case” federal regulations.

**C-10972 Regional Arbitrator Caraway  
August 8, 1991 S4N-3Q-C 25392**

A grievance is arbitrable where the Grievant asserted the same claim made in the grievance to the EEOC.

Claims that arbitration is barred because grievant waived access to the grievance procedure in a last-chance agreement.

**See also the more detailed discussion of last-chance agreements in the NALC publication *Defenses to Discipline*.**

**C-09680 Regional Arbitrator Bennett  
January 29, 1990, S7N-3Q-D 22055**

Grievance protesting removal is arbitrable, where employee had agreed to earlier last-chance settlement waiving future appeal rights.

**C-10482 Regional Arbitrator Render  
November 29, 1980, W7N5L-D 21704**

An arbitrator may review a discharge which occurs after a last-chance agreement waiving access to the grievance procedure.

**C-10000 Regional Arbitrator Lange  
April 20, 1990, W7N-5M-C 17720**

Grievance protesting removal is arbitrable, even where grievant earlier agreed to last-chance settlement waiving future appeal rights.

**C-10173 Regional Arbitrator Mitrani  
July 26, 1990, N7N-1N-D 26514**

Where arbitrator of earlier removal grievance restored grievant with a one year "probationary period," subsequent removal within one year is nonetheless arbitrable.

**C-10021 Regional Arbitrator Ables  
May 17, 1990, E7N-2K-C 22828**

Although styled as a class action, a grievance which requested as remedy the restoration to duty of a separated probationary employee is not arbitrable.

## **Claims that arbitration is barred because the grievance was settled or withdrawn**

**C-09436 Regional Arbitrator Germano  
October 20, 1989, N7N-1E-C 23918**

Grievance is arbitrable where management claims grievance was settled at Step 3, but produces no evidence of settlement.

**C-09533 Regional Arbitrator Levin  
November 11, 1989, NYN-7C 160**

Grievance protesting employer claim is not arbitrable where grievant and union agreed to settle suspension grievance by reduction to LOW and statement "with the understanding and agreement that if a claim is filed you are financially responsible."

**C-10974 Regional Arbitrator Byars  
July 16, 1991, S7N-3W-D 33143**

Grievance protesting removal is arbitrable, even where UMPS signed settlement agreeing that the removal was proper.

## **Claims that a grievance is not arbitrable because it is moot**

**C-01694 Regional Arbitrator Holly  
August 28, 1981, S8N-3D-C 14268**

Where the remedy requested was to change grievant's off days, and where the off days had been changed as of the arbitration, the grievance is moot.

**C-01648 Regional Arbitrator Bowles  
June 3, 1981, C8N-4C-C 13609**

A grievance is arbitrable even where the remedy originally requested is no longer attainable as the result of the passage of time.

**C-10559 Regional Arbitrator Sobel  
January 24, 1991, S7N-3N-C 28049**

Where two grievances were filed two days apart, protesting the same action and asking the same remedy, the denial of the first in arbitration must, under the doctrine of res judicata, cause the second to be denied.

**C-10827 Regional Arbitrator Goldstein  
September 28, 1990, C7N-4A-C 21728**

A case is not moot although the only remedy requested at Step 2 was granted at Step 3.

## **Claims that a national level dispute is not arbitrable because it does not concern an interpretive issue**

**C-13792 National Arbitrator Snow  
August 5, 1994, H7C-1K-C 31669 et al  
Arbitrability Decision in OF-346 Dispute**

It is clear from the evidence that the dispute in this case has arisen periodically. Nor can the merits of the dispute be resolved without interpreting several provisions of handbooks and manuals that are of general application. This is sufficient to meet the threshold requirement of the parties' agreement to overcome a challenge to the procedural arbitrability of an interpretive issue at the national level. See also [C-13903](#), Mittenthal

## **Substantive Arbitrability**

**Claims that arbitration is barred because the subject of the grievance is beyond the arbitrator's authority to consider**

See also [Grievance Procedure - Scope](#)

**C-01664 Regional Arbitrator Dworkin  
January 2, 1982, C8N-4A-C 22293**

"It may be, as the Postal Service suggests, that the grievance lacks a relevant contractual premise. That fact alone does not render a grievance non-arbitrable. The question of whether provisions of the Collective Bargaining Agreement are applicable to a complaint, and whether they have been properly applied or interpreted by one party or another, is precisely the issue at the core of every arbitration. It is that issue that arbitrators are charged with resolving. In plain language, the fact that a party may be wrong does not deprive him of the right to an arbitral award stating that he is wrong."

**C-10685 Regional Arbitrator Alsher  
July 26, 1990, S7C 3B-C 21022**

An official discussion may not be grieved; what may not be grieved may not be arbitrated.

**C-09917 National Arbitrator Mittenthal  
March 26, 1990, H7N-5P-C 1132**

A letter carrier's pre-removal grievance did not survive his later discharge.

Note: This decision has been superseded by the 1990 Memorandum of Understanding on the processing of post-removal grievances.

**M-00226 Memorandum of Understanding  
October 16, 1981**

[T]he processing and/or arbitration of a grievance is not barred by the separation of the grievant, whether such separation is by resignation, retirement, or death.

**C-00544 Regional Arbitrator Martin  
February 11, 1985, C1T-4C-C 31542**

A grievance protesting a decision by management that an employee is not eligible for a Safe Driver Award is arbitrable.

**C-01695 Regional Arbitrator Larson  
December 30, 1981, S8N-3U-C 16418**

An arbitrator has authority to decide a claim that a supervisor improperly intervened with a court to change the dates of grievant's scheduled jury duty.

**C-06949 National Arbitrator Bernstein  
April 8, 1987, H1N-3D-C 40171**

The NALC does not have standing to bring a grievance on behalf of a rural carrier. The NALC/APWU contract does not create substantive rights for employees outside of the bargaining units represented by the unions. Only the NRLCA is entitled to bargain on behalf of rural carriers, and the NALC is not entitled to intrude itself into that process.

**C-06858 National Arbitrator Bernstein  
March 11, 1987, H1N-5G-C 14964**

Article 5 of the National Agreement serves to incorporate all of the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism--it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

**C-01377 Regional Arbitrator Caraway  
September 9, 1982, S1N-3U-C 787**

An arbitrator lacks authority to consider a claim that the Freedom of Information Act has been violated. See also C-06858

## On-the-job injuries

**C-01396 Regional Arbitrator Caraway  
August 23, 1982, S1N-3U-C 191**

"Once the employee has filed a CA-1 with the Department of Labor, that agency has sole authority over [that employee's] claim. The arbitrator is divested of authority."

**C-01659 Regional Arbitrator Dobranski  
October 20, 1981, C8N-4A-C 20164**

OWCP has exclusive jurisdiction over compensation claims; a grievance filed concerning a claim is not arbitrable.

**C-04936 Regional Arbitrator Searce  
May 28, 1985, S1N-3W-C 19996**

An arbitrator lacks authority to order payment of COP.

# BARGAINING UNIT WORK, SUPERVISORS PERFORMING

See also [204Bs](#)

Article 1, Section 6 of the National Agreement contains the following restrictions on supervisors performing bargaining unit work.

## Section 6. Performance of Bargaining Unit Work

**A.** Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

1. in an emergency;
2. for the purpose of training or instruction of employees;
3. to assure the proper operation of equipment;
4. to protect the safety of employees; or
5. to protect the property of the USPS.

The JCAM provides the following explanation:

The prohibition against supervisors performing bargaining unit work also applies to acting supervisors (204b). The PS Form 1723, which shows the times and dates of the 204b detail, is the controlling document for determining whether an employee is in a 204b status. A separate PS Form 1723 is used for each detail. A single detail may not be broken up on multiple PS Forms 1723 for the purpose of using a 204b on overtime in lieu of a bargaining unit employee. Article 41.1.A.2 requires that a copy of the PS Form 1723 be provided to the union at the local level.

An acting supervisor (204b) may not be used in lieu of a bargaining unit employee for the purpose of bargaining-unit overtime. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail on the day he/she was in a 204b status unless all available bargaining unit employees are utilized. However, an employee may work bargaining unit overtime, otherwise consistent with the provisions of Article 8, on the day before or the day after a 204b detail. (Step 4, H0N-5R-C13315, August 30, 1993, [M-01177](#)).

Branches that wish to determine whether a post office has 100 or more bargaining unit employees should contact their national business agent. The Settlement Agreement NC-E-4716, November 24, 1978 ([M-00206](#)) between the NALC and USPS, which was intended to be of general application, provides that “where additional work hours would have been assigned to employees but for a violation of Article 1.6.A, and where such work hours are not *de minimis*, the employee(s) whom management would have assigned the work, shall be paid for the time involved at

the applicable rate.” (*De minimis*” means “trifling, unimportant, inconsequential.”)

An emergency is defined in Article 3.F as “an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.”

**B.** In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6.A.1 through 5 above or when the duties are included in the supervisor’s position description.

(The preceding Article, Article 1, shall apply to City Carrier Assistant Employees.)

The JCAM provides the following explanation:

Article 1.6.B prohibits supervisors in offices with less than 100 bargaining unit employees from performing letter carrier bargaining unit work except for the reasons enumerated in Article 1.6.A.1 through 5, or when the duties being performed are included in the supervisor’s position description.

The Step 4 decision NC-C-9746, March 3, 1978 ([M-00200](#)) provides that no matter what appears in a supervisor’s job description, it does not authorize the supervisor to “perform bargaining unit work as a matter course every day,” but rather “to meet established service standards.” Furthermore, the prearbitration settlement H7N-2M-C-443, May 17, 1988, ([M-00832](#)) provides that where the phrase “distribution tasks” or “may personally perform non-supervisory tasks” is found in a supervisor’s job description, this does not include casing mail into letter carrier cases.

### **C-03329 National Arbitrator Aaron March 16, 1983, H1N-3Q-C 1288**

Relabeling of letter carrier cases, including filling out of forms 313 is bargaining unit work which may not be performed by supervisors. See also [C-01409](#), [C-05654](#), [M-00204](#), [M-00691](#).

### **M-00832 Pre-arb May 17, 1988, H7N-2M-C 443**

In the administration of Article 1, Section 6.B of the National Agreement, the parties agree to the following principles: If the phrase “distribution tasks” or “may personally perform non-supervisory tasks” is found in a supervisor’s job description, this does not mean the casing of mail into letter carrier cases. See [M-00974](#).

### **M-00974 Memorandum, June 28, 1990**

This letter is intended to serve as a joint statement of the parties in clarification of the settlement in H7N-2M-C-443 [[M-00832](#)] and reflects the meaning and understanding of the parties, then and now.

The following language appears in the subject settlement:

*If the phrase "distribution tasks" or "may personally perform non-supervisory tasks" is found in a supervisor's position description, this does not mean the casing of mail into letter carriers cases.*

The parties agree that the meaning and intent of their settlement did not change the meaning of a prior settlement in case number NB-C-2981 (N-61)/S-SPR-M-55. The language in that settlement reads as follows:

*The provisions for distributing mail, as contained in a supervisors position description, refer to clerk duties and not the routing of mail into a carrier case.*

To this effect, the language of this joint statement of clarification should be deemed to be substituted for that which appears in the original settlement agreement of case number H7N-2M-C-443 (M-00832).

#### **M-00200 Step 4 March 3, 1978, NCC 9746**

The National Agreement does not limit the performance of bargaining unit work by supervisors to only emergency situations in offices of less than 100 employees. Conversely, the supervisor's job description does not intone (sic) that he would perform bargaining unit work as a matter of course every day but rather that he would perform such duties in order to meet established service standards. See also M-00974.

#### **M-01351 Step 4 F94N-4F-C 98101549, October 22, 1998**

An employee, while detailed to an EAS position, may not perform bargaining unit overtime, except as authorized by Article 3.F of the National Agreement. The PS Form 1723 should accurately reflect the duration of the detail.

#### **M-00540 Step 4 September 27, 1984, H1N-3F-C 31824**

Except in an emergency, a supervisor should not transport a member of a van-pool to his/her route.

#### **M-00206 Settlement Agreement November 24, 1978, NCE 4716**

Where additional work hours would have been assigned to employees but for a violation of Article I, Section 6A, and where such work hours are not de minimis, the employee(s) whom management would have assigned the work shall be paid for the time involved at the applicable rate.

#### **M-00205 Step 4 January 31, 1977, NCW 4083**

The supervisor had been instructed to discontinue placing the mail in question on the carriers' ledge.

#### **M-00870 Pre-arb November 1, 1988, H4N-3U-C 25828**

We mutually agreed the general delivery and pickup of express Mail is bargaining-unit work. It is also understood that management has not designated this work to any specific craft. In accordance with the above understanding, management is prohibited from performing bargaining-unit work except as enumerated in Article 1, Section 6.

This settlement is not intended to prohibit management from assigning available personnel as necessary, including non-bargaining-unit persons, to meet its commitment where Express Mail is concerned in connection with noon and 3 P.M. deliveries and office closings. See also M-00955 (APWU)

#### **M-00336 Pre-arb, NN 4507**

The Postal Service reaffirms its intent that supervisors will do as little bargaining unit work as possible and that such work will be performed only under the strict limitations of Article 1, Section 6, of the 1973 National Agreement.

#### **M-00202 Step 4 July 19, 1977, NCE 4977**

Preparation of collection schedules is a management function, however, the actual changing of collection box labels as cited in the grievance case should be performed by bargaining unit employees.

#### **M-00454 Step 4 November 18, 1977, NCS 8463**

The delivery of disciplinary notices to employees is not per se bargaining unit work.

#### **M-00751 Step 4 April 23, 1987, H4N-3U-C 27476**

Movement of mail by the supervisor for the sole purpose of conducting mail counts or volume measurements does not constitute bargaining-unit work.

#### **M-00322 Step 4 January 30, 1975, NBC 2981**

The provisions for distributing mail as contained in the supervisor's job description refer to clerk duties and not the routing of mail into a carrier case.

#### **M-00034 Step 4 January 20, 1983, H8N-4F-C 32626**

It is not the intent of the parties at the national level that supervisors will perform the duties enumerated in the applicable handbooks as carrier duties and responsibilities, except as provided for in Article 1, Section 6, of the 1978 National Agreement.

## **M-01031 Step 4**

**December 6, 1991, H7N-5C-C-21548**

The issue in this grievance is whether under these specific fact circumstances, the operation of a paper folding machine by supervisors violates the National Agreement. Without prejudice to either parties position in any other case, we agree that the work performed is bargaining unit work.

## **M-01132 APWU Step 4**

**May 20, 1977, AC-S-105**

The servicing of stamp-vending machines is bargaining unit work. Therefore, the grievance is sustained as it relates to the performance of this function. Supervisors will refrain from performing this work except as provided in Article I, Section 6 of the National Agreement.

## **M-01165 Step 4**

**October 4, 1993, HON-5S-C 15426**

The issue in this case is whether the National Agreement was violated when a postmaster relief employee not serving under a dual appointment, was loaned to an installation other than the one to which she was assigned and was used as a casual employee doing clerical work.

To the extent that a postmaster relief employee not serving under dual appointment may not be used as a casual employee, the grievance is sustained.

## **C-10597 Regional Arbitrator P.M. Williams**

**February 2, 1991**

The no-notice resignation of a carrier did not create an "emergency" and, therefore, did not justify the performance of bargaining unit work by a supervisor.

## **C-00001 Regional Arbitrator Williams**

**December 13, 1981, ACS 24175**

Management did not violate Article 1, Section 6 by assigning the duty of timekeeping to the Superintendent, Postal Operations.

## **C-10898 Regional Arbitrator Mitrani**

**June 7, 1991, N7N-1W-C 34921**

Management did not violate the contract when a supervisor delivered twenty-four pieces of express mail over a six-month period.

See also [Posting](#)

## **M-01619 Postal Service Letter**

**June 1, 2007**

Regarding the second phase of Postal PEOPLE implementation: The NALC National Agreement's requirement to post vacant or newly established duty assignments within five days falls outside of the functionality of the Human Capital Enterprise System (HCES). Also, some installations have Local Memorandum of Understanding provisions on posting and bidding that do not match other time periods and requirements of the National Agreement. To accommodate these requirements, it may be necessary to use manual bid cards following the HCES migration.

## **M-00752 Memorandum**

**March 16, 1987, H1N-NA-C 119**

The following procedures will be used in situations in which a regular letter carrier, as a result of illness or injury, is temporarily unable to work his or her normal letter carrier assignment, and is working another assignment on a light duty or limited duty basis, or is receiving Continuation of Pay (COP) or compensation as a result of being injured on the job, sick leave, or annual leave, or Leave Without Pay (LWOP) in lieu of sick leave.

A) A regular letter carrier who is temporarily disabled will be allowed to bid for and be awarded a letter carrier bid assignment in accordance with Article 41, Section 1.C.1, or, where applicable, in accordance with the provisions of a local memorandum of understanding, provided that the letter carrier will be able to assume the position within the six (6) months from the time at which the bid is placed.

B) Management may, at the time of submission of the bid or at any time thereafter, request that the letter carrier provide medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within six (6) months of the bid. If the letter carrier fails to provide such certification, the bid shall be disallowed, and, if the assignment was awarded, it shall be reposted for bidding. Under such circumstances, the letter carrier shall not be permitted to re-bid the next posting of that assignment.

C) If at the end of the six (6) month period, the letter carrier is still unable to perform the duties of the bid-for position, management may request that the letter carrier provide new medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within the second six (6) months after the bid. If the letter carrier fails to provide such new certification, the bid shall be disallowed and the assignment shall be reposted for bidding. Under such circumstances, the letter carrier shall not be permitted to re-bid the next posting of that assignment.

D) If at the end of one (1) year from the placement of the

bid the letter carrier has not been able to perform the duties of the bid-for position, the letter carrier must relinquish the assignment, and shall not be permitted to re-bid the next posting of that assignment.

E) It is still incumbent upon the letter carrier to follow procedures in Article 41.I.B.I to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

Letter carriers who bid to a higher level assignment pursuant to the procedures described in the preamble and Part I Bidding, above, will not receive higher level pay until they are physically able to, and actually perform work in the bid-for higher level position.

## **C-05793 Regional Arbitrator Pribble**

**February 27, 1986, C4N-4T-C 6054**

Management improperly denied bid, where carrier entered incorrect seniority date on PS 1717 bid card, but where correct seniority date would have entitled carrier to the assignment, because Article 41, Section 2.C confers responsibility for administration of seniority upon management.

## **C-09918 Regional Arbitrator Sobel**

**March 8, 1990**

Management violated the contract by placing a carrier in a new bid assignment in December.

## **C-10006 Regional Arbitrator Skelton**

**May 2, 1990**

Management did not violate the contract when it refused grievant's bid for a route on the basis that grievant was not qualified because of a twenty-five pound lifting restriction.

## **C-00108 Regional Arbitrator Martin**

**August 22, 1985, C1C-4K-C 33815**

Bid was timely submitted where it was mailed prior to cut-off, where USPS asserts "everyone knew" bids should be personally submitted.

## **M-00732 Step 4**

**October 31, 1974, NBW 1603**

Employee bid on his former assignment while still detailed to a supervisory position in which he had served for over six months. This was not consistent with applicable provisions of the National Agreement. Accordingly, the appropriate postal officials are being instructed to take the necessary steps to see that the assignment in question is awarded to the bidder who would have received that assignment had it not been awarded to the employee with whom this grievance is concerned.

## **M-00669 Step 4**

**February 24, 1987, H1N-5G-C 22641**

Full-time reserve and unassigned regular letter carriers occupying a hold-down position pursuant to the provisions

of Article 41.2.B.3 have the right to bid for a full-time duty assignment. If such letter carrier is the successful bidder, he shall be placed into the duty assignment pursuant to the provisions of Article 41.1.C.3. The resultant vacant hold-down will be filled pursuant to the provisions of Article 41.2.B.3-5, provided the anticipated duration of the resultant vacancy is of five (5) days or more.

**M-00491 Step 4**  
**June 29, 1972, NW 555**

It is improper to deny a letter carrier's bid based on an attendance record.

**M-00947 Step 4**  
**October 6, 1987, H7N-1N-C-20699**

Article 41, Section 1.B.1 of the National Agreement applies to letter carriers who have been suspended or removed. Notices inviting bids shall be sent to such letter carriers provided they submit request per that provision.

During the pendency of the grievance of a letter carrier who has been suspended or removed, management shall accept and honor the bid of such letter carrier for letter carrier craft duty assignments, and to such other assignments to which a letter carrier is entitled to bid.

**M-00683 Step 4**  
**June 23, 1977, NCS 6637**

The grievant was the successful bidder on one of several positions which were awarded in November 1976. However, the reassignments were not effective until January 15, 1977, by which time the position awarded to the grievant was reverted. The Union contends that as a result the grievant should have been awarded his second choice. The evidence available substantiates the Union's contention. The grievance is sustained.

**M-01055 APWU Step 4**  
**February 18, 1986, H4C-5K-C-3831**

The issue in this grievance is whether management violated the National Agreement by not placing the next senior qualified bidder in a position within the prescribed time. The parties at this level agree that "immediately after the end of the deferment period, the senior bidder then qualified shall be permanently assigned..." in accordance with Article 37.3F(3). Those employees who were placed in new assignments after the prescribed time limit should be paid out-of-schedule premium for those hours worked between such time and the effective date of the new assignment.

## Restrictions—Article 12.3

**M-01596 Postal Service Correspondence**  
**January 11, 2007**

The Postal Service has reset the bid counters for each letter carrier to zero effective November 21, 2006.

**M-01450 Memorandum of Understanding**  
**December 13, 2001**

Re: National Negotiations—Article 12.3.A and Article 10.4.B. The parties have agreed to extend the current period of contract negotiations. Pending conclusion of this extension, the parties have agreed to the following:

Article 12.3.A—The bid count for the five (5) successful bids during the term of the next National Agreement began on November 21, 2001.

Article 10.4.B—Choice vacation selections are to proceed as provided in the 1998-2001 National Agreement and, or corresponding Local Memoranda of Understanding.

**M-01626 USPS Letter**  
**April 4, 2007**

City letter carriers may claim "closer to home" when submitting bids through the Interactive Voice Recognition System or by computer bidding. A claim of "closer to home" is then tracked in the Human Capital Enterprise System. A bid that is validated as "closer to home" does not count towards the maximum number of successful bids allowed by Article 12.3.A of the collective bargaining agreement.

**M-00513 Step 4**  
**May 21, 1984, H1N-1E-C 25953**

The bidding restrictions of Article 12, Section 3, pertain only to those positions posted for bid pursuant to Article 41, Section 1.B.2. Other types of local in section bidding or bidding pursuant to Article 41, Section 2.B, are not included.

**M-00313 Step 4**  
**September 20, 1985, H1C-3P-C 36488**

The bidding exceptions listed in Article 12, Section 3, are to be applied from the first bid.

**M-00305 Step 4**  
**May 2, 1985, H1N-5G-C 26398**

The issue in this grievance is if an employee is designated a successful bidder to one of the exclusions enumerated under Article 12, Section 3.A, is that bid counted against the maximum of five or does the exception criteria apply only after the fifth successful bid. Such bid is not counted against the maximum of five (5) bids.

## While on LWOP for military duty

**M-01453 CAU Publication**  
**USERRA Rights, December 2001**

Contract Administration Unit Publication reviewing letter carrier rights under the Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA). Includes explanation of letter carriers' bidding rights while on LWOP for military service.

M-39 Section 242.341 provides for break periods. It states:

### **242.341 Street Time Allied Work Rules**

The carriers at the delivery unit will receive two 10-minute break periods. The local union may annually opt to have either (a) both breaks on the street or (b) one of the 10-minute breaks in the office and one break on the street. If two 10-minute breaks are taken on the street, they will be separate from each other. Breaks must be separate from the lunch period. The carrier shall record on Form 1564-A, Delivery Instructions, the approximate location of the break(s). Reasonable comfort stops will not be deducted from the carrier's actual time

## **Breaks Are Mandatory**

Letter carriers are required to take the negotiated breaks. If management does not enforce this requirement, it should be grieved by the union. The JCAM explains this requirement as follows:

**Rest Breaks.** National Arbitrator Britton ruled that the Postal Service must ensure that all employees stop working during an office break. Contractual breaks must be observed and cannot be waived by employees. (H4N-3D-C 9419, December 22, 1988, [C-08555](#))

### **C-01637 Regional Arbitrator Epstein October 6, 1981, C8N-4C-C 12068**

The appropriate remedy for the Postal Service's erroneous denial of break time is for the Postal Service to grant those carriers adversely affected compensatory time off. This time off may be granted in the form of double breaks for an amount of time equal to the time that the carriers were deprived of their breaks during the relevant period, or in blocks of hours or days at the option of the Postal Service. See also [C-03044](#)

## **Length of Past Practice**

The negotiated two 10-minute break periods are the required minimum. However, longer breaks may be established by [past practice](#) or the Local Memorandum of Understanding.

### **M-00179 Step 4 May 1, 1981, H8N-5C-C 13673**

This grievance involves whether the carriers in the office in question are entitled to two fifteen minute breaks by virtue of the previous long-standing practice of granting such breaks. Upon review of the issue raised along with other documents provided; including previous route inspection data, it is our determination that the carriers are entitled to 2 fifteen minutes breaks.

### **M-00702 Step 4 May 3, 1979, NCS 18037**

In those installations where there was a past practice of allowing coffee breaks longer than the twenty, minutes provided for in the National Agreement that past practice should continue.

### **M-00941 Step 4 June 27, 1989, H7N-5H 7814**

In those installations where longer break periods were provided by past local negotiation, the longer break periods will be used.

### **C-12691 Regional Arbitrator Epstein December 26, 1992, C0N-4U-C 4150**

Management violated the National Agreement and the established past practice when it unilaterally reduced the morning break from 15 minutes to 10 minutes.

### **C-00155 Regional Arbitrator Eaton April 4, 1986, W1C-5D-C 25265**

Management was not bound by past practice of permitting 15 minute breaks, where no management official with "contracting authority" was aware of the practice.

## **Location**

M-39 Section 126.5 requires that break locations be entered on Form 1564-A. Section 126.5 provides in relevant part:

126.5 § (3) Have approved approximate locations for street break periods been entered on Form 1564-A? Street break locations should also be entered on route maps. (Indicate sequence; i.e., after swing 2, etc.)

### **M-00138 Letter, May 10, 1979**

Letter carriers can take two 10-minute breaks on the street or take one 10-minute break in the office and one 10-minute break on-the-street. Inasmuch as the designated line of travel to and from the route is part of the route street time, a designation of an approximate break location of the line of travel is considered appropriate.

### **M-00424 Step 4, June 11, 1980, N8-W-0312**

The intent of the negotiated breaks for carriers allows that carriers may take their breaks on the line of travel to or from their designated delivery area and that one or both of the street breaks may be taken in the office as long as such is on street time and duly recorded in the carrier route book.

### **M-00527 Step 4 September 10, 1984, H1N-3U-C 32763**

If the carriers have selected to take either one or both of the breaks on the street, then either one or both of these street breaks may be taken in the office but must be

taken on street time and cannot be combined. See also [M-00062](#)

**M-00405 Step 4**  
**November 7, 1980, N8-S-0314**

The determination as to authorized rest break locations rest solely with management. There is no requirement that rest breaks be at a location that serves refreshments.

**M-00240 Step 4**  
**June 24, 1977, NCC 5581**

Letter carriers were permitted to go to the bakery next door to the post office on the clock in order to purchase a roll to eat with their coffee in the morning. The fact that the carriers' starting time was changed by 30 minutes does not, in and of itself, appear to be reasonable grounds on which to discontinue the practice of going to the bakery on the clock in order to purchase a roll. Accordingly, by copy of this letter, the postmaster is instructed to continue the past practice with respect to purchasing rolls, with the understanding that office time will not in any way be expanded by such a practice.

## Time Of

**M-00134 Letter, February 21, 1979**

No time will be noted of Form 1564 when designating the approximate location where breaks are to be taken.

**M-00885 National Joint City Delivery Meeting**  
**October 4, 1988**

Morning and afternoon office breaks for routers will be scheduled by management.

**M-00834 Pre-arb**  
**February 2, 1988, H4N-3Q-C 40722**

Handbook M-39, Section 242.341, requires that the two ten minute break periods be separate from each other, and that such breaks must be separate from the lunch period. There is no specific requirement in the M-39 Handbook that one of the break periods be before and one after a carrier's lunch period.

## PTF Breaks

**M-00618 Step 4**  
**November 13, 1985, H4N-5L-C 1316**

Break times for a part-time flexible letter carrier who works only a portion of a day performing carrier duties will be implemented on a pro-rata basis. The pro-rata basis will involve four equal segments of 2 hours each in the 8 hour day. Accordingly, a part-time flexible carrier who works 2 hours performing carrier duties is entitled to a 5-minute break; 4 hours carrier work would provide a 10-minute break; 6 hours carrier work would provide one 10-minute break and one 5-minute break; and 8 hours carrier work entitles the carrier to two 10-minute breaks.

See also [M-00171](#)

## Route Inspection Credit

**M-00242 Step 4**  
**September 13, 1976, NCE 2097**

Management should not deduct reasonable comforts/rest stops from the total street time during route inspections if deduction of the time is contrary to pass local practice.

**M-00230 Step 4**  
**March 17, 1982, H8N-4B-C 32585**

Letter carriers are entitled to two 10-minute break periods. If less than this is incorporated into the routes, appropriate action should be initiated to ascertain that this break time is reflected in the route adjustments. Management does not have the contractual right to deny the utilization of these breaks.

**M-00745 National Joint City Delivery Meeting**  
**December 11-12, 1979**

When both breaks are selected on the street in accordance with M-39 Section 242.34a, one or both of these breaks may in some instances properly be designated as in the post office. When this happens, however, the break or breaks will be recorded as street time and must occur during the period from clocking out of the office and clocking back in from the street.

## BULLETIN BOARDS

Article 22 of the National Agreement provides the following:

The Employer shall furnish separate bulletin boards for the exclusive use of the Union, subject to the conditions stated herein, if space is available. If sufficient space is not available, at least one will be provided for all Unions. The Union may place its literature racks in swing rooms, if space is available. Only suitable notices and literature may be posted or placed in literature racks. There shall be no posting or placement of literature in literature racks except upon the authority of officially designated representatives of the Union.

(The preceding Article, Article 22, shall apply to City Carrier Assistant Employees.)

The JCAM explains Article 22 as follows:

National Arbitration Howard Gamser ruled in N8-W-0214, July 14, 1981 (C-03224) that the Postal Service may not interfere with the posting of material on NALC bulletin boards unless management “can prove that this material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the work force and to manage its operations efficiently and productively.” Arbitrator Gamser sustained an NALC grievance in which management unilaterally removed a list of non-members from a bulletin board because the Postal Service was unable to demonstrate “that the notices did, in fact, cause sufficient disruption or dissension so as interfere with the orderly conduct of business, or that a failure to remove such notice would inevitably lead to such a result.”

In the Step 4 decision E90N-1E-C 93023117, December 16, 1993 (M-01159), Management sustained a grievance challenging the removal from a bulletin board of an NALC Bulletin listing endorsements of political candidates.

### **C-03224 National Arbitrator Gamser July 14, 1981, N8-W-0214**

Management will not interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that this material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the work force and to manage its operations efficiently and productively.

### **M-01159 Step 4 December 16, 1993, WON-5R-C 15397**

The issues in these cases is whether a contractual violation occurred when management removed certain items from NALC bulletin boards. The items were removed due

to management's determination that the material in question, which consisted of an NALC Bulletin listing endorsements of political candidates, was inappropriate for display in a building owned or leased by the Postal Service. Based on the particular fact circumstances in this case, the grievances are sustained.

### **M-01399 Step 4 January 12, 2000, E94N-4E-C 98082428**

The issue in this grievance is whether management violated Article 22 of the National Agreement when a petition regarding the minimum wage (Initiative 668) was not allowed to be posted in Bitterlake Station. After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed, that the Hatch Act is not applicable to the facts contained in this case. We also agreed that whether or not there was a violation of Article 22 of the National Agreement's a matter suitable for local determination.

### **M-00443 Step 4 October 19, 1978, NCS 11116**

The National Agreement, Article XXII does not restrict local management from allowing the national alliance of Postal and Federal employees to place material on a bulletin board other than the bulletin boards of the certified bargaining representatives.

## UNION BUTTONS

### **C-06858 National Arbitrator Bernstein March 11, 1987, H1N-5G-C 14964**

The Postal Service is directed to refrain from prohibiting the wearing of union buttons whenever it permits the wearing of any other items other than stars and bars, safe driving awards or other insignia which recognize special accomplishments.

### **M-01466 Prearbitration Settlement June 26, 2002, K94N-4D-C-99228226**

The issue in these cases is whether letter carriers are prohibited from wearing “union campaign/negotiations buttons,” on their uniforms.

In accordance with Section 933.72 of the ELM, “Except as indicated below, other insignia may not be worn with the uniform.” In accordance with Section 933.84 of the ELM, the September 1, 1998 memo from then Senior Vice President of Labor Relations, John Potter, provided an exception to the language contained in Section 933.72 of the ELM, allowing buttons to be worn on the uniform when out of public view, during that negotiation period.

The parties agree that during union elections and the bargaining period for National Negotiations, exceptions will normally be granted, as follows:

Employees in uniform may wear buttons on their uniforms when they are not in the performance of their duties in the public's view, and provided the message on the button is not insulting, disruptive, or otherwise inappropriate. See also [M-01467](#)

**C-00252 Regional Arbitrator Foster**  
**September 20, 1984, S1C-3W-C 16495**

Management acted improperly when it prohibited a clerk from wearing a T-shirt with the printed words "The LSM Sucks."

## Historical Background

On October 26, 1994, Interest Arbitrator Richard Mittenthal issued an award (C-13963) expanding the Carrier Technician Level 6 (T-6) program to all installations. Prior to that time the replacement carriers in some installations were called T-6s because they received Grade 6 pay. In other installations they were called utility carriers and received only Grade 5 pay, the same as other carriers.

A September 19, 1999 national interest arbitration award upgraded letter carriers to Grade 6 and maintained the existing pay differential for carrier technicians. To avoid confusion with the different pay scales in other crafts, the pay grade terminology was changed. PS 5 letter carriers became CC 1 and PS 6 letter carriers became CC 2. Consequently, the term T-6 became obsolete.

Nevertheless, many national level settlements and memorandums referring to T-6 (and utility) carriers, including all those listed below, remain in effect. If you have any questions concerning the current applicability of national level settlements, memorandums or regional arbitration awards, contact your national business agent.

### **C-13963 Interest Arbitrator Mittenthal October 26, 1994, T-6 Interest Arbitration**

"NALC's position as outlined by the Interest Arbitration Board on page 60 of its June 12, 1991 Award is adopted."

### **M-01214 Memorandum of Understanding January 10, 1995**

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that the following procedures will apply for the implementation of Arbitrator Mittenthal's October 26, 1994 Interest Arbitration Award [C-13963] regarding expansion of the Carrier Technician, Level 6, (T-6) program.

## Carrier Technician Duties

### **M-01214 Memorandum of Understanding January 10, 1995**

Memorandum of Understanding implementing the Arbitrator Mittenthal's national level arbitration award (C-13963). It provides in pertinent part:

*The parties recognize that the Carrier Technician, Level 6, (T-6) position carries with it an assumption of leadership responsibility as well as an advancement opportunity, and that in many cases, T-6's have not been called upon to perform the full scope of their position. With this in mind, the parties encourage supervisors, T-6's and carriers alike to work together to realize the leadership, efficiency and service potential inherent in the T-6 program.*

*In accordance with the duties and responsibilities of the T-6 position (copy of position description attached), the parties encourage use of T-6's in the following leadership activities:*

- a. Monitor and assist replacement carriers working on routes in their group to maintain schedules and quality service;*
- b. Assist management as a delivery point sequencing (DPS) quality liaison for carriers in their group, providing information and suggested improvements related to improving sort plan quality, station inputs, and overall quality of the DPS mail flow;*
- c. Make suggestions to the supervisor regarding coverage of the routes in their group to maintain efficiency and quality service; and*
- d. Assist management in conducting quality control efforts, such as ensuring that Change of Address cards (PS Form 3575) are processed appropriately and that carrier case labels are timely updated, etc.*

### **M-00278 Step 4**

#### **November 21, 1978, NCW-12279**

Normally the T-6 will train new employees as provided in the T-6 position description. However, management reserves the right to have anyone conduct such training.

## Qualifications

### **M-00425 Step 4**

#### **November 30, 1977, NC-W-5281**

The Qualifications Standards for the position of Carrier Technician require at least two (2) years of Postal experience of which at least one year must have been in the performance of city carrier duties. However, successful completion of a 4 year high school curriculum may be substituted for one (1) year of the required experience, but not for the one (1) year of experience as city carrier. If the experience requirements are posing and (sic) insurmountable problem in filling needed T-6 positions, the Postmaster may request waiver of the requirement.

### **M-00280 Step 4**

#### **September 21, 1982, H1N-5H-C 2754**

Total time (including casual) served performing carrier duties will count toward required experience when awarding carrier technician positions.

## Bidding and Posting

### **M-00986 Step 4**

#### **July 26, 1990, H4N-3A-C 62482**

T-6 positions should be included in postings under Article 41.3.0.

## **M-00694 Step 4**

**February 6, 1987, H1N-3A-C 30176**

If a Local Memorandum of Understanding contains the Article 41.3.O language and changes in T-6 are so great that the assignments are abolished, they should be reposted in accordance with Article 41.3.O. If a local Memorandum of Understanding does not contain 41.3.O language, reposting is not required. Changing one route in a T-6 string is not a cause for reposting regardless of Local Memorandum of Understanding provisions.

## **M-00061 Step 4**

**May 26, 1983, H1N-3A-C 16392**

Normally the changing of routes on a swing does not require the routes to be reposted for

## **Pay, Temporary Vacancies**

### **M-00902 Step 4**

**February 10, 1989, H4N-5R-C 44093**

The Brown Memo of November 5, 1973 (M-00437) remains in effect

### **M-00452 Brown Memo, November 5, 1973**

When a carrier technician (T-6) is absent for an extended period and another employee serves the series of 5 routes assigned to the absent T-6, the replacement employee shall be considered as replacing the T-6, and he shall be paid at the T-6 level of pay for the entire time he serves those routes, whether or not he performs all of the duties of the T-6. When a carrier technician's absence is of sufficiently brief duration so that his replacement does not serve the full series of routes assigned to the absent T-6, the replacement employee is not entitled to the T-6 level of pay. In addition, when a T-6 employee is on extended absence, but different carriers serve the different routes assigned to the T-6, those replacements are not entitled to the T-6 level of pay. The foregoing should be implemented in a straight-forward and equitable manner. Thus, for example, an employee who has carried an absent T-6 carrier's routes for four days should not be replaced by another employee on the fifth day merely in order to avoid paying the replacement higher level pay.

### **C-10254 National Arbitrator Snow**

**September 10, 1990, H7N-5R-C 316**

Management may not assign different employees on an "as needed" basis carry a route on a T-6 string when a vacancy of five or more days is involved; instead such vacancies must be filled according to Article 25.

### **M-01035 Pre-arb**

**February 24, 1992, H7N-5R-C-32010**

The issue in this grievance is whether management must fill a T-6 assignment which is vacant for five days or more.

During our discussion, we mutually agreed that manage-

ment may not refuse to fill a T-6 assignment which is vacant for five days or more, in order to reserve that assignment for other purposes such as pivoting.

### **M-01365 Step 4**

**October 22, 1998, H94N-4H-C 98077431**

Step 4 settlement citing the JCAM as confirmation that PTF letter carriers may apply for T-6 positions under the provisions of Article 25.

### **M-00431 Pre-arb**

**January 27, 1982, H8N-3P-C 32705**

Details of anticipated duration of one week (five working days within seven calendar days) or longer to temporarily vacant Carrier Technician (T-6) positions shall be filled per Article 25, 1981 National Agreement. When such temporary details involve a schedule change for the detailed employee, that employee will assume the hours of the vacancy without obligation to the employer for out-of-schedule overtime. See also M-00072

### **M-00276 Step 4**

**May 6, 1981, H8N-3P-C 25550**

Temporary T-6 positions are higher level assignments and are not subject to Article 41, Section 2.B.3-4-5. As such they are to be filled per the provisions of Article 25, National Agreement.

### **M-00614 Step 4**

**July 18, 1974, NBE-791**

If local management directs a city carrier to carry a route which would otherwise be carried by a T-6, and if the assignment is solely to those duties contained in the job description of a city carrier, KP-11, that city carrier will only be entitled to Level 5 pay for the day or days in question.

### **M-01833 Joint Questions and Answers**

**March 6, 2014**

**Question 46: How does a CCA who is hired as a grade CC-01 receive proper compensation when assigned to a City Carrier Technician (grade CC-02) position?**

In such case the CCA's PS Form 50 must be revised to reflect that he/she is assigned to a Carrier Technician position. This will require designation to the proper City Carrier Assistant Tech occupational code (either 2310-0047 or 2310-0048).

## **Schedule**

The JCAM Provides the following concerning Carrier Technician Assignments under Article 41.1.C.4:

Carrier Technician Assignments. The five routes on a Carrier Technician's string or group which constitute a full-time duty assignment are normally carried in the posted sequence. In the absence of any Local Memorandum

dum of Understanding provisions or binding past practice concerning this issue (see Article 5), management has discretion to move a Carrier Technician off the assignment he or she is working in the regular rotation to another route on the Carrier Technician's string.

If a Carrier Technician is moved to another route on the string, that route becomes the carrier's assignment on that day for the purposes of Article 41.1.C.4 and the application of the overtime provisions of Article 8.5. If a Carrier Technician is moved to another route on the string with a different starting time, he/she still retains and is still entitled to be paid for the hours of his/her regular schedule. However, if appropriate advance notice of a schedule change is given, the carrier receives out-of-schedule pay instead. (See the explanation of out-of-schedule pay under Article 8.4)

Management may not move the Carrier Technician off the string entirely, unless the Local Memorandum of Understanding so provides or "unanticipated circumstances" arise. It is not an "unanticipated circumstance" when the regular carrier, whose route the Carrier Technician is working, comes in and works his or her non-scheduled day.

**M-00129 Step 4**  
**December 13, 1978, NCS-11547**

It would be inconsistent with the terms and conditions of the National Agreement to utilize a T-6 carrier to case all five routes each day with the regular carriers making the street deliveries.

**M-01020 Step 4**  
**November 14, 1991, H7N-5R-C 6764**

The issue in this grievance is whether management violated Article 41 by failing to change the grievant's starting time to the starting time of the regular carrier of a route which the grievant carried as a Carrier Technician (T-6). During our discussion, we mutually agreed that the starting time(s) of a T-6 carrier should be the starting time(s) of the component routes which comprise the T-6 assignment.

**M-00282 Step 4**  
**April 27, 1979, NCS-12143**

Normally, a T-6 carrier covers the routes within his string of routes on the nonscheduled day of the carriers assigned to those routes. Usually, this means that the T-6 carrier will carry those routes within his string in a prescribed sequence. However, a T-6 carrier's function is to serve any route on his group during the absence of the regular carrier. Accordingly, assignment of a T-6 carrier to other than a prescribed sequence, but to a route within his string when the regular carrier for that route is absent, is proper, whether or not an unanticipated circumstance has occurred. See also [M-00380](#), [M-00283](#)

**M-00758 Step 4**  
**May 22, 1987, H4N-5R-C 30785**

The issue in these grievances is whether or not the T-6 carrier was improperly assigned to case mail on several routes on a given day.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. Whether or not the T-6 carrier was improperly assigned to case mail on several routes on a given day can only be determined by applying Article 41, Section 1.C.4 to the fact circumstances. The parties at this level agree that a T-6 should not normally be moved off the scheduled route unless absolutely necessary and all other alternatives have been considered including the use of overtime and/or auxiliary assistance. See also [M-00350](#)

**M-00277 Step 4**  
**November 30 1977, NC-W-8286**

When it is known in advance that a carrier will be absent for an extended period, it is not anticipated that a T-6 will be required to serve the same route for the entire week unless unanticipated or emergency circumstances exist.

**M-01085 Step 4**  
**May 8, 1992, H7N-3W-C 38708**

The issue in this grievance is whether a utility carrier was improperly assigned to case and deliver mail on a route within the bid assignment.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The previous decision in cases H4N-5R-C 30785 et al [[M-00758](#)] also applies to utility carriers. It states in relevant part, that "... a T-6 should not normally be moved off the scheduled route unless absolutely necessary and all other alternatives have been considered including the use of overtime and/or auxiliary assistance."

**M-00679 Step 4**  
**February 18, 1976, NC-W-400**

It was mutually agreed that the T-6 carrier will not be moved off his scheduled route unless absolutely necessary and all other alternatives have been made including calling in all qualified carriers in an overtime situation.

**M-00154 Step 4**  
**December 14, 1979, N8N-0176**

The regular route carrier is called in on his off-day to work his own route, he bumps the utility carrier to one of the other four routes in his string of routes. To enable the utility carrier to achieve the essence of his bid assignment, he will be allowed to displace an employee who has opted to cover an assignment under the provisions of Article XLI, Section 2B3,4 and 5 as long as such route is one of the utility carrier's string of routes and if none of the other routes in his string are available. See also [M-00511](#)

## **M-00128 Step 4**

**November 13, 1978, NCC-11621**

At issue in this grievance is whether local management can keep a T-6 carrier in the office all day on occasion to case mail and not deliver a route. It is our position that such a practice is inconsistent with the terms and conditions of the National Agreement. See also [M-00281](#)

## **M-00100 Step 4**

**October 29, 1976, NC-S-2814**

The grievant has been utilized to carry one route in his string of five routes for an extended period of time. Such a requirement is contrary to the provisions set forth in Article XLI, Section 2.D. of the National Agreement.

## **M-00279 Step 4**

**January 31, 1977, NCS-4362**

An employee need only be "qualified" to carry a route. The T-6 carrier will not be moved off his string solely because he is "better qualified" to carry a particular route.

## **M-00775 Step 4**

**July 8, 1977, NCC-6334**

The T-6 Carrier's Route Assignment was not temporarily changed due to anticipated circumstances. Local management was in this case, aware that Route 0424 was vacant with no carrier assigned to it. Therefore, under these specific factual circumstances we cannot conclude that unusual circumstances were present.

## **C-09761 Regional Arbitrator Dunn**

**February 20, 1990**

Management violated the contract when it required a T-6 carrier to work off his assignment.

## **C-10272 Regional Arbitrator P.M. Williams**

**September 13, 1990**

Management did not violate Article 41, Section 1.C.4 when it changed the composition of a T-6 assignment.

## **C-03633 Regional Arbitrator Holly**

**August 5, 1983, S1N-3U-C 14096**

Unscheduled sick leave does not constitute an "unanticipated circumstance" within the meaning of Article 41 Section 1.C.4. Consequently the Postal Service violated the contract by removing a letter carrier from his T-6 string after receiving a sick call.

## **M-01833, Joint Questions and Answers (in part) March 6, 2014**

Jointly developed USPS/NALC document explaining the mutual understanding of the national parties on issues related to the 2011 USPS/NALC National Agreement. Reprinted below is the section concerning city carrier assistants (CCAs). It replaces the May 22, 2013, Questions and Answers (M-01819) which is now obsolete.

### **City Carrier Assistants Joint Questions and Answers**

#### **1. What is the last date that transitional employees may be on the rolls?**

April 10, 2013.

#### **2. How will the provisions of Article 7.1.C be monitored for compliance?**

The CCA caps will be monitored at the national level. The Postal Service will provide the national union with a report every other pay period that lists, by District, the number and type of CCA (Article 7.1.C.1 and 7.1.C.2) and the number of full-time regular city letter carriers. Any dispute over compliance with the CCA caps will be addressed at the national level.

#### **3. Are transitional employees who were on their 5-day break on the effective date of the 2011 National Agreement (1/10/13) eligible for the higher Step AA hourly pay rate if hired to a CCA position?**

Yes.

#### **4. In determining CCA caps is the number of CCAs "rounded" for percentage purposes?**

No. Under Article 7.1.C.1 of the 2011 USPS/NALC National Agreement the number of CCAs shall not exceed 15% of the total number of full-time career city letter carriers in each District. Regarding the 8,000 CCAs employed under Article 7.1.C.2, the number in an individual District can be no more than 8% of the full-time career city letter carriers in that District.

#### **5. Are CCAs employed under Article 7.1.C.2 limited to sites directly affected by "fundamental changes in the business environment"?**

No. However, the number of this type of CCA that may be employed is limited to 8,000 nationwide and no more than 8% of the number of full-time career city letter carriers in a District.

#### **6. What are the occupational codes and designation activity codes for CCAs?**

CCA occupational codes are as follows: CCAs employed under Article 7.1.C.1 of the National Agreement are either 2310-0045 (City Carrier Assistant 1, CC-01) or 2310-0047 (City Carrier Assistant Tech 1, CC-02). CCAs employed under Article 7.1.C.2 of the National Agreement are either

2310-0046 (City Carrier Assistant 2, CC-01) or 2310-0048 (City Carrier Assistant Tech 2, CC-02). The designation activity code for all city carrier assistants is 84-4.

#### **7. Can city letter carrier transitional employees apply for CCA vacancies in installations other than their employing office?**

Yes.

#### **8. Which score is used if a city letter carrier transitional employee with an active test score retakes the exam?**

The most recent test score is used.

#### **9. What is a passing score on the postal exam?**

70.

#### **10. How long does a previous test score remain active for non-career employees?**

6 Years.

#### **11. Will reinstatement-eligible former career employees and veterans eligible for direct career appointment under VRA or because of their 30 percent or higher disability status be eligible for noncompetitive consideration for CCA employment?**

Yes.

#### **12. Does the five-day break between CCA 360-day appointments refer to five calendar or work days?**

Five calendar days.

#### **13. May a CCA employed under Article 7.1.C.1 or Article 7.1.C.2 be appointed to a term of less than 360 days?**

No. The only exception is when a transitional employee is hired as a CCA after a one day break during implementation of the 2011 National Agreement. In such case, the total period between the beginning of the transitional employee appointment and the end of the initial CCA appointment is 360 calendar days.

#### **14. Can a transitional employee turn down an offer to be hired as a CCA in one installation and remain eligible to be hired as a CCA in a different installation?**

Yes, provided the employee applied for a position in the other installation(s).

#### **15. May CCAs hold dual appointments?**

No.

#### **16. Must a CCA go through the normal pre-employment screening process (i.e. drug screen, background check, medical assessment, motor vehicle record check, etc.) when reappointed or hired immediately after a transitional employee appointment?**

No.

#### **17. May CCAs who have an on the job illness or injury**

### **be assigned to work in other crafts?**

Only if the assignment to another craft is consistent with Section 546 of the Employee and Labor Relations Manual and relevant Department of Labor regulations.

### **18. If a transitional employee is deployed to active duty in the military during the period of testing, will he/she have the opportunity to be hired as a CCA upon return from active duty?**

Yes, consistent with applicable laws and regulations.

### **19. Does the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) apply to CCAs?**

Yes.

### **20. How are CCAs considered when applying the Letter Carrier Paragraph?**

CCAs are considered as auxiliary assistance. Accordingly, management must seek to use CCAs at either the straight-time or regular overtime rate prior to requiring letter carriers not on the overtime desired list or work assignment list to work overtime on their own route on a regularly scheduled day.

### **21. Is there a limit on the number of hours CCAs may be scheduled on a workday?**

Yes, CCAs are covered by Section 432.32 of the Employee and Labor Relations Manual, which states: Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions.

### **22. Do CCAs receive Night Differential or Sunday Premium?**

CCAs receive Night Differential as defined in Article 8.7 of the National Agreement. CCAs do not receive Sunday Premium.

### **23. Do CCAs have a work hour guarantee?**

Yes, CCAs employed in post offices and facilities with 200 or more workyears of employment have a four hour work guarantee and CCAs employed in all other post offices have a two hour work guarantee.

### **24. Are there rules covering work hour guarantees for a CCA who has a gap between two periods of work?**

Yes. If a CCA is notified prior to clocking out that he/she should return within two hours, it is considered a split shift and no new work hour guarantee applies. However, if a CCA is notified prior to clocking out that he/she is to re-

turn after two hours, the CCA must be given another work hour guarantee pursuant to Article 8.8 (two or four hours depending on office size).

### **25. Can CCAs be required to remain on "stand-by" or remain at home for a call-in on days they are not scheduled to work?**

No.

### **26. May CCAs be permanently reassigned from one post office (installation) to another during their appointment?**

Yes, provided the employee's current appointment is being voluntarily terminated. To avoid a break in service a permanent reassignment to a different installation must be effected on the first day of a pay period.

### **27. Is there a "lock-in" period that a CCA must meet before being reassigned to another installation?**

There is no lock-in period a CCA must satisfy before becoming eligible to reassign to another installation. Eligibility to move between installations is generally intended to address situations where an individual CCA would like to be reassigned to another installation for personal reasons and there is an agreement between the "losing" and "gaining" installation heads.

### **28. After a CCA becomes a career employee does he/she serve a lock-in period for transfers as defined by the Memorandum of Understanding, Re: Transfers?**

Yes.

### **29. May CCAs carry over leave from one appointment to another?**

No. Currently any accrued annual leave is paid out at the end of a 360-day term. However, the national parties will explore appropriate options regarding current policies for paying terminal leave to CCAs.

### **30. Do separated transitional employees receive payment for accrued annual leave?**

Yes, all transitional employees will receive terminal leave payment at the end of their appointment, including transitional employees who directly (after a one day break) receive CCA appointments. Payment will be at the transitional employee rate effective under the 2006 National Agreement.

### **31. Do CCAs that are converted to career status carry their annual leave balance over when hired?**

No. Currently, CCAs receive a terminal leave payment for any leave balance at the end of the CCA appointment.

### **32. Are CCAs covered by the Memorandum of Understanding, Re: Bereavement Leave?**

Yes, however, CCAs do not earn sick leave and therefore may only request annual leave or leave without pay for be-

reavement purposes.

### **33. Do leave provisions outlined in Article 10 of the National Agreement apply to CCAs?**

No. Leave provisions for CCA employees are addressed on pages 18-19 of the January 10, 2013 Interest Arbitration Award (Das).

### **34. Does Article 30 of the National Agreement apply to CCAs?**

No, except as provided in the Memorandum of Understanding, Re: City Carrier Assistant (CCA) Leave, on page 23 of the January 10, 2013 Interest Arbitration Award (Das).

### **35. Does a CCA who receives a career appointment go through a 90 calendar day probationary period as a career city letter carrier?**

Yes, except in the following circumstances:

- The employee has successfully completed two successive 360-day appointments as a CCA, provided the career appointment directly follows a CCA appointment. See Memorandum of Understanding, Re: Article 12.1 – Probationary Period.
- The employee was a city carrier transitional employee placed into a CCA position following a one-day break in service in accordance with the January 31, 2013 Memorandum of Understanding, Re: Break in Service. The TE service does not apply, but completion of a total of 720 days as a CCA in successive appointments satisfies the two successive 360-day appointments required by the Memorandum of Understanding, Re: Article 12.1 - Probationary Period.
- When, during the term of the Memorandum of Understanding, Re: Sunday Delivery - City Carrier Assistant Staffing, the employee is converted to full-time career status and successfully served as a city carrier transitional employee directly before his/her initial CCA appointment.

### **36. Will CCAs have access to the grievance procedure if disciplined or removed?**

A CCA who has completed 90 work or 120 calendar days of employment within the immediate preceding six months has access to the grievance procedure if disciplined or removed. A CCA who has previously satisfied the 90/120 day requirement either as a CCA or transitional employee (with an appointment made after September 29, 2007), will have access to the grievance procedure without regard to length of service as a CCA.

### **37. Can a CCA serve as a union steward?**

Yes.

### **38. Will the union be allowed to address newly hired CCAs as part of the orientation process?**

Yes. The provisions of Article 17.6 of the National Agree-

ment apply to CCAs. Accordingly, the union is to be provided ample opportunity to address all newly hired CCAs as part of the hiring process.

### **39. Is the union provided an opportunity to discuss health insurance, pursuant to Article 17.6, when a CCA becomes a career employee?**

Yes, the union will be provided time to address the NALC Health Benefit Plans that are available to career employees.

### **40. Do former transitional employees go through the full orientation process when hired as CCAs?**

Only if the employee was not provided orientation when hired as a transitional employee. However, the union will be provided time, as defined in Article 17.6 of the National Agreement to address those CCAs that went through the full orientation process as transitional employees.

### **41. If a current transitional employee is a member of the union and they are hired as a CCA do they have to execute a new Form 1187 to remain a member of the union?**

No.

### **42. Are CCAs allowed to participate in the Federal Employees Health Benefits Program?**

The following applies until health benefits plan year 2014. After an initial appointment for a 360-day term and upon reappointment to another 360-day term, any eligible non-career CCA who wants to pay health care premiums to participate in the Federal Employees Health Benefits (FEHB) Program on a pre-tax basis will be required to make an election to do so in accordance with applicable procedures. A previous appointment as a transitional employee will count toward qualifying for participation in FEHB, in accordance with the Office of Personnel Management (OPM) regulations. The total cost of health insurance is the responsibility of the noncareer CCA. Health benefits available for CCAs beginning with health plan year 2014 are addressed at page 20 of the January 10, 2013 Interest Arbitration Award (Das).

### **43. To qualify for Health Benefits must a CCA serve the entire 360-day initial appointment before a second 360-day appointment?**

To qualify for the Federal Employees Health Benefits Program, CCAs must first have completed one full year (365 days) of current continuous employment, including breaks of five days or less, regardless of when the five-day break occurs.

### **44. Do the provisions of Article 21.5 (Health Benefit Brochures) apply when a CCA becomes a career employee?**

Yes.

### **45. Are CCAs entitled to higher level pay under Article**

## **25 of the National Agreement?**

No.

## **46. How does a CCA who is hired as a grade CC-01 receive proper compensation when assigned to a City Carrier Technician (grade CC-02) position?**

In such case the CCA's PS Form 50 must be revised to reflect that he/she is assigned to a Carrier Technician position. This will require designation to the proper City Carrier Assistant Tech occupational code (either 2310-0047 or 2310-0048).

## **47. When does a CCA become eligible for a uniform allowance?**

Upon completion of 90 work days or 120 calendar days of employment as a CCA, whichever comes first. CCAs who have previously satisfied the 90/120 day requirement as a transitional employee (with an appointment made after September 29, 2007), become eligible for a uniform allowance when they begin their first CCA appointment.

## **48. What defines the anniversary date for the purpose of annual uniform allowance eligibility for a CCA?**

The calendar date the CCA initially becomes eligible for a uniform allowance.

## **49. How is the uniform anniversary date determined for a CCA who is converted to career status?**

The employee retains the same anniversary date held as a CCA.

## **50. How is a uniform allowance provided to a CCA?**

When a CCA becomes eligible for a uniform allowance, funds must be approved through an eBuy submission by local management. After approval, a Letter of Authorization form must be completed and provided to the employee within 14 days of the eligibility date. The CCA takes the completed form to a USPS authorized vendor to purchase uniform items. The Letter of Authorization can be located on the Uniform Program website on the Blue Page under Labor Relations.

## **51. How are uniform items purchased?**

Uniform items can only be purchased from USPS licensed vendors. A list of all authorized Postal Service Uniform vendors is located under the Labor Relations website: Uniform Program from the Blue Page and also on Liteblue under My HR, and look for the link for Uniform Program.

## **52. How does a licensed uniform vendor receive payment for uniform items purchased by a CCA?**

The licensed vendor creates an itemized invoice of the sale, provides a copy of the invoice to the CCA, and sends the original invoice for payment to the local manager identified on the Letter of Authorization. Upon receipt, the local manager certifies the invoice and pays the vendor using the office Smartpay card.

## **53. If a CCA does not use the full allowance before his/her appointment ends, does the allowance carry-over into the next appointment when the appointment begins before the next uniform anniversary date?**

Yes, however, the CCA cannot purchase uniform items during his/her five calendar day break between appointments. If the full annual uniform allowance is not used before the next anniversary date, the remaining balance for that year is forfeited.

## **54. Does the annual uniform anniversary date change when a CCA is separated for lack of work and then rehired as a CCA after his/her anniversary date has passed?**

Yes, in this situation a new anniversary date is established on the date of reappointment and the CCA is provided a full annual uniform allowance within 14 days of the new anniversary date.

## **55. What happens to the annual uniform allowance for a CCA that has an anniversary date, is separated for lack of work, and then rehired as a CCA before their next uniform anniversary date?**

A CCA that is separated under this circumstance retains his/her anniversary date. If there is no uniform allowance balance remaining at the point of separation, the matter will be considered closed. If the CCA had any part of the annual uniform allowance available at the point of separation, the remaining balance will be redetermined upon reappointment as follows: If the period of separation exceeded 89 calendar days, the remaining balance will be reduced by 10 percent of the annual uniform allowance for the first 90 calendar days and then by 10 percent for each full 30 calendar days thereafter. In no event will such re-determination result in a negative balance for the employee.

## **56. Will CCAs receive the additional credit authorized under Article 26.2.B with their first uniform allowance following conversion to career status?**

Yes.

## **57. How is time credited for transitional employee employment when determining relative standing for CCAs?**

All time spent on the rolls as a city letter carrier transitional employee after September 29, 2007 will be added to CCA time in an installation to determine relative standing. Breaks in transitional employee service are not included in the relative standing period.

## **58. How is placement on the relative standing roster determined when two or more CCAs have the same total time credited for relative standing?**

First, the relative standing on the hiring list (appointment register) will be used to determine the CCA with higher relative standing (See Article 41.2.B.6.[a]). If a tie remains then the formula outlined in Article 41.2.B.7 is applied.

**59. For time spent as a city letter carrier transitional employee, does it matter where an individual was employed when determining relative standing?**

No. All time on the rolls as a transitional employee after September 29, 2007 counts toward relative standing regardless of the installation(s) in which the transitional employee was employed.

**60. Does time credited toward relative standing for time worked as a transitional employee after September 29, 2007 transfer from one installation to another once hired as a CCA?**

Yes.

**61. Does relative standing earned as a CCA in one installation move with a CCA who is separated and is later employed in another installation?**

No.

**62. How is relative standing determined for a CCA who is employed in an installation, then permanently moves to a different installation and then is subsequently reemployed in the original installation?**

Relative standing in this situation is based on the date the employee is reemployed in the original installation and is augmented by time served as a city letter carrier transitional employee for appointments made after September 29, 2007 (in any installation).

**63. How is a tie addressed when more than one employee is placed in full-time career city letter carrier duty assignments in an installation on the same date through either transfer/reassignment or CCA conversion to full-time?**

Placement on the seniority list is determined by the following:

- If two or more full-time career assignments in an individual installation are filled on the same date by only CCAs, placement on the career city letter carrier craft seniority list will be determined based on the relative standing in the installation.
- When two or more full-time career assignments in an individual installation are filled on the same date by only career employees through reassignment/transfer, placement on the city carrier craft seniority list will be determined by application of Article 41.2.B.7 of the National Agreement, as appropriate.
- Current career employees will normally be placed ahead of CCAs on the seniority list when two or more full-time career assignments are being filled in an individual installation on the same date from both reassigned/transferred and CCA employees. An exception may occur when the CCA(s) with the highest relative standing has previous career service. In such case the CCA(s) will be placed ahead of the career employee only if he/she is determined to be

senior to the transferred/reassigned employee by application of Article 41.2.B.7 of the National Agreement. In no case will a CCA with lower relative standing be placed on the seniority list ahead of a CCA with higher relative standing who is converted to career on the same date in the installation.

**64. Will CCAs be allowed to opt on (hold-down) vacant duty assignments?**

Yes, after April 10, 2013.

**65. Is there a waiting period for a new CCA (no former experience as a career city letter carrier or city carrier transitional employee) before the employee can opt on a hold-down?**

Yes, 60 calendar days from the date of appointment as a CCA. Once the CCA has met this requirement there is no additional waiting period for applying for/being awarded a hold-down when the employee is converted to career.

**66. Is there a difference in the application of opting (hold-down) rules between part-time flexible city carriers and CCAs?**

No.

**67. Can a CCA be taken off an opt (hold-down) in order to provide a part-time flexible employee assigned to the same work location with 40 hours of straight-time work over the course of a service week (Article 7, Section 1.C)?**

Yes, a CCA may be "bumped" from an opt if necessary to provide 40 hours of straight-time work over the course of a service week to part-time flexible letter carriers assigned to the same work location. In this situation the opt is not terminated. Rather, the CCA is temporarily taken off the assignment as necessary on a day-to-day basis.

**68. What is the pecking order for awarding hold-down assignments?**

Hold-down assignments are awarded to eligible career letter carriers by highest to lowest seniority first and then to eligible CCAs by highest to lowest relative standing in the installation.

**69. Will the 5-day break in service between 360-day terms end an opt (hold-down)?**

No.

**70. Does the 5-day break at the end of a 360-day appointment create another opt (hold-down) opportunity?**

Only where the break creates a vacancy of five work days. In such case the opt is for the five day period of the break.

**71. Will CCAs be offered part-time regular city carrier vacancies?**

While there is no prohibition against a CCA requesting a part-time regular vacancy, the Postal Service is under no

## CITY CARRIER ASSISTANTS (CCAs)

obligation to offer or place a CCA into such vacancy.

### **72. When there is an opportunity for conversion to career status in an installation and that installation has both part-time flexible and CCA employees available for conversion, who is converted?**

The part-time flexible employees are converted to full-time regular prior to offering conversion to CCAs.

### **73. When there is a career conversion opportunity for a CCA, how are CCA employees converted?**

CCAs are offered conversion opportunities to full-time regular on a highest to lowest relative standing order basis within an installation.

### **74. May a CCA decline an opportunity for conversion to full-time regular?**

Yes, rejection of a conversion offer does not impact the employee's relative standing as a CCA.

### **75. Will CCAs attend the carrier academy?**

Newly hired CCAs in Districts that use the carrier academy program will attend the training.

### **76. Will transitional employees hired as CCAs attend the carrier academy?**

If the transitional employee did not previously attend the carrier academy and the District uses the carrier academy program, the employee will attend the training.

### **77. May CCAs enter into City Carrier Transportation (Driveout) Agreements, as defined in Article 41.4 of the National Agreement?**

No, Article 41.4 does not apply to CCAs. However, the Memorandum of Understanding, Re: Use of Privately Owned Vehicles applies to CCAs. In circumstances where the postmaster or station manager determines that use of a personal vehicle is necessary for business purposes, a CCA may voluntarily elect to use his/her vehicle. Such agreement must be made through PS Form 8048, Commercial Emergency Vehicle Hire, with the daily rate for vehicle use mutually agreed to by the postmaster or station manager and the employee. The postmaster or station manager must then forward the completed form to the servicing Vehicle Maintenance Facility manager.

### **78. Will CCAs be assigned a Postal Service Employee Identification Number (EIN) and Personal Identification Number (PIN)?**

Yes.

### **M-01822 USPS Instructions May 22, 2013**

SUBJECT: City Carrier Assistants-Annual Uniform Allowance

In accordance with Article 26, Section 3 of the 2011 National Agreement between the U.S. Postal Service and

National Association of Letter Carriers, city carrier assistants (CCAs) are provided with an annual uniform allowance. To qualify for a uniform allowance CCAs must either complete 90 work days or be employed for 120 calendar days, whichever comes first. CCAs who have previously satisfied the 90/120 day requirement as a transitional employee (with an appointment made after September 29, 2007) become eligible for a uniform allowance at the beginning of their first CCA appointment.

CCA uniform allotments will be disbursed annually in a lump sum. The specific allotment amounts are as follows:

Effective Nov 21 , 2012 = \$390

Effective Nov. 21 , 2013 = \$399

Effective Nov 21 , 2014 = \$409

Effective Nov. 21 , 2015 = \$420

Generally, the calendar date that a CCA initially becomes eligible for a uniform allowance is the annual anniversary date. Any uniform allowance amount remaining at the beginning of the next anniversary date is forfeited.

To provide the uniform allowance, local managers must furnish each CCA with a Letter of Authorization that includes an original signature. In order to purchase uniform items, the CCA must provide the original Letter of Authorization to an authorized postal uniform vendor and display his/her postal identification for verification of identity. Advance payment to a uniform vendor is not required; however, **local managers must ensure that prompt payment is made to the vendor for approved CCA uniform item purchases after receiving the itemized invoice and the original Letter of Authorization.**

Detailed instructions regarding the purchase and payment of CCA uniform items and the Letter of Authorization template are attached. This information is also available on the Blue Page under the Uniform Program Website.

CCAs who are separated and not reappointed must return all uniform items to the local manager.

### **M-01827 Memorandum of Understanding December 4, 2013**

Re: City Carrier Assistants - Temporary Assignments to Other Post Offices

The parties agree to the following regarding the temporary assignment of city carrier assistants (CCAs) outside their employing post office (installation) to another post office (installation):

1. CCAs will normally work in their employing post office but may be assigned to work in another post office in the local travel area (Handbook F-15, Section 7- 1.1.1 .1) within the same district on an occasional basis (the assignment may be for a partial day or several consecutive days, depending on local circumstances). Sunday CCA work assignments are not subject to the occasional basis

## CITY CARRIER ASSISTANTS (CCA)

limitation.

2. Temporary assignments must otherwise be consistent with the National Agreement (e.g. assigning CCAs to work outside their employing office may not violate Article 7 1.C.4 in the temporary office or the letter carrier paragraph in the employing office)

3. Management will schedule CCAs to work in other post offices in advance of the reporting date whenever practicable

4. When the need arises to temporarily assign CCAs outside their employing post office, management will, to the extent practicable, use volunteer CCAs from the delivery unit providing assistance as long as the volunteers will be in a similar pay status (e.g straight-time rate, regular overtime rate, penalty overtime rate). If sufficient volunteers are not found, CCAs from the delivery unit providing assistance will be temporarily assigned to the other installation in reverse relative standing order whenever practicable as long as the junior CCAs are in a similar pay status.

5. CCAs who are required or volunteer to work outside their employing office may receive payment for mileage for the difference between their residence and employing office provided the difference is greater (Handbook F-15, Section 7-1.1.1.2.d).

The procedures outlined above are effective on December 7, 2013; however, either party may terminate this agreement by providing 30 days written notice to the other party. This agreement is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

### **M-01835 Memorandum of Understanding March 31, 2014**

*Re: Sunday Delivery—City Carrier Assistant Staffing*

The parties recognize the importance of successfully implementing the continued expansion of Sunday parcel delivery service, which began testing in approximately 900 delivery zones on November 10, 2013. The parties agree that during the test, the most cost-effective resource for this service would be the use of city carrier assistants (CCAs) without increasing the rate of overtime usage.

Many CCA resources are being used to temporarily fill full-time regular residual vacancies. Pursuant to the August 30, 2013 Memorandum of Understanding *Re: Residual Vacancies - City Letter Carrier Craft* and the March 31, 2014 Memorandum of Understanding *Re: Full-time Regular Opportunities - City Letter Carrier Craft*, the parties are in the process of permanently filling residual vacancies and full-time regular opportunities by assignment of unassigned regulars, conversion of part-time flexible employees to full-time regular status, acceptance of transfer requests and conversion of CCAs to full-time regular career status.

During implementation of the Memorandum of Understanding *Re: Residual Vacancies - City Letter Carrier Craft* and the Memorandum of Understanding *Re: Full-time Regular Opportunities - City Letter Carrier Craft*, the national parties may find it necessary to temporarily exceed the CCA caps in Article 7.1.C of the National Agreement when implementing the process outlined therein. Additionally, the parties recognize that additional CCAs may be needed in order to perform Sunday parcel delivery in a cost effective manner during the test.

The national parties will meet on a weekly basis to monitor implementation of the Memorandum of Understanding *Re: Residual Vacancies - City Letter Carrier Craft*, the Memorandum of Understanding *Re: Full-time Regular Opportunities - City Letter Carrier Craft*, and the Sunday parcel delivery test. These meetings will include discussion of the authorization of any CCAs (by District) that are deemed necessary as indicated above. If, as a result of these weekly meetings, there is a disagreement over increased CCA resources, that matter will be referred to the NALC National President and the Vice President, Labor Relations for discussion and resolution. In the event there remains a disagreement over additional CCA staffing, the District(s) at issue will reduce its CCA complement to conform to the provisions of Article 7.1.C of the National Agreement.

City carrier assistants converted to full-time regular career status during the term of this agreement will not serve a probationary period when hired for a career appointment provided the employee successfully served as a city carrier transitional employee directly before his/her initial CCA appointment.

This agreement is effective from the date of signature until March 31, 2015, unless extended by mutual agreement of the parties. However, either party may terminate this agreement earlier by providing 30 days written notice to the other party.

This agreement is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

# CITY CARRIER ASSISTANTS (CCA) DISCIPLINE

Access to the grievance procedure by CCAs was clarified by the March 6, 2014 USPS/NALC Joint Questions and Answers No. 36.

## **M-01833 USPS/NALC Joint Questions and Answers**

36. Will CCAs have access to the grievance procedure if disciplined or removed?

A CCA who has completed 90 work or 120 calendar days of employment within the immediate preceding six months has access to the grievance procedure if disciplined or removed. A CCA who has previously satisfied the 90/120 day requirement either as a CCA or transitional employee (with an appointment made after September 29, 2007), will have access to the grievance procedure without regard to length of service as a CCA.

The special rules governing the discipline of City Carrier Associates (CCAs) were established by the Das interest arbitration award. They appear in the 2011 National Agreement as Appendix B. Appendix B is the reprinting of Section 1 of the 2011 Das Award which created new CCA category.

## **2001 National Agreement, Appendix B Section E. Article 16 — Discipline Procedure**

CCAs may be separated for lack of work at any time before the end of their term. Separations for lack of work shall be by inverse relative standing in the installation. Such separation of the CCA(s) with the lowest relative standing is not grievable except where it is alleged that the separation is pretextual. CCAs separated for lack of work before the end of their term will be given preference for reappointment ahead of other CCAs with less relative standing in the installation, provided the need for hiring arises within 18 months of their separation.

CCAs may be disciplined or removed within the term of their appointment for just cause and any such discipline or removal will be subject to the grievance arbitration procedure, provided that within the immediately preceding six months, the employee has completed ninety (90) work days, or has been employed for 120 calendar days (whichever comes first) of their initial appointment. A CCA who has previously satisfied the 90/120 day requirement either as a CCA or transitional employee (with an appointment made after September 29, 2007), will have access to the grievance procedure without regard to his/her length of service as a CCA. Further, while in any such grievance the concept of progressive discipline will not apply, discipline should be corrective in nature.

In the case of removal for cause within the term of an appointment, a CCA shall be entitled to advance written notice of the charges against him/her in accordance with the provisions of Article 16 of the National Agreement.

Article 16.1 requires that discipline be “corrective in nature, rather than punitive.” Historically, almost all our arbitrators have read this to mean that, for most types of misconduct, discipline must be “progressive. However the Das award provides the following concerning CCA discipline grievances:

“While in any such grievance the concept of progressive discipline will not apply, discipline should be corrective in nature.”

This raises the issue of exactly how to differentiate the rights of CCAs from those of career carriers. Regional Arbitrator Brown's award in C-31128, below, helps clarify this issue. Although it is not binding on other arbitrators, it should be highly persuasive.

Finally, remember not to argue in a CCA grievance that discipline should be “progressive.” Doing so will merely give management a convenient target to attack and may distract attention from the real issues. Arguing that the discipline was punitive and not corrective should be sufficient.

## **Supporting Cases**

### **C-31128 Regional Arbitrator Robert Brown January 2, 2014**

Grievant is employed in a recently created job category (“CCA”) which was detailed in the interest arbitration award of National Arbitrator Shyam Das issued January 10, 2013. Previously a similar but not identical employment category was covered by modified discipline language that specifically limited an arbitrator’s authority to determining guilt or innocence of a charge, but precluded arbitrator modification of the penalty. In the case of a CCA, there is no such limitation (both clauses are set forth above). What still remains to differentiate the rights of CCAs from those of career carriers is a provision that the requirement for progressive discipline does not apply to CCAs, but the agreement still provides that discipline should still be corrective.

This is an agreement in which progressive discipline is rather closely defined, with language outlining ascending levels of discipline ranging from warning to removal. The elimination of those detailed requirements does not nullify the JCAM requirements that discipline be appropriate to the offense and corrective, and the latter requirement is reaffirmed in the Das award. There also remains the right of the Service to immediately remove an employee for an

# CITY CARRIER ASSISTANTS (CCA) DISCIPLINE

egregious offense, such as theft of mail, physical assault, workers compensation fraud, etc.

The concept of “corrective rather than punitive” is usually defined in terms of progressive discipline, but the inclusion of the term “corrective” here in the same section in which the requirement for progressive discipline is eliminated requires that there be an accommodation between these two provisions. Quite obviously, a removal is not “corrective” in the context of employment by the Postal Service, as it is final. It is therefore necessary to evaluate discipline with that in mind, and it would seem that an appropriate approach is to determine whether there is a showing that the employee is incorrigible. i.e. most likely cannot be brought into compliance with the rules.

\* \* \*

**CONCLUSION** There was not just cause for removal, because removal is not corrective in nature and there was no showing here that Grievant was incorrigible or had committed an offense that rose to the level of one justifying immediate removal. The removal is to be rescinded and expunged from the record, and its place there shall be substituted a 7-day suspension.

## **C-31174 Regional Arbitrator Bahakel, January 24, 2014**

It appears from the testimony that Management at the Niceville station was under the impression that the contract language in regard to discipline issued to CCA's was the same as it had been for TE's, i.e., that while just cause was required, progressive discipline did not apply and that the only issue to be decided in a removal was the guilt of the employee. As of January of 2013 that language changed and the language in effect at the time of the Grievant's Notice of Removal was that there must be just cause for discipline of a CCA and that while progressive discipline does not apply, the discipline must be corrective in nature.

## **Supporting Cases**

### **C-31128, Regional Arbitrator Brown January 2, 2014**

### **C-31172, Regional Arbitrator Roberts February 4, 2014**

### **C-31174, Regional Arbitrator Bahakel January 24, 2014**

### **C-31179, Regional Arbitrator Durham January 18, 2014**

# CITY CARRIER ASSISTANTS (CCA) RELATIVE STANDING

Appendix B of the 2011 National Agreement is the reprinting of Section I of the 2013 Das Award which established the new non-career employee category (CCAs). It provides the following concerning "relative standing."

## I. NON-CAREER COMPLEMENT

The parties shall establish a new job classification called City Carrier Assistant (CCA).

### 1. GENERAL PRINCIPLES

f. When hired, a CCA's relative standing in an installation is determined by his/her original CCA appointment date to the installation, using Article 41.2.B.6.(a) where applicable, and adding the time served as a city letter carrier transitional employee for appointments made after September 29, 2007 in any installation.

g. When the Postal Service hires new city letter carrier career employees, CCA employees within the installation will be converted to full-time regular career status to fill such vacancies based on their relative standing. A CCA who does not accept the career opportunity will not lose his/her relative standing for future career opportunities.

h. CCA employees may be separated at any time during their term of appointment for lack of work. Separations for lack of work shall be by inverse relative standing in the installation. Such separations are not grievable except where the separations are pretextual. CCAs separated for lack of work will be given preference for reappointment ahead of other CCAs with less relative standing in the installation if the need for hiring arises within 18 months of their separation.

**M-01833, Joint Questions and Answers**, explains the determination and application of relative standing for CCAs in questions number 57 through 63.

### **M-01833 Joint Questions and Answers March 6, 2014**

#### **Question 57. How is time credited for transitional employee employment when determining relative standing for CCAs?**

All time spent on the rolls as a city letter carrier transitional employee after September 29, 2007 will be added to CCA time in an installation to determine relative standing. Breaks in transitional employee service are not included in the relative standing period.

#### **Question 58. How is placement on the relative standing roster determined when two or more CCAs have the same total time credited for relative standing?**

First, the relative standing on the hiring list (appointment register) will be used to determine the CCA with higher rel-

ative standing (See Article 41.2.B.6.[a]). If a tie remains then the formula outlined in Article 41.2.B.7 is applied.

#### **Question 59. For time spent as a city letter carrier transitional employee, does it matter where an individual was employed when determining relative standing?**

No. All time on the rolls as a transitional employee after September 29, 2007 counts toward relative standing regardless of the installation(s) in which the transitional employee was employed.

#### **Question 60. Does time credited toward relative standing for time worked as a transitional employee after September 29, 2007 transfer from one installation to another once hired as a CCA?**

Yes.

#### **Question 61. Does relative standing earned as a CCA in one installation move with a CCA who is separated and is later employed in another installation?**

No.

#### **Question 62. How is relative standing determined for a CCA who is employed in an installation, then permanently moves to a different installation and then is subsequently reemployed in the original installation?**

Relative standing in this situation is based on the date the employee is reemployed in the original installation and is augmented by time served as a city letter carrier transitional employee for appointments made after September 29, 2007 (in any installation).

#### **Question 63. How is a tie addressed when more than one employee is placed in full-time career city letter carrier duty assignments in an installation on the same date through either transfer/reassignment or CCA conversion to full-time?**

Placement on the seniority list is determined by the following:

- If two or more full-time career assignments in an individual installation are filled on the same date by only CCAs, placement on the career city letter carrier craft seniority list will be determined based on the relative standing in the installation.
- When two or more full-time career assignments in an individual installation are filled on the same date by only career employees through reassignment/transfer, placement on the city carrier craft seniority list will be determined by application of Article 41.2.B.7 of the National Agreement, as appropriate.
- Current career employees will normally be placed ahead of CCAs on the seniority list when two or more full-time career assignments are being filled in an individual installation on the same date from both reassigned/transferred and CCA employees. An exception may occur when the CCA(s) with the highest relative standing has previous ca-

## **CITY CARRIER ASSISTANTS (CCA) RELATIVE STANDING**

reer service. In such case the CCA(s) will be placed ahead of the career employee only if he/she is determined to be senior to the transferred/reassigned employee by application of Article 41.2.B.7 of the National Agreement. In no case will a CCA with lower relative standing be placed on the seniority list ahead of a CCA with higher relative standing who is converted to career on the same date in the installation.

## See also [Jurisdiction](#)

Cross craft assignments are governed by the provisions of Article 7, Section 2. which provides the following:

### **Article 7, Section 2. Employment and Work Assignments**

**A.** Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum fulltime employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

The JCAM provides the following explanation of these provisions:

### **Combining Craft Duties To Create Full-Time Assignments.**

Article 7.2.A permits management to combine duties from different crafts, occupational groups or pay levels to create full-time duty assignments under limited circumstances. Under Article 7.2.A.1, management may combine work from different occupational groups or crafts only after it has first combined all available work within each separate craft, by tour. Under Article 7.2.A.2, management may combine work from different pay levels only after it has combined the work of different crafts in the same wage level, by tour. In either case, management must provide the affected unions with advance notification of the reasons for establishing the combination full-time assignments.

**Rural Carriers Excluded.** A combined position under Article 7.2.A may include the work of only the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance and mail handler. Rural carriers are excluded. See the discussion below of Article 7.2.B-C and the related memorandum of understanding.

### **C-19547 APWU Nat. Arbitrator Dobranski G94C-4G-C 96077397, June 1, 1999**

The union notification provisions of Article 7, Section 2.A of the National Agreement do not apply to permanent Rehabilitation Program full-time assignments made under ELM Section 546.

**B.** In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee

to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

**C.** During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary. [See Memo, page 155]

**Cross-Craft Assignments.** Article 7, Sections 2.B and 2.C set forth two situations in which management may require career employees to perform work in another craft. This may involve a carrier working in another craft or an employee from another craft performing carrier work.

**Insufficient Work.** Under Article 7.2.B, management may require an employee to work in another craft at the same wage level due to insufficient work in his or her own craft. This may affect a full-time employee or a part-time regular employee for whom there is "insufficient work" on a particular day to maintain his or her weekly schedule as guaranteed under Article 8.1. Or it may apply to any employee working under the call-in guarantees of Article 8.8—i.e., a regular called in on a nonscheduled day, or a PTF employee called in on any day. This section permits management to avoid having to pay employees for not working.

**Exceptional Workload Imbalance.** Article 7.2.C provides that under conditions of exceptionally heavy workload in one craft or occupational group and light workload in another, any employee may be assigned to perform other-craft work in the same wage level.

**Same Wage Level.** Article 7 Sections B&C both require that cross-craft assignments under their provisions must be at "the same wage level."

On September 19, 1999 a national interest arbitration award upgraded letter carriers to Grade 6. To avoid confusion with the different pay scales in other crafts, the pay grade terminology was changed. PS 5 letter carriers became CC 1 and PS 6 letter carriers became CC 2. Consequently, PS-5 clerks **are never** eligible for cross craft assignments under these provisions. Remember this change when reading arbitration awards or settlements dated prior to September 19,1999 including those included below.

### **C-00089 National Arbitrator Mittenthal August 23, 1982, H8C-2F-C 7406**

Management improperly assigned a Level 4 mailhandler to perform Level 5 clerk work because Article 7 permits cross-craft assignments only "to the same wage level". He wrote that "The latter were injured by the violation and

there is no way for them to get that work back. Accordingly, the appropriate remedy is to pay five hours at straight time rate to one or more Clerks to be designated by the parties.”

## Limits on Management’s Discretion to Make Cross-craft Assignments.

A national level arbitration award has established that management may not assign employees across crafts except in the restrictive circumstances defined in the National Agreement (National Arbitrator Richard Bloch, A8-W-0656, April 7, 1982, C-04560. This decision is controlling although it is an APWU arbitration case; it was decided under the joint NALC/APWU-USPS 1981 National Agreement and the language of Article 7.2.B & C has not changed since then. Arbitrator Bloch interpreted Article 7.2.B & C as follows (pages 6-7 of the award):

Taken together, these provisions support the inference that Management’s right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was “insufficient work” for the classification or, alternatively, that work was “exceptionally heavy” in one occupational group and light, as well, in another.

Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its need on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create “insufficient” work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the fact of pressing circumstances. ...

**Remedy For Violations.** As a general proposition, in those circumstances in which a clear contractual violation is evidenced by the fact circumstances involving the crossing of crafts pursuant to Article 7.2.B&C, a “make whole” remedy involving the payment at the appropriate

rate for the work missed to the available, qualified employee who had a contractual right to the work would be appropriate. For example, after determining that management had violated Article 7.2.B, Arbitrator Bloch in case H8S-5F-C-8027/A8-W-0656 (C-04560) ruled that an available Special Delivery Messenger on the Overtime Desired List should be made whole for missed overtime for special delivery functions performed by a PTF letter carrier.

## Emergencies

**Crossing Crafts in “Emergency” Situations.** In addition to its Article 7 rights, management has the right to work carriers across crafts in an “emergency” situation as defined in Article 3, Management Rights. Article 3.F states that management has the right:

**3.F.** To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

This provision gives management a very limited right to make cross-craft assignments. Management’s desire to avoid additional expenses such as penalty overtime does not constitute an emergency.

Management's right to make a cross craft assignment under the provisions of Article 3.F is extremely limited. If it is scheduled in advance, it is not "unforeseen". If it happens frequently it is "recurring". It is NALC's position that a wish to avoid additional expenses such as overtime is never an emergency.

### C-00201 Regional Arbitrator Martin March 13, 1984, C1C-4E-C 21318

Management violated the contract by working PTFS carriers in the clerk craft, where the reason for the assignment was to avoid payment of overtime to clerks. See also C-00251

## Exceptions

The cross craft provisions of Article 7, Section 2 do not apply to Rural carriers or Transitional Employees. The JCAM explains these exceptions as follows:

### Transitional Employees

The working of TEs across craft lines is addressed in question 11 of the parties’ joint Questions and Answers on TEs. The complete TE Q&As are found on pages 7-10-7-15.

### QUESTIONS AND ANSWERS (42) NALC TRANSITIONAL EMPLOYEES

The attached jointly-developed document (M-01701) provides the mutual understanding of the national parties on issues related to NALC Transitional Employees. This document may be updated as agreement is reached on additional matters related to transitional employees.

**Date: February 20, 2009**

## **11. May city letter carrier transitional employees be assigned to work in other crafts?**

Only under emergency conditions, as defined by Article 3 of applicable collective bargaining agreements.

### **M-01199 Step 4**

**August 10, 1994, H90N-4H-C-94004376**

The sole interpretive issue in this case is whether a Transitional Employee hired as a clerk may be assigned to work in the carrier craft.

We agreed that an APWU TE may not be used to perform work in the carrier craft. Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary, with regard to the remaining factual issues.

### **Rural Letter Carriers**

#### **MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO**

**Re: Article 7, 12 and 13 - Cross Craft and Office Size**

A. It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of this Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

**Date: August 19, 1995**

**Rural Carriers Excluded.** Paragraph A of this memorandum of understanding (National Agreement page 135) provides that the crossing craft provisions of Article 7.2 (among other provisions) apply only to the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance and mail handler. So cross-craft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance

with Article 7.2. However, rural letter carriers are not included. So cross-craft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in “emergency situations” ....

### **M-00876 Step 4**

**December 5, 1988, H4N-4H-C 27353**

*We agree that the Memorandum of Understanding which states:*

It is understood by the parties that in applying the provisions of Articles 7, 12, and 13 of the 1984 National Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

does not affect or change the provisions of Articles 7, 12 and 13 but instead, merely specifies the crafts to which they will be applied

## **Supporting Cases**

### **C-04560 APWU National Arbitrator Bloch**

**April 7, 1982, H8C-5C-C 8027**

The Postal Service improperly denied overtime to a member of the Special Delivery Craft when it used a city letter carrier to deliver special delivery mail when there was overtime work available in the letter carrier group; management's right to cross craft lines under Article VII, Sections 2.B. and C is substantially limited to situations that are both unusual and reasonably unforeseeable.

### **C-00089 National Arbitrator Mittenthal**

**August 23, 1982, H8C-2F-C 7406**

Management improperly assigned a Level 4 mailhandler to perform Level 5 clerk work because Article 7 permits cross-craft assignments only "to the same wage level". He wrote that "The latter were injured by the violation and there is no way for them to get that work back. Accordingly, the appropriate remedy is to pay five hours at straight time rate to one or more Clerks to be designated by the parties "

### **C-19547 APWU Nat. Arbitrator Dobranski**

**G94C-4G-C 96077397, June 1, 1999**

The union notification provisions of Article 7, Section 2.A of the National Agreement do not apply to permanent Rehabilitation Program full-time assignments made under ELM Section 546.

### **M-01199 Step 4**

**August 10, 1994, H90N-4H-C-94004376**

The sole interpretive issue in this case is whether a Transitional Employee hired as a clerk may be assigned to work in the carrier craft.

We agreed that an APWU TE may not be used to perform work in the carrier craft. Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary, with regard to the remaining

**M-01074 Step 4**  
**July 8, 1992, H7N-5R-C 29088**

The issue in this grievance is whether management violated Article 7, Section 2 of the National Agreement by assigning level 4 Automated Markup Clerks to perform carrier casing duties.

During our discussion, we mutually agreed that the practice of using level 4 Automated Markup Clerks to perform carrier casing duties under these circumstances should cease. The U.S. Postal Service position with respect to assigning lower level work to employees in higher level positions in accordance with Article 7.2.B and C is not prejudiced in any way by the settlement of this Step 4 grievance.

**M-00175 Step 4**  
**September 4, 1981, H8N-4H-C 25737**

Provided the special delivery messenger performed city delivery duties within Article VIII guarantees, no contractual violation has occurred. If the employee was utilized in the carrier craft merely to obtain work hours, outside Article VIII guarantees, pay as requested by the Union is appropriate.

**M-00299 Step 4**  
**April 18, 1983, H1N-3W-C 14251**

Management may assign employees to perform work in another craft while they are on overtime. It is further understood that these assignments are predicated on the individual fact circumstances but must be in accordance with Article 7, Section 2, of the National Agreement.

**M-01006 Step 4**  
**April 18, 1983, H1N-3W-C 14251**

The question raised in this grievance involved whether the assignment of an employee to perform work in another craft while on overtime must be on a voluntary basis.

The parties agree that overtime assignments are not determined by the employee. Management may assign employees to perform work in another craft while they are on overtime. It is further understood that these assignments are predicated on the individual fact circumstances but must be in accordance with Article 7, Section 2, of the National Agreement.

**C-00279 Regional Arbitrator McAllister**  
**October 1, 1984, C1N-4H-C 26161**

The contract permits, but does not require, management to establish assignments including work from different crafts.

**C-00201 Regional Arbitrator Martin**  
**March 13, 1984, C1C-4E-C 21318**

Management violated the contract by working PTFS carriers in the clerk craft, where the reason for the assignment was to avoid payment of overtime to clerks. See also C-00251

**C-05959 Regional Arbitrator Rotenberg**  
**December 31, 1985 C4N-4C-C 63**

The Article 7 restrictions on management's right to work employees across craft lines apply regardless of the size of the office, or any past practice to the contrary. The appropriate remedy for violations of Article 7.2 is to pay employees on the OTDL for the overtime they would have worked were it not for the violation.

**C-00134 Regional Arbitrator Zack**  
**February 22, 1985, N1C-1J-C 28638**

Management did not violate the contract when it worked part-time flexible carriers in the clerk craft, where management claims it did so to "maintain the number of work hours of the employee's basic work schedule."

**C-00162 Regional Arbitrator Klein**  
**September 3, 1985, C4S-4A-C 2059**

Management improperly assigned PTFS carriers to perform Special Delivery work on a holiday, where there was no "exceptionally heavy workload."

## Supporting Cases

### Rural Carriers

**M-01193 Step 4**  
**July 20 1994, H9ON-4H-C-93019498**

The issue in this grievance is whether Management violated the National Agreement by assigning Rural Carrier Associates (RCAs) to transport mail.

During our discussion, we agreed that no national interpretive issue was fairly presented in this case. We mutually agreed that, as previously stated in Case H4N-5H-C 12359, "the Postal Service may not normally or ordinarily use an RCA employee to perform city letter carrier work. It is also agreed, however, that in the limited, unusual and unforeseeable circumstances provided for in Article 3, Section F of the National Agreement, the Postal Service may use... RCA employees to perform letter carrier work."

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing or to be rescheduled for arbitration, as appropriate, for a determination as to whether the work in question is "letter carrier work."

**M-01276 Step 4**  
**January 6, 1997, E94N-4E-C 96054401**

The issue in this grievance is whether management violated the National Agreement when it assigned a part-time

flexible letter carrier to perform rural letter carrier craft duties.

letter carrier PTFs in the rural carrier craft.

After reviewing this matter, we mutually agreed that:

- 1) City letter carriers may be assigned to perform duties in the rural carrier craft in emergency situations, as specified in Article 3.F. of the National Agreement; and
- 2) The cross-craft provisions of Article 7.2 do not apply to the rural letter carrier craft.

### **M-01833 Joint Questions and Answers**

**March 6, 2014**

#### **Question 17: May CCAs who have an on the job illness or injury be assigned to work in other crafts?**

Only if the assignment to another craft is consistent with Section 546 of the Employee and Labor Relations Manual and relevant Department of Labor regulations.

### **M-01203 Pre-arb**

**January 31, 1995, H7N-1N-C 26508**

The issue in this case is whether management violated the National Agreement when it assigned a PTF letter carrier to perform duties in the rural carrier craft.

After reviewing this matter, we mutually agreed that city letter carriers may be assigned to perform duties in the rural carrier craft in emergency situations, as specified in Article 3.F of the National Agreement. See also [M-01197](#).

### **M-01421 Step 4**

**D94N-4D-C 99001217, May 17, 1999**

It is agreed that the Postal Service may not use an RCR or RCA to perform city letter carrier work, except in the limited, unusual and unforeseeable circumstances provided for in Article 3, Section F of the National Agreement. However, whether or not the work performed by the RCR or RCA is city letter carrier work is not an interpretive issue.

### **M-00836 Prearbitration Settlement**

**July 5, 1988, H4N-5H-C 12359**

It is agreed that the Postal Service may not ordinarily use an RCR or Rural Carrier Associate (RCA) employees to perform city letter carrier work. It is also agreed, however, that in the limited, unusual and unforeseeable circumstances provided for in Article 3, Section F of the National Agreement, the Postal Service may use an RCR or RCA employees to perform letter carrier work.

This settlement does not necessarily apply to RCR or RCA employees also holding a valid dual appointment to a casual position (Reference ELM 323.6) See also [M-01393](#)).

### **C-10776 Regional Arbitrator Lange**

**April 11, 1991, W7N-5C-C 19690**

Management violated the contract when it worked city

## DELIVERY POINT SEQUENCING (DPS)

### **M-01663 Pre-arb**

**July 30, 2007**

Case Q98N-4Q-C 01045570 arose as a result of the application of the March 21, 2000 Memorandum of Understanding (MOU) Re: City Letter Carrier DPS Work Methods. The issue in this grievance is whether city letter carriers in a DPS environment using the vertical flat case (VFC) work method on park and loop or foot deliveries may be required to carry presequenced addressed mail as a third bundle, when DPS letters and cased mail (flats and non-DPS letters) constitute the first and second bundles.

The parties agree that:

1. The March 21, 2000 MOU did not provide the Postal Service with the right to require letter carriers on park and loop or foot deliveries to carry pre-sequenced addressed mail as a third bundle.
2. The parties' prior agreements for carrying third bundles were not modified in any way by the March 21, 2000 MOU. These prior agreements include the following two circumstances:
  - a. pursuant to the 1980 'simplified address mail' agreement, which allows the placement of such unaddressed mail on the bottom of the appropriate mail bundle; and
  - b. in accordance with the 1992 memorandum providing for the DPS composite work method, which includes residual letters, DPS letters, and flats.

Case #Q98N-4Q-C 00189552 arose as a result of handbook modifications indicating that city letter carriers on park and loop or foot deliveries may be required to carry up to three bundles of mail.

Notwithstanding the above agreement, the parties recognize that the Postal Service and its employees have an obligation to the American public to provide cost effective quality mail service. We also recognize that the changing nature of the mail (e.g., decreasing First-Class Mail volume, increasing parcels and increasing automation) necessitate changes in our work methods. Therefore, the parties further agree that:

1. In accordance with the recognitions cited in the above paragraph, effective with the signing of this agreement the parties agree that city letter carriers on park and loop or foot deliveries who currently carry three bundles will continue to carry as a third bundle, within weight restrictions, Enhanced Carrier Route (ECR) and Pehodicals walk sequenced letter or flat mailings (WSS) that have either 90% or more coverage of the total active residential addresses, or 75% or more coverage of the total number of active deliveries on a route.

2. The parties will establish a joint work group to examine the various methods of mail delivery on park and loop and foot deliveries. The objective of the work group will be to develop safe and efficient delivery methods for handling three bundles of addressed and/or unaddressed mail on routes with these types of deliveries. The work group will develop appropriate methods in the current DPS letter environment and it will complete its mission within sixty days of this agreement. After that sixty day period all city carriers on park and loop and walking deliveries will be required to carry three bundles using methods from the work group, unless management determines that fewer than three bundles will be used. If the work group does not reach agreement within sixty days, all city carriers on park and loop and walking deliveries will, unless otherwise determined by management, be required to carry three bundles, but the individual city carrier will determine whether he/she carries the third bundle on the arm or in the satchel. Regardless of the work method, the third bundle must meet the requirements of paragraph 1, above.

3. The parties agree that under no circumstances will city letter carriers on park and loop or foot deliveries be required to carry more than three bundles.

The terms of this settlement became effective September 11, 2007 with ratification of the 2006-2011 National Agreement.

### **M-01662 Pre-arb**

**July 30, 2007**

The issue in this case is whether S-999 mail (hold mail, caller mail, change of address mail, non-delivery day mail) processed on Delivery Point Sequence (DPS) automation equipment must receive piece credit on section 1 of PS Form 1838-C or actual time recorded on line 21 of 1838-C during route count and inspection.

The parties discussed how to record S-999 mail, multi point mail, 9 digit mail that is not finalized in DPS order, and mail that is brought back from the street in the afternoon during a count and inspection. The parties agree that if this mail is cased in the carrier case it will be recorded on PS Form 1838-C sections 1 or 2, as applicable. Any of this mail that is not cased in the carrier case will be handled and recorded on line 21.

The terms of this settlement became effective September 11, 2007 with ratification of the 2006-2011 National Agreement.

### **M-01306 Building Our Future By Working Together** **November 19, 1992**

Joint NALC USPS Training Guide on the six September 1992 Memorandums of understanding.

## **M-01307 Revised Chapter 6 to Building Our Future By Working Together**

Supplement to Building Our Future By Working Together, a Joint NALC USPS Training Guide on the six September 1992 Memorandums of understanding.

## **M-01151 January 22, 1993, Questions 1-34**

## **M-01152 February 17, 1993, Questions 35-54**

## **M-01153 March 31, 1993, Questions 55-80**

Questions and Answers published as a supplement to Building our Future by Working Together, the USPS-NALC Joint Training Guide on the September, 1992 Memorandums of Understanding, published November 19, 1992. They provide joint answers to questions concerning the interpretation and application of those memorandums and the subsequent December 21, 1992 memorandum. See page 346 for complete text.

## **M-01109 Memorandum**

**September 17, 1992**

### **MEMORANDUM FOR POSTMASTERS, CITY DELIVERY OFFICES, LOCAL PRESIDENTS, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO**

#### **SUBJECT: Joint Agreements**

The NALC and USPS recognize that our continued existence as a viable organization is heavily dependent upon our ability to meet our customers' needs while empowering employees to levels not previously envisioned.

As many of you are aware, we have strived at the National level to obtain an agreement on the implementation of automation for letter mail on carrier routes. We agreed then, and we agree now, on three basic principles:

Provide the best service to postal customers (Mailers and recipients).

Minimize impact on letter carrier craft employees.

Create an opportunity for increased efficiency.

Our mutual hope is that the following agreements will provide a basis for trust and cooperativeness, and that they will form a basis on which to satisfy our customers' needs. While each agreement may not accomplish all that each party may desire, collectively they will form the basis for a positive working relationship of mutual trust and respect, and the foundation for continued empowerment of all employees.

#### **Case Configuration/Letter Size Mail**

This agreement provides for a standard definition of letter-sized mail and provides guidelines for conducting route inspections when letter mail is cased into four-and-five-shelf case configurations that have been established as a result of a joint agreement.

## **M-01114 Memorandum**

**September 17, 1992**

Resolution of Issues Left Open by Mittenthal Award of July 10, 1992

#### **Current Events and Adjustments**

A current event is defined as a route or routes which are shown to be out of adjustment by a recent route inspection and evaluation. All current adjustments to existing routes will place the route on as near an 8-hour daily basis as possible, in accordance with Handbook M-39.

## **Sort Errors**

### **M-01356 Step 4**

**E94N-4E-C 97078744, October 22, 1998**

Local Managers are responsible for establishing and advising carriers of local policy for handling, identifying and reporting DPS sort errors found by city carriers during street delivery. Local quality guidelines for error identification and resolution procedures should cover all anticipated circumstances and contain clear instructions for carriers to follow regarding both the delivery and disposition of mail returned to the office.

## **Work Methods**

### **M-01408 Memorandum of Understanding**

**March 21, 2000**

RE: City Letter Carrier DPS Work Methods

This Memorandum of Understanding (MOU) represents the parties' final agreement regarding the October 8, 1998, Joint Work Methods Study to determine the more efficient work method for city delivery routes in delivery units where Delivery Point Sequence (DPS) has been, or will be, implemented. This MOU is based on the results of a joint study conducted by the parties pursuant to Chapter 5 of Building Our Future by Working Together to determine the relative efficiency of the composite bundle and vertical flat casing work methods in a DPS environment. Further, any interim or local agreements for handling the fourth bundle on park and loop and foot routes will continue until conversion to the DPS vertical flat casing work method. In accordance with paragraph 3 of the October 8, 1998, Joint Work Methods Study Agreement the following are the parties' joint instructions to the field:

1. There continue to be approved DPS work methods: the composite bundle work method and the vertical flat casing work method. Any other work methods must be approved by Postal Service Headquarters prior to testing or implementation.
2. The parties have analyzed the results of the joint study and have determined that the vertical flat casing work

## DELIVERY POINT SEQUENCING (DPS)

method is the more efficient work method at all sampled percentage levels of DPS. Management may convert those routes that have vertical flat cases and are currently using the composite bundle work method to the vertical flat casing DPS work method.

3. On curblines routes and business routes where DPS is planned, but not implemented, management will determine the most efficient DPS work method. All other routes not yet converted to DPS which have vertical flat cases will use the vertical flat casing DPS work method.

4. On those routes where DPS is not currently planned but where DPS is implemented in the future, management will determine the DPS work method.

5. City letter carriers on a park and loop or foot route will not be required to carry more than three bundles.

### **M-01407 Memorandum of Understanding (Relevant part) March 21, 2000**

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that the following represents the parties' agreement with regard to implementation of the upgrade issue emanating from the September 19, 1999 Fleischli Award, our agreement regarding case configuration when using the vertical flat casing work method, and additional provisions relative to the 1998 National Agreement.

When management elects to reassess the case configuration of a route currently using the DPS vertical flat casing work method or changes the DPS work method on a route from the composite bundle work method to the vertical flat casing work method, management will determine for each route, whether 4, 5, or 6 shelves will be used.

### **M-01110 Memorandum September 17, 1992**

The U. S. Postal Service and the National Association of Letter Carriers, AFL-CIO, recognize the importance of the work methods that will be used in a delivery point sequence environment. The parties also realize the substantial contribution that letter carriers can make in the development of these work methods. Towards facilitating that involvement, the following principles have been agreed to by the parties at the national level:

1. The following are the approved work methods:

- Case residual letters in the same separations with vertically cased flat mail, pull down and carry as one bundle.
- Case residual letters mail separately into delivery sequence order, pull down and carry as a composite (third) bundle.

2. As implementation of the delivery point bar coding impacts a delivery unit, local parties will select the most efficient work method possible from the delivery point sequence work methods authorized in number 1 above. If the local parties cannot agree on the most efficient work method, the issue will be presented to the parties at the Headquarters level to determine the most efficient work method.

3. Local parties will also be encouraged to develop efficient new work methods and to share their ideas with the parties at the national level for joint review and evaluation. The purpose of this joint review and evaluation will be to determine the efficiency of the local method. After the review and evaluation of the new work method and if the method proves to be efficient, it will be added to Item 1 above.

4. The parties agree that the work method in place at the delivery unit will be utilized in the day-to-day management of letter carrier routes and in the procedures for inspection, evaluation and adjustment of routes.

5. The parties at the national level will continually review alternative methods in an effort to improve efficiency. Both parties agree that the process of continual joint review of new and more efficient work methods will result in the continued upgrading at the local delivery unit of the most efficient work method.

### **M-01333 Pre-arbitration Settlement July 6, 1998, Q90N-4Q-C 95064925**

The issue in this case is whether the instructions contained in the "DPS Decision Trees and Flow Chart-National Delivery Conference June 27-29, 1995," are inconsistent and in conflict with the six (6) Memorandums of Understanding between the NALC and the USPS on DPS implementation contained in, "Building Our Future by Working Together."

As a result of those discussions, it was mutually agreed that the disputed issues in this case have been addressed by the following National Arbitration Awards and Step 4 Settlements:

Step 4 (June 12, 1996) J94N-4J-C-96-28815 [[M-01258](#)]

National Award (June 9, 1997) Carlton Snow, Q90N-4Q-C 93034541 [[C-16863](#)]

Fourth Bundle Agreement (August 12, 1997) [[M-01303](#)]

Interim Approach Under Fourth Bundle Agreement (September 12, 1997) [[M-01304](#)]

NALC-USPS Procedure for Determining Interim Approach (September 26, 1997) [[M-01305](#)]

Pre-arbitration Settlement (December 3, 1997) Q94N-4Q-C 96091697 [[M-01268](#)]

## DELIVERY POINT SEQUENCING (DPS)

Pre-arbitration Settlement (June 24, 1997 H90N-4H-C 94061042 [M-01291]

Pre-arbitration Settlement (May 12, 1998) H90N-4HC 94057924 [M-01310].

Without prejudice to management's position that the purpose of the subject document was to serve as a management tool to assist delivery unit and plant managers in making some key decisions concerning DPS implementation It was mutually agreed that the foregoing citations represent a full and final settlement of the issues disputed in this case.

### **M-01277 Step 4** **January 6, 1997, D94N-4D-C 96077047**

The issue in this case is whether application of the DPS work method selection for a regular route also applies to an auxiliary route.

As a result of our discussion, it was agreed that the Joint Training Guide for Delivery Management and Building Our Future by Working Together both stipulate that, while the selection of the work method is based on efficiency, it is to be a joint determination by management and the union, with carrier input.

There is no dispute between the parties that this work method selection is determined whether the route is a regular or auxiliary route; understanding, however, that an auxiliary route has no regular carrier for input. In that case, the selection method is a joint determination between management and the union. In addition, use of the one-bundle system on other than the standard six-shelf letter case requires joint agreement between the local parties.

### **M-01240 Step 4** **July 25, 1995, J90N-4J-C 95012688**

The issue in this grievance is whether Management violated the National Agreement by allowing a carrier to utilize a homemade cardboard tray device to the fixed tray in a Long Life Vehicle, to assist in the delivery of DPS mail.

During our discussion the parties agreed that the USPS/NALC Joint Training Guide on Building Our Future by Working Together, dated September 1992, does not authorize changes in work methods in the delivery of DPS mail without local agreement. Whether this is such a change, and whether its use is prohibited, is suitable for regional/local determination.

### **M-01258 Step 4** **June 12, 1996, J94N-4J-C-96028815**

The issue in this grievance is whether management violated the National Agreement by requiring the carrier to utilize the composite bundle DPS work method in lieu of the carrier's preference to utilize the vertical flat case DPS work method.

We agreed to remand this case back to the local parties to resolve jointly. If the local parties are unable to agree on the most efficient work method, the issue should then be referred to the national committee at the Headquarters level, as specified in Building our Future by Working Together, for a joint resolution.

### **M-01256 Step 4** **October 2, 1996, H90N-4H-C-95033604**

The issue in this grievance is whether Management violated the National Agreement by requiring city carriers to use the one-bundle system while using a 5 shelf case configuration.

During our discussion, it was agreed that the explanation Building our Future by Working Together of the September 1992 MOU on Case Configuration states that the two-bundle and modified two bundle casing systems may be used with four or five shelf letter cases. However, use of the one-bundle system on other than the standard six-shelf letter case requires a joint agreement between the local parties.

### **M-01300 Step 4** **January 13, 1998, C94N-4C-C 97055832**

The issue in this grievance is whether management is in violation of the National Agreement by requiring carriers to use a one bundle system in an office that has not implemented Vertical Flat Casing (VFC).

The September 1992 MOU on Work Methods provides for the following approved work methods: "Case residual letters in the same separations with vertically cased flat mail, pull down and carry as one bundle." The alternate choice would be to "case residual letter mail separately into delivery order, pull down and carry as a composite (third) bundle."

In this case the only choice available is for carriers to "case residual letter mail separately into delivery sequence order, pull down and carry as a composite bundle since there is no VFC in this site.

### **M-01317 Prearbitration Settlement** **July 6, 1998, H90N-4H-C-94068034**

The parties have agreed that management may not unilaterally change a previously agreed upon work method. The parties have previously agreed that the "Joint Training Guide for Delivery Management" and "Building Our Future by Working Together" both stipulate that though the selection of the work method is based on efficiency, it is to be a joint determination by management and the union, with carrier input. A change in the work method or development of a more efficient work method is likewise to be a joint endeavor.

## Fourth Bundle

### **C-16863 National Arbitrator Snow** **June 9, 1997, Q90N-4Q-C 93034541**

"It is a violation of the Memorandum of Understanding on

Work Methods executed in September of 1992 [M-01110] to require a letter carrier on a Park and Loop route in a DPS environment who uses the composite third bundle method to work 'marriage mail' behind addressed flats. Accordingly, the grievance is sustained, and the issue is remanded to the parties to reach agreement with regard to an accommodation consistent with the MOU of the parties." See also (M-01697)

### **M-01303 Fourth Bundle Agreement August 12, 1997**

Joint Agreement concerning June 9, 1997 Fourth Bundle arbitration award (C-16863).

### **M-01304 Interim Approach Under Fourth Bundle Agreement, September 12, 1997**

Letter of Intent concerning August 12, 1997 Fourth Bundle Agreement (M-01303).

### **M-01305 NALC-USPS Procedure For Determining Interim Approach, Sept. 26, 1997**

Agreement setting forth procedures for routes on which no interim approach for handling unaddressed flats was jointly selected as of September 26, 1997.

### **M-01318 Management Instructions May 22, 1998**

Management Instructions concerning the September 26, 1997 Memorandum on fourth bundle work method accommodation

## **Target Percentages**

### **C-17080 National Arbitrator Snow Q90N-4Q-C 94029376, August 4, 1997**

The Postal Service's unilateral change to the methodology for determining when the target percentage is met violated its commitment under the September 1992 Memorandums (M-01109).

### **M-01265 Step 4 July 8, 1997, J94N-4J-C 97040708**

It was agreed there is no dispute between the parties that, when using the established "Methodology" to estimate the total hourly impact of DPS on city delivery routes, as described in the Joint Training Guide, Chapter 3, Building Our Future by Working Together, the "unit" target percentage is calculated and is applied to each individual route.

### **M-01410 Prearbitration Settlement April 21, 2000, Q90N-4Q-C-94029376**

The issue in this matter concerns the methodology used by the Postal Service to meet the target percentage which would trigger planned route adjustments when implementing Delivery Point Sequence (DPS).

In full and final resolution of this matter, we mutually agreed to the following:

The methodology initially selected to determine when the DPS target percentage had been met created anomalies. While management's decision to use the weekly average methodology eliminated those anomalies, the decision to implement the weekly average should not have been made unilaterally.

In compliance with Arbitrator Snow's award in this case, the parties resolve that the accepted method for determining when the target percentage in a DPS environment is achieved, is the weekly average formula.

The above language will not change any local agreements to use a different methodology, which may have been made prior to this settlement.

### **M-01294 Step 4 May 28, 1997, B94N-4B-C 97044293**

The issue in this grievance is whether, in implementing planned adjustments in a DPS environment, the "Methodology" requires adjustment based on the unit's DPS target percentage or each individual route's DPS percentage.

During that discussion, it was agreed there is no dispute between the parties that, when using the established "Methodology" to estimate the total hourly impact of DPS on city delivery routes, as described in the Joint Training Guide, Chapter 3, Building Our Future by Working Together, the "unit" target percentage is calculated and is applied to each individual route.

### **M-01266 Prearbitration Settlement July 2, 1997, H90N-4H-C 95000700**

The issue in this case involved whether local management violated the National Agreement by not utilizing the station input process to change the DPS sort plan in order that mail for businesses closed on Saturdays would be held out from the DPS sort plan on Saturdays.

After reviewing this matter, it was mutually agreed that no contractual violation was present in this case, however, the Postal Service will provide information to the field which encourages and provides guidance on the station input process. This process allows for DPS sort plan changes which would include holding out the Saturday non-delivery day mail when management determines that it makes operational sense to do so.

It was further agreed that all DPS candidate mail which is diverted from going directly to the street via the station input process will be counted as DPS volume for the purpose of determining whether the DPS target percentage has been reached.

## Viewing DPS Mail

### **M-01366 Pre-arbitration Settlement** **October 21, 1998, H90N-4H-C 94048405**

The issue in this case involved whether Management violated the National Agreement by not allowing individual carriers to personally observe the amount of DPS mail intended for delivery on their assigned routes, prior to determining the need for overtime/auxiliary assistance.

After reviewing this matter, it was agreed that if, while in the normal course of picking up DPS mail, a letter carrier determines the need to file a request for overtime or auxiliary assistance (or to amend a request that was previously filed), the carrier may do so at that time. The supervisor will advise the letter carrier of the disposition of the request or amended request promptly after review of the circumstances.

If the local parties have agreed upon a practice where the letter carrier has access to their DPS mail prior to filling out the request for overtime/auxiliary assistance, this settlement will not apply.

## 60 Day Reviews

### **M-01268 Prearbitration Settlement** **December 3, 1997, Q94N-4Q-C 96091697**

The issue in this case deals with the 60-day revisit of previously implemented DPS planned route adjustments. Specifically, whether or not the review of planned DPS adjustments within "60 days" of their implementation also includes and imposes the same 60-day deadline for implementing any further adjustments (if any) as a result of this review. See also ([M-01278](#) and [M-01347](#))

### **M-01278 Step 4** **January 6, 1997, H90N-4H-C 96077604**

The case at issue deals with an office in a DPS environment. The September 1992 MOU at Appendix C of Building our Future by Working Together, as well as Handbook M-39 (243.614), specify that, within 60 days of implementing the planned adjustments for future automated events, the parties will revisit those adjustments to ensure that routes are as near to 8 hours daily as possible. Both the planned adjustments and subsequent minor adjustments that may be necessary are based on the most recent route inspection data for the route. In this case, the reexamination process was timely conducted in August (within 60 days of implementing the planned adjustments). During its revisit of the adjustments, management also conducted one-day counts in order to determine each carrier's office performance as provided for in M-39, Section 141.2.

The interpretive issue in this grievance is whether Management violated the National Agreement by conducting one-

day special office mail counts as part of its requirement to revisit and reexamine previously planned adjustments.

During our discussion, we mutually agreed that Special Office Mail Counts (M-39, 141.2) are conducted when management desires to determine the efficiency of a carrier in the office, and cannot form the sole basis for route adjustments. However, no prohibition exists that restricts management from also conducting a one-day count for the above purpose in conjunction with the 60-day reexamination of planned adjustments. The only time restraint imposed by the M-39 is that the carrier must be given one-day's advance notification.

## DPS Inspections, Adjustments, Data

### **M-01221 Step 4** **July 25, 1995, C90N-4C-C-94038561**

The issue in this grievance is whether management violated the National Agreement by not using current route inspection data in the implementation of Delivery Point Sequencing (DPS).

The parties agreed that route inspection data must be current for those offices implementing DPS, where there was no agreement or requested exemption to use their old route data.

### **M-01284 Prearbitration Settlement** **April 17, 1992, H94N-4Q-C 97026594**

The issues in this grievance is whether management is required to define "reasonably current" in Part 141.19 of the M-39 Handbook as "18 months" for all adjustment purposes.

During our discussion, it was mutually agreed that the following constitutes full settlement of this grievance:

1. The parties acknowledge that, as an alternative to the methodology provided in the unilateral process, managers may, at their option, use the route inspection and adjustment procedure in Chapter 2 of the M-39 Handbook to capture initial DPS savings. After using the M-39 inspection and adjustment procedures to adjust routes, the unit is considered to be out of the unilateral process and the M-39 procedures, including Part 141.19 Minor Adjustments, will apply thereafter.
2. Finally, it is agreed that Part 141.19, Minor Adjustments, including the reference to "reasonably current" remains unchanged.

# DELIVERY UNIT OPTIMIZATION (DUO)

## **M-01745 Memorandum of Understanding**

**March 22, 2011**

Re: Delivery Unit Optimization

Delivery Unit Optimization (DUO) refers to a process that includes permanently moving all city carrier assignments from one location to another location(s).

Regarding the city letter carrier craft, the parties agree to the following principles when Delivery Unit Optimization results in moving city letter carriers from one installation to another:

1. All city letter carriers and transitional employees will be moved from the losing installation to the gaining installation(s). However, this provision does not alter or modify the rights or obligations of either party under the Memorandum of Understanding, Re. Transitional Employees Additional Provisions.
2. At least 60 days advance notice, whenever possible, will be provided to the Union at the National, Regional, and Local Levels, and to individual city letter carriers who are to be moved to another installation.
3. City letter carriers from both the gaining and losing installations will retain their craft installation seniority and bid assignments. For the purposes of applying Article 41.2.B.7, all craft seniority will be credited as earned at the gaining installation.
4. Hold down assignments obtained pursuant to Article 41 2.B will not be impacted by the movement of city letter carriers under the Delivery Unit Optimization process. Temporary higher level carrier technician assignments obtained pursuant to Article 25.4 of the National Agreement will not be impacted solely by the movement of city letter carriers under the Delivery Unit Optimization process.
5. The parties agree that annual leave requests previously approved in either the gaining or losing installation(s) will be honored except in serious emergency situations, pursuant to Article 10.4.D of the National Agreement.
6. This agreement does not apply to the movement of city letter carriers when installations are discontinued, consolidated, or when a station or branch is transferred or made independent in accordance with Article 12.5.C.1, 12.5.C.2, and 12.5.C.3.

This agreement is reached without prejudice to either party's position on this or any other matter and may only be cited to enforce its terms.

## **M-01744 Memorandum of Understanding**

**March 22, 2011**

Re: Local Memorandum(s) of Understanding under Delivery Unit Optimization

Delivery Unit Optimization (DUO) refers to a process that includes permanently moving all city carrier assignments from one work location to another location(s).

The parties agree to the following process to address issues related to Local Memoranda of Understanding resulting from Delivery Unit Optimization:

1. The local parties at the gaining installation will identify and discuss any existing Local Memoranda of Understanding (LMOU) provisions from the losing installation(s) that are different from those in the gaining installation(s). While these discussions are not considered Article 30 local implementation, the local parties will make necessary revisions to the LMOU in the gaining installation(s) to accommodate city delivery operations moving from the losing installation(s).
2. Any LMOU issues not resolved at the local level will be referred within 30 days of DUO notice to the Area Manager, Labor Relations (or his/her designee) and the National Business Agent (or his/her designee) for resolution.
3. Any LMOU issue(s) not resolved within 20 days of receipt by the Area and NBA will be forwarded to the parties at the National Level for resolution.
4. Any provision(s) of an LMOU from a losing installation that is made part of the LMOU in the gaining installation(s) will use the date the provision was added to the LMOU in the losing installation for the purpose of applying Article 30,C.
5. In the event city delivery assignment(s) are returned to the losing installation(s), the original LMOU in the losing installation(s) shall be reinstated.
6. This agreement does not apply to the movement of city letter carriers when installations are discontinued, consolidated, or when a station or branch is transferred or made independent in accordance with Article 12.5.C.1, 12.5.C.2, and 12.5.C.3.

This agreement is reached without prejudice to either party's position on this or any other matter and may only be cited to enforce its terms. Either party to this agreement may unilaterally withdraw from this process with 60 days notice to the other party. However, such withdrawal will not impact the provisions of paragraph 4 and 5, above.

## **M-01778 Memorandum of Understanding**

**April 4, 2012**

Any city carrier(s) who had active retreat rights to the losing installation at the point of DUO implementation will have his/her retreat rights carried forward to the gaining installation. In this situation, retreat rights will be offered to excess city letter carriers by seniority as defined by the Memorandum of Understanding Re: Delivery Unit Optimization and the National Agreement.

## **DELIVERY UNIT OPTIMIZATION (DUO)**

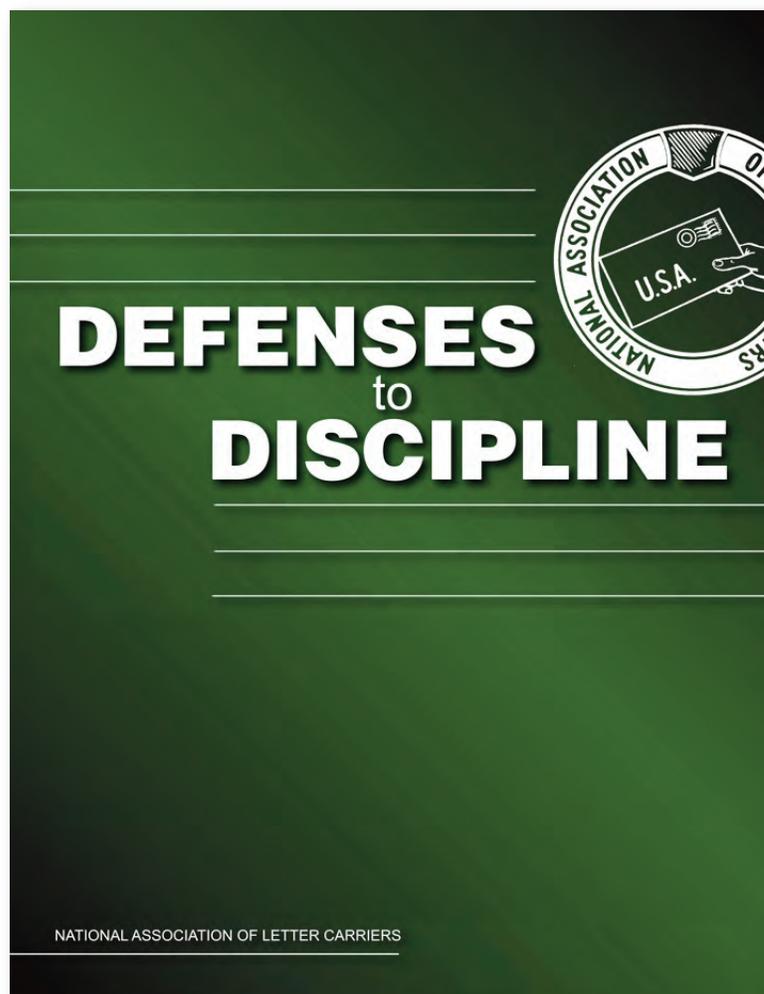
In the event city delivery assignment(s) are returned to the losing installation(s), any city carrier(s) who had active retreat rights to the losing installation at the point of DUO implementation will have retreat rights restored to his/her original installation.

## DISCIPLINE

Job security is the most important employee guarantee in any collective bargaining agreement. Wages, benefits and work rules mean little without contract language to protect the right to stay employed. Historically over half of all cases NALC has brought to arbitration have concerned discipline.

Since discipline is such a large and important subject, NALC has written an entire separate publication, Defenses to Discipline, to cover it. Most of the material concerning discipline that formerly appeared in MRS has been moved to this new publication.

NALC created that publication to help union representatives find that in-depth information and put it to work challenging discipline. The guide summarizes more than 30 years of NALC experience with a comprehensive range of subjects related to discipline. It explains the key principles, contract language, national settlements and arbitration decisions that comprise our own “common law” of just cause and job security.



[Click here to go to Defenses to Discipline](#)

# DRIVE-OUT AGREEMENTS

1.4 Section 4. City Carrier Transportation (Driveout) Agreements It is agreed by and between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that the following terms and conditions represent the basic understanding of the parties as to the administration of transportation agreements (driveout) of city carriers for the period of this Agreement.

1. The furnishing of a vehicle by a city carrier for transportation to and from the route shall be voluntary; no carrier may be coerced into furnishing a vehicle or carrying passengers or relays without the carrier's consent. A written authorization (Form 1311) shall be executed by the installation head in every instance, with a copy of said authorization to be retained by the installation head and the carrier. Carriers shall not drive their cars to and from the route for their own personal convenience.

**M-00985 Step 4**  
**January 18, 1990, H4N-3A-C 47917**

Settlement confirming that the Postal Service may not discontinue Driveout Agreements without providing the 30 days written advance notice required by Article 41

2. Reimbursement to a carrier who provides a vehicle shall be determined locally by written agreement between the carrier and installation head and shall be not less nor more than the sum of the amounts computed under each of the factors listed below, as applicable to the individual case.

3. All carriers furnishing a vehicle for transporting themselves, passengers and mail to and from the assigned routes shall be reimbursed on a mileage-zone basis as follows:

**M-00502 Step 4**  
**May 2, 1984, H1N-1Q-C 17744**

A carrier may be required to use his/her vehicle on more than one route, which would include any route that he/she would be assigned to deliver.

a. For transportation of carrier and carry-out swing from delivery unit to beginning of route when distance is ½ mile or more or from end of route if route begins less than, but ends more than ½ mile from delivery unit.

**REIMBURSEMENT RATES**

Mileage	Daily Rate
0.5 to 1.0	<b>\$2.40</b>
1.1 to 1.5	<b>\$2.65</b>
1.6 to 2.0	<b>\$2.75</b>
2.1 to 3.0	<b>\$2.90</b>
3.1 to 4.0	<b>\$2.95</b>
4.1 to 5.0	<b>\$3.25</b>
Over 5	<b>\$3.30</b> plus 20 cents per each additional mile (one way) over

Five miles to beginning of route.

b. When carriers use their vehicles as transportation for Distances of more than ½ mile between segments of a route or routes, they will be reimbursed sixty cents for each such movement; c. Sixty cents for each mail relay carried, up to a maximum of \$3.00 daily; d. Sixty cents per authorized ride for each carrier or supervisory passenger; and, e. Thirty cents for each article transported larger than the size required to be delivered by foot letter carriers (2 lbs).

Prior to the 1978 National Agreement "article" was "parcel." The change was made so that the provision would apply to all classes of mail.

**M-00235 Pre-arb**  
**June 28, 1982, H1N-4E-C 1360**

Carriers with city carrier transportation (drive-out) agreements shall be reimbursed for the transportation of all articles in excess of two pounds, whether in relay sacks or not. See also [M-00261](#).

**M-00534 Step 4**  
**March 11, 1985, H1N-4A-C 27955**

The delivery of more than one relay by the same carrier to the same relay point is considered a single relay stop for compensation purposes.

f. Part-time flexibles providing auxiliary assistance on one or more routes shall be paid at mileage-zone rates indicated above for the first route served, plus sixty cents for each additional authorized move of ½ mile or more.

4. Carrier Agreements in effect which provide allowances more favorable than those provided by the schedule in subsection 3 above shall continue in force for the duration of this Agreement unless terminated by either party upon thirty days written notice, or reassignment of the carrier.

**M-01833 Joint Questions and Answers**  
**March 6, 2014**

Question 77: May CCAs enter into City Carrier Transportation (Driveout) Agreements, as defined in Article 41.4 of the National Agreement?

No, Article 41.4 does not apply to CCAs. However, the Memorandum of Understanding, *Re: Use of Privately Owned Vehicles* applies to CCAs. In circumstances where the postmaster or station manager determines that use of a personal vehicle is necessary for business purposes, a CCA may voluntarily elect to use his/her vehicle. Such agreement must be made through PS Form 8048, Commercial Emergency Vehicle Hire, with the daily rate for vehicle use mutually agreed to by the postmaster or station

## **DRIVE-OUT AGREEMENTS**

manager and the employee. The postmaster or station manager must then forward the completed form to the servicing Vehicle Maintenance Facility manager.

See also JCAM, Article 29

**C-18159 National Arbitrator Snow**  
**I94N-4I-D 960276608, April 9, 1998**

*Arbitrator Snow held that Article 29 of the 1994 National Agreement with the NALC "requires the Postal Service to make temporary cross-craft assignments in order to provide work for letter carriers whose driver's licenses have been [temporarily] suspended or revoked." He rejected the Postal Service's argument that the Postal Service was no longer bound by cross craft provisions of Article 29 in light of the APWU/NALC split. However, he also agreed with the APWU that Article 29 of the NALC Agreement could not be applied in a manner inconsistent the APWU Agreement. Arbitrator Snow's decision did not address cases where driving privileges are permanently revoked.*

*He held that if it is not possible to accommodate temporary cross-craft assignments in a way that does not violate the APWU Agreement, a letter carrier who is deprived of the right to temporarily cross craft assignment to a position in the APWU represented crafts must be placed on leave with pay until such time as he may return to work without violating either unions' Agreement.*

*Accordingly, in cases where letter carriers temporarily lose driving privileges, the following applies:*

*Management should first attempt to provide non-driving letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.*

*If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of those other craft employees.*

*If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.*

*Finally, if there is insufficient carrier craft work and also insufficient work in other crafts to which the carrier could be assigned but for the Snow award, and it is expected to continue that way for an extended period of time, the employee has the option of not working and not being paid or being permanently reassigned to another craft if a vacancy exists.*

In summary, this award does not establish an automatic carrier entitlement to leave with pay. Rather, each case must be handled individually based upon making "every reasonable effort" to seek work.

**M-00672 Step 4**  
**June 19, 1972, NS 411**

The grievant was due those hours of work per day which did not necessitate utilization of a motor vehicle. Therefore, the grievant shall be paid the number of scheduled hours per day which normally would have been devoted to casing and non-motorized activities.

**C-21799 Regional Arbitrator Duda**  
**January 17, 2001**

The Union specifically cites various duties in the letter Carrier and clerk crafts, which were available and could have been assigned to Grievant to enable him to work eight hours per day. The Service made no attempt to dispute the availability of such work claimed by the Union. The fact is, Postmaster Johns flatly refused after October 21, 1994, to make a effort to assign Grievant non-driving duties except to case one route per day. The evidence is clear that there were other non-driving duties available.

Furthermore, even the Service recognizes that the Postmaster offered to transfer Grievant to a clerk vacancy that existed. Grievant had the right to refuse the transfer, but the Service was not thereby freed from its responsibility "to seek suitable work for grievant." In fulfilling that responsibility the Service could have temporarily assigned Grievant to work the clerk duties.

See also [EAP](#).

## **M-01021 USPS Letter, May 13, 1986**

The Representatives for the National Association of Letter Carriers submitted agenda items for the January 7 and April 2 Joint Labor-Management Safety Committee meetings requesting to discuss the Postal Service's policy on drug testing. The subject was discussed fully, addressing the points raised in your recent letter. Your representatives seemed to understand the position of the Postal Service on this issue.

As a reiteration of previous discussions by our representatives on this matter, I will again set forth our position.

The Postal Service has no national policy for drug testing.

During fitness-for-duty examinations, the medical officer or contact physician may decide that a specific test is necessary. This is based upon the physician's observation and/or medical judgment (ELM 864.3).

Disciplinary action will not be taken against an employee based solely on a positive test.

Employees who have a problem with drugs/alcohol will be referred to the Employee Assistance Program (EAP). Postal Service policy concerning EAP participation is found in Section 871.3 of the Employee and Labor Relations Manual.

With regard to establishing a future policy, a Postal Service task force is presently studying the testing of applicants and current employees.

## **M-00984 Step 4, December 12, 1990**

The issue in this grievance is whether random drug screening is permissible on a voluntary basis as part of a structured EAP Program. By letter dated March 9, 1990, local management proposed to implement such a process for EAP participants who were not involved in a last-chance agreement and agreed to submit to random drug screening as a deterrent to using drugs and/or alcohol.

The parties at this level have previously agreed that across-the-board drug testing and/or random drug testing of present employees is prohibited under any circumstances. However, on a case-by-case basis, during fitness for duty examinations, drug tests may be administered, depending on the specific reasons for the examination as stated by the referring official and/or in the judgment of the examining medical official. It is the understanding of the parties that no such drug screening was conducted and the letter of March 9, 1990 was never implemented or enforced. The parties consider the issue to be moot and agree that the facts in this case have no bearing on last-chance agreements. Accordingly, said letter shall be rescinded and this grievance is resolved.

## **M-00867 Pre-arb**

### **October 26, 1988, H4N-5C-C 15273**

Under current policy, as established by the August 6, 1986 Memorandum from SAPMG David H. Charters [M-00653], across-the-board drug testing of present employees is prohibited. For example, a requirement that all candidates for issuance of a particular class of OF-346 submit to drug testing, constitutes across-the-board drug testing.

## **M-00653 USPS Memorandum, August 6, 1986**

Recently, it has come to our attention that drug testing is being used in the field as part of the initial issuance and renewal of the SF-46, Operator's Identification Card, and in Accident Repeater Programs.

Across-the-board drug testing and/or random drug testing of present employees is prohibited under any circumstances. However, on a case-by-case basis, during fitness-for-duty examinations, drug tests may be administered, depending on the specific reasons for the examination as stated by the referring official and/or in the judgment of the examining medical official (see Attachment A). Additionally, drug testing in conjunction with medical assessments and evaluations as part of the Employee Assistance Program is within established procedures (see Attachment B). Furthermore, we will be issuing a policy statement on drug screening of applicants for employment in the near future.

## **M-00863 Step 4, H4N-5T-C 36368**

While strict procedures must be followed to verify the chain of custody of specimens, current Postal Service policy prohibits contract medical personnel from directly observing an employee who is producing a sample for urinalysis.

## **M-00977 Step 4**

### **September 10, 1990, H7N-3A-C-25639**

This case concerns a requirement that all drivers who have had their OF-346 suspended due to negligence or poor or impaired judgment undergo a fitness-for-duty examination, which includes alcohol and drug screening, prior to reissuance of the OF-346.

The parties at this level have previously agreed that "under current policy, as established in the August 6, 1986, memorandum from SAPMG David H. Charters, across-the-board drug testing of present employees is prohibited." (Case No. H7N-5C-C-15273) [M-00653]. The local procedure dated October 16, 1989 will be modified to conform to this policy.

## **C-09903 Regional Arbitrator Martin**

### **March 9, 1990**

Management did not violate the contract by refusing work to an employee who had balked when requested to provide a urine sample during a fitness-for-duty examination.

### **C-09551 Regional Arbitrator P.M. Williams**

A urine test is incapable of resolving whether a person is impaired or under the influence of an illegal drug; for the results of a drug test to be probative, management must establish chain of custody, and must preserve a sufficient quantity of the sample so that the employee has the opportunity to have an independent analysis made.

**M-00087 Step 4****November 15, 1984, H1C-1Q-C 31822**

Temporary assignment as an ad hoc EEO Counselor is not a supervisory position. The duty assignment should not be posted for bid under the provisions of Article 37, 3.A.7

**M-00493 Step 4****March 12, 1984, H1N-3U-C 18530**

The Employer will allow the complainant and his/her representative reasonable time to meet with an EEO counselor so long as the meeting is held within the employees' regular working hours. Payment is made on a no loss-no gain basis.

**M-00770 Step 4****April 15, 1987, H4N-3U-D 25076**

We mutually agreed the EEO settlement regarding the suspension does not bar further processing of the grievance. See also [M-00818](#)

**M-00471 Step 4****March 8, 1983, H1N-5K-C 8037**

If any EEO complainant has expressed in writing his desire that any communications concerning his formal complaint be made through his representative, that request should be honored under normal circumstances. The complainant must furnish the name, address and telephone number of his designated representative.

**M-00470 Step 4****June 25, 1982, H8N-3W-C 26379**

The complainant and the representative, if otherwise in an active duty status, shall be allowed reasonable official time to present the issues to the EEO Counselor, providing such presentation occurs during their regularly scheduled work hours. This agreement is not restricted to the installation where the representative is employed, nor does it include travel time.

**M-01062 APWU Step 4****October 5, 1983, H1C-5K-C-14705**

The issue in this grievance is whether the grievants are entitled to Article 8 guarantees for work performed on April 25, 1983.

After further review of this matter, we determined that the grievants were utilized to distribute mail while waiting to testify at an EEO hearing. The performance of this work invoked the guarantee provisions of the National Agreement.

We also agreed that this decision is made without prejudice to the position of either party, in regard to whether Article 8, Section 8, applies to employees called to testify at EEO hearings who do not perform work.

**M-01057 APWU Step 4****October 29, 1982, H1C-3W-C-7741**

During our discussion, we agreed to resolve the case based on our understanding that EEO representatives, if in an active duty status, are entitled to official time for travel from one location to another in the same building when performing duties as representative.

**M-00804 Pre-arb****October 22, 1987, H1N-5G-C 15447**

The grievant shall be compensated at the overtime rate for the 45 minutes spent testifying outside his normal work hours at an EEO hearing.

Witnesses whose presence at the hearing is officially required will be in a duty status during a reasonable period of waiting time prior to their testimony at the hearing and during their actual testimony.

**M-00766 Step 4****September 1, 1976, NCC 2120**

It would be inappropriate to assign heavy mail to the grievant simply because he is a male individual while withholding such heavy mail from a female simply because she is a female.

**C-00051 Regional Arbitrator McConnell****June 21, 1983, E8C-2M-C 10537**

Regular employee called in to testify at an EEO hearing is entitled to full eight-hour guarantee.

Real emergencies do happen. But for some supervisors every inconvenient occurrence sick calls, heavy mail volume or excessive overtime is any "emergency." Article 3 of the National Agreement has a much more restrictive definition. It provides:

**Article 3** The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

\*\*\*

**3.F.** To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

The JCAM explains this provision as follows:

**Article 3.F Emergencies.** This provision gives management the right to take whatever actions may be necessary to carry out its mission in emergency situations. An emergency is defined as "an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."

### **Emergencies—Local Implementation Under Article 30.**

Article 30.B.3 provides that a Local Memorandum of Understanding (LMOU) may include, among other items, "Guidelines for the curtailment or termination of postal operations to conform to orders of local authorities or as local conditions warrant because of emergency conditions."

Stated another way, to be a true emergency a situation must simultaneously meet all three of the following criteria:

- It must be "unforeseen."
- It must "call for immediate action," and,
- It is not be "expected to be of a recurring nature."

### **M-00105 Step 4**

**November 16, 1978, NCS 12632**

Normally mail volume in and of itself is not an emergency situation. An emergency is described as an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

### **M-00775 Step 4**

**July 8, 1977, NCC 6334**

The T-6 Carrier's Route Assignment was not temporarily changed due to anticipated circumstances. Local management was in this case, aware that Route 0424 was vacant with no carrier assigned to it. Therefore, under these specific factual circumstances we cannot conclude that unusual circumstances were present.

### **M-00381 Step 4**

**April 5, 1976, NCE-427**

Local management must have a rational basis for determining that unusual circumstances exist before moving a T-6 Carrier from his normal route. See also [M-00678](#)

## **Supporting Cases**

### **C-03633 Regional Arbitrator Holly**

**August 5, 1983, S1N-3U-C 14096**

Unscheduled sick leave does not constitute an "unanticipated circumstance" within the meaning of Article 41 Section 1.C.4. Consequently the Postal Service violated the contract by removing a letter carrier from his T-6 string after receiving a sick call.

### **C-08309 Regional Arbitrator Britton**

**April 25, 1988, S4N-3W-C 23992**

Sickness does not fall within the definition of "unanticipated circumstances" The possibility that sickness will occur is an anticipatory event, and therefore one which supervision should be able to plan around.

### **C-15946 Regional Arbitrator Devine**

**October 3, 1996**

The Service acknowledged that Part Time Flexibles have been scheduled, in advance, to deliver rural routes. Therefore, this situation cannot be described as "unforeseen". In addition, the definition of emergency calls for the situation to be that "which is not expected to be of a recurring nature". Again, the circumstances as testified to by the Service do not meet this criterion. The lack of available rural carriers was of a continuing nature. (Emphasis in original)

### **C-04735 Regional Arbitrator Marx**

**March 15, 1985**

The circumstance (that is, a vacant route) is not a particularly unusual or unanticipated situation and certainly does not rise to the level of "emergency" described in Article 3.

### **C-03125 Regional Arbitrator Schroeder**

**February 20, 1980**

Is the unscheduled absence of one Opening Clerk 'unforeseen'? It is no doubt unusual, but I cannot believe it to be unforeseen... In the course of a year it surely happens more than once, on the average... By the same token, the Clerk's absence can be expected to recur over period of time.... Did it call for immediate action? I believe it called for immediate action, but not for supervisor doing bargaining unit work... Therefore conclude that an emergency, as defined in Art, 3.F did not exist.

# EMPLOYEE ASSISTANCE PROGRAM

**Historical Note.** The Employee Assistance Program. (EAP) was originally known as the Program for Alcoholic Recovery (PAR). In 1985 the name of the program was changed to "Employee Assistance Program" (EAP) and its services were expanded. Pre 1985 settlements and arbitration awards referring to PAR are generally still applicable.

## ARTICLE 35 EMPLOYEE ASSISTANCE PROGRAM

35.1 Section 1. Programs The Employer and the Union express strong support for programs of self-help. The Employer shall provide and maintain a program which shall encompass the education, identification, referral, guidance and follow-up of those employees afflicted by the disease of alcoholism and/or drug abuse. When an employee is referred to the EAP by the Employer, the EAP staff will have a reasonable period of time to evaluate the employee's progress in the program. This program of labor-management cooperation shall support the continuation of the EAP for alcohol, drug abuse, and other family and/or personal problems at the current level.

An employee's voluntary participation in the EAP for assistance with alcohol and/or drug abuse will be considered favorably in disciplinary action proceedings.

**Employee Assistance Program (EAP).** Article 35.1 affirms the parties' continued joint support for a national program of employee counseling for alcohol or drug abuse as well as for other types of family or personal problems. The EAP provides free confidential counseling to all postal employees and their family members by trained outside professionals.

NALC officials participate in EAP matters at both the national and local levels (Article 35.2). The joint National EAP Committee administers the EAP at the national level. Within each of the Postal Service's Customer Service Districts, a joint Labor/Management Advisory Committee oversees the process. The committee, which meets at least quarterly, has both union and management representatives.

Except in those districts specifically designated by the National EAP Committee, EAP counseling is provided through a contract between the Postal Service and the U.S. Department of Health and Human Services' Division of Federal Occupational Health (FOH). The FOH hires the EAP vendor who, in turn, provides EAP services to postal employees and their families.

**Confidentiality.** Confidentiality is the cornerstone of EAP counseling. EAP counselors are bound by very strict codes of ethics, as well as federal and state laws, requiring that information learned from counseled employees remains private. EAP counselors have licenses and master's

degrees in their fields of expertise.

Management officials and union officials have no right to breach the confidentiality of EAP counseling sessions. What an EAP counselor learns in confidential counseling or other treatment of an employee may be released only with the employee's completely voluntary, written consent, except in the limited circumstances provided for in ELM 944.4.

**Referral.** EAP Counselor services are available, through voluntary self-referrals, to letter carriers and their family members. A management official may also refer an employee to EAP. However, participation is entirely voluntary. Currently the national contact number for such self-referrals is 1-800-EAP4YOU, or 1-800-327-4968. Additional information is also available at the website [www.eap4you.com](http://www.eap4you.com).

### M-00298 Step 4

**November 3, 1983, H1N-5C-C 14243**

Management should refer an employee with an attendance problem to meet with a PAR counselor if there is an indication that alcoholism or drug abuse is present. See also [M-00345](#), [M-00439](#), [M-00250](#)

### M-01279 Prearbitration Settlement

**January 23, 1997, G90N-4G-D 95066426**

The issue in this grievance is whether management unilaterally may require an employee to participate in the Employee Assistance Program (EAP) beyond the initial EAP interview, apart from requiring such participation as part of an agreement with the employee and/or the employee's representative.

During the discussion, it was mutually agreed that management may not unilaterally require an employee to attend EAP beyond the initial interview.

Note: See ELM Section 872.221. Effective with ELM 16, June 1999, employees have the option to refuse a referral to EAP. An employee cannot be disciplined for noncompliance.

### M-01362 Step 4

**October 22, 1998, J94N-4J-C 98061369**

The mere fact that an employee has an accident does not normally warrant an automatic referral to EAP. Any referral to EAP must be in accordance with ELM 872.

### M-00984 Step 4, December 12, 1990

The issue in this grievance is whether random drug screening is permissible on a voluntary basis as part of a structured EAP Program. By letter dated March 9, 1990, local management proposed to implement such a process for EAP participants who were not involved in a last-chance agreement and agreed to submit to random drug screening as a deterrent to using drugs and/or alcohol.

The parties at this level have previously agreed that across-the-board drug testing and/or random drug testing of present employees is prohibited under any circumstances. However, on a case-by-case basis, during fitness for duty examinations, drug tests may be administered, depending on the specific reasons for the examination as stated by the referring official and/or in the judgment of the examining medical official. It is the understanding of the parties that no such drug screening was conducted and the letter of March 9, 1990 was never implemented or enforced. The parties consider the issue to be moot and agree that the facts in this case have no bearing on last-chance agreements. Accordingly, said letter shall be rescinded and this grievance is resolved.

**35.2 Section 2.** Joint Committee For the term of the 2006 National Agreement, the Employer and the Union agree to establish at the national level a National EAP Committee. The Committee will have responsibility for jointly assessing the effectiveness of EAPs operating inside and outside the USPS, and for developing on an ongoing basis the general guidelines with respect to the level of services and the mechanisms by which the services will be provided.

The Committee is not responsible for day-to-day administration of the program.

The Committee shall convene at such times and places as it deems appropriate during the term of the 2006 National Agreement. No action or recommendations may be taken by the Committee except by consensus of its members. In the event that the members of the Committee are unable to agree within a reasonable time on an appropriate course of action with respect to any aspect of its responsibility, the Vice President, Labor Relations, and the National Union President shall meet to resolve such issues.

The Committee is authorized to obtain expert advice and assistance to aid its pursuit of its objectives. The apportionment of any fees and expenses for any such experts shall be by consensus of the Committee.

The Employer and the Union agree that they will cooperate fully at all levels towards achieving the objectives of the EAP. This joint effort will continue for the term of the 2006 National Agreement.

**National EAP Committee.** The joint National EAP Committee oversees the national EAP program, assessing program effectiveness and providing overall policy guidance. The Committee takes action only through a consensus of its members.

#### **M-01429 Step 4**

**August 31, 2000, Q94N-4Q-C 99199249**

The parties reaffirm their commitment to the principles in Article 35 of the 1998 National Agreement regarding the Employee Assistance Program. It is agreed that decisions

regarding the general guidelines with respect to the level of service and the mechanism by which the services will be provided are to be made by consensus of the Joint Committee. Further, it is agreed that when the members of the Committee are unable to agree on a course of action within a reasonable time frame, the parties will adhere to the provisions of Article 35.2.

## Supporting Cases

### **C-11659 Regional Arbitrator Flagler**

**February 2, 1992, C7N-4S-C 11659**

The Postal Service's elimination of an Employee Assistance Program Specialist position violated Articles 5 and 35 of the National Agreement according to the regional award by Arbitrator Flagler. The arbitrator found that the Service's unilateral action violated the terms of the National Agreement by failing to support continuation of EAP at the current level as required by Article 35.

### **C-27061 Regional Arbitrator Ames**

**April 17, 2007, F01N-4F-D 07035961**

The parties recognize that employees afflicted with the disease of alcoholism and/or drug abuse should be treated and actively encouraged to seek help. An employee's voluntarily participation in a recognized EAP for assistance with alcohol and/or drug abuse will be considered favorably in disciplinary action proceedings. Notwithstanding the Agency's reservations about whether the Grievant has demonstrated sufficient remorse to be entitled to reinstatement, under Article 35, the evidence record indicates that Grievant has taken the positive initiative while off work to address his drug abuse problem.

### **C-28135 Regional Arbitrator Helburn**

**March 2, 2009, G06N-4G-D 08369810**

Management had sufficient information to consider that the grievant was an alcoholic. Thus, failing to consider favorably her treatment in EAP and AA violated Article 35.1.

### **C-24340 Regional Arbitrator Harris**

**June 6, 2003, A01N-4AD-0306032**

While it is true that ELM 17.2 (Sec. 871.32 Limits to Protection) provides that "participation in EAP does not shield an employee from discipline. . ." and such participation does not "limit management's right to proceed with any contemplated disciplinary action for failure to meet acceptable standards," the ELM provision does not negate Article 35.1. The NOR shows that Lewis, in the PDI, did not ask a single question about the Grievant's participation in the EAP, and nowhere in the NOR did she mention the EAP as a factor in her decision to issue the NOR

### **C-00694 Regional Arbitrator Cohen**

**June 22, 1983, C1C-4BD-10052**

Here Grievant participated in not only one, but in three, Programs of self-help. These were the PAR program,

## EMPLOYEE ASSISTANCE PROGRAM

women for sobriety, and Alcoholic Anonymous. I believe that voluntary participation in such programs should entitle Grievant to extra consideration, This is not to say that a recovering alcoholic is to be given complete freedom of action because of participation in self-help programs. Grievant's participation, however, should tip the balance in her favor, especially if there is a show of improvement.

## EMPLOYEE CLAIMS, TORT CLAIMS

Accidents happen. If as a result of an accident or other event a letter carrier's personal property is damaged or lost at work, Article 27 of the National Agreement provides a mechanism for employees to file a claim for reimbursement with the Postal Service. Article 27 provides the following:

### ARTICLE 27 EMPLOYEE CLAIMS

Subject to a \$10 minimum, an employee may file a claim within fourteen (14) days of the date of loss or damage and be reimbursed for loss or damage to his/her personal property except for motor vehicles and the contents thereof taking into consideration depreciation where the loss or damage was suffered in connection with or incident to the employee's employment while on duty or while on postal premises. The possession of the property must have been reasonable, or proper under the circumstances and the damage or loss must not have been caused in whole or in part by the negligent or wrongful act of the employee. Loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions.

Claims should be documented, if possible, and submitted with recommendations by the Union steward to the Employer at the local level. The Employer will submit the claim, with the Employer's and the steward's recommendation, within 15 days, to the Step B Team for determination. An impasse on the claim may be appealed to arbitration pursuant to Article 15, Step B (d) of this Agreement.

A decision letter impassing a claim in whole or in part will include notification of the Union's right to appeal the decision to arbitration under Article 15.

The Step B Team will provide the National Business Agent a copy of the impasse referenced above, the claim form, and all documentation submitted in connection with the claim.

The Step B Team will also provide a copy of the impasse to the steward whose recommendation is part of the claim form.

The above procedure does not apply to privately owned motor vehicles and the contents thereof. For such claims, employees may utilize the procedures of the Federal Tort Claims Act in accordance with Part 250 of the Administrative Support Manual.

The procedure specified therein shall be the exclusive procedure for such claims, which shall not be subject to the grievance-arbitration procedure.

A tort claim may be filed on SF 95 which will be made available by the installation head, or designee.

(The preceding Article, Article 27, shall apply to City Carrier Assistant Employees.)

The JCAM provides the following explanation of Article 27:

**Summary.** A letter carrier whose personal property is lost or damaged at work may file a claim for reimbursement with the Postal Service.

Article 27 sets forth the rules for such "employee claims:"

**1. Personal Property.** The property must be "personal property." This includes cash, jewelry, clothing and carrier uniforms as well as other items that are worn or otherwise brought to work. Personal property does not include automobiles (See "Automobile Exclusion," below).

**2. Automobile Exclusion.** Privately owned motor vehicles and their contents are excluded from Article 27 claims. However, if a letter carrier's automobile is damaged by "the negligent or wrongful act" of the Postal Service, the carrier may seek recovery under the Federal Tort Claims Act. To initiate a Tort Claim a carrier should complete and submit a [Form 95](#). Note that the standard for establishing liability under the Tort Claims Act is different than the standard for reimbursement under Article 27, because they treat fault differently. The Postal Service must pay a claim under Article 27 unless it was "caused in whole or in part by the negligent or wrongful act of the employee" — whether or not there was also negligence on the part of the Postal Service. However, to recover under the Tort Claims procedure the employee must establish that the damage was the fault of the Postal Service.

#### **M-00228 Step 4 Aug 31, 1977, NCE 7534**

The grievant was properly denied payment for the loss of a battery in her motor vehicle.

The procedures for filing a tort claim are found in Part 250 of the Administrative Support Manual which states in pertinent part:

The procedure specified therein shall be the exclusive procedure for such claims, which shall not be subject to the grievance-arbitration procedure. A tort claim may be filed on SF 95 which will be made available by the installation head, or designee.

Non-motorized vehicles are not considered "privately-owned vehicles" within the meaning of Article 27. A claim for the loss or damage to non-motorized bicycles can be made and decided in accordance with the provisions of Article 27 (Pre-arbitration settlement F90N-4F-C-95004286, April 19, 2001, [M-01440](#)).

## Tort Claims

### **M-01440 Prearbitration Settlement**

**April 19, 2001 F90N-4F-C-95004286**

The parties agreed that Article 27 does not apply to privately owned vehicles and the contents thereof. However, we agree that non-motorized bicycles are not considered "privately owned motor vehicles", such as those excluded from Article 27 procedures. Therefore, a claim for loss or damage to non-motorized bicycles can be made and decided in accordance with the provisions of Article 27.

### **M-00142 Step 4**

**April 16, 1979, NC-S-11585**

The grievant may properly file a tort claim for damage to his vehicle while it was parked on U. S. Postal Service property, even though, a claim had been previously submitted and denied in accord with the provisions of Article 27 of the National Agreement. The merits of a tort claim may not be considered through the grievance-arbitration procedure

### **M-00530 Step 4**

**December 6, 1984, H1N-3W-C 37222**

An employee's cooperation in assisting the U.S. Postal Service in pursuing a tort claim against a third party is voluntary. Therefore, the subject letter, as currently written, must be rescinded with regard to all employees involved in a third party tort claim.

### **M-00713 Step 4**

**January 19, 1978, NC-S-9108**

When employees are properly in pursuit of their official duties, they receive the same coverage in the event of a tort claim whether walking or driving on private property.

**3. Reasonable Possession at Work and Loss Connected With Employment.** Under Article 27, possession of the personal property at work must have been reasonable or proper under the circumstances, and the loss or damage must have been suffered "in connection with or incident to the employee's employment while on duty or while on Postal premises." These two requirements are often interrelated. In determining whether these requirements were met, arbitrators generally evaluate: (1) whether it was necessary for the employee to have the lost or damaged item in his or her possession at work, and (2) whether the item's value was so great that the employee should not have risked losing or damaging it at work.

Generally, an employee's personal money and items such as a license or watch have been found to be incident to employment and possession deemed reasonable under the circumstances. (See [C-07760](#), [C-03968](#), [C-04235](#), [C-05223](#), [C-06481](#)). In [C-05276](#), possession of a radio was found to be reasonable, where the Service allowed the carriers to use their radio headsets at their cases, sig-

nifying an affirmation that the use of radios was incidental to their work. (See also [C-03408](#)).

The reasonableness of a claim generally turns on the value of the item. Where the item being claimed is of unreasonable or excessive value, arbitrators generally rule in favor of the employer. In [C-05223](#), the arbitrator held that where the employee damaged his expensive watch while delivering mail, the employee exercised poor judgment, and should have known the risk of damaging such an expensive piece of property. Therefore, the wearing of the watch was unreasonable.

Most arbitrators have ruled that expensive jewelry items such as personal rings or necklaces are not reasonably or properly connected with an employee's job duties as a letter carrier so as to justify responsibility in the employer (See [C-08188](#)). In [C-06224](#), the arbitrator stated, "Whether or not a carrier wears a ring while at work is purely a personal decision. Such item is not required by the carrier's job. The employee is furnished a locker in which to keep personal belongings which he does not wish to take with him on his route."

Generally, however, in cases involving wedding or engagement rings, arbitrators have ruled possession to be reasonable. In [C-02145](#), the arbitrator ruled that although the wearing of expensive jewelry may create unreasonable risks, "it cannot be said that the wearing of a wedding ring or engagement ring while performing duty in the workplace is unreasonable or improper under the circumstances." (But see, [C-04235](#)).

### **C-09154 Regional Arbitrator McConnell**

**August 4, 1981**

After a full consideration of all the evidence, I find no contractual support for the Postal Service policy or guideline which limits-reimbursement for cash loss to \$20, particularly when applied in an inflexible and arbitrary manner.

## Purses

Arbitrators generally agree that possession of a purse in a postal vehicle by a female worker is a reasonable and common practice and does not constitute negligence or unreasonable possession for purposes of Article 27. (See [C-03968](#) and [C-06481](#)). Where an employee leaves her purse unattended, in an open area, however, the employee will most likely be found negligent. (See [C-07382](#)).

### **C-03968 Regional Arbitrator Caraway December 14, 1983**

That [the grievant] left her purse in her mail vehicle was an ordinary and customary thing for female letter carriers to do. It was impossible for her to carry her purse with her. It would be unreasonable to expect a female letter carrier to lock her purse in her locker at the mail facility. There are essential items which a female letter carrier must bring with her in her purse.

### **C-06481 Regional Arbitrator Jacobowski September 10, 1986**

First, I find that it is reasonable and common practice for female carriers to take their purses with them on the route and lock them. in their vehicle as did the grievant.

Second, I am satisfied that the grievant did' hide her purse in the locked vehicle as she described. Management's attempt to cast doubt on her credibility, by suggesting that her purse was not hidden because the mail was not disturbed, is without merit and pure speculation.

Third, I find that the purchase value estimates she has placed on the purse and its contents, is reasonable, and do not require further documentation, since receipts may not be commonly kept for such small personal items

## Eyeglasses

There have been a significant number of employee claims pertaining to loss or damage of an employee's eyeglasses. Arbitrators generally require the employee to maintain well-adjusted glasses in order to receive recovery. In [C-01389](#), the arbitrator stated, "If the evidence established that the glasses merely slipped off during the course of his work because they were not fastened or adjusted properly, the Postal Service should not be responsible for that damage under Article 27." Where glasses are knocked off during the course of a normal job performance, the employee will generally recover. (See [C-00132](#), [C-01452](#)).

When the employee has taken affirmative steps to safeguard his/her property, arbitrators generally find this to be reasonable behavior. In [C-00795](#), the employee lost his glasses while shoveling heavy snow, after placing his glasses in a case and affixing them to his clothing by a

clip. The arbitrator found the employee "took those steps to safeguard his property which are usually taken by a reasonable person," and upheld the claim. Similarly, where an employee took reasonable precautions and left her glasses in a locked vehicle which was later broken into by a third person, the arbitrator found this to be reasonable behavior, and upheld the claim. (See [C-01488](#), [C-03814](#)).

Arbitrators will look carefully at the judgment of the employee in the particular situation. Where the employee appears to have exercised poor judgment or acted carelessly, arbitrators usually rule that the claim cannot be justified. (See [C-00194](#), [C-01588](#)). In [C-01252](#), the employee left her glasses out on her work space temporarily, and they were crushed by a falling newspaper roll. The arbitrator stated, "While anyone knows that glasses are easily broken, the average reasonably prudent person does take off his or her glasses occasionally and for short periods and places them either on the desk or other work place with the expectation that the glasses, after the short interval, will be picked up and worn. What the average reasonably prudent person does is not negligence or want of due care. On the other hand, to place glasses on a desk or other work place indefinitely, and unprotected, is a breach of due care."

**4. Not Caused by Employee Negligence.** The Postal Service need not pay a claim when a loss was caused in whole or part by the negligent act of the employee. "Negligent" means failure to act with reasonable prudence or care.

In order to successfully deny an otherwise meritorious claim, the employer bears the burden of proving that the employee was negligent or failed to exercise reasonable care. Generally, a positive showing that the employee was not exercising reasonable care is required to establish negligence or a wrongful act. (See [C-06482](#)). Where there is a common practice among employees, of which management acquiesces, the employee usually will not be found negligent in following this practice. (See [C-02686](#)).

When an employee fails to attach a lock, chain or cable to secure his bicycle, he will likely be held negligent if his bicycle is stolen, and his claim will be barred. (See [C-01589](#), [C-06356](#)). In [C-01589](#), the arbitrator held that it was not reasonable for the employee to rely on the presence of a mail handler in the area as adequate protection against theft. In addition, the arbitrator ruled that a reasonable person should not need to be told to secure an expensive bicycle, therefore, the Postal Service has no obligation to give such notice.

In cases involving theft out of postal vehicles, it is generally required that the employee show that the vehicle was locked and adequately secured, and all reasonable measures were taken to protect the employee's property. See [C-03408](#), [C-05542](#).

## Damage or loss due to an accident

Where damage or loss is sustained due to an accident which is beyond the control of the employee, arbitrators are generally reluctant to find the employee negligent. In C-00132, the arbitrator ruled, "An accident is simply an unexpected incident which results in damage to property or person. It is not normal, it is unexpected and when the incident results in the loss of property, it is provided for by Article 27."

When an employee sustains a loss due to slipping or falling while performing his job duties, the claim is generally upheld. In C-01453, the grievant slipped on an icy sidewalk while making his rounds. According to the arbitrator, "Special training in walking on ice and snow indicates a degree of risk. There is always the possibility of an accident." Since there was no evidence of negligence on the part of the employee, the arbitrator upheld the claim.

**5. Not Normal Wear and Tear.** The loss or damage will not be compensated when it resulted from normal wear and tear associated with day-to-day living and working conditions.

Normal wear and tear is that damage that occurs during the normal course of working and day-to-day living. In C-02111, the arbitrator concluded that damage done to an employee's shirt by a customer's package was not ordinary wear and tear. In C-04462, where 5 pairs of trousers were damaged due to the employee's vehicle seat, the arbitrator ruled that this damage, all occurring in the same area, could not constitute ordinary wear and tear and upheld the claim.

**6. Depreciated Value.** The amount of the loss claimed must reflect the depreciated value of the property.

**7. Fourteen Days to File a Claim.** Article 27 requires an employee to file a timely claim within fourteen days after the loss or damage occurred. Generally, the employee is expected to know the proper procedures to file, including the time limits.

### **C-24587 Regional Arbitrator Goldstein August 28, 2003**

The Postal Service violated Article 27 both procedurally and substantively. Undisputed evidence of repeated failure and/or refusal to furnish Grievant a Form 2146 prohibited her timely filing of a personal property loss claim. This was a prima facie contract violation; denying her access to the process and potential relief for a loss. Although Management subsequently claimed that negligence of the Grievant contributed to her loss, it had initially denied the claim for another reason; neither explained nor consistent. There was no evidence of negligence or unreasonable behavior by the Grievant. Accordingly, Grievant shall be paid the entire amount of her claim [\$736.00]; plus statutory in-

terest from the date presented to the USPS, to date of payment.

### **C-01452 Regional Arbitrator Smith October 16, 1981**

The grievant's delay in filing Form 2146 was caused by the lack of proper forms at the post office and by the lack of knowledge on his part and that of his steward as to the appropriate procedures. The intent to file the claim is evidenced by the fact that a Tort Claim form was actually filed within the 14 day period, and when it was discovered to be the wrong procedure the proper form was filed only two days beyond the 14 day limitation. Considering the circumstances and the obvious intent of the time limitation, I find that the claim should be considered, in effect, as being timely filed since the 14 day period should, in all equity, be extended in this case.

**8. Written Claim.** PS Form 2146, Employee Claim for Personal Property, is filed to document a claim. However, any written document may be treated as a proper claim if it provides substantiating information. Claims should be supported with evidence such as a sales receipt, a statement from the seller showing the price and date of purchase, or a statement from the seller concerning replacement value.

### **M-00435 Step 4 September 1, 1977, NCC 7656**

The employee should have been supplied with a Form 2146 to file a claim for lost property whether or not management had determined the legitimacy of that claim.

### **C-05562 Regional Arbitrator Seidman May 17, 1991**

The employee missed the 14-day time limit and asserted his claim as timely due to oral communication with his supervisor following the accident. The arbitrator ruled, "Verbal relating of the fact of the accident and loss of employee to his supervisor can't be regarded as the filing of a written claim within 14 days of the date of the loss or damage. Even though the language of the agreement does not refer to a written clause, uniform past practices show that the claim should be in writing."

### **C-01389 Regional Arbitrator Dobranski August 26, 1982**

The employee imprecisely described his claim, yet the arbitrator allowed oral evidence at the hearing to control. The arbitrator stated, "The resolution of the claim does not depend solely on the claim submitted. Where the language is incomplete or ambiguous, the Postal Service should ask for clarification or additional information."

**9. Appeal Procedure.** The Employer must submit the claim form, which must include the supervisor's and steward's recommendation, together with all documenta-

tion submitted in connection with the claim to the Step B Team within fifteen days for determination. The Step B Team will review the claim and issue a decision within fourteen days of the receipt of the claim at Step B. The Step B Team may 1) resolve the claim 2) declare an impasse or 3) remand the case for specific information needed for a decision at Step B.

If the Step B Team impasses the claim in whole or in part, the team must provide the National Business Agent a copy of the impasse, the claim form, and all documentation submitted with the claim. The team must also provide a copy of the impasse decision to the steward and supervisor whose recommendations are part of the claim form. The National Business Agent may appeal an impasse to expedited arbitration within fourteen days after receipt of the Step B impasse. This procedure is the exclusive procedure for resolving employee claims.

## MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Article 27

To clarify the appeal process after a Step B Team has impassed an employee claim, the parties agree to revise the language of the third, fourth, and fifth paragraphs of Article 27 of the National Agreement as follows:

A decision letter impassing a claim in whole or in part will include notification of the Union's right to appeal the decision to arbitration under Article 15.

The Step B Team will provide the National Business Agent a copy of the impasse referenced above, the claim form, and all documentation submitted in connection with the claim.

The Step B Team will also provide a copy of the impasse to the steward whose recommendation is part of the claim form.

Date: August 8, 2002

## Proof of value

The employee and the Union bear the burden of proving the value of the personal property lost or damaged. The best evidence of value is a purchase receipt. If a receipt is unavailable, the claimant's own unsupported valuation of the lost or damaged property may not always satisfy the demands of proof. In [C-07600](#), the arbitrator denied the

claim where the evidence of value was only the testimony of the employee herself.

Although documentation is ordinarily the easiest way of proving the value of the damaged items, arbitrators may use their discretion in allowing recovery. In [C-05773](#), the arbitrator concluded, "The fact that there was no documentation for the lost goods is not fatal to the grievant's claim. Article 27 does not state that all claims must be documented in order to be allowed.

### **C-06481 Regional Arbitrator Jacobowski September 10, 1986**

I find that the purchase value estimates she has placed on the purse and its contents, is reasonable, and do not require further documentation, since receipts may not be commonly kept for such small personal items

### **C-05773 Regional Arbitrator Erbs February 21, 1986**

The fact that there was no documentation for the lost goods is not fatal to the Grievant ' s claim. Article 27 states that "claims should be documented, if possible. . ." It does not state that all claims must be documented in order to be grieved or subsequently allowed.

## Remedy

Once an arbitrator concludes that management violated Article 27 in denying the employee's claim, a remedy is due. Article 27 establishes that the employer's obligation to provide reimbursement includes "taking into consideration depreciation." In [C-00795](#), the arbitrator ruled, "The amount of the loss to which the employee is entitled is the depreciation value of the property loss, not the new or replacement value." Often, in the absence of evidence showing the depreciation value, arbitrators have tended to award the employee 50% of the amount of replacement rather than conduct a new hearing to present evidence of depreciation value. (See [C-00795](#), See also, [C-01488](#)).

If the property lost or damaged has a value clearly in excess of the reasonable value of personal property claimed to be needed for the performance of employment duties, the employee will have no assurance that he will be reimbursed for the full value of the property. In [C-03408](#), the arbitrator determined that although possession of a radio was reasonable, the value claimed by the employee was excessive and reduced the claim. Similarly, in [C-07600](#), the arbitrator found a claim for an expensive watch excessive and reduced it to a reasonable amount.

## Article 28 Employer Claims

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the USPS property, postal funds and the mails. In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor.

**Employer Claims.** An employer claim is a demand made by management that a letter carrier pay for certain types of losses or damage, to the mail or to other postal property. This paragraph requires the employer to inform an employee in writing in advance of the reasons for any money demand.

In addition to the employee protections in Article 28, ELM Section 437 sets forth procedures under which an employee may request a waiver of an employer claim. See the discussion of waiver provisions at the end of this article.

### **C-28238 Regional Arbitrator Talmadge May 22, 2009**

Management violated Article 28 of the National Agreement, when on September 23, 2008 the Grievant was issued a Letter of Demand for an alleged payroll overpayment of \$5,335.81, by failing to provide adequate rationale for the indebtedness in light of the Service's earlier affirmation that the Grievant had not been incorrectly placed at various pay steps between December 2006 and May 2007. Accordingly, the grievance is sustained.

### **C-28318 Regional Arbitrator Zuckerman July 13, 2009**

This is not a case of unjust enrichment. The Arbitrator is not convinced that Tomaski actually still owes the \$2,768.74.... If we assume that the figure of \$2,768.74 is correct, the Grievant should be relieved from having to repay it because there is a clear contractual requirement in Article 28 that the Service provide a sufficient explanation in writing of the debt to the employee. This was not done. If the contract language means anything, it means that therefore the debt must be rescinded.

### **28.1 Section 1. Shortages in Fixed Credits**

Employees who are assigned fixed credits or vending credits shall be strictly accountable for the amount of the credit. If any shortage occurs, the employee shall be financially liable unless the employee exercises reasonable care in the performance of his/her duties. In this regard, the Employer agrees to:

- A. Continue to provide adequate security for all employees responsible for postal funds;
- B. Prohibit an employee from using the fixed credit or other financial accountability of any other employee without permission;
- C. Grant the opportunity to an employee to be present

whenever that employee's fixed credit is being audited and if the employee is not available to have a witness of the employee's choice present;

D. Absolve an employee of any liability for loss from cashing checks if the employee follows established procedures; and E. Audit each employee's fixed credit no less frequently than once every four months.

**Not Applicable.** Letter carriers are not ordinarily assigned fixed credits or vending credits, so this language does not apply to the letter carrier craft. However, note that language protecting letter carriers from employer claims involving faulty checks appears in Article 41.3.C.

### **28.2 Section 2. Loss or Damage of the Mails**

An employee is responsible for the protection of the mails entrusted to the employee. Such employee shall not be financially liable for any loss, rifling, damage, wrong delivery of, or depredation on, the mails or failure to collect or remit C.O.D. funds unless the employee failed to exercise reasonable care.

**Reasonable Care.** Article 28.2 protects letter carriers against management claims resulting from the loss or damage of mails, unless the employee "failed to exercise reasonable care."

### **C-10942 Regional Arbitrator Taylor July 15, 1991, S7N-3V-D 35904**

Employer Claim was improper where carrier was not questioned about delivery for five months, although patron's claim was filed one month after delivery.

### **C-11293 Regional Arbitrator Axon W7N-5L-D 30655, October 21, 1991**

Where management made no attempt to recover a misdelivered piece of registered mail for more than a month, even where the employee failed to exercise reasonable care the Employer Demand must be reduced.

### **28.3 Section 3. Damage to USPS Property and Vehicles**

An employee shall be financially liable for any loss or damage to property of the Employer including leased property and vehicles only when the loss or damage was the result of the willful or deliberate misconduct of such employee.

**Willful or Deliberate.** Article 28.3 protects letter carriers against management claims for the loss or damage to Postal Service property, including vehicles, unless the loss or damage resulted from the "willful or deliberate misconduct" of the letter carrier.

### **C-23653 Regional Arbitrator Bowers September 2, 2002**

The Union is correct in asserting that Potsaidlo applied the wrong standard, "exercise reasonable care" to the loss of the scanner. The other reasons given at any time by the Service amount to nothing more than its effort to get the

Grievant to pay for the scanner. In writing the clear and unambiguous language contained in Article 28.3 of the National Agreement and in jointly agreeing on the interpretation of that language in the JCAM, the parties meant and the Arbitrator agrees that Article 28.3 "protects letter carriers against management claims for the loss or damage to other USPS property, including vehicles, unless the loss or damage resulted from "willful or deliberate misconduct" of the letter carrier". (emphasis added) The Service made no such showing and, thus, the grievance is sustained.

**M-00899 Step 4**  
**February 7, 1989, H1N-5G-C 28042**

Pursuant to statutory and judicial mandates, government (postal) employees are protected from liability for vehicle accidents arising out of their negligence while acting in the scope of their employment. Accordingly, the letter of demand will be rescinded.

**M-00673 Step 4**  
**February 26, 1973, NC 1388**

We do not believe that the evidence shows that the damage to the vehicle was the result of the willful or deliberate misconduct of the grievant. Therefore, the grievance is sustained.

**M-00426 Step 4**  
**March 14, 1978, NCN 8809**

Based on the evidence presented in this grievance, we find that the grievant was properly assessed for damage to the Postal Service vehicle as the result of his willful or deliberate misconduct which resulted in the accident in question. However, Part 271 of the Postal Service Manual applies to damage or loss of government property and not loss or damage of private property. Based on the foregoing, it was inappropriate to issue the letter of demand to the grievant for the amount of damages to private property.

**M-00352 Step 4**  
**May 13, 1977, NCE 5626**

Part 271 of the Postal Service Manual applies to damage or loss of government property not loss or damage of private property.

### 28 Section 4. Collection Procedure

**28.4.A.** If a grievance is initiated and advanced through the grievance/ arbitration procedure or a petition has been filed pursuant to the Debt Collection Act, regardless of the amount and type of debt, collection of the debt will be delayed until disposition of the grievance and/or petition has (have) been had, either through settlement or exhaustion of contractual and/or administrative remedies.

**Due Process Delay in Collection.** Article 28.4.A prohibits the Postal Service from collecting a debt, regardless of the

amount or type of debt, until all grievances concerning the debt have been resolved.

**C-02968 National Arbitrator Fasser**  
**February 23, 1977 NBE 5724**

Failure of a Letter of Warning for negligence to state specifically that the carrier had a right to grieve the warning rendered it inadequate; failure to grieve a letter of warning does not bar grievance of a subsequent letter of demand.

**C-10686 Regional Arbitrator Martin**  
**July 20, 1990**

Management violated the contract when it deducted a claimed overpayment from grievant's paycheck without first issuing a letter of demand.

**C-11012 Regional Arbitrator Powell**  
**November 26, 1990**

Management violated the contract when it issued a letter of demand which did not comport with the technical requirements of Article 28 and the F-1 Handbook.

**C-10679 Regional Arbitrator Zumas**  
**July 16, 1990, N4C-1A-C 25151**

Management violated the contract when it failed to state the employee's grievance rights in a letter of demand.

**C-00011 Regional Arbitrator Cohen**  
**February 24, 1982, C8C-4F-C 27250**

Management violated the contract when it docked the employee for overpaid annual leave without issuing a letter of demand.

**M-01029 Pre-arbitration Settlement**  
**December 10, 1991, H7N-1P-C-14879**

The issue in this grievance is whether management may cash an employee's salary check to satisfy a letter of demand. In seeking to collect a debt from a collective bargaining unit employee, the U.S. Postal Service adheres to the procedural requirements governing the collection of debts as specified in Article 28, Employer Claims, of the National Agreement, and ELM 460, Collection of Debts from Bargaining Unit Employees. The cashing of an employee's payroll check without permission is inappropriate.

**M-00533 Step 4**  
**December 6, 1984, H1N-3W-C 34695**

In accordance with ASM 273.272, management is proper in charging an employee for a lost badge. Management shall, however, inform an employee of a money demand under Article 28 of the National Agreement, and the demand must include the reasons therefore.

**M-01349 USPS Letter**  
**September 22, 1988**

USPS policy does not allow field offices to stop Bank/Direct Deposits until salary advances are collected.

**28.4.B.** No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

(The preceding Article, Article 28, shall apply to City Carrier Assistant Employees.)

**Limit on Deduction Amount.** Article 28.4.B sets absolute limits on the amount the employer may deduct from an employee's pay in collection of a debt, unless the employee agrees otherwise, voluntarily and in writing.

### **M-00676 Step 4**

#### **April 22, 1977, NCC 4750**

In view of the hardships experienced by the grievant by paying \$50 per pay period in order to liquidate this liability, it was agreed that we would reduce the required payment to \$25 per pay period.

**Waiver of Employer Claims.** Many employer claims involve mistakes in which carriers were overpaid. Section 437 of the ELM gives carriers the right to file for waiver of a claim for overpayment. This section, titled "Waiver of Claims for Erroneous Payment of Pay," outlines the steps that carriers must follow to request a waiver.

Under this process the carrier files PS Form 3074, Request for Waiver of Claim for Erroneous Payment of Pay. ELM Section 437.32 states:

#### Section 437.32 PS Form 3074

The applicant requests a waiver of a claim or a refund of money paid as a result of a claim by submitting PS Form 3074, Request for Waiver of Claim for Erroneous Payment of Pay, in triplicate to the installation head. The completed PS Form 3074 must contain:

- a. Information sufficient to identify the claim for which the waiver is sought including the amount of the claim, the period during which the erroneous payment occurred, and the nature of the erroneous payment.
- b. A copy of the invoice and/or demand letter sent by the Postal Service, if available, or a statement setting forth the date the erroneous payment was discovered.
- c. A statement of the circumstances that the applicant feels would justify a waiver of the claim by the Postal Service.
- d. The dates and amount of any payments

made by the employee in response to the claim.

The installation head investigates the claim, and writes a report of the investigation on the reverse side of the PS Form 3074. The report should contain the data and/or attachments indicated in the ELM Section 437.4. The form is then forwarded to Human Resources for review and further completion. The entire file is then sent to the Eagan Accounting Service Center (ASC). ELM Section 437.6 provides that:

#### **Section 437.6 Action by Eagan Accounting Service Center**

The Eagan ASC waives the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment occurred through administration error of the Postal Service. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, key-punching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in the process of current operations.
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interests of the Postal Service.

Nothing contained in Section 437 of the ELM precludes an employee from requesting a waiver where the employer erroneously failed to withhold any employee insurance premiums (Step 4, Q98N-4Q-C 00187353, September 20, 2001, M-01446).

## **Supporting Cases**

### **Insurance premiums**

#### **M-01446 Step 4 Settlement**

#### **September 20, 2001, Q98N-4Q-C 00187353**

The issue in this case is whether Section 437 of the Employee and Labor Relations Manual allows employees to request a waiver where the employer erroneously fails to withhold employee insurance premiums.

The parties agree that nothing contained in Section 437 of the ELM precludes an employee from requesting a waiver where the employer erroneously fails to withhold employee insurance premiums.

**C-00859 National Arbitrator Fasser**  
**June 29, 1978, ABE 4810**

The recoupment of allegedly overpaid wages is an arbitrable matter; in this case, where life insurance payroll deductions were not made because of administrative error, the grievance was not covered by the insurance and the grievance was sustained.

**C-07642 Regional Arbitrator Gentile**  
**December 14, 1987, W4N-5H-C 46068**

Life insurance payroll deductions were not made because of administrative error by the Postal Service. The arbitrator found that the letter of demand was not justified under the National Agreement.

**C-10696 Regional Arbitrator Zumas**  
**July 16, 1990**

Management may not impose a Letter of Demand for health insurance premiums unless it can demonstrate that USPS actually paid the premiums.

**C-00012 Regional Arbitrator Cohen**  
**January 5, 1982, C8C-4G-C 33104**

Management violated the contract when it issued a letter of demand for unpaid health benefit premiums, where the employee claimed there had been no coverage and management failed to prove

### Supporting Cases

**M-01192 Memorandum**  
**July 20, 1994**

The parties agree that bargaining unit employees will be provided an opportunity to petition for a hearing regarding monies demanded by the Employer pursuant to the Debt Collection Act as promulgated in postal regulations found in the Employee and Labor Relations Manual and in other handbooks, manuals, and published regulations of the Postal Service. The following procedures embody our agreement and outline this process and its relationship to the grievance-arbitration procedures in Article 15 of the National Agreement:

1) A bargaining unit employee shall have the right to file a grievance under the provisions in Article 15 of the National Agreement concerning any letter of demand, to challenge the existence of a debt owed to the Postal Service, the amount of such debt, and the proposed repayment schedule. A bargaining unit employee also shall have the right to file a grievance under the provisions in Article 15 of the National Agreement concerning any other issue arising under Article 28 of the National Agreement. However, if no

grievance challenging the existence of a debt owed to the Postal Service, the amount of such debt, or the proposed repayment schedule, is initiated within 14 days of receipt of the letter of demand, and the Employer intends to proceed with the collection of the debt, the employee will be issued a "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act," with a right to petition for a hearing, pursuant to the Debt Collection Act.

2) At any stage of the grievance-arbitration procedure where the existence of a debt, the amount of debt, or the proposed repayment schedule has been resolved through a written settlement between the Employer and the Union, and the employee remains liable for all or some of the debt, the employee will be issued a "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act." If a petition for hearing is filed, the Postal Service is free, before the Hearing Officer, to pursue collection of the full amount of the debt. However, any contractual issue settled by the parties in the grievance-arbitration procedure will be final and binding.

3) At any stage of the grievance-arbitration procedure where a grievance has not been initiated or advanced to the next step within the time limits set forth in Article 15 of the National Agreement, and the Employer intends to proceed with collection of the debt, the employee will be issued a "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."

4) When an arbitrator finds the grievance is not arbitrable, and the Employer intends to proceed with the collection of the debt, the employee will be issued a "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."

5) Once an arbitration hearing has opened on the merits of any money demand, the employee will not be issued a "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act," unless the arbitrator finds the grievance is not arbitrable or the grievance is settled pursuant to paragraph numbered 2.

6) If a grievance is initiated and advanced through the grievance-arbitration procedure or a petition has been filed pursuant to the Debt Collection Act, regardless of the amount and type of debt, collection of the debt will be delayed until disposition of the grievance and/or petition has (have) been had, either through settlement or exhaustion of contractual and/or administrative remedies.

7) No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

8) The provisions of paragraphs 6 and 7 of this Memorandum

dum, regarding the delay of collection of the monies demanded and the amount to be collected through payroll deductions, will be incorporated in Article 28, Section 4 of the 1994 National Agreement.

9) An administrative hearing under the Debt Collection Act may be conducted by any individual not under the supervision or control of the Postmaster General, but may include a hearing official designated by the Judicial Officer.

### **M-01415 Step 4**

**May 17, 2000, Q98N-4Q-C 00104081**

Settlement of national Level grievance withdrawing a USPS proposal to use a "salary offset" process to collect certain salary overpayments.

### **M-01338 Prearbitration Settlement**

**August 7, 1998, H94N-4H C 97080228**

Claims for over-payment regarding the promotion pay settlement will be processed in accordance with Article 28 of the National Agreement and Section 437 of the ELM.

### **C-09382 Regional Arbitrator Taylor**

**August 22, 1989, S4N-3E-C 52067**

Letter of demand is rescinded where mail was lost after it was left unattended by the letter carrier in the post office.

### **C-11105 Regional Arbitrator Helburn**

**August 15, 1991**

Letter of demand issued grievant is rescinded because her departure from proper practice was condoned and management's investigation was inadequate.

### **C-10697 Regional Arbitrator R. G. Williams**

**February 26, 1991, S7N-3V-C 33759**

Where the employee failed to submit an adequate medical certificate, management properly demanded repayment of sick leave. See also [C-10670](#)

### **M-01095 Pre-arb**

**July 13, 1992, H7N-NA-C 50**

The issue in these grievances involves changes occurring in Issues 11 and 12 of the Employee & Labor Relations Manual (ELM).

Without prejudice to its ability to make future changes pursuant to Article 19, management shall adhere to the provisions of ELM Section 437 as they were published in Issue 10 of the ELM. Any timely grievance alleging a violation of ELM 437 shall be processed as if the provisions of ELM Issue 10 were in effect.

Note: See [M-01231](#) for a copy of ELM Section 437 as it was published in Issue 10. Note that it is labeled "Issue 9" since it was not changed when Issue 10 was published (See cover page).

See also [Delivery Unit Optimization](#)

**C-16923 National Arbitrator Snow  
I90N-4I C 92057810, June 20, 1997**

Article 12.5.C.6 of the 1990 National Agreement does not alter the reassignment rules specified by Article 12.5.C.5 pursuant to which excess employees are reassigned across craft lines within an installation before being assigned to a different installation

**C-20485 National Arbitrator Das  
H7C-NA-C 82, March 21, 2000**

The issue is whether the phrase "in excess of the part-time flexible quota for the craft", and, more particularly, the term "quota" found in Article 12.5.C.8 has any meaning or is an obsolete relic.

The evidence as to bargaining history and the consistent and accepted application of Article 12.5.C.8 since 1971 establishes that the PTF quota language has no current meaning, and has had none since 1971.

**C-22368 National Arbitrator Snow  
H0C-NA-C 12, July 27, 2001**

The language in Article 12.5.C.5.a(2) allows the employer discretion in separating casuals prior to excessing consistent with the following agreement among the parties: "All casuals must be removed if it will eliminate the impact on regular workforce employees. The employer must eliminate all casual employees to the extent that it will minimize the impact on the regular workforce."

**C-11528 National Arbitrator Snow  
December 19, 1991, H7N-4Q-C 10845**

Senior employees excessed into the Letter Carrier Craft under terms of Article 12.5.C.5.a must begin a "new period" of seniority pursuant to the provisions of Article 41.2.G of the parties National Agreement. Article 41.2.G prevails and employees reassigned from other crafts must begin a new period of seniority in the Letter Carrier Craft.

**M-01082 APWU Memorandum  
April 16, 1992**

The United States Postal Service and the American Postal Workers Union, AFL-CIO (Parties), mutually agree that Arbitrator Carlton Snow's award in Case Number H7N-4Q-C-10845 shall be applied in a prospective fashion effective with the date of the award.

Accordingly, employees who are excessed into APWU represented crafts (Clerk, Maintenance, Motor Vehicle, and Special Delivery Messenger) after December 19, 1991, under the provisions of Article 12.5.C.5, shall begin a new period of seniority.

**M-01118 Step 4  
January 13, 1993, H0N-NA-C 15**

The issue in this grievance is whether management violated the National Agreement in the manner in which it re-

sponded to the National Union's request for comparative workhour reports.

During our discussion, we mutually agreed that such requests will not be unreasonably delayed. Normally, such requests shall be responded to within sixty days. On those occasions when requests cannot be responded to within the sixty days, the union will be so advised

**C-28031 Regional Arbitrator Zuckerman  
January 30, 2009, B06N4BC08257683**

The Service violated Article 12 of the National Agreement and the MOU by excessing the three full-time carriers from the Quincy, MA Post Office in June 2008 and retaining the ten TEs because the Service did not demonstrate specifically that there was insufficient work for the three full-time carriers. The Service also did not demonstrate that the work of the transitional employees was offered to the three full-time regular carriers before they were excessed.

**C-28076 Regional Arbitrator Monat  
February 14, 2009, F06N4FC03155116**

The Arbitrator conducted an analysis of the CWHR (J2:18 - Attachment 2) and found the differences between before and after excessing to be of a lesser magnitude than management claimed, or even in a different direction. The average PTF overtime represented 19.3% before and 21.1% after excessing. The average FTR/PTR straight time hours to PTF straight time hours remained about the same (1.17 vs. 1.13). This supplemental analysis favors the Union's claim that management failed to "minimize the impact on FTR positions by reducing PTFs" in violation of Article 12.

**M-00081 Step 4  
December 6, 1982, H8N-4J-C 33933**

The issue in this case is whether management violated the National Agreement by reassigning the employee to another craft due to his inability to work safely.

It was mutually agreed that: An employee may volunteer for reassignment to another craft. However, the Postal Service may not unilaterally make such a reassignment.

**M-01778 Memorandum of Understanding  
April 4, 2012**

Any city carrier(s) who had active retreat rights to the losing installation at the point of DUO implementation will have his/her retreat rights carried forward to the gaining installation. In this situation, retreat rights will be offered to excessed city letter carriers by seniority as defined by the Memorandum of Understanding Re: Delivery Unit Optimization and the National Agreement.

In the event city delivery assignment(s) are returned to the losing installation(s), any city carrier(s) who had active retreat rights to the losing installation at the point of DUO implementation will have retreat rights restored to his/her original installation.

The Postal Service regulations concerning Express Mail are found in the DM-201, Express Mail Service. The M-68, referenced in some earlier settlements, is now obsolete. However, the principles established by these settlements are still applicable

**C-13863 National Arbitrator Mittenthal  
September 29, 1994, H0C-NA-C 14  
H7N-3A-C 24946 "Arlington Texas Case"**

The Special Delivery Craft does not have exclusive jurisdiction over the delivery of express mail.

**C-15602 National Arbitrator Snow  
B90V-4B-C 93032199, July 24, 1996**

The Postal Service did not violate the national agreement when it assigned other than Motor Vehicle Service Division employees to transport bulk quantities of Express Mail.

**M-00136 Step 4  
May 31, 1985, H1N-3T-C 38350**

It is the position of the Postal Service that neither the delivery nor the transportation of Express Mail is exclusively letter carrier craft work.

**M-01013 Step 4  
September 5, 1991, H7N-3V-C 37666**

We agreed the delivery of Express Mail is controlled in part by the provisions of Handbooks M-68 and DM-201.

**M-00601 National Joint City Delivery Meeting  
Nov 17, 1983**

The performance of "acceptance functions" is not a responsibility of letter carriers except where the collection involves the scheduled pick-up of Custom Designed Next Day Express Mail. Carriers picking up express mail at random in the normal course of performing their delivery and collection duties need only ensure that postage is affixed just as they are required to do with all collection mail.

**M-01037 APWU Step 4  
July 11, 1986, H1S-4B-C 34169**

The question raised in these grievances involved the use of Letter Carriers to deliver Express Mail.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in these cases. We agreed that the delivery and collection of Express Mail can be accomplished as determined by management. The specific duties are not designated to any one craft and are assigned in accordance with the M-68, Express Mail Handbook.

**M-00870 Pre-arb  
November 1, 1988, H4N-3U-C 25828**

We mutually agreed the general delivery and pickup of Express Mail is bargaining-unit work. It is also understood that management has not designated this work to any specific craft. In accordance with the above understand-

ing, management is prohibited from performing bargaining-unit work except as enumerated in Article 1, Section 6.

This settlement is not intended to prohibit management from assigning available personnel as necessary, including non-bargaining-unit persons, to meet its commitment where Express Mail is concerned in connection with noon and 3 p.m. deliveries and office closings. See also M-00955 (APWU)

**C-00248 Regional Arbitrator Dworkin  
September 23, 1984, C1S-4H-C 27303**

The Special Delivery Craft does not have exclusive jurisdiction over delivery of express mail; Management did not "cross crafts" when it had PTF carriers deliver express mail.

**C-26913 Regional Arbitrator Simmelkjaer  
February 16, 2007, B01N-4B-C 06094135**

Given the finding that a past practice existed, a violation of Article 5 is discernible since the decision to subcontract the work was made unilaterally without bargaining in good faith with the Union prior to the change.

... It is significant that, even if Article 32.1(A) were applicable, the Employee's obligation "to give due consideration to the public interest, cost, efficiency, availability of equipment and qualifications of employees" as not fully documented in this case.

### Award

- 1) The Service violated Article 5 of the National Agreement when it stopped using Letter Carriers to pick up Express Mail and instead hired a Highway Contractor to perform the service.
- 2) As a remedy, the Carrier Craft at Great Barrington, MA shall be reimbursed two (2) hours per week at the PTF's prevailing wage on March 17, 2006 until the present
- 3) Henceforth, the Express Mail run shall be returned to the Carrier Craft.

**C-10898 Regional Arbitrator Mitrani  
June 7, 1991, N7N-1W-C 34921**

Management did not violate the contract when a supervisor delivered twenty-four pieces of express mail over a six-month period.

See also **Drug testing**  
**Medical Treatment, Examinations**

**M-00778 Step 4**  
**July 15, 1977, NCS 6645**

Management does have the right to send an employee for another medical opinion or fitness-for-duty examination.

**M-00860 Step 4**  
**October 17, 1988, H4C-NA-C 79**

Part 343.31 of the P-11 Handbook states, "The appointing officer completes Form 2485, Certificate of Medical Examination, Section B only and the installation head signs it." We agree that the intent of this language is that the installation head will be the postal official authorizing the Fitness for Duty Examination.

**M-01161 Prearb**  
**December 10, 1993, H7N-5F-C 26185**

This grievance concerns the scheduling of an appointment for prescribed medical treatment as a result of a job-related injury. It is agreed that an employee cannot be required or compelled by the postal Service to undergo a scheduled medical examination and/or treatment during non-work hours.

**M-01324 Pre-arbitration Settlement**  
**May 21, 1998, J94N-4J-C 97063003**

It was mutually agreed that there is no dispute at this level concerning the use of Form CA-17 for fitness-for-duty determinations incident to on-the-job injury or illness. We acknowledge Part 547.34 of the Employee and Labor Relations Manual, which specifies in pertinent part:

The following procedures apply only to fitness-for-duty determinations incident to an on-the-job injury or illness. Fitness-for-duty determinations for other purposes are not covered by this instruction.

A. The physician or hospital must, for each visit of the employee make a professional statement, using Form CA-17 showing the employee is either:

1. Fit for duty; or
2. Fit for limited duty, and the work tolerance limitations due to the injury; or
3. Not fit-for-duty with an expected return-to-duty date.

**M-00647 Step 4**  
**December 13, 1978, NC-N-12792**

The National Agreement does not provide for the payment of a union steward who accompanies an employee to a medical facility for a fitness-for-duty examination.

**M-00901 Step 4**  
**March 7, 1989, H7N-2K-C 7670**

While non-medical personnel may administer blood pressure tests, only the medical officer is authorized to make determinations concerning an employee's fitness-for-duty.

**C-09903 Regional Arbitrator Martin**  
**March 9, 1990**

Management did not violate the contract by refusing work to an employee who had balked when requested to provide a urine sample during a fitness-for-duty examination.

**C-09670 Regional Arbitrator Dunn**  
**February 5, 1990**

Grievant properly refused week-long hospitalization as fitness-for-duty examination, where USPS indicated it would not pay for cost of hospitalization.

**C-10971 Regional Arbitrator Talmadge**  
**August 8, 1991**

Management acted reasonably when it made its initial determination that Grievant was unfit for duty as a result of mental illness. USPS doctor acted reasonably when he referred Grievant to a state hospital, where grievant was involuntarily detained for two weeks.

**C-00284 Regional Arbitrator Schedler**  
**July 6, 1982, S1C-3U-D 4132**

Management violated Article 2 when it placed a 5 foot, 96 pound female off-the-clock for three weeks while waiting for a post office medical ruling on her physical suitability for continued employment.

**C-10678 Regional Arbitrator Zumas**  
**July 20, 1990 N4C-1A-C 28399**

Management violated the contract when it required medical clearance in the form of a fitness-for-duty exam of an employee who had been absent for military service.

## Payment for Time, Travel

**M-01045 APWU Step 4**  
**January 30, 1980, E8C-2B-C-2061**

During our discussion, we concluded that at issue in this grievance is whether management must pay an employee for all time spent to undergo a Fitness-for-Duty exam at the employer's request; and whether charging such time to an employee's annual leave constitutes such payment.

After reviewing the information provided, it is our position that time spent by an employee in waiting for and receiving such medical attention at the direction of the employer constitutes hours worked. Thus, the grievant in this case shall be carried in an official duty pay status for all time involved. In addition, any annual leave charged to the grievant shall be recredited to his balance.

## **M-00094 APWU Step 4**

**November 14, 1984, H1C-5F-C 9268**

The proper compensation for undergoing a fitness-for-duty examination on a non-scheduled day is pay for time actually spent taking the examination, including travel time.

See also [M-00616](#), [M-00617](#)

## **M-00550 APWU Step 4**

**October 11, 1983, H1C-4F-C 19109**

The grievant is not entitled to an eight-hour guarantee for time spent undergoing a Fitness-for-Duty Examination. Article 8 guarantees are only applicable to work situations.

The grievant was not called in to perform any work. It should be noted that the grievant was compensated at the overtime rate for the time spent undergoing this examination.

## **M-01350 Step 4**

**J94N-4J-C 97009363, November 5, 1998**

The issue in this case is whether management is required to compensate an employee for time spent in a medical facility, after the employee's tour of duty has ended, as a result of a management directed medical evaluation. After reviewing this matter, it has been decided to sustain this case.

## **M-00356 Step 4**

**May 23, 1985, H1N-5F-C 29072**

On his nonscheduled day, the grievant was scheduled for a fitness-for-duty examination. The file reflects that the grievant was paid for the time actually involved. It is the position of the Postal Service that the grievant was not called in to work on his nonscheduled day. Therefore, the grievant is not entitled to 8 hours of guaranteed work or pay under Article 8, Section 8.

## **C-10984 Regional Arbitrator Purcell**

**July 29, 1991**

Where the Grievant was ordered to undergo a fitness-for-duty exam outside of her normal schedule, and where she was paid administrative leave for the balance of the day, Grievant was not entitled to be paid out-of-schedule overtime. Such payment is made only for "work" and Grievant performed no work on the day in question.

# FLAT SEQUENCING SYSTEM (FSS)

## **M-01643 Memorandum** **September 11, 2007** Re: FSS Implementation

The United States Postal Service and National Association of Letter Carriers, AFLCIO mutually recognize that the delivery point sequencing of flat mail will change the delivery environment, ultimately producing better service for postal customers.

The Postal Service experienced significant benefits in 1993 by automating the processing and sequencing of letter mail, as the parties worked together to implement that technology, in the interest of working jointly on this technology the parties agree to the following:

1. Once FSS is fully implemented in a delivery unit, management will determine the methods to estimate impact in a delivery unit and make route adjustments accordingly.
2. Sixty days after implementing route adjustments for FSS, the local parties will review the adjustments to ensure that routes are as near 8 hours as possible. This sixty day period will not count toward the special route inspection process (Section 271, Handbook M-39; Section 918, Handbook M-41). If either party determines that the route(s) is not properly adjusted, then the route(s) will be adjusted in accordance with the provisions of Handbook M-39 or, if applicable, a locally agreed upon adjustment formula.

The terms of this Memorandum are effective immediately and continue through all phases of Flats Sequencing System (FSS) implementation.

## **M-01831 Prearbitration Settlement** **January 9, 2014**

Under the Memorandum of Understanding Re: FSS Implementation, management has the right to plan for Flat Sequencing System (FSS) implementation. The parties agree the intent of the subject memorandum is that once FSS is fully implemented, management will determine the final method used to estimate the impact FSS has on individual route(s) and when initial route adjustments will be made.

If the Carrier Optimal Routing (COR) program is used to make route adjustments pursuant to paragraph 1 of the Memorandum of Understanding, Re: FSS Implementation, the back of the PS Form 1840 will indicate, by sector-segment, any change in street credit from the actual street time used in sector-segment on PS Form 3999; including all relay, allied, parcels, accountables, etc. Any such adjustment to the carrier's actual street time must be documented and explained by appropriate comments on the reverse of PS Form 1840 and discussed during the carrier's route adjustment consultation. Travel To, Travel From, and Travel Within times must be validated, documented, and discussed during carrier consultation.

If either party determines sixty days after an initial adjustment is made pursuant to the MOU Re: FSS Implementation that a route(s) is not properly adjusted and there is no locally agreed upon adjustment formula, then the route(s) will be adjusted in accordance with the provisions of Handbook M-39. This refers to a traditional six day count and inspection conducted pursuant to Chapter 2 of Handbook M-39.

Any grievance currently held for this case will be discussed to determine whether any issues remain in dispute. Such cases will, as appropriate, either be closed or processed in accordance with Article 15.Step B or Article 15.4.8.5.

## **M-01644 Memorandum** **September 11, 2007**

[T]he United States Postal Service (USPS) and National Association of Letter Carriers (NALC) agree to jointly examine methods and procedures related to handling DPS flats. Effective with the signing of this Memorandum, a Joint Task Force comprised of four members from the NALC and four from the Postal Service will be established to explore alternative w/ork methods necessary for handling mail in an FSS environment. The Task Force will attempt to reach agreement on necessary studies and potential work method changes, as well as implementation and operating procedures.

## **M-01634 Memorandum of Agreement** **December 27, 2007**

USPS/NALC Data Collection - FSS Work Methods Joint Task Force:

The parties agreed that data collected in Hyattsville, MD under the direction of the FSS Work Methods Joint Task Force will be the sole and exclusive use of the Task Force in exploring alternative work methods necessary for handling mail in an FSS environment and to support its joint report to the NALC President and the Postal Service Vice President, Labor Relations outlining findings and recommendations.

## **M-01691 FSS Task force Report** **August 18, 2008**

Re: FSS Work Methods. The Task Force Report provides agreed upon work methods in the FSS environment. Any changes to work methods not adopted through this report must be consistent with the terms of the National Agreement.

## **M-01697s MOU Re: Approved FSS Work Methods** **November 24, 2008**

This is the parties agreement for handling mail in an FSS environment. Following review of the Joint Task Force Report (M-01691) the parties agreed to the methods of handling mail in an FSS environment. (see Also M-01644, M-01691, M-01677, and M-01682)

The primary reference manual for Postal Service forms is the *Directives and Forms Catalog, Publication 223* which is on the NALC Contract DVD. If you have internet access, the most current version is available on the Postal Service's website at:  
<http://about.usps.com/publications/pub223.pdf>.

Publication 223 identifies all authorized forms by number, name, oldest useable version and where they are used.

Postal Service Regulations concerning forms are found in Section 321 of the Administrative Support Manual (ASM).

## Locally Developed or Modified

### **C-00427 National Arbitrator Garrett** **January 19, 1977, MB-NAT-562**

"The development of a new form locally to deal with Stewards' absences from assigned duties on Union business—as a substitute for a national form embodied in an existing Manual (and thus in conflict with that Manual)—thus falls within the second paragraph of Article XIX. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn."

### **M-01461 Step 4 Settlement** **April 24, 2002 Step 4, Q98N-4Q-C-02071061**

The issue in this case is whether local management may alter a national form.

We mutually agreed that there are no material facts in dispute with this case.

We further agree that, in accordance with Arbitrator Garrett's decision in National case MB-NAT-562, a national form directly relating to wages, hours or working conditions and embodied in an existing handbook or manual covered by the provisions of Article 19 can only be changed through the procedures specified in the second paragraph of Article 19.

Accordingly, the local forms at issue may not be used for route inspections in lieu of the national PS Form 1838-C.

### **M-00852 Pre-arb** **November 24, 1992, H7N-2D-C 42122**

The issuance of local forms, and the local revision of existing forms is governed by Section 324.12 of the Administrative Support Manual (ASM). The locally developed form was not promulgated according to ASM, Section 324.12. Therefore, management will discontinue the use of the subject form. See also [M-00808](#), [M-00809](#), [M-00821](#), [M-00849](#), [M-00887](#), [M-00852](#), [M-01107](#)

### **M-01325 Step 4** **May 6, 1998, I94N-4I-C 97116055**

We agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 325 of the Administrative Support Manual (ASM).

The locally modified form at issue was not promulgated according to ASM 325.12. Therefore, management will discontinue using this form.

### **M-00190 Step 4** **September 22, 1981, H8N-5G-C 16694**

Whether or not management violates Article 19 of the National Agreement by use of a Daily Management Productivity Control Form: The form in question is merely a management tool being utilized to gather information. As such, it is not used for disciplinary or route adjustment purposes.

### **M-00038 Step 4** **September 10, 1982, H1N-5G-C 4724**

The Postmaster will discontinue the use of the "checklist of unsatisfactory casing procedures."

### **M-00075 Step 4** **September 27, 1983, H1N-5B-C 13425**

The Los Angeles MSC Manager/Postmaster shall remove the Route Assistance Worksheets from all the carriers' order books.

### **M-00319 Step 4** **July 3, 1985, H1C-5D-C 30950**

Management may document unsafe practices. However, inasmuch as there is no national requirement for employees to acknowledge that the subject information was documented, they should not be required to sign a local form, such as the one referenced to in this grievance.

### **M-00853 Step 4** **January 12, 1983, H1N-5K-C 6754**

The issue in this grievance involves the requirement of carriers to record their daily leaving and return times on a tablet placed on the carrier cases. Such leaving and returning time notations are inappropriate and will be discontinued upon receipt of this decision

### **M-00079 Step 4** **November 9, 1983, H1N-5G-C 14955**

Under ELM 513.362, an employee is required to provide "acceptable evidence of incapacity to work." The form in question has been determined by local management to meet that requirement. Accordingly, the form may be provided as a convenience to an employee, and its use by employees is optional.

### **M-00995 Step 4** **October 24, 1990, H7N-5M-C 14783**

The issue in this grievance is whether management violated

the National Agreement when it used a locally developed form requiring routers to record footage cased on each route.

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in this case. We also agreed that the issuance of local forms is governed by Section 324.12 of the Administrative Support Manual (ASM). The locally developed form (5M-001, Router Assignment Form) was properly promulgated in accordance with existing regulations and this grievance is settled as follows:

The form cited in this grievance is being used as a management tool for date collection and the assignment and matching of router work load and work hours and may not be used as a basis for discipline. Further, this form is not to be used to develop work and/or time standards or to determine whether they have been met.

Accordingly, management may continue to use the Router Assignment Form 5M-001.

**M-01334 Pre-arbitration Settlement  
July 16, 1998, H90N-4H-C 96029292**

The issue in this grievance is whether management violated the National Agreement by developing a local form which was not approved in accordance with the ASM. The development of local forms is governed by the ASM. This grievance concerns a letter which is being issued to employees locally, entitled, "Accident Repeater Alert!!!

During our discussion, we mutually agreed that the development of local forms is governed by the ASM. Therefore, the issuance of the "Accident Repeater Alert!!! letter will be discontinued.

**M-01361 Step 4  
October 22, 1998, D94N-4D-C 96071608**

This grievance concerns the use of collection cards in an effort to improve service through proper collection of mail and the use of locally developed forms. After reviewing this matter, we mutually agreed that there is no dispute at this level concerning a carrier's responsibility for the collection of mail, and for the proper use of cards used to verify and/or remind carriers of such collections. The parties further agree that management may document the fact that letter carriers have been given appropriate instruction on the proper handling of such cards. However, as these cards are not currently identified as accountable items in part 261 of Handbook M-41, carriers are not currently required to sign/initial to verify receipt of these cards. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 325.12 of the Administrative Support Manual (ASM). The locally developed forms at issue were not promulgated according to the ASM, Section 325.12. Therefore, management will immediately discontinue their use until such time as they comply with the above cited provision.

## Signing Forms

**M-00529 Step 4  
June 25, 1984, H1N-5K-C 20444**

We found no requirement under the referenced sections of the P-23 Handbook that letter carriers initial, date or verify the time used for periodic safety talks on Form 2548-A. The referenced sections clearly concern initial craft skill training.

**M-00544 Step 4  
July 5, 1985, H1N-1J-C 40875**

Management may document the fact that specific provisions of handbooks and manuals were reviewed by the carriers and that information regarding vehicle operations was given to the carriers. However, inasmuch as there is no national requirement for carriers to acknowledge that the subject information was received, carriers should not be required to sign a local form.

**M-01302 Prearbitration Settlement  
February 24, 1998, H90N-4H-C 95018608**

The issue in this grievance is whether management violated the National Agreement when a local policy was issued and carriers were required to sign off that they were present when the information was read to them. After reviewing this matter, the parties mutually agreed to the following: There is no requirement that a carrier sign that the subject information was received.

**M-00411 Step 4  
January 12, 1983, H1N-5K-C 6754**

The issue in this grievance involves the requirement of carriers to record their daily leaving and return times on a tablet placed on the carrier cases. Such leaving and returning time notations are inappropriate and will be discontinued upon receipt of this decision.

**M-00069 Step 4  
November 3, 1983, H1N-4B-C 18836**

Management required an employee involved in an accident, to complete the locally devised Accident Prevention Inquiry Form. The completion of the local form by an employee shall be voluntary. However, an employee may be required to answer the questions verbally. Such information can then be documented by the manager on PS Form 1769.

**M-00495 Step 4  
March 12, 1984, H8N-3U-C 19864**

Management may complete Form 3971 for an employee who refused to work overtime; however, the employee cannot be required to sign the form.

**M-00015 Step 4  
November 17, 1977, NC-S-8696**

Signatures or initials may be required to verify attendance at a meeting, receipt of a document, etc. However, to re-

quire an employee to sign that he has read and understood instruction, as a condition of employment for which disciplinary action may be administered, is inappropriate. See also [M-00851](#)

**M-00465 Step 4**

**September 1, 1982, H1N-1N-C 325**

PS Form 2548-A is completed by the training agent and/or immediate supervisor. The initialing of this form by an employee is not a condition of employment and employees should not be required to initial the form under the threat of disciplinary action.

**M-00319 Step 4**

**July 3, 1985, H1C-5D-C 30950**

Management may document unsafe practices. However, inasmuch as there is no national requirement for employees to acknowledge that the subject information was documented, they should not be required to sign a local form, such as the one referenced to in this grievance.

**M-01229 Step 4**

**May 9, 1995, H90N-4H-C 94027675**

The issue in these grievances is whether Management violated the National Agreement by developing and requiring carriers to sign a preprinted card apologizing for misdeliveries.

Development and issuance of local forms is governed by Section 325.12 of the Administrative Support Manual. Further, employees should not be required to sign cards such as the ones referenced in this grievance.

**M-00328 Step 4**

**May 26, 1972, N-W-315**

It is the decision of the U. S. Postal Service that the signing of the form which is the subject of this grievance cannot be made a "condition of employment" and further that the failure of an employee to sign the attestation affixed thereto cannot be a subject for disciplinary action.

**M-00942 Step 4**

**June 13, 1989, H7N-5R-C 5943**

The issue in this grievance is whether management violated the National Agreement by its use of a "Checklist of Unsatisfactory Casing Procedures" We agree that while the checklist is an appropriate means by which a supervisor may acquire a set of personal notes on the individual performance of his subordinates, a carrier may not be required to sign the checklist.

**M-00069 Step 4**

**November 3, 1983, H1N-4B-C 18836**

Management required an employee involved in an accident, to complete the locally devised Accident Prevention Inquiry Form. The completion of the local form by an employee shall be voluntary. However, an employee may be required to answer the questions verbally. Such informa-

tion can then be documented by the manager on PS Form 1769.

## Form CA-8 Claim for Continuing Compensation

**M-00797 Step 4**

**April 3, 1987, H4C-3A-C 25605**

The issue in this grievance is whether management's instructions requiring employees on limited duty to pick up CA-8 forms during daytime hours at the Injury Compensation Office violates the National Agreement. During our discussion, we mutually agreed that the following constitutes full and final settlement of this case:

The said forms will be made available to employees in limited duty status on all tours.

## Form CA-16 Request for Examination/Treatment

**M-01087 Step 4**

**April 20, 1992, H7N-5K-C 31951**

The issue in this grievance is whether forms CA-16, Request for Examination and/or treatment, must be maintained at the West Jordan Post Office.

During our discussion you were advised that the West Jordan installation now has forms CA-16 on hand and will maintain an adequate supply. The issue is considered moot.

## FORM 50 Notification of Personnel Action

See also [Personnel File](#).

**M-00819 Letter**

**April 18, 1988**

A Form 50 is processed to initiate a step deferral and when such deferral is subsequently canceled, appropriate action will be taken to ensure that reference to the canceled action does not appear in the employee's Official Personnel Folder or in the history section of subsequent Form 50s.

**M-01442 Prearbitration Settlement**

**April 17, 2001, B94N-4B-C 97120651**

An employee's Form 50 may reflect only one duty station. A Form 50 which lists more than one duty station will be amended to reflect one duty station.

## Form 313 Requisition for Case

See [Letter Carrier Duties—Case Labels](#)

## Form 1187 Dues Withholding

**M-00317 Step 4**

**July 19, 1985, H4N-4J-C 2536**

Completion of SF-1187 as identified in ELM 913.414 will be permitted during employee orientation in the areas designated by management.

## Form 1188 Dues Revocation

**M-00918 Step 4**

**April 13 1989, H4N-5M-C 46561**

Inasmuch as the submission of PS Form 1188 was outside the window period as prescribed in Article 17 Section 7, the discontinuing of dues withholding was improper. The parties are directed to apply the principles outlined in case M-NAT-196 and M-W-166, issued by Arbitrator Sylvester Garrett, July 30, 1975 (C-00723).

**C-00723 National Arbitrator Garrett**

**July 30, 1975, M-NAT-196**

Where dues for any given month are not deducted from the pay of an individual employee, by the Postal Service, pursuant to a valid checkoff authorization, the Service nonetheless is obliged under Article XVII, Section 7-A of the 1971 National Agreement to pay over to the Mail Handlers the amount of dues which should have been deducted.

Where innocent failure to check off dues pursuant to a valid checkoff authorization results in an overpayment of wages to an individual employee, no authorization by the individual is required to permit the Postal Service to recoup the amount of such overpayment in a subsequent pay period or pay periods.

**C-11197 Regional Arbitrator Dworkin**

**C1C-4B-C 11033, December 11, 1985**

Where management improperly permitted employees to revoke dues authorizations, management must reimburse the union for the amount of dues lost.

## Form 1216 Employee's Current Address

**C-09460 Regional Arbitrator P.M. Williams**

Grievance is timely where filed within 14 days of grievant's receipt of removal notice, although notice had been mailed to last known address two months earlier and grievant had not updated Form 1216.

## Form 1260 Non-Transactor Time Card

**M-00414 Step 4**

**November 14, 1977, NCS 7834**

When the transactor unit is malfunctioning, employees will be allowed to clock-in on Form 1260 as provided in the M-39 Handbook Section 215.2.

## Form 1564 Carrier Route Instruction

**M-00134 Letter**

**February 21, 1979**

No time will be noted of Form 1564 when designating the approximate location where breaks are to be taken.

**M-00842 Step 4**

**June 15, 1983, H1N-5G-C 10222**

Those carriers not included in items 1 through 4 of footnote 2, on Form 1564-A, shall not be required to complete those portions of the form annotated by footnote 2, except at their option.

## Form 1571 Report of Undelivered Mail

**M-00413 Step 4**

**October 28, 1983, H1N-5F-C 12482**

We agreed to settle this case based on our mutual understanding that forms 1571 and 3996 are to be completed on the day to which they apply.

**M-00971 Step 4**

**July 23, 1990, H7N-5T-C 7855**

If it is determined that the use of forms 1571 is of a recurring nature, then appropriate time should be entered on Line 21. If the use of these forms is not of a recurring nature, then the time should be entered on line 22 during the mail count and inspection. The determination of recurring or non-recurring must be made locally.

## Form 1583 Application of Delivery Through Agent

**M-01224 Step 4**

**August 16, 1995, E90N-4E-C 94055266**

The issue in this grievance is whether Management violated the National Agreement by permitting a Commercial Mail Receiving Agency (CMRA) to deliver mail merchant's mail.

During our discussions the parties agreed that CMRA's are only allowed to handle merchant's mail when PS Form 1583 (Application of Delivery Through Agent) has been submitted by a merchant authorizing the release of their mail to a CMRA. Without a signed PS Form 1583, mail may not be released to a CMRA. These guidelines are contained in the Domestic Mail Manual (DMM), Section D

042. In this case, there are no signed PS Form 1583's for all merchants at the Mall.

## Form 1717 Bid for Assignment

**C-05793 Regional Arbitrator Pribble**  
**February 27, 1986, C4N-4T-C 6054**

Management improperly denied bid, where carrier entered incorrect seniority date on PS 1717 bid card, but where correct seniority date would have entitled carrier to the assignment, because Article 41, Section 2.C confers responsibility for administration of seniority upon management.

## Form 1723 Assignment Order

See [204Bs](#)

## Form 1750 Probationary Period Evaluation Report

**M-00354 Step 4**  
**March 3, 1978, NCC 9547**

The use of PS Form 1750 is for the evaluation of probationary employees. The Postmaster is instructed not to use this form to evaluate employees who have completed their probationary period. See also [M-00020](#)

## Form 1767 Report of Hazard, Unsafe Condition or Practice

**M-01285 Prearbitration Settlement**  
**May 12, 1997, E90N-4E-C 93045300**

The issue in this grievance is whether PS form 1767, Report of Hazard, Unsafe Condition or Practice, may be completed in an overtime status. During our discussion, it was mutual agreed that the following constitutes full and final settlement of this grievance:

1. The parties agree that PS Forms 1767 are normally completed during the course of an employee's work day, and that there may be occasions where the completion of PS form 1767 may be accomplished on overtime, depending on the local circumstances. Therefore, the parties agree there is nothing which prevents local management from approving overtime for the completion of PS Form 1767 in such circumstances.

## Form 1838-C Carrier's Count of Mail

## Form 1840 Summary of Inspection

## Form 1840-B Carrier Time Card Analysis

See [Route Inspections](#)

## Form 2146 Employee Claim for Personal Property

**M-00435 Step 4**  
**September 1, 1977, NCC 7656**

The employee should have been supplied with a Form 2146 to file a claim for lost property whether or not management had determined the legitimacy of that claim.

See also [Employee Claims](#)

## Form 2444 Relocation Agreement

**M-00976 USPS Letter**  
**June 27, 1990**

The union representatives requested that the PS Form 2444, Postal Service Relocation Agreement, be changed to specifically exclude employees exercising their retreat rights. They also requested that the 12-month commitment not be additive.

After considering all responses, we have decided not to make the 12-month commitment additive. However, we do not feel that the changing of the Form 2444 as requested by the unions is necessary. It is understood and accepted that the national agreement takes precedence over the relocation commitment. If a bargaining unit employee was involuntarily relocated and, within the 12-month commitment period, exercises his/her retreat rights to return to the original duty station, the 12-month commitment would be waived by the Postal Service.

## Form 2488 Authorization for Medical Report

**M-01441 Step 4**  
**April 19, 2001, D90N-4D-C 94025408**

The issue in this case is whether management violated the National Agreement by requiring the grievant to sign PS Form 2488, "Authorization for Medical Report."

While we mutually agree that no national interpretive issue is fairly presented in this case, we resolve this case as follows:

Completion of PS Form 2488 by the employee is voluntary

**M-01430 Step 4**  
**September 13, 2000, Q98N-4Q-C 00116558**

Form CA-17 "Duty Status Report" is usually adequate to obtain medical information concerning an injured employee's job-related medical condition and work restrictions. If a medical provider will not release the Form CA-17, without a medical release, PS Form 2488 may be used to secure the release. Completion of PS Form 2488 by the injured employee is voluntary, and Section 10.506

of the regulations governing claims under the Federal Employees' Compensation Act sets forth the rules under which employing agencies may request medical reports from the attending physicians of injured employees.

## Form 2497 Election of Medical Care

**M-01671 Interpretive Step Withdrawal**  
**January 30, 2008, Q01N-4Q-C 07201183**

NALC letter withdrawing grievance because the Postal Service had withdrawn PS Form 2497, Election of Medical Care, on September 12, 2007.

## Form 2548-A Training Record

**M-00465 Step 4**  
**September 1, 1982, H1N-1N-C 325**

PS Form 2548-A is completed by the training agent and/or immediate supervisor. The initialing of this form by an employee is not a condition of employment and employees should not be required to initial the form under the threat of disciplinary action.

## Form 3189 Temporary Schedule Change

See [Schedules](#)

## Form 3849 Delivery Notice

**M-00149 Step 4**  
**May 13, 1977, NCN 3966**

When a letter carrier is assigned to deliver registered or certified articles and numbered insured parcels, preparation of Form 3849 is a carrier function. Accordingly, if another craft is assigned the function of preparing Form 3849 that assignment must be made in accordance with the applicable provisions of Article VII of the 1975 National Agreement.

## Form 3883 Firm Delivery Receipt for Accountable Mail

**M-01608 Intrepetive Step Settlement**  
**April 4, 2007**

PS Form 3883-A is an electronically generated version of manually prepared PS Form 3883, The parties agree that changing from use of manual Form PS 3883 to electronic PS Form 3883-A cannot be the sole reason for altering a past practice, as defined in Article 5 of the JCAM, on completing PS Form 3883.

**M-01545 Prearbitration Settlement**  
**August 4, 2005 G94N-4G-C 98039177**

The parties agree that the locally developed form at issue may not be used in lieu of PS Form 3883, or its electronic

equivalent PS Form 3883-A. Use of either PS Form 3883 or 3883-A requires the customer's signature on PS Form 3849 in accordance with current handbooks and manuals.

## Form 3921 Daily Volume Worksheet

**M-00067 Step 4**  
**June 9, 1983, H1N-3U-C 13925**

The proper methods of recording the disputed card mailing is contained in Management Instruction PO-610-79-24 (Delivery Unit Volume Recording). Sections VI.B.3 or 4 contain instructions for the flats. In accordance with these instructions, the route would receive credit for both the cards and the unlabeled flats. The cards would be credited in Column 7 on the PS 3921 and the flats would be included in Column 1 on the PS 3921-A.

## Form 3971 Request for Leave

**M-00119 Step 4**  
**November 21, 1978, NCS 12428**

The record shows that the employee in question requested that he be allowed to leave early for personal reasons. Under the circumstances, the eight hour guarantee provision was negated. However, in the future if a Form 3971 is used to record an early departure, the form should be completed at the time.

**M-00998 Step 4**  
**April 11, 1991, H7N-3W-C 22137**

The issue in this grievance is whether management may require an employee to complete PS Form 3971 to receive Continuation of Pay (COP).

During our discussion, we agreed that management may require an employee to complete PS Form 3971 to request Continuation of Pay. However, we also agreed that the proper response to an employee who fails to complete PS Form 3971 for COP is appropriate corrective action rather than withholding COP to which the employee is otherwise entitled.

**M-00495 Step 4**  
**March 12, 1984, H8N-3U-C 19864**

Management may complete Form 3971 for an employee who refused to work overtime; however, the employee cannot be required to sign the form.

**M-01054 APWU Step 4**  
**September 3, 1985, H1C-3W-C-48121**

The issue in this grievance involves management requiring employees to complete PS Forms 3971 at the Postal Source Data Site prior to obtaining their time badges following unexpected absences from duty. The parties at this level agree that the completion of a Form 3971 "upon/after return to duty" means while the employee is on-the-clock.

**C-10714 Regional Arbitrator Grohsmeyer  
July 6, 1990**

Management may stamp "approved for pay purposes only," but may not stamp "unscheduled absences not condoned" on Forms 3971.

**M-01579 Postal Service Correspondence  
June 20, 2006**

Concerning PS Forms 3971 completed through eRMS/IVR, there is no change concerning the information that should be entered in the "time of call or request" box on the Form 3971.

## Form 3982 Change of Address

**M-00601 National Joint City Delivery Meeting  
Nov 17, 1983, page 1**

Form 3982 is permissible for use by routers the same as for any city carrier occupying a regular assignment.

**M-00256 Step 4  
October 18, 1982, H1N-5C-C 5793**

The maintenance of Forms 3982, Changes of Address, is a function of the carrier craft as provided for in Part 240 of Methods Handbook, Series M-41.

**M-00243 Step 4  
December 1, 1975, NBN 5989**

If the occasion arises where a carrier would review the Forms 3982 during the week of count and inspection, the time utilized for this review would be entered on line 22 of the Form 1838. But See [M-00605](#), Item c.

## Form 3996 Carrier Auxiliary Control

Article 41, Section 3.G provides the following:

G. The Employer will advise a carrier who has properly submitted a Carrier Auxiliary Control Form 3996 of the disposition of the request promptly after review of the circumstances at the time. Upon request, a duplicate copy of the completed Form 3996 and Form 1571, Report of Undelivered Mail, etc., will be provided the carrier.

**M-00294 Step 4  
March 2, 1984, H1N-5G-C 16766**

In order not to undermine the purpose of the Form 3996, it is agreed that any employee who provides carrier assistance shall complete the lower portion of the Form 3996 as instructed on the form itself.

**M-00189 Step 4  
July 28, 1981, H8N-5H-C 17726**

Whether or not management violates Article 17 of the National Agreement by disallowing local stewards the use of PS Forms 3996 to document grievance activity. The sole

purpose of PS Form 3996 is to record overtime and/or auxiliary assistance.

**M-00661 Step 4  
November 28, 1978, NCS 11311**

We mutually agreed that local management will observe the instructions on the reverse of Postal Service Form 3996.

**M-00131 Step 4  
May 6, 1985, H1N-3W-C 42292**

PS Forms 3996 are to be completed as provided for in Part 280 of Methods Handbook, Series M-41. Deviations from these instructions, including locally devised forms attached to the 3996, are not appropriate.

**M-00144 Step 4  
May 8, 1979, NCS 13207**

In accordance with the provisions of the 1978 National Agreement, upon request, a duplicate copy of the completed Form 3996 and Form 1571, Report of Undelivered Mail, etc. will be provided the carriers.

**M-00810 Step 4  
April 29, 1981, H8N-5H-C 15421**

Forms 3996 are to be completed as provided for in M-41 Section 280d which states that item J (the reason for requesting assistance) should be omitted during the Christmas period.

**M-01301 Step 4  
January 13, 1998, G94N-4G-C 97075358**

The issue in this grievance involves management's use of a rubber stamp to record mail volume on Form 3996, Carrier-Auxiliary Control.

During our discussion, we mutually agreed that the issue in this case has been addressed in a previous Step 4 agreement (H4N-5F-C 38907, 4/8/88)[[M-00823](#)] and is restated as follows:

PS Forms 3996 are to be completed as provided for in Part 280 of Methods Handbook, Series M-41. Deviations from these instructions, including locally devised rubber stamped modifications to the 3996 are not appropriate. Accordingly, the local Form 3996 modification is to be discontinued. See also [M-00794](#), [M-00800](#), [M-00823](#)

**M-00363 Step 4  
April 26, 1985, H1N-3W-C 32752**

Letter carriers will not be required to enter volume figures on PS Forms 3996 unless the reason for the request is related to volume. If volume is required to be noted in linear measurement terms, it is not anticipated that letter carriers are to be expected to report anything more than their reasonable estimate of volume. See also [M-00850](#)

## **M-00413 Step 4**

**October 28, 1983, H1N-5F-C 12482**

We agreed to settle this case based on our mutual understanding that forms 1571 and 3996 are to be completed on the day to which they apply.

## **M-00260 Step 4**

**October 14, 1982, H1N-5K-C 3842**

PS Forms 3996 are to be completed as provided for in Part 280 of Methods Handbook, Series M-41, and on the reverse of the form itself. Deviations from these instructions, including requiring time clock rings on the form, are not appropriate.

## **M-01366 Pre-arbitration Settlement**

**October 21, 1998, H90N-4H-C 94048405**

The issue in this case involved whether Management violated the National Agreement by not allowing individual carriers to personally observe the amount of DPS mail intended for delivery on their assigned routes, prior to determining the need for overtime/auxiliary assistance.

After reviewing this matter, it was agreed that if, while in the normal course of picking up DPS mail, a letter carrier determines the need to file a request for overtime or auxiliary assistance (or to amend a request that was previously filed), the carrier may do so at that time. The supervisor will advise the letter carrier of the disposition of the request or amended request promptly after review of the circumstances.

If the local parties have agreed upon a practice where the letter carrier has access to their DPS mail prior to filling out the request for overtime/auxiliary assistance, this settlement will not apply.

## **Form 3999 Inspection of Letter Carrier Route**

See [Route Inspections](#)

## **Form 4098 Employee ID Card**

### **M-00053 Step 4**

**March 8, 1983, H1N-3T-C 13108**

Letter carriers, while on duty away from the facility, should carry Form 4098 in their wallet, pocket, or purse, and display when identification is needed (Reference Part 273.223, ASM).

### **M-01249 Step 4**

**J94N-4J-C 96025972, June 16, 1996**

The issue in this grievance is whether the Postal Service violates the National Agreement by requiring employees to wear their identification badge with their social security number exposed. Employees may request new identification badges in accordance with the procedures outlined in

Postal Bulletin 21485 dated November 15, 1984. See also [M-00085](#), [M-00120](#).

Note: Postal Bulletin 21485 dated November 15, 1984 provides that "This version calls for the employee's social security number to be placed on the reverse side of the form as Employee Identification Number. Placing the number there affords a greater measure of privacy."

### **M-00533 Step 4**

**December 6, 1984, H1N-3W-C 34695**

In accordance with ASM 273.272, management is proper in charging an employee for a lost badge. Management shall, however, inform an employee of a money demand under Article 28 of the National Agreement, and the demand must include the reasons therefore.

### **M-00053 Step 4**

**March 8, 1983, H1N-3T-C 13108**

Letter carriers, while on duty away from the facility, should carry Form 4098 in their wallet, pocket, or purse, and display when identification is needed (Reference Part 273.223, ASM).

## **Form 4565 Vehicle Repair Tag**

### **C-06135 Regional Arbitrator Schedler**

**May 11, 1986, S1N-3U-C 30068**

An employee must be allowed official time to complete form 4565 (vehicle repair tag) even if he is in an overtime status.

## **Form 4582-A Driver's Record**

### **M-00367 Step 4**

**October 18, 1974, NBS 1998**

With respect to the use of Form 4582-A, it is our determination that an employee who is being considered for renewal or reissuance of SF-46 is under no obligation to furnish information regarding his off-duty driving record, in view of the National Agreement, Article XXIX; the pertinent part of which reads, "When a revocation, suspension, or reissuance of an employee's SF-46 is under consideration, only his on-duty record will be considered in making a final determination." Accordingly, management is instructed to discontinue requiring employees who are being considered for reissuance or renewal of SF-46 to complete item number 15 of PS Form 4582-A.

## **Form 4583 Physical Fitness Inquiry for Motor Vehicle Operators**

### **M-01456 Step 4 Settlement**

**March 1, 2002, E98N-4E-C-02040097**

The issue in this case is whether the Driver training Program. 43513-00, was violated by requiring employees to

complete Question 18 of PS Form 4583, Physical Fitness Inquiry for Motor Vehicle Operators, as a requirement to drive a government vehicle.

It was mutually agreed that no national interpretive issue is fairly presented in this case. It was further agreed that for routine use (for current employees rather than applicants) of Postal Form 4583, Physical Fitness Inquiry for Motor Vehicle Operators, Sections c. through g. and i through q. are not completed in Question 18.

## Form 8139 Protecting Mail

### **M-01108 USPS Letter**

**July 21, 1992**

Letter transmitting draft of November 12, 1992 Postal Bulletin Notice concerning PS Form 8139. This form may only be used in the pre-employment process to advise potential employees of their responsibilities concerning the security of mail. Any other use should be grieved

## See also [Arbitration](#)

The primary source for information about the grievance procedure is the *Joint Contract Administration Manual (JCAM)*. The material below is supplemental.

### **M-01648 Memorandum September 11, 2007**

Re: Article 15—Dispute Resolution Process: Additional provisions concerning Article 15, Grievance-Arbitration Procedure.

### **M-01666 Interpretive Step Settlement July 30, 2007, Q01N-4Q-C 07037323**

The issue in this case is whether management violated the April 25, 2002 Memorandum of Understanding, Re: Article 15 - Dispute Resolution Process, by not activating certain individuals to act as Step B team members. The Postal Service affirms that both management Step B representatives referenced in the Interpretive Step appeal ended their service as Step B representatives for reasons consistent applicable provisions of the April 25, 2002 Memorandum. To provide a more efficient process, the parties agree to revise the April 25, 2002 MOU Re: Article 15 - Dispute Resolution Process.

The terms of this settlement became effective September 11, 2007 with ratification of the 2006-2011 National Agreement.

### **M-01569 Memorandum April 25, 2006**

Joint USPS/NALC Dispute Resolution Process (DRP) Memorandum to USPS Area Managers of Labor Relations and NALC National Business Agents, addressing: timeliness at various steps in the DRP; the last day to mail the appeal to Formal Step A; and the use of G-10 envelopes for appeals.

### **M-01517 USPS LETTER May 31, 2002**

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

### **M-01492 USPS-NALC Joint Statement Of Expectations, July 2003**

The parties at the national level commit to the following principles of conduct when addressing disputes under Article 15 of the National Agreement. We believe these principles are essential to the effectiveness of any dispute resolution process as well as effective working relationships between the union and management. Our expectation is that these principles will guide union and

management representatives at all levels of the organization.

We will do our best to understand and respect each other's roles, responsibilities, interests, and challenges.

We will make every effort to establish and maintain a more constructive, and cooperative working relationship between union and management at all levels of the organization by promoting integrity, professionalism, and fairness in our dealings with each other.

We are committed to honoring our labor contract and the specific rights and responsibilities of the parties set forth therein.

We will work together to prevent contract violations through communication, training, and good faith efforts to anticipate workplace problems and resolve disputes in a timely manner.

We are committed to eliminating abuses of our grievance-arbitration procedure, such as the filing of unwarranted grievances to clog the system or a refusal to resolve grievances even where there are no legitimate differences of opinion between the parties.

We are committed to mutual and joint efforts to improve the workplace environment and to improve the overall performance of the Postal Service.

We will make every effort to resolve our disputes in a professional manner and to avoid any unnecessary escalation of disputes which may adversely impact adherence to the above principles or adversely influence union-management relationships at other levels of the organization.

### **C-03235 National Arbitrator Garrett July 30, 1975, NB-NAT-2705**

(Reading Time Dispute) National level interpretive grievance may not be used as a vehicle for considering individual grievances as a sort of class action; issues of compliance with the Fair Labor Standards Act are not within the proper scope of a national level dispute; Article XLI, Section 3.K. of the new M-41 Handbook requires payment to a carrier for time spent studying the new handbook at the direction or with the permission of the Postal Service, but only for a reasonable time. Whether individual carriers are entitled to compensation under Article XLI, Section 3.K. shall be handled through the Article XV grievance procedure with due regard to the facts in each individual case.

### **M-00878 Step 4 November 14, 1988, H4N-3R-C 43838**

It is not required that investigation of a grievance be completed before a grievance may be appealed to another step of the grievance procedure.

**M-00773 Step 4**  
**August 16, 1979, N8N-0027**

We mutually agree that the disclosure provisions set forth in Article 15, 17 and 31 of the 1978 National Agreement intend that any and all information which the parties rely on to support their positions in a grievance is to be exchanged between the parties representatives to assure that every effort is made to resolve grievances at the lowest possible level.

**M-01386 Step 4**  
**January 13, 1999, E94N-4E-C 99001405**

We agree that where the local parties are in mutual agreement, grievance discussions may take place via telephone. See also [M-00909](#).

**C-27783 Regional Arbitrator Cenci**  
**September 19, 2008, B06N-4B-C 0855207**

Management engaged in a pattern of repeated, willful and intentional violations of Article 15 over a long period of time and this conduct resulted in harm to the Union that could not be remedied by advancing each grievance to Step B. The arbitrator found concept of progressive payments advanced by the Union reasonable and that such did not constitute punitive damages.

**M-01701 Joint Questions and Answers - Transitional Employees, March 26, 2009 (Question # 25)**

Transitional Employees have access to the grievance procedure if removed consistent with the Memorandum of Understanding, Re: Transitional Employees - Additional Provisions ([M-01641](#)), which states:

1. Transitional employees may be separated at any time upon completion of their assignment or for lack of work. Such separation is not grievable except where the separation is pretextual. Transitional employees may otherwise be removed for just cause and any such removal will be subject to the grievance arbitration procedure, provided the employee has completed ninety (90) work days, or has been employed for 120 calendar days, whichever comes first. Further, in any such grievance, the concept of progressive discipline will not apply. The issue will be whether the employee is guilty of the charge against him or her. Where the employee is found guilty, the arbitrator shall not have the authority to modify the discharge. In the case of removal for cause, a transitional employee shall be entitled to advance written notice of the charges against him/her in accordance with the provisions of Article 16 of the National Agreement.

## Informal Step A

Material below referring to Step 1 of the old grievance procedure, applies to Informal Step A of the current procedure.

**M-00824 Step 4**  
**February 26, 1988 H4N-5E-C 36561**

The term immediate supervisor as written in Article 15, Section 2, Step 1(a) of the National Agreement may be an acting supervisor (204b).

**M-01065 Pre-arb**  
**April 2, 1992, H7N-5R-C 26829**

The issue in this grievance is whether the Union should be given the opportunity to be present when management and an employee adjust a Step 1 grievance and the employee has not asked to be accompanied and represented by a shop steward or union representative.

We agreed to the following as a full settlement of the issues raised, recognizing that the terms of this settlement are applicable only to formally declared Step 1 grievances.

The parties recognize that Article 15 distinguishes between two aspects of a Step 1 meeting, the discussion and the adjustment. While both of these may occur at the same meeting, the adjustment may also be issued as much as five days following the discussion. A settlement would be considered part of the adjustment phase of the procedure.

We agreed that a grievant has the option to exclude a steward from the discussion portion, where the merits of the grievance are discussed by the grievant and management. However, absent waiver by the bargaining representative Section 9(a) of the National Labor Relations Act requires that the bargaining representative be given the opportunity to be present at the adjustment portion of the grievance procedure. The bargaining representative need not be given an opportunity to be present if the grievance is denied at Step 1.

Finally we agreed that this settlement has prospective effect only, and will not be used to invalidate any Step 1 settlements reached prior to its issuance. See also [M-00684](#).

**M-00937 Pre-arb**  
**1974, RA-73-1740**

The Postal Service acknowledges its obligation under Section 9(a) of the National Labor Relations Act, which provides in part: "That any individual employee... shall have the right at any time to present grievances to (his) employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: Provided further, that the bargaining representative has been given the opportunity to be present at such adjustment."

**M-00648 Step 4**  
**August 12, 1983, H1N-5G-C 8564**

The local union has a right to be notified of a settlement or

# GRIEVANCE PROCEDURE

adjustment which occurred at Step 1 of the grievance procedure.

**M-00223 Step 4**  
**March 21, 1986, H4N-3W-C 8797**

The grievant has a right to be present when the Step 1 grievance decision is rendered. In addition, the supervisor should state the reasons for the decision in accordance with Article 15, Section 2.(c), of the National Agreement.

**M-00329 Step 4**  
**June 2, 1972, NS 401**

It is the position of the U.S. Postal Service that Article 15, Section 2, Step 1 grants the representative of the employee the right not only to be present but also to speak on behalf of the employee at the Step 1 meeting.

**M-00717 Step 4**  
**June 13, 1977, NC-NAT-4702**

When the union files a grievance at Step 1, the authorized union official filing the grievance is the only appropriate party required to meet with the supervisor and discuss the grievance pursuant to Article XV, Section 2, Step 1 of the National Agreement.

## Formal Step A

Material below referring to Step 2 of the old grievance procedure, applies to Formal Step A of the current procedure.

**M-01423 Step 4**  
**I94N-4I-C 99008899, April 8, 1999**

There is no language in the National Agreement which prohibits designating a Step 2 representative outside an installation of more than 20 employees, in these situations, if the Step 2 meetings have been held in the installation, that practice will continue absent an agreement to the contrary. Both parties recognize their respective obligation to meet contractual grievance processing time limits unless there is mutual agreement to extend those time limits.

**M-00790 Step 4**  
**May 22, 1987, H4N-1E-C 28034**

The necessity of the presence of a grievant at a Step 2 meeting is determined by the Union. See also [M-01068](#).

**C-03214 National Arbitrator Mittenthal**  
**January 18, 1982, N8N-0221**

Management is not required to pay a grievant for time spent traveling to and from a Step 2 meeting.

**M-00577 Step 4**  
**November 25, 1980, H8N-5B-C 13172**

A grievant is entitled to attend the Step 2 meeting and shall be compensated for time spent at the meeting excluding travel time to and from the meeting, provided such time is part of the grievant's regular schedule. See also

[M-00578](#), [M-00611](#).

**M-00716 Step 4**  
**June 18, 1980, N8-S-0330**

Union stewards are paid for the time actually spent at Step 2 meetings with the employer provided such meetings are held during their regular work day; however, there are no contractual provisions which would require the payment of travel time or expenses

**M-00449 Step 4**  
**March 25, 1977, NCS 4634**

It is not the intent of the Postal Service to exclude a grievant from a meeting held pursuant to Step 2 A of the grievance procedure. Although we do not believe in most instances the grievant's presence will be beneficial to speedy resolution of a problem, we will not exclude him if he insists on being present.

**M-00952 Step 4**  
**October 13, 1976, NC-W-3083**

The Union is not precluded from having the Branch President, acting as Chief Steward, present a grievance at Step 2 in lieu of the steward.

**M-00290 Step 4**  
**November 18, 1983, H8N-3U-C 16250**

Both the union and the Employer have historically had persons other than the actual designated representatives attend Step 2 meetings as observers. However, such persons shall attend at the mutual consent of the parties designated to discuss the grievance. See also [M-00807](#)

**M-01145 APWU Step 4**  
**December 7, 1979, A8-S-0309**

We mutually agree that a steward is allowed a reasonable amount of time on-the-clock to write the Union statement of corrections and additions to the Step 2 decision. This is considered part of the Step 2 process. The Union statement should relate to incomplete or inaccurate facts or contentions set forth in the Step 2 decision.

## Interpretive Step

Material below referring to Step 4 of the old grievance procedure, applies to Interpretive Step of the current procedure.

**M-01631 Interpretive Level Disputes Resolved with 2006 National Agreement, December 19, 2007**

The parties agree to the following guidelines for processing cases that are being held at all steps of the grievance-arbitration procedure for the below-listed national level disputes. The parties further agree that once the principles of the national level grievance resolution are applied to a held grievance, the case should be reviewed to determine whether it includes an issue(s) outside the interpretive

issue. If another issue(s) is involved, the other issue(s) should be addressed pursuant to the provisions of Article 15 of the National Agreement.

- Q01N-4Q-C-05022605—Carrier Optimal Routing (COR). The agreement states: "Any grievance held pending a decision on this case will be resolved consistent with the principles of this agreement." The terms of this settlement should be applied to the specific circumstances of each grievance to resolve the dispute.

- Q01-N-4Q-C-06187579—S-999 Mail: Apply the terms of the settlement to grievances held for this interpretive dispute.

- Q98N-4Q-C-01045570, Q98N-4Q-C-00189522—Third Bundle: This settlement contains specific instructions for held cases: "This agreement resolves and closes all outstanding disputes at all levels of the grievance-arbitration procedure concerning city carriers on park and loop or foot routes being required to carry three bundles. The parties will meet at the appropriate level on all held cases to determine if they involve other issues. If a grievance contains issues other than third bundle, those issues will be addressed pursuant to Article 15 of the National Agreement." If a grievance involves only the third bundle issue, it should be closed pursuant to this settlement.

- Q01N-4Q-C-05022610—Delivery Operations Information System (DOIS): The terms of the settlement should be applied to DOIS disputes held for this interpretive dispute. Note that those cases involving minor route adjustments should continue to be held pending instructions from the task force established pursuant to the Memorandum of Understanding, Re: Alternate Route Evaluation Process.

- Q01N-4Q-C-07091320—Flat Sequencing System (FSS): This settlement states: "This agreement resolves and closes all outstanding disputes at all levels of the grievance-arbitration procedure concerning FSS impact and the associated employment of Transitional Employees." If a grievance involves only FSS impact and/or the associated employment of Transitional Employees, it should be closed pursuant to this settlement. The settlement does not address withholding disputes such as when or how long a position may be withheld, whether more than the authorized number of positions were withheld, or whether the appropriate position(s) was withheld [i.e. the position(s) which would minimize disruption and inconvenience to the employee]. Such grievances should be processed using pages 12-12 through 12-14 of the November 2005 JCAM as a guide.

- Q01N-4Q-C-07037323—Dispute Resolution Process (DRP): Any pending disputes held for this national level grievance should be forwarded to the National Business Agent and Area Manager Labor Relations for resolution.

Any questions regarding application of the above-referenced settlements to held cases should be directed to the National Business Agent and Area Manager Latjor Relations.

## **M-01501 Interpretive Step October 22, 2003, E98N-4E-C-00169070**

After reviewing this matter, we mutually agree that no national interpretive issue is presented in this case. It is agreed that either party may place a case appealed to Regional arbitration on hold, pursuant to Article 15.4.B.5 of the 2001-2006 National Agreement, pending the consideration of the interpretive issue by their national representative at any point prior to an arbitrator issuing a written decision. Such referral to the interpretive step is not subject to regional arbitral review. As the subject case was referred to the national level prior to Arbitrator Bajork's February 8 award, the award is considered invalid and without standing. The parties further agree to close this case, as the underlying grievance is now moot.

## **C-00431 National Arbitrator Mittenthal January 18, 1983, H8C-4C-C 12764**

A grievance may be withdrawn from regional level arbitration and referred to Step 4 even after the case has been presented to the arbitrator.

## **C-20300 National Arbitrator Snow Q94N-4Q-C 98062054, January 1, 2000**

The NALC, when it has intervened in a area-level arbitration case, has a right to refer the case to Step 4 of the grievance procedure.

## **M-01391 Step 4 October 25, 1999, G94N-4G-C 98024445**

The parties agreed there is no dispute between the parties that Step 4 grievance settlements are precedential and binding, unless otherwise agreed between the national parties.

Whether or not a particular Step 4 settlement is applicable to a particular case is not an interpretive issue and is suitable for regional arbitration.

## **M-01196 Step 4 June 27 1994, E90N-6E-C 94042837**

During our discussion, we mutually agreed that upon intervention at a hearing, the intervening union becomes a full party to the hearing. As a party, the intervening union has the right to refer a grievance to Step 4.

## **M-00467 Step 4 January 17, 1984, H1N-3A-D 24954**

In most cases, a grievance involving discipline should be handled at the regional level where witnesses and the factual elements for determining just cause are most readily accessible. However, in a case where either party maintains that the grievance involves an interpretive issue

under the 1981 National Agreement, or some supplement thereto, which may be of general application, the union representative shall be entitled to appeal an adverse decision to Step 4 of the grievance procedure.

## **M-00963 Step 4**

**April 20, 1990, H7N-3R-D 23724**

We mutually agree that no national interpretive issue is fairly presented in this case. Accordingly we agree remand this case to the parties at the regional level, to be scheduled before the same arbitrator (if that arbitrator is still on the appropriate panel) who was originally scheduled to hear the case before it was referred to Step 4.

## **Step B**

The issue in this case is whether, under the Dispute Resolution Process, when the parties declare an impasse, are the arguments in arbitration limited to those raised in writing in the impasse decision?

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in this case.

The parties agreed that the Questions and Answers portion of the NALC/USPS Dispute Resolution Process Test, Q&A No. 59, is applicable to this case and reads as follows:

A59. The impasse decision should contain all issues in dispute and both parties' position on those issues. The arbitration would thus generally be limited to those issues. However, there are always exceptions to general statements like this; an arbitrator could use his/her authority to hear additional arguments if persuaded of the necessity. We do not, however, want "arbitration by ambush."

## **M-01425 Step 4**

**H94N-4H-D 98099738, April 8, 1999**

There is no dispute at this level that the Dispute Resolution Team has the responsibility to develop a joint report of the decision which fully reflects the basis for the decision, which includes:

- Review of the USPS-NALC Joint Step A Grievance Form and grievance files to obtain a thorough understanding of the issues, facts, and contentions of the parties and research any remaining questions about the grievance.
- Share any additional relevant information.
- Conduct discussion of the grievance in a manner that is professional and will foster an atmosphere of good labor-management relations.
- Make an objective decision based on the facts, consistent with the National Agreement and then resolve the grievance if possible.

- Prepare a joint report of the decision which fully reflects the basis for the decision.

- Communicate the decision to the necessary parties.

## **M-01840 Prearbitration Settlement**

**July 2, 2014, Q06N-4Q-C 09012746**

Recently, our representatives met in pre arbitration discussions on the above-captioned case. After reviewing this matter, we mutually agree to resolve this case based on the following understanding:

While we agree that Step B resolutions must normally be complied with, the parties recognize that there are limited circumstances where a Step B settlement may be invalid (e.g. where a Step B resolution is based on fraud, misrepresentation, intentional concealment of facts, or mutual misunderstanding). Where the parties have a dispute as to whether a Step B settlement is invalid, the issue is suitable for regular arbitration. However, before the case may be scheduled for regular arbitration the issue must be reviewed by the national level parties. If an arbitration hearing is subsequently held, the sole issue before the arbitrator will be whether the settlement is valid. In the event an arbitrator invalidates a Step B decision, the original dispute will be returned to Step B for determination on the merits, unless the parties at the Regional/Area level agree otherwise.

## **Held Cases**

### **C-10062 Regional Arbitrator Scearce**

**June 20, 1990, S7N-3D-C 88024**

Where it was agreed to hold a grievance "in abeyance pending the decision" in another case, there was no agreement to settle the held case on the same basis as the held-for case; instead, the agreement was simply to "wait and see."

### **C-10198 National Arbitrator Britton**

**August 13, 1990, H7N-3S-C 21873**

Where representative grievances are ruled untimely, the cases held for disposition of the representative grievances are nonetheless arbitrable.

## **Payment**

### **C-03214 National Arbitrator Mittenthal**

**January 18, 1982, N8N-0221**

Management is not required to pay a grievant for time spent traveling to and from a Step 2 meeting.

### **C-04657 National Arbitrator Mittenthal**

**February 15, 1985, H1N-NA-C 7**

The Postal Service is not required to pay Union witnesses for time spent traveling to and from arbitration hearings.

**C-02875 National Arbitrator Aaron  
November 10, 1980, H8N-5K-C 14893**

The union did not waive claims for compensation where the question of compensation for stewards who, because of management's refusal to recognize them, were forced to process grievances "off-the-clock" was never raised in negotiation of the pre-arbitration settlement or mutually understood by the parties to include that issue.

**M-00716 Step 4  
June 18, 1980, N8-S-0330**

Union stewards are paid for the time actually spent at Step 2 meetings with the employer provided such meetings are held during their regular work day; however, there are no contractual provisions which would require the payment of travel time or expenses

**M-00643 Step 4  
March 20, 1975, NBN 3529**

As a general rule, grievance meetings should not be scheduled off the clock.

**M-00101 Step 4  
September 8, 1976, NCN 2064**

The National Agreement requires that employee witnesses shall be on Employer time when appearing at the arbitration hearing, provided the time is during the employee's regular working hours. There is no distinction made in this section as to whether testimony is given or whether such testimony is relevant.

## Continuing Violations

**C-13671 National Arbitrator Mittenthal  
June 16, 1994, H1M-5D-C 297**

"Assume for the moment, consistent with the federal court rulings, that the Postal Service incorrectly calculated FLSA overtime, for TCOLA recipients under the ELM. Each such error would have been a separate and distinct violation. We are not dealing here with a single, isolated occurrence. Management was involved in a continuing violation of the ELM. The affected employees (or NALC) could properly have grieved the violation on any day the miscalculation took place and such grievance would be timely provided it was submitted within the fourteen-day time limit set forth in Article 15. This is precisely the kind of case where a "continuing violation" theory seems applicable. To rule otherwise would allow an improper pay practice to be frozen forever into the ELM by the mere failure of some employee initially to challenge that practice within the relevant fourteen-day period."

**C-20901 Regional Arbitrator Snow  
F90N-4F-C 96026953, August 4, 2000**

The concept of a continuing grievance is well established in arbitration decisions and American case law. As one arbitrator defined it, a "continuing grievance" exists where

"the act of the company complained of may be said to be repeated from day to day, such as the failure to pay an appropriate wage rate or acts of a similar nature." (See Bethlehem Steel Co., 26 LA 550.) Professor Ted St. Antoine, past president of the National Academy of Arbitrators, has defined a 'continuing grievance' in terms of the longevity of its impact. He asks whether the impact of the act persists indefinitely. (See USS and United Steelworkers of America, 99 WL 1074562 (1999).) A delay in filing a complaint about a continuing grievance may affect remedies available to a grievant, but it does not preclude pursuing a claim to arbitration. (See, e.g., Typefitters Union Local 636, 75 LA 449, 454.) If it is clear that the facts of a dispute support describing it as a "continuing grievance," a grievant does not automatically forfeit all rights by failing to meet customary time limits. (See, e.g., Brockway Company, 69 LA 1115, 1121.)

## Law, Enforcement of

**M-01316 Pre-arbitration Settlement  
May 18, 1998, F94N-4F-C 96032816**

The parties agree that pursuant to Article 3, grievances are properly brought when management's actions are inconsistent with applicable laws and regulations.

**C-06858 National Arbitrator Bernstein  
March 11, 1987, H1N-5G-C 14964**

Article 5 of the National Agreement serves to incorporate all of the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism--it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

## Scope

**M-01273 Step 4  
January 2, 1997, B94N-4F-C 96069778**

The issue in this case is whether those Memorandums of Understanding not included in the EL-901, National Agreement, are still in effect.

The parties agreed that the Memorandums of Understanding printed in the EL-901, National Agreement, between the U.S. Postal Service and the National Association of Letter Carriers for 1994-1998, are not the only Memorandums of Understanding in effect and that the "Work Assignment Overtime" Memorandum of Understanding, dated May 28, 1985, is in full force and effect.

## **Memorandum of Understanding**

**1990 National Agreement, June 12, 1991**

RE: Processing of Post-Removal Grievances. The parties agree that the processing and/or arbitration of a nondisciplinary grievance is not barred by the final disposition of the removal of the grievant, if that nondisciplinary grievance is not related to the removal action.

## **C-06363 National Arbitrator Bernstein**

**July 21, 1986, H1N-4E-C 9678**

A grievance may not be initiated by a retired employee.

## **M-00226 Memorandum of Understanding**

**October 16, 1981**

It is agreed by the United States Postal Service; National association of Letter Carriers, AFL-CIO; and the American Postal Workers Union, AFL-CIO, that the processing and/or arbitration of a grievance is not barred by the separation of the grievant, whether such separation is by resignation, retirement, or death.

## **C-09917 National Arbitrator Mittenthal**

**March 26, 1990, H7N-5P-C 1132**

A letter carrier's pre-removal grievance did not survive his later discharge.

Note: This decision has been superseded by the 1990 Memorandum of Understanding on the processing of post-removal grievances.

## **M-01178 Step 4**

**February 11, 1994, H0N-1F-C 2820**

The issue in this case is whether an internal management document can constitute a violation of the National Agreement.

The parties agree that internal correspondence between management officials is not a grievable matter. However, the union may, and in fact has, in separate grievances, grieved action taken by management consistent with the opinions expressed in the document.

This settlement is without prejudice to either party's position with regard to separate grievances on the issue of management actions that may be consistent with the document at issue. Moreover, the settlement does not reflect any alteration in the parties' understanding of what matters are or are not grievable under the National Agreement.

## **C-06949 National Arbitrator Bernstein**

**April 18, 1987, H1N-3D-C 40171**

The NALC does not have standing to bring a grievance on behalf of a rural carrier. The NALC/APWU contract does not create substantive rights for employees outside of the bargaining units represented by the unions. Only the NRLCA is entitled to bargain on behalf of rural carriers, and the NALC is not entitled to intrude itself into that process.

## **M-00018 Step 4**

**May 19, 1983, H1N-4B-C 11678**

The issue presented in the grievance pertains to the status of the grievant subsequent to reassignment to a position within the bargaining unit for which the American Postal Workers Union is the exclusive bargaining agent. Only the APWU has the right to pursue a grievance relevant to the issue presented, and the grievance presented by the NALC is procedurally defective. Local management will notify the grievant and the local union having jurisdiction of our decision. Time limits will be waived and a Step 1 grievance initiated by either party will be accepted relevant to this issue within 14 days of their notification.

Note: this settlement must be read in conjunction with [M-01120](#), below.

## **M-01120 Memorandum of Understanding**

**January 29, 1993**

1. By accepting a limited duty assignment, an employee does not waive the opportunity to contest the propriety of that assignment through the grievance procedure, whether the assignment is within or out of his/her craft.

2. An employee whose craft designation is changed as a result of accepting a limited duty assignment and who protests the propriety of the assignment through the grievance procedure shall be represented during the processing of the grievance, including in arbitration, if necessary, by the union that represents his/her original craft.

For example, if a letter carrier craft employee is given a limited duty assignment in the clerk craft, and grieves that assignment, the employee will be represented by the NALC. If a clerk craft employee is given a limited duty assignment in the letter carrier craft, and grieves that assignment, the employee will be represented by the APWU

## **M-00114 Step 4**

**March 28, 1985, H1N-5H-C 28873**

There is no prohibition against supervisors asking carriers for estimated leaving and return times; however, use of the information and/or actions resulting from having the information are appropriate subjects for scrutiny under the grievance-arbitration procedures. See also [M-00853](#)

## **C-00591 National Arbitrator Aaron**

**October 31, 1980, A8-NA-0371**

Experimental programs are not covered by the National Agreement.

## **M-00944 Step 4**

**August 17, 1989, H7N-4J-C-13361**

The issue in this grievance is whether the grievant was entitled access to his psychological records pursuant to 353 of the Administrative Support Manual (ASM).

After reviewing this matter, we mutually agreed that no na-

tional interpretive issue is fairly presented in this case. We further agree that this dispute is subject to the Grievance and Arbitration procedure and resolvable by an arbitrator.

**M-01502 Prearbitration Settlement**  
**April 29, 2003, B94N-4B-C 99258223**

concerning the scope of the grievance procedure in cases involving on-the-job injuries and citing JCAM page 15-1 as the controlling authority.

**C-01664 Regional Arbitrator Dworkin**  
**January 2, 1982, C8N-4A-C 22293**

"It may be, as the Postal Service suggests, that the grievance lacks a relevant contractual premise. That fact alone does not render a grievance non-arbitrable. The question of whether provisions of the Collective Bargaining Agreement are applicable to a complaint, and whether they have been properly applied or interpreted by one party or another, is precisely the issue at the core of every arbitration. It is that issue that arbitrators are charged with resolving. In plain language, the fact that a party may be wrong does not deprive him of the right to an arbitral award stating that he is wrong."

## Intervention Process

**M-01496 USPS-NALC Intervention Process**  
**Joint Expectations, August 28, 2003**

In conjunction with finalizing the dispute resolution language in Article 15 of the 2001 National Agreement, the national parties agreed to develop an Intervention Process for the purpose of identifying and responding to locations which are unable to efficiently and expeditiously address disputes pursuant to Article 15.

The National Business Agent and the Area Manager, Labor Relations are responsible for the Intervention Process in their jurisdictions. They or their designees will jointly assess needs and develop appropriate responses to intervention candidate sites.

The following are the expectations of the national parties:

Interveners will work together to promote and maintain a cooperative working relationship based on integrity, professionalism, and fairness at all levels of the organization.

Interveners will be committed to eliminating abuses of our grievance-arbitration procedure, such as the filing of unwarranted grievances to clog the system or a refusal to resolve grievances even when there are no legitimate differences of opinion between the parties or when the grievances clearly lack merit.

Interveners will be committed to contract compliance and eliminating repetitive violations of the National Agreement.

Interveners will be committed to long term solutions and measurable improvement.

Interveners will work to improve the working relationships of labor and management at the local level.

Interveners will adhere to the principle that the best solutions are reached at the lowest possible organizational level.

The undersigned commit that the resources of our organizations will be used to avoid unnecessary escalation of disputes and to ensure that the parties in any dispute treat each other in a civil and professional manner.

## Settlements

**M-01517 USPS LETTER**  
**May 31, 2002**

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

**M-01384 Step 4**  
**July 13, 1999, H94N-4H-D 98113787**

The issue in this case is whether a settlement made on a non-citeable, non-precedent basis on a letter of warning can be introduced in an arbitration, to counter management relying on the letter of warning in an arbitration hearing on subsequent discipline citing the letter of warning as an element of past record.

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in this case.

We also agreed that a non-citeable, non-precedent settlement may be cited in arbitration to enforce its own terms.

We further agreed that the subject letter of warning cannot be cited as a past element because it was removed from the grievant's record and reduced to a discussion via the September 3, 1998 settlement.

**C-09533 Regional Arbitrator Levin**

"Agreements may not be set aside, except by the showing of extreme circumstances that demonstrate unreasonable duress, fraud, deceit, or some equally sinister cause."



See also [Schedule Changes](#)

## Article 8, Section 8. Guarantees

A. An employee called in outside the employee's regular work schedule shall be guaranteed a minimum of four (4) consecutive hours of work or pay in lieu thereof where less than four (4) hours of work is available. Such guaranteed minimum shall not apply to an employee called in who continues working on into the employee's regularly scheduled shift.

B. When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.

C. The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more workyears of employment per year. All employees at other post offices and facilities will be guaranteed two (2) hours work or pay when requested or scheduled to work.

D. Any CCA employee who is scheduled to work and who reports to work in a post office or facility with 200 or more workyears of employment shall be guaranteed four (4) hours of work or pay. CCAs at other post offices and facilities will be guaranteed two (2) hours work or pay.

**Regular Schedule Employee Call-in Guarantees.** Article 8.8.A applies to full-time regular, full-time flexible and part-time regular employees (Step 4, H8N-3W-C 26065, May 27, 1981, [M-00575](#)). Full-time and part-time regular employees called in outside of the employee's regular work schedule but on a regularly-scheduled workday will be guaranteed four consecutive hours of work (or pay in lieu of work). This guarantee does not apply when the employee continues to work into the employee's regular scheduled shift. Although full-time flexible employees do not have permanent regular schedules, they must be assigned weekly schedules by Wednesday of the prior week (Article 7). This is considered their schedule for the purpose of administering the guarantee provisions of Article 8, Sections 8.A and B.

When an employee completes a scheduled tour, clocks out, and then is notified to clock in and resume working, that is considered a call back. All bargaining unit employees are guaranteed 4 hours work or pay if called back to work on a day when they have completed their assignments and clocked out. This guarantee is applicable to any size office.

### **M-00050 Step 4** **March 23, 1983, H1N-5K-C 9174**

Management instructed the full-time employees to clock out and return to duty one hour later for overtime work:

The employees will each receive one additional hour of pay at the applicable overtime rate in order to compensate them for the disputed period of time.

### **M-00575 Step 4** **May 27, 1981, H8N-3W-C 26065**

Article VIII, Section 8 states in pertinent part, "An Employee called in outside the employee's regular work schedule shall be guaranteed a minimum of four (4) consecutive hours of work or pay in lieu thereof, when less than four (4) hours of work is available." This provision applies only to full-time regulars and part-time regulars.

### **C-00051 Regional Arbitrator McConnell** **June 21, 1983, E8C-2M-C 10537**

Full-time Regular employee called in to testify at an EEO hearing is entitled to full eight-hour guarantee.

**Article 8, Section 8.B** When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.

**Pay Guarantee For Full-Time Employee on Non-Scheduled Day.** A full-time regular or full-time flexible employee called in on a nonscheduled day is guaranteed 8 hours of work (or pay in lieu thereof). This guarantee also applies on a holiday or designated holiday.

### **M-00170 Memo, September 20, 1979**

Any full-time employee in the regular work force who is called in on his non-scheduled day, regardless of the size of the office or amount of advance notice, is guaranteed eight hours work or pay in lieu thereof.

### **M-00356 Step 4** **May 23, 1985, H1N-5F-C 29072**

On his nonscheduled day, the grievant was scheduled for a fitness-for duty examination. The file reflects that the grievant was paid for the time actually involved. It is the position of the Postal Service that the grievant was not called in to work on his nonscheduled day. Therefore, the grievant is not entitled to 8 hours of guaranteed work or pay under Article 8.8.

### **C-00328 Regional Arbitrator Bowles** **December 7, 1984, W1C-5B-C 22617**

Where all clerks were instructed to work overtime "until further notice," employee properly reported to work on nonscheduled day and is entitled to full guarantee.

**Article 8, Section 8.C** The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more workyears of employment per

year. All employees at other post offices and facilities will be guaranteed two (2) hours work or pay when requested or scheduled to work.

**Part-Time Flexible Employee Call-In Guarantees** Article 8.8.C, applies only to part-time flexible employees (Arbitrator Mittenenthal, H4N-NAC 21, September 11, 1987, C-07323).

- A part-time flexible employee requested or scheduled to work in a post office or facility with 200 or more workyears of employment is guaranteed four hours of work (or pay in lieu of work). If branch officers need to determine if their post office has 200 or more workyears of employment, they should contact their national business agent.

- A part-time flexible employee requested or scheduled to work in a post office or facility with fewer than 200 workyears of employment is guaranteed two hours of work (or pay in lieu of work).

- ELM Section 432.62 further provides that a part-time flexible employee who is called back to work on a day the employee has completed an assignment and clocked out is guaranteed four hours of work or pay regardless of the size of the office.

- National Arbitrator Britton held in H1N-3U-C-28621, December 13, 1988 (C-08530) that the two or four hour guarantee provided for in Article 8.8.C does not apply to PTF employees who are initially scheduled to work, but called at home and directed not to report to work prior to leaving for work.

- **Split Shifts.** When PTF employees work a split shift or are called back, the following rules apply (Step 4 H8N-1N-C-23559, January 27, 1982 M-00224).

- 1) When a part-time flexible employee is notified prior to clocking out that he or she should return within two hours, this will be considered as a split shift and no new guarantee applies.

- 2) When a part-time flexible employee, prior to clocking out, is told to return after two hours:

- The employee must receive the applicable guarantee of two or four hours work or pay for the first shift, and;
- The employee must be given another minimum guarantee of two hours work or pay for the second shift. This guarantee is applicable to any size office.

- 3) All part-time flexible employees who complete their assignment, clock out and leave the premises regardless of intervals between shifts, are guaranteed four

hours of pay if called back to work. This guarantee is applicable to any size office.

**M-00224 Step 4**

**January 27, 1982, H8N-1N-C-23559**

- 1) When a part-time flexible employee is notified prior to clocking out that he should return within two (2) hours, this will be considered as a split shift and no new guarantee applies.

- 2) When a part-time flexible employee, prior to clocking out, is told to return after two (2) hours, that employee must be given another minimum guarantee of two (2) hours work or pay.

- 3) All part-time flexible employees who complete their assignment, clock out and leave the premises regardless of intervals between shifts, are guaranteed four (4) hours of work or pay if called back to work. This guarantee is applicable to any size office. See also M-00982, M-00246, M-00576, M-01405

**M-00208 Step 4**

**January 20, 1983, H1N-1N-C 69**

The question in this grievance involves entitlement to a two (2) hour guarantee. A part-time flexible carrier was originally scheduled for a four hour tour of duty in order to complete 40 hours. Due to unforeseen circumstances, he was directed to clock out after approximately one and one-half hours, swing for one hour and report back for approximately two and one-half hours. Under the circumstances described, the employee is entitled to a two (2) hour guarantee for his initial tour of duty. See also M-00934, M-00906

**M-01084 Prearb July 7, 1992**

**H7N 3Q-C 28062**

Non-cite prearbitration settlement paying the PTF grievants two guarantees when they were required to split their shift for more than two hours prior to the completion of their guarantee during their initial report.

**M-00888 Pre-arb**

**January 5, 1989, H4N-3W-C 17913**

Travel time is proper when management sends a PTF to another station. Part-time flexible employees should not be required to end their tour and then report to another station to continue working without being compensated, as provided for in Part 438.132 of the Employee and Labor Relations Manual.

**C-08530 National Arbitrator Britton**

**December 13, 1988, H1N-3U-C 28621**

The two (2) or four (4) hour guarantee provided for in Article 8 Section 8.C does not apply to PTFs employees who are initially scheduled to work, but called at home and directed not to report to work prior to leaving for work.

## **M-01067 USPS Letter February 14, 1972**

PTF employees must be scheduled at least 4 hours per pay period.

## **City Carrier Assistants**

D. Any CCA employee who is scheduled to work and who reports to work in a post office or facility with 200 or more workyears of employment shall be guaranteed four (4) hours of work or pay. CCAs at other post offices and facilities will be guaranteed two (2) hours work or pay.

## **M-01833 Joint Questions and Answers March 6, 2014**

QUESTION 23: Do CCAs have a work hour guarantee?

Yes, CCAs employed in post offices and facilities with 200 or more workyears of employment have a four hour work guarantee and CCAs employed in all other post offices have a two hour work guarantee.

## **M-01833 Joint Questions and Answers March 6, 2014**

QUESTION 24: Are there rules covering work hour guarantees for a CCA who has a gap between two periods of work?

Yes. If a CCA is notified prior to clocking out that he/she should return within two hours, it is considered a split shift and no new work hour guarantee applies. However, if a CCA is notified prior to clocking out that he/she is to return after two hours, the CCA must be given another work hour guarantee pursuant to Article 8.8 (two or four hours depending on office size).

## **M-01833 Joint Questions and Answers March 6, 2014**

QUESTION 25: Can CCAs be required to remain on "stand-by" or remain at home for a call-in on days they are not scheduled to work?

No.

**Waiving guarantees.** The Step 4 settlement H4N-2D-C 40885, November 14, 1988 (M-00879) provides that "Management may not solicit employees to work less than their call-in guarantee, nor may employees be scheduled to work if they are not available to work the entire guarantee.

However, an employee may waive a guarantee in case of illness or personal emergency. This procedure is addressed in the ELM, Section 432.63."

## **M-00879 Step 4 November 14, 1988, H4N-2D-C 40885**

Management may not solicit employees to work less than their call in guarantee, nor may employees be scheduled to work if they are not available to work the entire guarantee. However, an employee may waive a guarantee in case of illness or personal emergency. This procedure is addressed in the F22, Section 22.14 and the ELM, Section 432.63. See also M-01210

## **M-00115 Step 4 October 31, 1978, NCC 12644**

Management should not solicit employees to work less than their guarantees rather than soliciting employees who would work their full guarantees. See also M-00118, M-00709

## **M-01227 Step 4 July 26, 1995, H90N-4H-C 94050531**

It was agreed that management may not solicit TEs to work less than their reporting guarantee; a TE may, however, request that he/she be authorized to work less than the four hour reporting guarantee in case of illness or for personal reasons.

## **M-00119 Step 4 November 21, 1978, NCS 12428**

The record shows that the employee in question requested that he be allowed to leave early for personal reasons. Under the circumstances, the eight hour guarantee provision was negated. However, in the future if a Form 3971 is used to record an early departure, the form should be completed at the time.

## **C-10941 Regional Arbitrator Dennis July 15, 1991, N7N-1W-C 37842**

Management improperly permitted a letter carrier called in on a non-scheduled day to leave after a partial day of work. See also C-10945

## **Holidays**

See also [Holiday Scheduling](#)

## **EL-401, Section 4.C.1 (page 24) November 1983**

Full-time regular employees in the bargaining units are guaranteed 8 hours' work (or pay in lieu of work) if called in to work on their non-scheduled day, holiday or designated holiday. If such an employee works 6 hours and is then told by the supervisor to clock out because of lack of work, the remaining 2 hours or the employee's 8 hour guarantee is recorded as guaranteed time. (Emphasis added)

### **M-00580 Settlement Agreement**

#### **March 4, 1974 (Rademacher)**

When a full time regular employee works on his holiday, he will be guaranteed eight (8) hours of work or pay in lieu thereof, in addition of the holiday pay to which he is entitled under Article XI, Sections 2 and 3.

### **M-01207 Step 4**

#### **August 4, 1994, E90N-4E-C 93023015**

The issue in this grievance is whether carriers must be permitted to carry their routes on a state holiday.

The parties mutually agreed that on days when the Post Office is closed for local observances, full-time carriers scheduled for duty who do not have approved leave, will be allowed to work. In such circumstances they will be allowed to work as much of their bid assignment as is available. It is the parties' understanding that, in this case, street delivery is not available. In the event there is insufficient work on their bid assignment to meet their work hour guarantee, they may be assigned work in accordance with Article 7, Section 2.B of the National Agreement.

## ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

[see Memo]

**Handbooks and Manuals.** Article 19 provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement. Changes to handbook and manual provisions directly relating to wages, hours, or working conditions may be made by management at the national level and may not be inconsistent with the National Agreement. A challenge that such changes are inconsistent with the National Agreement or are not fair, reasonable, or equitable may be made only by the NALC at the national level.

A memorandum negotiated as part of the 2001 National Agreement establishes a process for the parties to communicate with each other at the national level regarding changes to handbooks, manuals and published regulations that directly relate to wages hours or working conditions. The purpose of the memorandum is to provide

the national parties with a better understanding of their respective positions in an effort to eliminate unnecessary appeals to arbitration and clearly identify and narrow the issue(s) in cases that are appealed to arbitration under Article 19.

**Local Policies.** Locally developed policies may not vary from nationally established handbook and manual provisions. (National Arbitrator Aaron, H1N-NAC-C-3, February 27, 1984, C-04162) Additionally, locally developed forms must be approved consistent with the Administrative Support Manual (ASM) and may not conflict with nationally developed forms found in handbooks and manuals.

National Arbitrator Garrett held in NB-NAT-562, January 19, 1977 (C-00427) that "the development of a new form locally to deal with stewards' absences from assigned duties on union business—as a substitute for a national form embodied in an existing manual (and thus in conflict with that manual)—thus falls within the second paragraph of Article 19. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn."

### MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

#### Re: Article 19

1. When the Postal Service provides the Union with proposed changes in handbooks, manuals, or published regulations pursuant to Article 19 of the National Agreement, the Postal Service will furnish a final draft copy of the revisions and a document that identifies the changes being made from the existing handbook, manual, or published regulation. When the handbook, manual, or published regulation is available in electronic form, the Postal Service will provide, in addition to a hard copy, an electronic version of the final draft copy clearly indicating the changes and another unmarked final draft copy of the changed provision with the changes incorporated.

2. The document that identifies the changes will indicate language that has been added, deleted, or moved, and the new location of language moved. Normally, the changes will be identified by striking through deleted language, underlining new language, and placing brackets around language that is moved, with the new location indicated. If another method of identifying the changes is used, the method will be clearly explained, and must include a means to identify which language is added, deleted, and moved, as well as the new location of any language moved.

3. When notified of a change(s) to handbooks, manuals, and published regulations, pursuant to Article 19 of the National Agreement, the Union will be notified of the purpose and anticipated impact of the change(s) on city letter carrier bargaining unit employees.

4. At the request of the Union, the parties will meet to discuss the change(s). If the Union requests a meeting on the change(s), the Union will provide the Postal Service with notice identifying the specific change(s) the Union wants to discuss.

5. Within sixty (60) days of the Union's receipt of the notice of proposed change(s), the Union will notify the Postal Service in writing of any change(s) it believes is directly related to wages, hours, or working conditions and not fair, reasonable or equitable and/or in conflict with the National Agreement. The Union may request a meeting on the change(s) at issue.

6. The Postal Service will provide the Union with a written response addressing each issue raised by the Union, pursuant to paragraph 5, within thirty (30) days of receipt, provided the Union identifies the issue(s) within sixty (60) days of the Union's receipt of the notice of proposed change(s).

7. If the Union, after receipt of the Postal Service's written response, believes the proposed change(s) violates the National Agreement, it may submit the issue to arbitration within sixty (60) days of receipt of the notice of proposed change or thirty (30) days after the Union receives the Postal Service's written response, whichever is later. If the Postal Service fails to provide a response to the Union pursuant to paragraph 6, the Union may submit the issue(s) to arbitration provided it does so within thirty (30) days after the Postal Service's response was due. The Union's appeal shall specify the change(s) it believes is not fair, reasonable or equitable and/or in conflict with the National Agreement, and shall state the basis for the appeal.

8. If modifications are made to the final draft copy as a result of meetings with employee organizations, the Postal Service will provide NALC with a revised final draft copy clearly indicating only the change(s) which is different from the final draft copy.

9. When the changes discussed in paragraph 8 are incorporated into the final version of a handbook, manual, publication, or published regulation, and there is not an additional change(s) which would require notice under Article 19, the Union will be provided a courtesy copy. In such case, a new Article 19 notice period is not necessary.

10. Lastly, in any case in which the Postal Service has affirmatively represented that there is no change(s) that directly relates to wages, hours, or working conditions pursuant to Article 19 of the National Agreement, time limits for an Article 19 appeal will not be used by the Postal

Service as a procedural argument if the Union determines afterwards that there has been a change to wages, hours, or working conditions.

Nothing contained in this memorandum modifies the Postal Service's right to publish a change(s) in a handbook, manual or published regulation, sixty (60) days after notification to the Union.

Date: January 10, 2013

### **M-00816 Settlement Agreement March 11, 1988, H4N-NA-C-90**

In full and complete settlement of the above referenced arbitration case brought pursuant to the 1987 National Agreement between the parties, the United States Postal Service (USPS), the National Association of Letter Carriers, AFL-CIO (NALC), and the American Postal Workers Union, AFL-CIO (APWU), hereby agree as follows:

1. When the USPS provides the Union(s) with proposed changes in handbooks, manuals or published regulations, the USPS will furnish to the Union(s), if available, the final draft and/or summary of changes which show the changes being made from the existing handbook, manual or published regulation. In those instances where a final draft or summary is unavailable, the USPS will so advise the Union(s) in its letter of notice.

2. If no final draft or summary is available, which shows proposed changes, the Postal Service will, at the request of the Union(s), promptly make available appropriate officials to meet with representatives of the Union(s) to identify and discuss the changes made in the proposed handbook, manual or published regulation from those contained in existing documents.

3. The 60 day period during which the Union may appeal to arbitration may be extended to accommodate ongoing discussion of the proposed change(s) with the USPS in paragraph 2, above. However, in no instance may the Union(s) appeal the matter to arbitration more than 14 calendar days from the close of those extended discussions. The USPS may also publish the proposed change(s) at anytime after the 60 day notice period under Article 19.

4. Where the USPS has affirmatively expressed that there are no changes which directly relate to wages, hours, or working conditions pursuant to Article 19, time limits for Article 19 will not be used by the Postal Service as a procedural argument if the Union(s) signatory to this settlement agreement determine(s) afterwards that there has been a change to wages, hours, or working conditions.

## National Level Arbitration Awards

### **C-00427 National Arbitrator Garrett** **January 19, 1977, MB-NAT-562**

"The development of a new form locally to deal with Stewards' absences from assigned duties on Union business -- as a substitute for a national form embodied in an existing Manual (and thus in conflict with that Manual) -- thus falls within the second paragraph of Article XIX. Since the procedure there set forth has not been invoked by the postal Service, it would follow that the form must be withdrawn."

### **C-04162 National Arbitrator Aaron** **February 27, 1984, HIN-NAC-C 3**

Local and regional departures from the procedures set forth in Sub-chapter 540 of the ELM are in conflict with those procedures and therefore with the National Agreement. Article 19 does not distinguish between national, local and regional levels of management.

### **C-00937 National Arbitrator Gamser** **December 27, 1982, H8C-NA-C 61**

The EL-501 (Supervisors Guide To Attendance Improvement) is not a handbook within the scope of Article 19.

### **C-03223 National Arbitrator Gamser** **October 3, 1980, N8-E-0088**

An ambiguous handbook provision should be construed against its management drafter.

### **C-10089 National Arbitrator Mittenthal** **June 20, 1990, H4C-NAC 881**

A change in the POM prohibiting postal employees from engaging in voter registration activities within post offices did not "directly relate to working conditions" within the meaning of Article 19.

### **C-03236 National Arbitrator Mittenthal** **February 24, 1981 N8-NA-0220**

A grievance concerning the content of a regional directive that was published but not yet implemented is "ripe" for an arbitrator's decision where an interpretive issue is raised.

### **C-00749 National Arbitrator Bloch** **May 12, 1983, H1C-NA-C 5**

The certification to arbitration of a dispute concerning an amendment to the ELM, made more than 60 days after the union's receipt of the notice of proposed amendment, was untimely.

### **C-11160 National Arbitrator Snow** **March 8, 1989, H7C-NA-C 10**

"Publication [of changes] is not notice of changes under Article 19." Publication of changed handbook provisions without the required notice is a violation of Article 19 and is grievable under Article 15.4(D).

### **C-10090 APWU National Arbitrator Collins** **June 21, 1990, H4C-NA-C 88**

USPS' revision of ELM 867.53 to provide employees with the right, if they choose, to receive follow-up treatment from a contract physician was fair, reasonable and equitable.

### **C-23261 National Arbitrator Nolan** **April 28, 2002, Q98N-4Q-C 01090839**

The arbitrator found that NALC's national level grievance challenging revisions to Publication 71 was arbitrable. The Postal Service had argued that NALC could not resolve in arbitration a dispute concerning the Family and Medical Leave Act, a federal law. Arbitrator Nolan also rejected a series of additional management arguments that the case was not arbitrable, including claims that the grievance was untimely and that Publication 71 is not covered by Article 19. The grievance was subsequently resolved by the prearbitration settlement [M-01474](#).

### **C-28034 National Arbitrator Das** **January 30, 2009, Q06C4QC07141697**

The requirement in ELM 665.17 is that employees report that they are subject to a legal requirement to register as a sex offender. As already determined, the Postal Service has a justifiable right to obtain that information. There is a nexus between being publicly registered as a sex offender and employment by the Postal Service, at least for the purpose of the self-reporting requirement. Compliance with this requirement permits the Postal Service to investigate and determine what, if any, appropriate action to take. Any such action, of course, is subject to the requirements of the CBA, including just cause and due process standards. The latter have not been changed or circumvented.

## Joint Contract Administration Manual (JCAM)

### **M-01373 Step 4** **January 7, 1999, G94N-4G-D 98042998**

The Joint Contract Administration Manual (JCAM) does not constitute argument or evidence; rather, the JCAM is a narrative explanation of the Collective Bargaining Agreement and should be considered dispositive of the joint understanding of the parties at the national level. If introduced into arbitration, the local parties are to allow the document to speak for itself and not seek testimony on the content of the document from the national parties.

### **M-01462 USPS Letter** **December 14, 2001**

This is to confirm our November 28 discussion concerning the use of the Joint Contract Administration Manual (JCAM) in national level arbitration.

During our discussion, we agreed that the narrative portions of the JCAM represent the agreement of the parties

on those issues addressed, and that the JCAM may be introduced as evidence of those agreements in national level arbitration. If introduced as evidence in national level arbitration, the document shall speak for itself. Without exception, no testimony shall be permitted in support of the content, background, history or any other aspect of the JCAM's narrative.

## National Level Settlements

### **M-01184 Step 4**

**February 14, 1994, H0N-1F-C 2820**

The issue in this case is whether an internal management document can constitute a violation of the National Agreement.

The parties agree that internal correspondence between management officials is not a grievable matter. However, the union may, and in fact has, in separate grievances, grieved action taken by management consistent with the opinion expressed in the document.

### **M-01131 Prearbitration Settlement**

**May 13, 1993, H7C-NA-C 19018**

The issue in this case involves revisions to the PSDS Time and Attendance Handbook, F-22, received by the unions on November 7, 1990.

During our discussion, we agreed to settle this case with the understanding that Article 19 time limits are not a bar to the Union initiating an appeal to arbitration at the national level protesting the November 7, 1990, changes to the F-22 Handbook if it is subsequently determined that the Postal Service has not complied with the notice provisions of Article 19.

### **M-00957 Step 4**

**October 31, 1989, H7N-5E-C 14095**

The issue in this grievance is whether Management violated the National Agreement by issuing certain changes to the manner in which Bulk Business Mail is handled, when those changes first appeared in the booklet "Bulk Business Mail - It's Our Business."

During our discussion, we mutually agreed that the booklet referred to above was not properly transmitted to the Union as a proposed change to any Handbook, or Manual, consistent with the requirement, of the National Agreement. Therefore, to the extent that the booklet is inconsistent with the provisions of the M-41 or other existing manuals, this grievance is sustained, with instructions to Management to discontinue reliance on the booklet as having the effect of a Manual change.

### **M-01156 Prearb**

**December 16, 1993, H7C-NA-C 76**

The parties agree that organizational levels below Head-

quarters will not issue directives that conflict with any national handbooks, manuals or published regulations directly related to wages, hours and working conditions.

The issuance of regional directives must comply with established manual language (ASM 310). Regional and field directives may provide guidance, contain operating instructions; and/or supplement directives issued by Headquarters; however, they may not clarify, reword or interpret Headquarters directives.

For the purpose of this settlement, the parties consider "issuances" to be a subcategory of "directives."

### **Memorandum of Understanding**

**1990 National Agreement, June 12, 1991**

The parties agree that local attendance or leave instructions, guidelines, or procedures that directly relate to wages, hours, or working conditions of employees covered by this Agreement, may not be inconsistent or in conflict with Article 10 or the Employee and Labor Relations Manual, Subchapter 510.

### **C-00330 Regional Arbitrator Caraway**

**October 17, 1983, S1C-3A-C 11234**

Management violated the contract when it used a restricted sick leave letter which went beyond the basic conditions set forth in the ELM.

### **M-00500 Step 4**

**May 2, 1984, H1N-5C-C 18518**

Any local attendance control policy must conform to the provisions of subchapter 510 of the Employee and Labor Relations Manual (ELM). Whether or not the local policy is in accord with these ELM provisions is a local dispute and is suitable for regional determination.

### **M-01422 Prearbitration Settlement**

**Q94N-4G-C 97085513, April 1, 1999**

Placement of the ELM on the internet does not obviate management's contractual obligation under Article 19 to notify the Union of proposed changes that directly relate to wages, hours, and working conditions. In the event that a disagreement arises as to the accuracy of the electronic version of the ELM, the ELM as amended through Article 19 procedures will be controlling.

### **M-00497 Step 4**

**March 30, 1984, H1N-3W-C 21270**

Any local policy establishing a call-in procedure must be in compliance with Section 513.332 of the Employee and Labor Relations Manual (ELM).

### **M-00296 Step 4**

**November 21, 1983, H1N-5D-C 14785**

A local Attendance Program cannot be inconsistent with ELM 510. Disciplinary action which results from a local policy must meet the just cause provision of Article 16.

**M-01507 Prearbitration Settlement**  
**November 6, 2003, Q98N-5Q-C 01104612**  
**Re: ELM Chapter 8**

The addition of the words "rotational basis" was in conflict with Article 14, Section 8.A. It was not intended to affect any provision of the National Agreement and the language will be rescinded in the next review of Chapter 8 of the ELM.

It was also determined that an oversight resulted in the NALC being given less than 60 days notice of the revision, in violation of Article 19.

After reviewing the remaining matters, we mutually agree that no national interpretive issue is presented in these cases and agree to close these grievances with the following understanding:

Where the Postal Service has affirmatively expressed that there are no charges which directly relate to wages, hours or working conditions pursuant to Article 19, time limits for Article 19 will not be used by the Postal Service as a procedural argument if the NALC determine(s) that there has been a change to wages, hours or working conditions.

**C-03003 National Arbitrator Garrett**  
**September 29, 1978, NB-N 3908**

"This kind of argument appears to equate the USPS Handbooks with carefully drawn, highly technical legal documents, such as a trust indenture. It would seem, however, that this kind of an interpretive theory at best could have only limited value as an aid to sound interpretation of typical collective bargaining agreements. Moreover, its application here would overlook the fact that the Handbook provisions were not drafted to represent the results of collective bargaining, but rather essentially to set forth policies and procedures to guide USPS employees in the performance of their numerous and varied duties. While it is entirely clear that such policies and procedures may embody provisions which on their face (or by reasonable implication) constitute conditions of employment, it must be recognized that some operating conditions or problems are not of sufficiently great importance to warrant specific treatment in a Manual, Handbook or Regulation. Thus it seems unsound at best to attempt to read such a document as it were designed to cover expressly every possible situation which might arise in the course of operations."

**M-01638 Interpretive Step Settlement**  
**September 24, 2007, Q01N-4Q-C 07012033**

Settlement resolving grievance alleging that revisions to Handbook AS-805, Information Security, published in Postal Bulletin 22190 on September 28, 2006, violated the National Agreement.

The parties agreed to amend Section 1-3.2, Organizations and Personnel by adding:

These policies do not change the rights or responsibilities of either management or the unions pursuant to Article 17 or 31 of the various collective bargaining agreements or the National Labor Relations Act, as amended. These revisions do not bar the unions from using their own portable devices and media for processing information that is relevant for collective bargaining and/or grievance processing, including information provided by management pursuant to Articles 17 or 31 of the collective bargaining agreement or the National Labor Relations Act. There is no change to policy concerning restricted access to the Postal Service intranet.

**M-01095 Pre-arb**  
**July 13, 1992, H7N-NA-C 50**

The issue in these grievances involves changes occurring in Issues 11 and 12 of the Employee & Labor Relations Manual (ELM).

After discussing this matter, we agreed to the following settlement of this dispute:

- 1) The parties will meet within 90 days to identify and discuss the changes between ELM Issues 10, 11, and 12.
- 2) Without prejudice to its ability to make future changes pursuant to Article 19, management shall adhere to the provisions of ELM Section 437 as they were published in Issue 10 of the ELM. Any timely grievance alleging a violation of ELM 437 shall be processed as if the provisions of ELM Issue 10 were in effect.
- 3) Article 19 time limits are not a bar to the Union initiating an appeal to arbitration at the national level protesting changes to the ELM, if it is determined that the Postal Service has not complied with the notice provisions of Article 19. As a matter of clarification, this provision is also applicable to changes initially occurring in Issues 11 and 12 of the ELM.
- 4) The parties will meet within 14 days to discuss ELM Section 421.531 and ELM Section 568. In the event the parties are unable to resolve possible disputes on either Section, they will be referred to national level arbitration and scheduled on a priority basis.
- 5) Each Chapter of ELM Issue 13 will be provided to the Unions in advance of publication.

Note: See [M-01231](#) for a copy of ELM Section 437 as it was published in Issue 10. Note that it is labeled "Issue 9" since it was not changed when Issue 10 was published (See cover page).

**M-01491 Prearb Settlement**  
**June 17, 2003, Q98N-4Q-C 00106833**

The Postal Service affirmatively represents that there are no changes that directly relate to wages, hours, or working

conditions pursuant to Article 19 of the National Agreement in the revisions to Handbook M-32, Management Operating Data Systems (MODS), which was transmitted to the NALC by letter dated January 12, 2000. Time limits for an Article 19 appeal will not be used by the Postal Service as a procedural argument if the Union subsequently determines that there has been a change(s) that directly relate to wages, hours, or working conditions.

**M-01636 Pre-Arb**  
**September 18, 2007**

The parties will discuss any remaining issues with respect to the proposed revisions to Chapter 3 of ELM transmitted by letter dated April 30, 2001.

**M-01623 Pre-arb**  
**June 25, 2007**

The Postal Service affirmatively asserts that there were no subsequent revisions in Issue 16 of the ELM that directly relate to wages, hours, or working conditions pursuant to Article 19 of the National Agreement.

**M-01612 Pre-arb**  
**May 2, 2007**

The Postal Service affirmatively represents that there are no changes that directly relates to wages, hours, or working conditions pursuant to Article 19 of the National Agreement in the revisions to Employee and Labor Relations Manual, Section 430. Basic and Special Pay Provisions, which were transmitted to the union by letter dated April 12, 2000.

**M-01499 Prearbitration Settlement**  
**Q95N-4Q- 97122149, September 26, 2003**

Settlement of Article 19 appeal of ELM Chapter 450 and 460 changes transmitted to Union on January 27, 1997. Grievance was withdrawn after USPS rescinded the proposed changes by letter dated September 17, 2003.

**M-01498 Prearbitration Settlement**  
**Q98N-4QW-C 00187358, September 19, 2003**

Settlement of Article 19 appeal of MI-EL-869-2000

**M-01493 Prearbitration Settlement**  
**Q94N-4Q-C 96014638, August 7, 2003**

Settlement concerning proposed changes to Postal Operations Manual (POM) Issue 7.

# HIGHER LEVEL ASSIGNMENTS

See also [Carrier Technicians](#)

## Section I. Definitions

Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

### 25.2 Section 2. Higher Level Pay

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

### 25.3 Section 3. Written Orders

Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for the higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

**All Higher-Level Assignments.** Article 25.1, 25.2 and 25.3 apply to all details to higher level work, whether or not such work is within a bargaining unit.

### 25.4 Section 4. Higher Level Details

Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists. However, for details of an anticipated duration of one week (five working days within seven calendar days) or longer to those higher level craft positions enumerated in the craft Article of this Agreement as being permanently filled on the basis of promotion of the senior qualified employee, the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected.

**Higher-Level Bargaining Unit Work.** Article 25.4 sets forth rules for filling temporarily vacant, bargaining unit, higher level positions. The rules depend upon the duration of the vacancy. For a vacancy of less than five working days, any employee may be selected from those who are "eligible, qualified and available" in the immediate work area in which the vacancy occurs. For a vacancy of five working days or more, the "senior qualified, eligible and available" volunteer in the immediate work area must be selected. All qualified letter carriers, including part-time flexibles and full-time regular letter carriers with bid posi-

tions are eligible to apply for higher level assignments under the provisions of this section.

### M-00438 Step 4

**June 25, 1982, H8N-4F-C 21675**

A carrier in one station is not considered eligible or available to compete for higher level vacancies in another station. He is not in the immediate work area.

### M-01015 Step 4

**October 10, 1991, H7N-4A-C 26472**

The issue in this grievance is whether the terms and conditions of Article 25 were violated when the grievant, T-6, was not detailed to a vacant VOMA position. Higher level positions are to be filled in accordance with Article 25. It should be noted, however, that the grievant would not have been entitled for a higher level assignment, inasmuch as he is a level 6 and the VOMA position in question is ranked as a level 6.

### C-00782 APWU National Arbitrator Bloch

**May 24, 1985, H1C-5F-C 21356**

An employee detailed to a higher level assignment should receive step increases in the higher level as if promoted to the position.

### M-00432 Step 4

**June 18, 1982, H8N-3W-C 16883**

The carrier is entitled to higher level pay if the assignment involves coding, drawing sector lines of maps, completing data entry forms and placing sector segments on Zip plus 4 printouts. No higher level pay is justified when the assignment merely concerns the updating of existing maps or the placing of marks on maps for identification. The file does not identify exactly which duties were performed by the employees.

### M-00309 Step 4

**December 17, 1985, H4C-1E-C 6348**

Level 5 clerk craft employees who are utilized as on-the-job instructors for new employees shall be compensated at the level 6 rate for time actually spent on such job.

An employee properly selected for a higher level assignment may voluntarily remain on the assignment as long as they remain eligible, qualified, and available in the immediate work area. However, unlike the provisions of Article 41.2.B.3-5, Article 25.4 does not have a "duration clause". Therefore, the assignment to higher level does not limit or supersede management's right to assign full-time unassigned regular employees under the provision of Article 41.1.A.7 which could possibly remove the employee from the immediate work area of the available position. Likewise, the assignment to higher level does not limit or supersede a carrier's right to bid, opt, or return to their bid position.

## HIGHER LEVEL ASSIGNMENTS

**Carrier Technician Positions.** Temporarily vacant Carrier Technician positions are higher level assignments and thus are not subject to opting under the provision of Article 41.2.B. Rather, temporarily vacant Carrier Technician positions must be filled in accordance with this section (Step 4, H8N-3P-C-25550, May 6, 1981 [M-00276](#)). National Arbitrator Snow held in H7N-5R-C-316, September 10, 1990 ([C-10254](#)), that management may not assign different employees on an “as needed” basis to carry a route on a Carrier Technician string when a vacancy of five or more days is involved; instead such vacancies must be filled according to Article 25. Note that most settlements and memorandums that referred to “T-6” positions also to apply to “Carrier Technician” positions.

The September 19, 1999 national interest arbitration award upgraded letter carriers to Grade 6 and maintained the existing the pay differential of for carrier technicians. To avoid confusion with the different pay scales in other crafts, the pay grade terminology was changed. PS 5 letter carriers became CC 1 and PS 6 letter carriers became CC 2. Consequently, the term T-6 became obsolete. Nevertheless, most national level settlements and memorandums referring to T-6 (and utility) carriers, including all those listed below, remain in effect.

Employees who are detailed to Carrier Technician positions under the provisions of Article 25.4 are entitled to higher level pay, for all work performed for the duration of the detail, as if promoted to the position.

Letter carriers who fill temporarily vacant Carrier Technician positions assume the hours of the vacancy as provided by the pre-arbitration settlement H8N-3P-C 32705, January 27, 1982 ([M-00431](#)), which states:

*Details of anticipated duration of one week (five working days within seven calendar days) or longer to temporarily vacant Carrier Technician (T-6) positions shall be filled per Article 25, 1981 National Agreement. When such temporary details involve a schedule change for the detailed employee, that employee will assume the hours of the vacancy without obligation to the employer for out-of-schedule overtime.*

The Step 4 Settlement H4N-5R-C-44093, February 10, 1989 ([M-00902](#)), provides that the following management document known as the “Brown Memo” (November 5, 1973, [M-00452](#)) is a contractual commitment and remains in effect. The memorandum explains when a replacement employee is entitled to higher level pay when no employee is detailed under the provisions of Article 25.4.

When a carrier technician (T-6) is absent for an extended period and another employee serves the series of 5 routes assigned to the absent T-6, the replacement employee shall be considered as replacing the

T-6, and he shall be paid at the T-6 level of pay for the entire time he serves those routes, whether or not he performs all of the duties of the T-6. When a carrier technician’s absence is of sufficiently brief duration so that his replacement does not serve the full series of routes assigned to the absent T-6, the replacement employee is not entitled to the T-6 level of pay. In addition, when a T-6 employee is on extended absence, but different carriers serve the different routes assigned to the T-6, those replacements are not entitled to the T-6 level of pay. The foregoing should be implemented in a straight-forward and equitable manner. Thus, for example, an employee who has carried an absent T-6 carrier’s routes for four days should not be replaced by another employee on the fifth day merely in order to avoid paying the replacement higher level pay.

### **City Carrier Assistant Employees.**

Article 25 does not apply to City Carrier Assistant Employees. The pay rate of CCAs assigned to Carrier Technician positions is addressed by the parties’ Joint Questions and Answers 2011 USPS/NALC National Agreement, dated March 6, 2014.

### **Question and Answers 2011 USPS/National Agreement M-01833**

#### **Question 45. Are CCAs entitled to higher level pay under Article 25 of the national Agreement?**

No.

#### **Question 46 . How does a CCA who is hired as a grade cc-01 receive proper compensation when assigned to a city carrier technician (grade cc-02) position?**

In such case the CCA’s PS Form 50 must be revised to reflect that he/she is assigned to a Carrier Technician position. This will require designation to the proper City Carrier Assistant Tech occupational code (either 2310-0047 or 2310-0048)

#### **M-00276 Step 4 May 6, 1981, H8N-3P-C 25550**

Temporary T-6 positions are higher level assignments and are not subject to Article 41, Section 2.B.3-4-5. As such they are to be filled per the provisions of Article 25, National Agreement.

### **25.5 Section 5. Leave Pay**

Leave pay for employees detailed to a higher level position will be administered in accordance with the following: Employees working short term on a higher level assignment or detail will be entitled to approved sick and annual paid leave at the higher level rate for a period not to exceed three days. Short term shall mean an employee has been on an assignment or detail to a higher level for a period of

## HIGHER LEVEL ASSIGNMENTS

29 consecutive work days or less at the time leave is taken and such assignment or detail to the higher level position is resumed upon return to work. All short term assignments or details will be automatically canceled if replacements are required for absent detailed employees. Long term shall mean an employee has been on an assignment or detail to the higher level position for a period of 30 consecutive workdays or longer at the time leave is taken and such assignment or detail to the higher level position is resumed upon return to work. paid at the higher level for all employees who are assigned or detailed to higher level assignments on their last workday.

**Leave During Higher Level Assignments.** Article 25.5 provides that a carrier working a higher-level detail for less than thirty working days will receive sick or annual leave pay at the higher rate, but only for up to three leave days. If a replacement for the detailed employee is required, the detail is automatically canceled. An employee detailed to a Carrier Technician position is considered replaced when another employee is assigned to the vacancy for "five working days within seven calendar days or longer" under the provisions of Article 25.4.

### **M-00452 Brown Memo, November 5, 1973**

When a carrier technician (T-6) is absent for an extended period and another employee serves the series of 5 routes assigned to the absent T-6, the replacement employee shall be considered as replacing the T-6, and he shall be paid at the T-6 level of pay for the entire time he serves those routes, whether or not he performs all of the duties of the T-6. When a carrier technician's absence is of sufficiently brief duration so that his replacement does not serve the full series of routes assigned to the absent T-6, the replacement employee is not entitled to the T-6 level of pay. In addition, when a T-6 employee is on extended absence, but different carriers serve the different routes assigned to the T-6, those replacements are not entitled to the T-6 level of pay. The foregoing should be implemented in a straight-forward and equitable manner. Thus, for example, an employee who has carried an absent T-6 carrier's routes for four days should not be replaced by another employee on the fifth day merely in order to avoid paying the replacement higher level pay.

### **C-00161 National Arbitrator Gamser July 27, 1975**

The practice of filling temporary vacancies by detailing employees, whose names appear on a list of so-called volunteers .... did not relieve the Employer of the obligation of paying overtime to those employees who thus volunteered in advance for out of regular schedule assignments. Such out of regularly scheduled work week details and assignments cannot be regarded as not being performed at the request of the Employer and fall under the exemption provided in Section 4-B of Article VIII of the Collective Bargaining Agreement.

### **C-00580 National Arbitrator Mittenthal, January 27, 1982, A8-W-939**

Employees working as 204Bs are entitled to receive the out-of-schedule overtime premium when applicable under Article 8, Section 4.B. See also [C-00938](#), APWU National Arbitrator Gamser, January 31, 1978.

### **C-26042 Regional Arbitrator Ames June 23, 2005**

The Arbitrator, after a careful examination of the evidence presented finds no basis to restrict or limit 204b Supervisor Beltran 's "out- of-schedule back pay to the 14 days previous to the filing of the grievance." The Service has not shown by a preponderant standard of evidence that the grievant or her Union was aware prior to filing its grievance on 12/27/04, that the Tustin Office maintained a practice of not paying 204b 's out- of- schedule pay in violation of Article 8 of the National Agreement.

The Union has presented credible evidence of it 's timely filing after first requesting and reviewing employee clock rings, then contacting members of the DRT Team, to determine the appropriate out- of- schedule pay regulations for 204b supervisors.

The evidence further demonstrates that the Tustin Office was aware of its ongoing violation and failure to pay out -of-schedule pay to 204b supervisors prior to this grievance.

And, then attempted to restrict and limit their full recovery of back wages under the guise of an existing past practice, where none existed or could exist, in direct violation of FLSA and the National Agreement. The grievant cannot be said to have voluntarily waived her right to out- of-schedule premium pay.

Prior National awards by Arbitrators Gamser [[C-00161](#)] (AB-C-3410 and Mittenthal [[C-00580](#)] (A8-W-939) support this view and stands for the long held proposition that employee 's detailed as 204b supervisors are entitled to their out- of- schedule premiums, when detailed as temporary supervisors under Article 8, Section 4-B of the Agreement. The clear and specific language of Section 4-B precludes any reviewing authority, such as an arbitrator, from denying payments of overtime to employees for the time worked outside of their regularly scheduled work week at the request of the Employer.

### **C-21881 Regional Arbitrator Rosen April 9, 2011**

Management improperly denied the Grievant's bid for the T-6 position. The bid she submitted clearly contained all the requested information necessary for management to determine she was the successful bidder. Management shall rectify this matter by treating her as a T-6 effective November 6, 1999, and it shall make her whole for all losses of pay and benefits caused by that denial.

### **C-17692 Regional Arbitrator Zigman**

**November 29, 1997**

The grievance is sustained and the grievant, Cynthia White shall be entitled to a monetary remedy for lost wages representing the difference in hourly pay between the route 0194 T-6 assignment which she should have been placed into and the hourly pay in the assignment that she worked in during the period from July 31 until September 23, 1994.

### **C-19778 Regional Arbitrator Roberts**

**May 17, 1997**

Being that the Grievant was assigned as a 204B for the entire period of 12 March 1996 to 22 April 1996, he is entitled to the higher level 16 rate of pay for the entire period.

## **City Carrier Assistants**

### **M-01833 Joint Questions and Answers**

**March 6, 2014**

Question 45: Are CCAs entitled to higher level pay under Article 25 of the National Agreement?

No.

### **M-01833 Joint Questions and Answers**

**March 6, 2014**

Question 46 How does a CCA who is hired as a grade CC-01 receive proper compensation when assigned to a City Carrier Technician (grade CC-02) position?

In such case the CCA's PS Form 50 must be revised to reflect that he/she is assigned to a Carrier Technician position. This will require designation to the proper City Carrier Assistant Tech occupational code (either 2310-0047 or 2310-0048).

**41.2.B.3.** duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

**41.2.B.4.** Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned. City carrier assistants may exercise their preference (by use of their relative standing as defined in Section 1.f of the General Principles for the Non-Career Complement in the Das Award) for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned that are not selected by eligible career employees.

**41.2.B.5.** A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

**Opting on Temporary Vacancies.** Article 41.2.B.3, 41.2.B.4 and 41.2.B.5 provide a special procedure for exercising seniority in filling temporary vacancies in full-time duty assignments. This procedure, called “opting,” allows carriers to “hold down” vacant duty assignments of regular carriers who are on leave or otherwise unavailable to work for five or more days.

Full-time reserve, full-time flexibles and unassigned full-time letter carriers may opt on vacancies of fewer than five days where there is an established local past practice. (Article 41.2.B.3)

**Eligibility for opting.** Full-time reserve letter carriers, full-time flexible schedule letter carriers, unassigned full-time carriers, part-time flexible carriers, and city carrier assistants may all opt for hold-down assignments.

All unassigned regulars have opting rights, regardless of the reason for the unassigned status (Step 4, H94N-4H-C 96007241, September 25, 2000, M-01431).

## City Carrier Assistants

General opting rules for CCAs are further addressed by the parties’ Joint Questions and Answers, March 6, 2014. M-01833

### **M-01833 Joint Questions and Answers March 6, 2014**

**Question 64: Will CCAs be allowed to opt on (hold-down) vacant duty assignments?**

Yes, after April 10, 2013.

**Question 65: Is there a waiting period for a new CCA (no former experience as a career city letter carrier or city carrier transitional employee) before the employee can opt on a hold-down?**

Yes, 60 calendar days from the date of appointment as a CCA. Once the CCA has met this requirement there is no additional waiting period for applying for/being awarded a hold-down when the employee is converted to career.

**Question 66: Is there a difference in the application of opting (hold-down) rules between part-time flexible city carriers and CCAs?**

No.

**Question 67: Can a CCA be taken off an opt (hold-down) in order to provide a part-time flexible employee assigned to the same work location with 40 hours of straight-time work over the course of a service week (Article 7, Section 1.C)?**

Yes, a CCA may be “bumped” from an opt if necessary to provide 40 hours of straight-time work over the course of a service week to part-time flexible letter carriers assigned to the same work location. In this situation the opt is not terminated. Rather, the CCA is temporarily taken off the assignment as necessary on a day-to-day basis.

**Question 68: What is the pecking order for awarding hold-down assignments?**

Hold-down assignments are awarded to eligible career letter carriers by highest to lowest seniority first and then to eligible CCAs by highest to lowest relative standing in the installation.

**Question 69: Will the 5-day break in service between 360-day terms end an opt (hold-down)?**

No.

**Question 70: Does the 5-day break at the end of a 360-day appointment create another opt (hold-down) opportunity?**

Only where the break creates a vacancy of five work days. In such case the opt is for the five day period of the break.

### **M-01431 Step 4 September 25, 2000, H94N-4H-C 96007241**

The issue in this grievance is whether unassigned regulars may opt pursuant to Article 41.2.B.3 if their unassigned status is not the result of the elimination of their duty assignment.

The parties mutually agreed that the language of Article 41.2.B.3 and 41.2.B.4 intended three categories of employees part-time flexible carriers, full-time reserve carriers, and unassigned regulars, regardless of the reason for the unassigned status.

Although Article 12.3 of the National Agreement provides that “an employee may be designated a successful bidder no more than seven (7) times” during the contract period, a national settlement (H1N-1E-C 25953, May 21, 1984, [M-00513](#)) establishes that these restrictions do not apply to the process of opting for vacant assignments. Moreover, opting is not “restricted to employees with the same schedule as the vacant position” (H1N-1J-C 6766, April 17, 1985, [M-00843](#)). Rather, an employee who opts for a hold-down assignment assumes the scheduled hours and non-scheduled day of the opted assignment. (See “Schedule Status,” below.)

### **M-00513 Step 4**

**May 21, 1984, H1N-1E-C 25953**

The bidding restrictions of Article 12, Section 3, pertain only to those positions posted for bid pursuant to Article 41, Section 1.B.2. Other types of local in section bidding or bidding pursuant to Article 41, Section 2.B, are not included.

### **M-00843 Pre-arb**

**April 15, 1985, H1N-1J-C 6766**

Where temporary bargaining-unit vacancies are posted, employees requesting these details assume the hours and days off without the Postal Service incurring any out-of-schedule liability. The bargaining-unit vacancies will not be restricted to employees with the same schedule as the vacant position.

National Arbitrator Bernstein held (H1N-3U-C 10621, September 10, 1986, [C-06461](#)) that an employee may not be denied a hold-down assignment by virtue of his or her potential qualification for overtime pay. For example, an employee who works forty hours Saturday through Thursday is eligible for a hold-down which begins on Friday even though he or she will earn overtime pay for work in excess of forty hours during the service week. If a full-time letter carrier on the ODL works overtime solely as a result of such circumstances, the overtime is not counted or considered in determining equitability at the end of the quarter under the provisions of Article 8.5.C.2.b.

### **C-06461 National Arbitrator Bernstein September 12, 1986, H1N-3U-C 10621**

First Issue: “Sections 3 and 4 of Article 41.2.B allow reserve and part-time flexible letter carriers to use their seniority to obtain five day assignments. There are no exceptions or qualifications in the language that would indicate that the sections apply only to potential bidders who can work the assignments without departing from

straight time pay status.”

**Second Issue:** “A reserve letter carrier was awarded a route that included off-days of Friday, Saturday, and Sunday during the week he worked it. However, he was assigned to work on the non-scheduled Saturday of that, to give him a full 40 hour work week. He is seeking overtime pay for being forced to work out of his assigned schedule”

“The Union recognizes that this case has merit only if the Arbitrator decides that a reserve or part-time carrier who bids successfully on a five day vacancy thereby steps into the pay status of the carrier he or she replaced. The Arbitrator makes no such ruling. Consequently this grievance must be denied.”

### **M-00186 Step 4**

**July 25, 1979, N8-W-0010**

The meaning and intent of Article 41, Section 2.B.4, of the 1978 National Agreement is to have part-time flexible letter carriers assume the hours of duty and the schedule of work days of the full-time carrier whose assignment is being covered.

### **M-00960 Step 4**

**February 7, 1990, H7N-4J-C 19083**

The issue in this grievance is whether management violated the National Agreement by permitting a carrier who “opted” for an assignment under provisions of Article 41.2.B to work overtime, rather than a carrier on the overtime desired list.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Accordingly we agreed to remand this case to the parties at Step 3 for application of Arbitrator Bernstein's award in Case No. H1N-3U-10621, et. al. ([C-06461](#)).

### **M-00066 Step 4**

**October 31, 1985, H4N-4B-C 3322**

Full-time reserve carriers and part-time flexible carriers are restricted to exercising their preference for craft duty assignments under Article 41, Section 2.B.3 and 4 of the 1984 National Agreement to their bid assignment area and delivery unit assigned respectively.

### **M-00828 Step 4**

**May 24, 1988, H4N-5R-C 46648**

A Part-time Flexible letter carrier “on loan” to another office must be allowed to opt for hold-down assignments in the installation from which he was loaned.

### **M-00091 Pre-arb**

**April 15, 1985, H1N-1J-C 6766**

Where temporary bargaining-unit vacancies are posted, employees requesting these details assume the hours and days off without the Postal Service incurring any out-of-schedule liability. The bargaining-unit vacancies will not

be restricted to employees with the same schedule as the vacant position.

An otherwise qualified employee on light duty may not be denied hold-down assignments as long as the employee can perform all the duties of the assignment.

Some employees are not permitted to opt. Probationary employees may not opt (H8N- 2W-C 7259, November 25, 1988, [M-00594](#)). Carriers acting in 204b supervisory positions may not opt for hold-down positions while in a supervisory status (Step 4, H1N-4B-C 16840, October 24, 1983, [M-00552](#)). A national pre-arbitration settlement (H1N-5W-C 26031, January 12, 1989, [M-00891](#)) established that an employee's supervisory status is determined by Form 1723, which shows the times and dates of an employee's 204b duties.

**M-00594 Step 4**  
**November 25, 1980, H8N-2W-C 7259**

Probationary employees are not entitled to exercise preference rights for a hold-down duty assignment pursuant to Article XLI, Section 2.B.4.

**M-00552 Step 4**  
**October 24, 1983, H1N-4B-C 16840**

While an employee is in a 204B supervisory status, he or she cannot exercise a bid preference for a temporary assignment available under Article 41, Section 2.B.3 or 2.B.4.

**Duty Assignments Eligible for Opting.** Vacancies in full-time Grade One assignments, including Reserve Regular assignments, are available for opting. When a Reserve Regular letter carrier opts on an available assignment, his/her temporarily vacated Reserve Regular position becomes available for opting if vacated for five days or more. However, as is the case with any opt, a carrier on an opt for a Reserve Regular assignment must work the assignment for its duration and is not eligible to opt on any other assignments for the duration of the opt. Vacant routes under consideration for reversion are available for opting until they are reverted or filled, provided the anticipated vacancy is for five days or more (Step 4 H0N-5R-C 6380, January 21, 1993, [M-01128](#)).

**M-01128 Step 4**  
**January 21, 1993, H0N-5R-C 6380**

The issue in this grievance is whether management violated the National Agreement by not allowing carriers to opt on a route while it was under consideration for reversion.

During our discussion, we mutually agreed that routes under consideration for reversion, when they are of anticipated duration of five days or more, will be made available for opting until they are reverted or posted for bid.

**M-00510 Step 4**  
**June 8, 1984, H1N-3P-C 30206**

Management may not utilize a PTF letter carrier on an available full-time craft duty assignment of anticipated duration of five days or more for training purposes, rather than allow employees to exercise preference by seniority pursuant to Article 41, Section 2.B., of the 1981 National Agreement.

**M-00595 Step 4, April 10, 1980, N8-W-0278**

Management may not refuse to allow opting as provided in Article 41, Section 2.B.3 and 2.B.4 in order to reserve the assignment for the training and performance evaluation of probationary employees.

**M-00914 Step 4**  
**April 13 1989, H4N-2L-C 45826**

The issue in these grievances is whether management violated the National Agreement when it refused to post several potential opt assignments claiming the assignments were reserved for limited duty. We mutually agreed that no national interpretive issue is fairly presented in these cases. We further agreed that there is not authority for management to withhold routes "reserved" for limited duty.

**M-00157 Pre-arb**  
**February 28, 1980, N8-W-0101**

For Article 41, Section 2.B.3 and 4 purposes, a five day vacancy did exist even though it was not within the confines of the service week.

**M-00749 Step 4**  
**November 22, 1982, H1N-3W-C 8041**

Available full-time regular Reserve Letter Carrier assignments of anticipated duration of five days or more are open for opting under the provisions of Article 41, Section 2.B.3. and 4. See also [M-00037](#)

However, not all anticipated temporary vacancies create opting opportunities. Carrier Technician positions are not available for opting because they are higher level assignments which are filled under Article 25 of the National Agreement. Auxiliary routes are not available as hold-downs because they are not full-time. (Step 4, H8N-5B-C 14553, May 15, 1981, [M-00625](#)) Full-time flexible positions are not subject to opting because they are not bid assignments.

**M-00625 Step 4**  
**May 7, 1981, H8N-5B-C 14553**

Article 41 Section 2B3, 4, 5 does not require management to make auxiliary routes available for opting purposes.

Except where a local past practice provides for a shorter period, vacancies lasting less than five days need not be filled as hold-downs. Clarifying the meaning of this five-

## HOLD-DOWN ASSIGNMENTS—OPTING

day requirement, National Arbitrator Kerr held that opting is permitted when vacancies are expected to include five or more work days, rather than vacancies that span a period of five calendar days but may have fewer than five days of scheduled work. (W1N-5G-C 11775, March 20, 1986, C-05865) However, these anticipated five days may include a holiday (H8N-4E-C 14090, July 1, 1982, M-00237)

### **C-05865 National Arbitrator Kerr March 20, 1986, W1N-5G-C 11775**

The phrase "Craft duty assignments of anticipated duration of five (5) days or more" in Article 41.2.B 3 and 4 means assignments of work duty of five days or more rather than of work duty during the course of five days or more.

### **M-00237 Pre-arb July 1, 1982, H8N-4E-D 14090**

A temporary vacancy of five (5) days or more that includes a holiday may be opted for, per Article 41, Section 2.B.

An employee does not become entitled to a hold-down assignment until the "anticipated" vacancy actually occurs. Thus, an employee who successfully opts for a vacancy that fails to materialize is not guaranteed the assignment.

### **Temporarily Vacant Carrier Technician Assignments.**

Temporarily vacant Carrier Technician assignments are not filled under the opting provisions of Article 41.2.B.3 & 41.2.B.4. Rather, they are higher level assignments filled under the provisions of Article 25. (Step 4, H8N-3PC 25550, May 6, 1981, M-00276)

### **M-00276 Step 4 May 6, 1981, H8N-3P-C 25550**

Temporary T-6 positions are higher level assignments and are not subject to Article 41, Section 2.B.3-4-5. As such they are to be filled per the provisions of Article 25, National Agreement.

**Posting and Opting.** The National Agreement does not set forth specific procedures for announcing vacancies available for hold-downs. However, procedures for announcing vacancies and procedures for opting for hold-down assignments may be governed by Local Memorandums of Understanding (LMOU) or past practice (Memorandum, February 7, 1983, M-00446). The LMOU or past practice may include: method of making known the availability of assignments for opting, method for submission, a cutoff time for submission, and duration of hold-down. In the absence of an LMOU provision or mutually agreed-upon local policy, the bare provisions of Article 41.2.B apply. In that case, there is no requirement that management post a vacancy, and carriers who wish to opt must

learn of available assignments by word of mouth or by reviewing scheduling documents.

### **M-00446 Memorandum of Agreement February 7, 1983**

In full and final settlement of all impasse issues pending at the regional level on the subject of filling available craft duty assignments of anticipated duration of (5) days or more pursuant to Article 41, Section 2.8.3.4, of the 1981 National Agreement, the parties hereby enter into the following agreement.

The parties at the national level hereby agree that impasses on this issue pending arbitration at the regional level are to be returned to the local parties for discussion and resolution. The parties at the local level shall meet to discuss the matter and shall develop for use locally:

- (a) A method for making known the availability of temporary assignments of an anticipated duration of (5) days or more whenever reasonable advance notice is given to the employer of the intended vacancy.
- (b) A method for submission of preference for such assignments to the delivery unit to which the employees are assigned.
- (c) A cutoff time for submission of preference by those employees wishing to be considered for available craft duty assignments of anticipated duration of (5) days or more.

**Duration of Hold-Down.** Article 41.2.B.5 provides that once an available hold-down position is awarded, the opting employee "shall work that duty assignment for its duration." An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns, even if only to perform part of the duties—for example, to case but not carry mail.

**Exceptions to the Duration Clause.** There are situations in which carriers temporarily vacate hold-down positions for which they have opted—for example for vacation. Such an employee may reclaim and continue a hold-down upon returning to duty. (Step 4, H4N-3U-C-26297, April 23, 1987, M-00748) If the opting employee's absence is expected to include at least five days of work, then the vacancy qualifies as a new hold-down within the original hold-down. Such openings are filled as regular hold-downs, such that the first opting carrier resumes his or her hold-down upon returning to duty—until the regular carrier returns.

### **M-00748 Step 4 April 23, 1987, H4N-3U-C 26297**

Whereas the original opting employee went on vacation for five days or more within the original opting duration, the assignment should have been made available as a hold-

down to other employees during the absence. Upon return from the annual leave of five days or more, the employee who first opted for the vacancy should have been allowed to return to the hold-down for completion of the original vacancy duration. See also [M-00268](#)

### **C-09187 National Arbitrator Britton July 21, 1989, H4N-1W-C 34928**

For the reasons given, the grievance is sustained and the Employer is directed to adhere to the findings made herein, namely, that a part-time flexible city letter carrier on a hold-down who accepts a 204b detail retains the contractual right to the hold-down until the hold-down is awarded to another carrier pursuant to the provisions of Article 41, Section 2B4 of the National Agreement; and under the language of Article 41, Section 1.A.1, within five working days of the day that the hold-down becomes vacant as a result of a carrier accepting a 204b detail, the hold-down must be reposted for the duration of the remainder of the original vacancy.

An opting employee may bid for and obtain a new, permanent full-time assignment during a hold-down. A national prearbitration settlement (H1N- 5G-C 22641, February 24, 1987, [M-00669](#)) established that such an employee must be reassigned to the new assignment. If there are five or more days of work remaining in the hold-down, then the remainder of the hold-down becomes available to be filled by another opting carrier.

### **M-00669 Step 4 February 24, 1987, H1N-5G-C 22641**

Full-time reserve and unassigned regular letter carriers occupying a hold-down position pursuant to the provisions of Article 41.2.B.3 have the right to bid for a full-time duty assignment. If such letter carrier is the successful bidder, he shall be placed into the duty assignment pursuant to the provisions of Article 41.1.C.3. The resultant vacant hold-down will be filled pursuant to the provisions of Article 41.2.B.3-5, provided the anticipated duration of the resultant vacancy is of five (5) days or more.

An employee on a hold-down assignment may accept a temporary supervisory position (204b). However, the hold-down must be reposted for the duration of the remainder of the original vacancy provided it is for five days or more. A carrier who has accepted a 204b detail only retains the right to the hold-down until it is awarded to another letter carrier.

An employee on a hold-down assignment may voluntarily terminate the assignment to accept a higher level assignment under the provisions of Article 25. In such cases, the vacancy must be made available for opting for the duration of the original vacancy, provided it is for five days or more.

**Involuntary Reassignment and Hold-Downs.** The duration provision in the National Agreement generally prevents the involuntary removal of employees occupying continuing hold-down positions.

National Arbitrator Bernstein (H1N-3U-C 10621, September 10, 1986, [C-06461](#)) held that an employee may not be involuntarily removed from (or denied) a hold-down assignment in order to prevent his or her accrual of overtime pay (See “Eligibility for opting”). For example, suppose an employee who worked eight hours on a Saturday then began a forty hour Monday-through-Friday hold-down assignment. Such an employee may not be removed from the hold-down even though he or she would receive overtime pay for the service week.

Article 41.1.A.7 of the National Agreement states that unassigned fulltime regular carriers may be assigned to vacant residual full-time duty assignments for which there are no bidders. However, National Arbitrator Mittenthal ruled that an unassigned regular may not be involuntarily removed from a hold-down to fill a residual full-time vacancy (H1N-3UC-13930, November 2, 1984, [C-04484](#)) Of course, management may decide to assign an employee to a residual vacancy pursuant to Article 41.1.A.7 at any time, but the employee may not be required, and may not volunteer, to work the new assignment until the hold-down ends.

### **C-04484 National Arbitrator Mittenthal November 2, 1984, H1N-3U-C 13930**

A carrier who successfully opts for an assignment is entitled to work the assignment for its duration, and management may not prematurely terminate the temporary assignment to move the carrier to a permanent assignment pursuant to Article 41, Section 1.A.7.

### **M-00791 Pre-arb October 29, 1987, H4N-3F-C 45541**

1) Full-time flexible letter carriers may exercise their preference by use of seniority for available craft duty assignments in accordance with the provisions of Article 41.2.B.3.

2) Notwithstanding the foregoing, if, prior to the exercise of his/her preference, a full-time flexible employee has been assigned a schedule for a service week by the preceding Wednesday in accordance with the Article 7 Memorandum of Understanding dated February 3, 1981, then the employee shall remain in that assignment for the balance of the service week before assuming the opted-for assignment.

3) In no event shall the employee be prevented from assuming the opted-for assignment for a period of more than one week.

## HOLD-DOWN ASSIGNMENTS—OPTING

**Removal From Hold-Down.** There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees and city carrier assistants may be “bumped” from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part-time or city carrier assistant employees if there is not sufficient work available for them on a particular day. (H1N-5D-C 6601, September 11, 1985, [M-00097](#))

### **M-00097 Pre-arb September 6, 1985, H1N-5D-C 6601**

Management may assign a reserve carrier to a temporary assignment of 5 days or more rather than honor the request of a part-time flexible provided it can be demonstrated that honoring the opt would result in insufficient work for the full-time regular.

In such situations, the part-time flexible or city carrier assistant employee’s opt is not terminated. Rather, the employee is temporarily “bumped” on a day-to-day basis. Bumping is still a last resort, as reflected in a Step 4 settlement. (H1N-5D-C 7441, October 25, 1983, [M-00293](#)), which provides that:

A PTF or city carrier assistant, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or “relays” of routes to make up a full-time assignment. Additionally, the route of the “hold-down” to which the PTF opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

### **M-00293 Step 4 October 25, 1983, H1N-5D-C 7441**

A PTF, temporarily assigned to a route under Article 41, Section 2B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time employee could be assigned. A regular carrier may be required to work parts or “relays” of routes to make up a full-time assignment. Additionally, the route of the “hold-down” to which the PTF opted, may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work. Absent the above conditions, the PTF who exercised a bid preference and was awarded the assignment in accordance with Article 41, Section 2B4, shall work that duty assignment for its duration.

### **M-00531 Step 4 December 5, 1984, H1N-1N-C 23934**

Once an employee has been assigned to a “hold-down” pursuant to the local procedures established in accord with the above-referenced memorandum, such employee should not be bumped from that assignment except

to provide an 8-hour assignment to a full-time regular employee who would otherwise be insufficiently employed. See also [M-00521](#), [M-00289](#), [M-01211](#), [M-00238](#), [M-00375](#)

### **M-00917 Step 4 April 13 1989, H7N-4G-C 7520**

We further agreed that a PTF temporarily assigned to a route under Article 41.2.B., shall work the duty assignment, unless there is no other eight hour assignment available to which a full time employee could be assigned. A regular carrier may be required to work parts or “relays” of routes to make up a FT assignment. Additionally, the route of the hold-down to which the PTF opted, may be pivoted if there is insufficient work available to provide a FT carrier with eight hours of work. Absent the above conditions, the PTF who exercised a bid preference and was awarded the assignment in accordance with Article 41.2.B.4., shall work that duty assignment for its duration.

### **M-01500 Pre-arb October 8, 2003, H98N-4H-C-01216386**

The issue in this grievance is whether management violated Article 41.2.B.4 of the National Agreement, when a part-time flexible (PTF) city letter carrier was taken off a “hold-down” assignment to provide work to a full-time city letter carrier on limited duty.

After reviewing this matter, we mutually agree that no national interpretive issue is presented in this case. We agree to remand this case to Step B with the following understanding.

Full-time employees when on limited duty as a result of a job-related illness or injury, may “bump” a PTF on a “hold-down” assignment (or portion of hold-down assignment) only if the duties on the “hold-down” assignment are included in the written/verbal (see ELM 545.32) limited duty assignment and there is no other work available to satisfy the terms of the limited duty assignment.

Consistent with page 41-13 of the Joint Contract Administration Manual the opt is not terminated the PTF is “bumped” on a day-to-day basis.

### **M-01126 Step 4 April 15, 1993, H7N-5R-C 32586**

We agreed that management may not remove a part-time flexible carrier from a hold-down assignment solely to avoid the payment of penalty overtime pay. We also agreed that this does not limit management’s right to remove a PTF carrier from a hold-down if there is insufficient work available to provide a full-time carrier with eight hours work.

Another exception occurs if the Local Memorandum allows the regular carrier on a route to “bump” the Carrier

## HOLD-DOWN ASSIGNMENTS—OPTING

Technician to another route when the regular carrier is called in on a non-scheduled day to work on his/her own route. In such cases, the Carrier Technician is allowed to displace an employee who has opted on an assignment on the technician's string if none of the other routes on the string are available. In such cases a part-time flexible or city carrier assistant employee's opt is not terminated. Rather, he/she is temporarily "bumped" on a day-to-day basis. (See Step 4, N8-N-0176, January 9, 1980, M-00154.)

### **M-00154 Step 4**

#### **December 14, 1979, N8-N-0176**

In the office in question when the regular route carrier is called in on his off-day to work his own route, he bumps the utility carrier to one of the other four routes in his string of routes. To enable the utility carrier to achieve the essence of his bid assignment, he will be allowed to displace an employee who has opted to cover an assignment under the provisions of Article 41, Section 2.B.3,4 and 5 as long as such route is one of the utility carrier's string of routes and if none of the other routes in his string are available.

**Note:** Whether or not the above settlement is applicable in a specific office can only be determined by referring to the applicable Local Memorandum of Understanding.

**PTF and CCA Pay Status and Opting.** Although a part-time flexible or city carrier assistant employee who obtains a hold-down must be allowed to work an assignment for the duration of the vacancy, he or she does not assume the pay status of the full-time regular carrier being replaced. A part-time flexible or city carrier assistant carrier who assumes the duties of a full-time regular by opting is still paid as a part-time flexible or city carrier assistant as appropriate during the hold-down. While they must be allowed to work the assignment for the duration of the vacancy, PTF's and city carrier assistants are not guaranteed eight hours daily or forty hours weekly work by virtue of the hold-down alone.

Nor do PTF's or city carrier assistants receive holiday pay for holidays which fall within the hold-down period by virtue of the hold-down. Rather, part-time flexibles they continue to be paid for holidays as PTFs per Article 11.7. City carrier assistants are not covered by Article 11.7.

**Schedule Status and Opting.** Employees on hold-downs are entitled to work the regularly scheduled days and the daily hours of duty of the assignment (H8N-1M-C 23521, June 2, 1982, M-00239). These scheduling rights assumed by all hold-down carriers, whether full-time or part-time, create some of the most perplexing problems in the opting process. In the area of schedule status, two key distinctions must be considered. First, there is a difference between a guarantee to work and a right to days

off. The second distinction involves the appropriate remedy when an opting employee is denied work within the regular hours of a hold-down.

### **M-00239 Step 4**

#### **June 2, 1982, H8N-1M-C 23521**

A part-time flexible who, pursuant to Article 41, Section 2.B of the 1978 National Agreement, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration. This includes the daily hours of duty of the assignment. See also M-01394.

**Scheduled Days and Opting.** The distinction between the guarantee to work certain scheduled days and the right to specific days off is important. An employee who successfully opts for a hold-down assignment is said to be guaranteed the right to work the hours of duty and scheduled days of the regular carrier. It must be noted, however, that days off are "assumed" only in the sense that a hold-down carrier will not work on those days unless otherwise scheduled. In other words, a hold-down carrier is not guaranteed the right to not work on non-scheduled days. Of course, this is the same rule that applies to the assignment's regular carrier, who may, under certain conditions, be required to work on a non-scheduled day.

For example, suppose there is a vacant route with Thursday as the scheduled day off. The carrier who opts for such a route is guaranteed the right to work on the scheduled work days, but is not guaranteed work on Thursday. This does not necessarily imply that Thursday is a guaranteed day off; the carrier on a hold-down may be scheduled to work that day as well, either on or off the opted-for assignment.

However, management may not swap scheduled work days with days off in order to shift hours into another service week to avoid overtime or for any other reason. To do so would violate the guarantee to work all of the scheduled days of the hold-down.

### **M-00404 Step 4**

#### **February 21, 1980, N8-W-0216**

Employees assuming the temporary assignment will assume the work schedule of the regular carrier including off-days and reporting time.

### **M-00686 Step 4**

#### **July 8, 1983, H1N-5B-C 11222**

It is management's position that although the grievant was awarded a five-day "hold-down" assignment that could have resulted in a short work week, the proper remedy was to adjust the schedule by having the employee work one of the non-scheduled days. Furthermore, because this adjustment was made to eliminate an under-time situation, the grievant is not entitled to out-of-schedule premium.

## **M-00353 Step 4**

**May 24, 1985, H1N-5G-C 24094**

A reserve carrier who does not opt for a "hold-down" shall nonetheless assume the schedule of the "hold-down" if management elects to assign the reserve carrier to the route or assignment anyway.

This settlement establishes the schedule a reserve letter carrier should work if assigned to a hold-down by management. It does not waive the carrier's entitlement to out-of-schedule pay. See [M-00940](#)

**Remedies and Opting.** Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.

In those circumstances in which a PTF worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional "cease and desist" resolution would be appropriate.

This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

## **Remedy for violations**

### **C-05287 Regional Arbitrator Rotenberg**

**November 1, 1985, C4N-4K-C 4007**

Where management improperly refused to honor opting requests of two PTFS carriers, management is ordered to make the carriers whole for any losses suffered as a result.

### **C-05821 Regional Arbitrator Rotenberg**

**March 24, 1986, C4N-4F-C 5526**

Where a PTFS carrier was bumped off opted-for assignment by regular called in to work, and where the PTFS was worked only six hours as a result, the PTFS is awarded two hours pay.

### **M-00720 Pre-arb**

**January 27, 1982, H8N-4E-C 13406**

The grievants (PTFS) were properly assigned in accordance with Article 41, Section 2.B.4. The grievants should have worked the assignments in question for the duration without changing days off of the assignment. Since the grievants worked on a scheduled day off, they should have worked six days in the week in question. Therefore, each grievant will be compensated for 8 hours of pay at the overtime rate in effect at the time the dispute arose. See also [M-00227](#), [M-00232](#), [M-00473](#), [M-00474](#).

**Regional Arbitration Awards:** The following awards are among those which held that monetary awards were appropriate remedies for violations of employees' rights to opt:

**C-04739** Leventhal, March 28, 1985

**C-05287** Rotenberg, November 1, 1985

**C-05821** Rotenberg, March 24, 1986

**C-06142** Britton, May 9, 1986

**C-06339** Dennis, June 19, 1986

**C-06395** Stephens, August 8, 1986

**C-06904** Jacobowski, March 6, 1987

**C-07001** Searce, April 8, 1987

**C-10181** Sobel, July 23, 1990

**C-10264** Parkinson, Sept. 4, 1990

**C-10710** Taylor, March 15, 1991

## 11.1 Section 1. Holidays Observed

The following ten (10) days shall be considered holidays for full-time and part-time regular scheduled employees hereinafter referred to in this Article as “employees”:

New Year’s Day  
Martin Luther King, Jr.’s Birthday  
Presidents Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veterans’ Day  
Thanksgiving Day  
Christmas Day`

Only full-time regular, full-time flexible and part-time regular employees receive holiday pay. Part-time flexible employees do not. Instead, as explained under Article 11.7, part-time flexible employees are paid at a slightly higher straight-time hourly rate to compensate them for not receiving paid holidays.

## 11.2 Section 2. Eligibility

To be eligible for holiday pay, an employee must be in a pay status the last hour of the employee’s scheduled workday prior to or the first hour of the employee’s scheduled workday after the holiday.

An employee who has been granted any paid leave is considered to be “in a pay status.”

## Section 3. Payment

11.3.A A. An employee shall receive holiday pay at the employee’s base hourly straight time rate for a number of hours equal to the employee’s regular daily working schedule, not to exceed eight (8) hours.

Full-time employees receive eight hours of holiday pay. Part-time regular employees scheduled to work a minimum of five days per service week are paid for the number of hours in their regular schedule. Part-time regular employees who are regularly scheduled to work less than five days per service week receive holiday pay only if the holiday falls on a regularly scheduled workday (ELM Section 434.421).

11.3.B B. Holiday pay is in lieu of other paid leave to which an employee might otherwise be entitled on the employee’s holiday.

Holiday pay “replaces” other approved paid leave which the employee would otherwise receive on the holiday. For example, employees who would otherwise receive sick or annual leave on the holiday would not have this time charged against their sick and annual leave balance.

## 11.4 Section 4. Holiday Work

A. An employee required to work on a holiday other than Christmas shall be paid the base hourly straight time rate for each hour worked up to eight (8) hours in addition to the holiday pay to which the employee is entitled as above described. B. An employee required to work on Christmas shall be paid one and one-half (1 1/2) times the base hourly straight time rate for each hour worked in addition to the holiday pay to which the employee is entitled as above described.

An employee who works on a holiday (except Christmas Day) or day designated as their holiday will be paid at the base straight-time rate for each hour worked, up to eight. Overtime is paid for work in excess of eight hours. (ELM Section 434.53(a)) Regular employees who are required to work on Christmas Day or their designated Christmas holiday are paid an additional 50 percent of their base hourly straight time rate for up to eight hours of Christmas worked pay, in addition to their holiday worked pay. Part-time flexible employees receive an additional 50 percent Christmas worked pay for hours actually worked on Christmas Day—December 25. (ELM Section 434.52).

**Guarantees.** A full-time employee who is “called in” to work on a holiday or a day designated as the employee’s holiday is guaranteed eight hours of work (or pay if there is less than eight hours of work available).

## 11.5 Section 5. Holiday on Non-Work Day

A. When a holiday falls on Sunday, the following Monday will be observed as the holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as the holiday.

B. When an employee’s scheduled non-work day falls on a day observed as a holiday, the employee’s scheduled workday preceding the holiday shall be designated as that employee’s holiday.

## 11.6.A Section 6. Holiday Schedule

A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

Beginning with the 1987 National Agreement, Article 11 was changed to require posting of the holiday schedule as of Tuesday preceding the week in which the holiday falls. Earlier decisions, although referring to Wednesday, may be understood to mean Tuesday.

B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and

## HOLIDAYS

part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.

11.6.C C. An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based on an extreme emergency situation and is excused by the Employer.

D. Qualified CCAs will be scheduled for work on a holiday or designated holiday after all full-time volunteers are scheduled to work on their holiday or designated holiday. They will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a nonscheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. If the parties have locally negotiated a pecking order that would schedule full-time volunteers on a nonscheduled day, the Local Memorandum of Understanding will apply.

The intent of Article 11.6 is to permit the maximum number of full-time regular, full-time flexible and part-time regular employees to be off on the holiday should they desire not to work while preserving the right of employees who wish to work their holiday or designated holiday.

Article 11.6.B provides the scheduling procedure for holiday assignments. Keep in mind that Article 30.B.13 provides that “the method of selecting employees to work on a holiday” is a subject for discussion during the period of local implementation. The Local Memorandum of Understanding (LMOU) may contain a local “pecking order.” In the absence of LMOU provisions or a past practice concerning holiday assignments, the following minimum pecking order should be followed:

- 1) All part-time flexible employees to the maximum extent possible, even if the payment of overtime is required.
- 2) All full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have volunteered to work on their holiday or their designated holiday—by seniority.
- 3) City carrier assistant employees.
- 4) All full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have volunteered to work on their non-scheduled day—by seniority.
- 5) Full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have not volunteered on what would

otherwise be their non-scheduled day—by inverse seniority.

- 6) Full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have not volunteered on what would otherwise be their holiday or designated holiday—by inverse seniority.

Adverse inferences concerning whether a “pecking order” contained in an LMOU is in conflict or inconsistent with the language of Article 11.6 should not be drawn solely because the parties at the national level have agreed to a “default pecking order.”

See also [M-01343](#)

The reference to LMOU’s refers to Article 30.B.13 which provides that the local parties may bargain concerning “the method of selecting employees to work on a holiday.”

**Holiday Schedule Posting.** The provisions of Article 11.4.A concerning straight-time pay for holiday work apply to all full-time employees whose holiday schedule is properly posted in accordance with this section. If the holiday schedule is not posted as of Tuesday preceding the service week in which the holiday falls, a full-time employee required to work on his or her holiday or designated holiday, or who volunteers to work on such day, will receive holiday scheduling premium for each hour of work, up to eight hours. However, the ELM Section 434.53.c(2) provides that:

ELM 434.53.c(2) In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises that requires the use of manpower on that holiday in excess of that scheduled in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) do not receive holiday scheduling premium.

Additionally, if a full-time employee replaces another *full-time employee* who was scheduled to work and calls in sick or is otherwise unable to work after Tuesday deadline, the replacement employee *is not eligible* for holiday scheduling premium. This is true even if the employee being replaced was on a regular work day (rather than a holiday or designated holiday). In B90N-4B-C 94029392, November 28, 1997 (C-17582) National Arbitrator Snow ruled that “...whether the replaced employee is scheduled for a regular day or for his or her holiday is of no consequence with regard to the application of Employee and Labor Relations Manual Section 434.533(c).” Note: This is currently ELM Section 434.53.c(3)

Full-time employees who are scheduled after the Tuesday deadline to replace a properly scheduled *part-time flexible employee* who calls in sick or is otherwise unable to work are eligible for holiday scheduling premium. (Step 4, NC-C-4322, April 14, 1977, [M-00150](#)).

The posting of a holiday schedule on the Tuesday preceding the service week in which the holiday falls is to include part-time flexible employees who at that point in time are scheduled to work on the holiday in question. If additional part-time flexible employees are scheduled after the Tuesday posting, there is no entitlement to additional compensation for those part-time flexible employees who are scheduled after the posting deadline.

Arbitrator Mittenthal held in H4N-NA-C 21 (2nd Issue), January 19, 1987 ([C-06775](#)) that a regular employee who volunteers to work on a holiday or designated holiday has only volunteered to work eight hours. A regular volunteer cannot work beyond the eight hours without supervision first exhausting the ODL. He also ruled that management may not ignore the holiday "pecking order" provisions to avoid the payment of penalty overtime and remanded the issue of remedy for such violations to the parties. The relationship between Article 11 and the overtime provisions of Article 8 is discussed further under Article 8.5.

The Memorandum of Understanding dated October 19, 1988 ([M-00859](#)) provides:

The parties agree that the Employer may not refuse to comply with the holiday scheduling "pecking order" provisions of Article 11.6 or the provisions of a Local Memorandum of penalty overtime. The parties further agree to remedy past and future violations of the above understanding as follows.

- 1) Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.
- 2) For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11.6, or pursuant to a Local Memorandum of Understanding, at the rate of pay the employee would have earned had he or she worked on that holiday.

While Mittenthal ruled that it was a violation to ignore the "pecking order" to avoid payment of penalty overtime, he did indicate that "...the Postal Service can, of course,

choose from among the part-time flexible (or from among the regular volunteers, etc.) in order to limit its labor cost. That kind of choice would not conflict with the 'pecking order'."

National Arbitrator Fasser ruled in NCC-6085, August 16, 1978 ([C-02975](#)) on the appropriate remedy for violations of Article 11.6. He found that when an employee who volunteered to work on a holiday or designated holiday is erroneously not scheduled to work, "the appropriate remedy now is to compensate the overlooked holiday volunteer for the total hours of lost work."

**C-00928 National Arbitrator Mittenthal April 15, 1983, H8C-5D-C 14577**

Management must follow the pecking order in Article 11 Section 6 in scheduling for holiday coverage. However, if additional employees are needed after the schedule has been posted, management may use employees from the OTDL rather than holiday volunteers. See also [M-01186](#)

**M-00366 Step 4 January 10, 1980, N8-C-0191**

There is no contractual obligation to utilize the Overtime Desired List when scheduling for holiday coverage. See also [M-00168](#).

**C-06775 National Arbitrator Mittenthal January 19, 1987, H4C-NA-C 21, "Second Issue"**

Management may not ignore the "pecking order" in holiday period scheduling under Article 11, Section 6 in order to avoid penalty overtime pay under Article 8. Management may not treat regular volunteers for holiday period work as having volunteered for up to twelve hours on whatever day(s) they are asked to work.

**C-00940 National Arbitrator Gamser December 22, 1979**

The Postal Service has no obligation to notify persons whose names are not on the holiday schedule posting on the Wednesday [now Tuesday] preceding the holiday that they are not required to work on the holiday.

**M-00152 Step 4 August 31, 1977**

Article XI, Section 6 of the National Agreement is written to allow as many full-time regular schedule employees off on a holiday as practicable. In the absence of a Local Memorandum of Understanding holiday volunteers may be selected in any order deemed appropriate.

**C-17582 National Arbitrator Snow November 28, 1997**

The exception in ELM Section 434.533(c) applies whether the replaced full-time employee was scheduled for a regular day or a holiday.

**M-00340 Step 4 July 16, 1974, NBS 1739**

There is no provision which provides for the assignment of "best qualified" employees to perform carrier work on a

holiday.

## **M-00400 Step 4 July 16, 1974, NBS 1739**

In the absence of any local memorandum of understanding providing to the contrary, full-time and part-time regular letter carriers who wish to work on a holiday must be afforded an opportunity to do so before arbitrarily assigning employees to work on their designated holiday.

## **M-00946 Step 4 October 6, 1989, H7N-1R-C-6142**

We agreed that management has an obligation to post a holiday schedule for December 25.

## **M-00871 Pre-arb January 10, 1989, H4N-5K-C 38796**

Holiday scheduling provisions, whether found in Article 11.6 of the National Agreement or in a Local Memorandum of Understanding apply to actual as well as designated Holidays.

## **M-01293 Step 4 March 31, 1998**

Donated leave under the leave share program is considered paid status for holiday leave purposes

## **C-00146 Regional Arbitrator Leventhal March 14, 1985, W1C-5G-C 6261**

Management violated a valid local memorandum of understanding when it did not schedule regular volunteers for holiday work, but instead scheduled PTFs employees.

## **C-11270 Regional Arbitrator Eaton W7N-5D-C 26075, October 9, 1991**

Management did not violate the contract when it worked the grievant off his bid assignment on his designated holiday.

## **C-09421 Regional Arbitrator P.M. Williams**

Management did not violate the national or local agreement when it worked 5 PTFs on a holiday, rather than 5 senior regular volunteers.

## **EL-401, Section 4.C.1 November 1983**

Full-time regular employees in the bargaining units are guaranteed 8 hours' work (or pay in lieu of work) if called in to work on their non-scheduled day, **holiday or designated holiday**. If such an employee works 6 hours and is then told by the supervisor to clock out because of lack of work, the remaining 2 hours or the employee's 8 hour guarantee is recorded as guaranteed time. (Emphasis added)

## **M-00155 Step 4 February 28, 1978, NCC 9687**

Management can call in an employee on holiday as a replacement for another employee properly scheduled for holiday work without impairing (sic) a 50% penalty

This settlement is consistent with ELM Section 434.533 which reads:

*434.533 (c) When a full-time employee who is scheduled to work on a holiday is unable or fails to work on the holiday, the supervisor may require another full-time employee to work such schedule, and such employee is not eligible for holiday scheduling premium.*

## **M-00150 Step 4 April 14, 1977, NCC 4322**

A properly scheduled part-time flexible employee was replaced on the holiday by a full-time regular employee after the part-time flexible advised of being ill and of his inability to report as scheduled. Under such circumstances, the full-time regular employee is entitled to be compensated an additional fifty percent (50%) of his basic hourly straight-time rate of pay for each hour worked on the holiday schedule up to eight hours.

## **M-01207 Step 4 August 4, 1994 E90N-4E-C 93023015**

The issue in this grievance is whether carriers must be permitted to carry their routes on a state holiday.

The parties mutually agreed that on days when the Post Office is closed for local observances, full-time carriers scheduled for duty who do not have approved leave, will be allowed to work. In such circumstances they will be allowed to work as much of their bid assignment as is available. It is the parties' understanding that, in this case, street delivery is not available. In the event there is insufficient work on their bid assignment to meet their work hour guarantee, they may be assigned work in accordance with Article 7, Section 2.B of the National Agreement.

## **11.7 Section 7. Holiday Part-Time Employee**

A part-time flexible schedule employee shall not receive holiday pay as such. The employee shall be compensated for the ten (10) holidays by basing the employee's regular straight time hourly rate on the employee's annual rate divided by 2,000 hours. For work performed on December 25, a part-time flexible schedule employee shall be paid in addition to the employee's regular straight time hourly rate, one-half (1/2) times the employee's regular straight time hourly rate for each hour worked up to eight (8) hours.

## **M-01275 Step 4 January 2, 1997**

The issue in this case is whether or not management must include part-time flexible carriers when posting a holiday schedule.

After reviewing this matter, we mutually agreed that the posting of a holiday schedule on the Tuesday preceding the service week in which the holiday falls shall include part-time flexible carriers who at that point in time are scheduled to work on the holiday in question. See also M-00936.

## **M-00898 Step 4 February 5, 1989, H7N-5R-C 4230**

Article 11, Section 6.B of the National Agreement requires

that, where operational circumstances permit, casual and PTF employees should be utilized in excess of eight (8) hours before any regular employees should be required to work their holiday or designated holiday.

## **M-00300 Step 4 April 1, 1985**

Part-time flexible employees while detailed to another facility may be utilized for holiday work, provided they possess the necessary skills needed to perform the required duties.

Both Article 11.1 & 11.7 provide that part-time flexible employees do not receive holiday pay. Instead, Article 11.7 provides that the holiday pay that regular carriers receive is "built into" the regular hourly rate for part-time flexible employees. This explains why a part-time flexible's hourly pay is always higher than that of a regular employee at the same level and step. Under the provisions of Article 11.7, the straight-time hourly rate for a part-time flexible is computed by dividing the annual salary for a full-time regular at that level and step by 2,000 hours, rather than the 2,080 figure used to calculate the full-time regular's hourly rate. The difference of eighty hours is exactly equivalent to a regular employee's pay for ten holidays.

For example: Effective November 17, 2001, a Grade 1, Step A fulltime regular carrier's annual salary was \$32,735. Dividing this by 2,080 results in a straight-time hourly rate for a full-time regular in that grade and step of \$15.74. However, dividing the same number by 2,000 results in a straight-time hourly rate for a Grade 1, Step A part-time flexible of \$16.37.

## **Remedies for Violations**

### **M-00859 Memorandum**

**October 19, 1988**

The parties agree that the Employer may not refuse to comply with the holiday scheduling "pecking order" provisions of Article 11, Section 6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime. The parties further agree to remedy past and future violations of the above understanding as follows.

1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.

2. For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11, Section 6, or pursuant to a Local Memorandum of Understanding, at the rate of pay the employee would have earned had he or she

worked on that holiday.

### **M-01591 Step 4 Settlement**

**January 13, 1981**

The question raised in this grievance involves whether the grievant, who volunteered to work on a holiday was properly passed over.

It was the position of the local office that the grievant was denied the opportunity to work his designated holiday because he lacked the necessary skills and knowledge of the city delivery route he would have been assigned. By virtue of the fact that the grievant is a letter carrier, in and of itself, makes him qualified to perform the duties on a city delivery route. Based on the fact circumstances of this instant case, it was mutually agreed to pay the grievant 8 hours of pay at the straight time rate.

### **C-02975 National Arbitrator Fasser**

**August 16, 1978, NCC 6085**

Proper remedy for Article 11 holiday scheduling violation is full pay for missed work.

### **C-03542 Regional Arbitrator Foster**

**May 12, 1983, S1N-3U-C 1824**

The Postal Service violated the contract by requiring the grievant to work on his designated holiday. The arbitrator granted the remedy requested by the union; "to grant Grievant 8-hours administrative leave to use at his discretion in the next twelve months."

### **C-00142 Regional Arbitrator Dobranski**

**June 21, 1983, C1C-4E-C 5244**

Where management improperly required an employee to work on a designated holiday, the appropriate remedy is either to pay the grievant an additional 50% or to excuse the grievant from the next mandatory holiday.

### **C-10690 Regional Arbitrator Eaton**

**August 13, 1990**

Where management failed to timely post a holiday schedule, an arbitrator has authority to grant a remedy "which is neither specifically authorized nor prohibited by the National Agreement."

### **C-28498 Regional Arbitrator Monat**

**October 15, 2009**

Management violated the National Agreement when they assigned Transitional Employees from South Mountain Station to another unit within the Phoenix installation and then forced non-volunteers at South Mountain to work during the holiday schedule. May 23, 2009. Each of the four grievants shall be granted eight (8) hours of administrative leave at his discretion, subject to the condition that Management must be given thirty days advance notice in order to plan for each absence. Furthermore, only one grievant at a time may take the administrative leave and only one per week.

### **C-02713 Regional Arbitrator Censi**

**June 23, 2007**

Management violated Article 11 of the National Agreement by forcing the grievant Newman to work her NSD day. The Service is ordered to pay the grievant an additional 50% of her base hourly straight time rate for all the hours she was required to work.

### **C-25914 Regional Arbitrator Clarke**

**April 25, 2005**

“The Union was able to establish that the Postal Service failed to work casuals and part-time flexibles to the maximum extent possible before calling in a full-time regular carrier to work on her designated holiday. The carrier who worked on her designated holiday shall be paid back pay at a fifty percent (50%) premium of her regular straight time rate for each hour she worked.”

# JOINT STATEMENT ON VIOLENCE

## **M-01242 Joint Statement on Violence and Behavior in the Workplace, February 14, 1992**

We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies or research projects.

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.

This is a time for a candid appraisal of our flaws and not a time for scapegoating, fingerpointing or procrastination. It is a time for reaffirming the basic right of all employees to a safe and humane working environment. It is also the time to take action to show that we mean what we say.

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats or bullying by anyone.

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect and fairness. The need for the USPS to serve the public efficiently and productively and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. "Making the numbers" is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.

We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity respect and fairness are basic human rights, and where those who do not respect those rights are not tolerated.

Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives.

## **M-01243 Second Joint Statement On Violence And Behavior In The Workplace**

In our Joint Statement of February, we affirmed our belief that dignity, respect and fairness are basic human rights, and we pledged our efforts toward a safer, more harmo-

nous, as well as a more productive workplace. Since then, we have continued to meet regularly and engage in an active dialogue on the issues addressed in that statement. We believe that effective communication and a cooperative spirit are the starting point for the resolution of the problems in our workplace.

It is essential to our efforts that the same discussions and cooperative efforts take place among representatives of management, postal unions, and management organizations at the region, division, and MSC levels, as well as at the national level. To the extent that representatives at those levels have not yet established an ongoing dialogue on these issues, we ask that you do so without further delay. The joint groups should focus on ways to foster safe, harmonious, and productive workplaces and, when a particular problem site is identified, the representatives should work together to eliminate the underlying problems.

In our discussions at the national level on problem sites, we concluded that problems are best addressed, and resolved, at the lowest possible level. Accordingly, if a problem site comes to our attention at the national level, we will refer it to the appropriate regional joint group for attention. An intervention will not be initiated at this level unless the regional or local parties are unable to resolve the problems at the site. This problem-solving approach is not intended as a substitute for existing dispute resolution processes, but as an informal, cooperative approach to significant workplace relationship problems wherever they may occur. We can and must work together to resolve the factors contributing to disputes in our workplace, and we expect our counterparts at all levels of the organization to work toward that end.

## **C-15697 National Arbitrator Snow Q90N-4F-C 94024977, August 16, 1996**

"[T]he Joint Statement on Violence and Behavior in the Workplace constitutes a contractually enforceable bargain."

"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."

## **M-01332 Step 4 June 25, 1998, A94N-4A-D 97120613**

Removals relating to violations of the Joint Statement Regarding Violence in the Workplace are properly scheduled and heard in regular arbitration.

## Court Decisions

### **M-01488 Sixth Circuit Court**

**June 4, 2003**

Decision upholding regional arbitration award (C-20643, below) demoting a supervisor for violation of the Joint Statement on Violence and Behavior in the Workplace. This is a case that should be submitted in arbitration cases involving the Joint Statement.

### **M-01518 United States Court of Appeals for the Fourth Circuit. November 5, 2002**

This decision reversed a decision by a lower court that the regional arbitration award of Arbitrator Raymond Britton in Clinton, Maryland (C-21913) case could not be upheld. The Fourth Circuit determined that the decision to remove the Postmaster should be upheld. This is a case that should be submitted in arbitration cases involving the Joint Statement.

See the [November 2003 NALC Arbitration Advocate](#) article "U.S. Courts Confirm Joint Statement." for a further discussion of these cases.

## Regional Arbitration Awards

### **C-16247 Regional Arbitrator Francis** **F90N-4F-C 94024977, December 28, 1996**

These cases were originally heard by Arbitrator Francis in April 1995. They involved a number of incidents in which the NALC alleged that a 204b had engaged in behavior that violated the Joint Statement. After the hearing the USPS advocate referred the cases to Step 4. These case became the interpretive vehicle for Arbitrator Snow to rule on the Joint Statement. In C-15697. After Snow issued his decision, the case was remanded to Arbitrator Francis, who ruled that the 204b had violated the Joint Statement. Arbitrator Francis declined to remove the 204b from her supervisory duties, based on her belief that the Postal Service had taken sufficient action. More importantly, Arbitrator Francis dismissed the Postal Service argument that she lacked the authority to take "administrative action" against managers who violate the Joint Statement.

### **C-21292 Regional Arbitrator Fields** **I94N-4I-C 99136168, November 1, 2000**

A supervisor yelled at the a letter carrier, waving his arms, calling him a liar and "unprofessional" and accusing him, unjustifiably, of almost running down a customer. The arbitrator ruled that the supervisor was a chronic abuser who violated the Joint Statement, and that a higher-level manager also violated the Joint Statement by failing to control the supervisor. Arbitrator Fields ordered the manager to apologize and punished the supervisor severely, suspending him from letter carrier supervision duties and ordering him to undergo a psychological fitness-for-duty examination and "anger management training." NALC ad-

vocates should cite Arbitrator Fields' powerful and beautifully written award in every case involving supervisory violations of the Joint Statement.

### **C-16162 Regional Arbitrator Wooters** **B90N-4B-C 96012210, December 10, 1996**

Arbitrator Wooters determined that a supervisor violated the Joint Statement when he called an employee a "coward" or, perhaps, "fucking coward." He concluded that the behavior was abusive and inappropriate regardless of which word was used. He ordered that the supervisor be counseled for his behavior, and warned that if a similar infraction were to occur, a remedy such as removal from administrative duties would be appropriate.

### **C-16518 Regional Arbitrator Devine** **A90N-1A-C 95063232, March 7, 1997**

This award was limited to a question of arbitrability. Arbitrator Devine discussed in detail how the Snow Award and a subsequent Award by Arbitrator Wooters (see C-16162, above) made clear that the union has a right to grieve and expect an appropriate remedy for violations of the Joint Statement.

### **C-16740 Regional Arbitrator Simmelkjaer** **A94N-4A-C 96040539, May 9, 1997**

The Arbitrator determined that the case was arbitrable and provided some good language on various types of remedies that are available and could be considered by an arbitrator.

### **C-17589 Regional Arbitrator Maher** **A94N-4A-C 97029875, December 13, 1997**

The Arbitrator found that a supervisor violated the Joint Statement and, despite Postal Service objections, required that the supervisor provide a letter of apology and that the award be posted on a bulletin board for ten days.

### **C-18283 Regional Arbitrator Zigman** **F94N-4F-C 96018527, May 9, 1998**

The Arbitrator ruled that a supervisor violated the Joint Statement and remanded to the case to the Postal Service to determine what, if any, corrective action should be taken. The Arbitrator concluded that while the supervisor violated the contract, the violations were minor in nature. An interesting note on this case is Arbitrator Zigman's decision to hold the union to the standard of proof (i.e. a preponderance of the evidence) that applies to the Postal Service in disciplinary cases.

### **C-19162 Regional Arbitrator Ames** **E90N-4E-C 94051426, February 19, 1999**

This case provides some very strong language concerning the due process rights of a manager. The case involved a long history of abuse by a Postmaster in numerous installations going back to the 1970s. The arbitrator ordered a wide-ranging set of remedies against the supervisor, including: counseling on the possession of fire-arms while

## JOINT STATEMENT ON VIOLENCE

on postal premises; counseling on the Joint Statement; both a physical and mental fitness for duty exam; restriction from supervising letter carriers except in emergency situations; and a written apology to the letter carriers in his installation.

### **C-19475 Regional Arbitrator Olson**

**F94N-4F-C 97074830, May 6, 1999**

The arbitrator found that a supervisor had violated the Joint Statement by grabbing a letter carrier's arm and yelling at him. The arbitrator required the supervisor to receive human relations training to assist him in complying with the Joint Statement.

### **C-20380 Regional Arbitrator Shea**

**B94N-4B-C 99231980, January 22, 2000**

The arbitrator found that management personnel violated the Joint Statement when they did nothing to prevent or stop the harassment of a letter carrier by a supervisor. The arbitrator also provided an excellent definition of harassment.

### **C-20536 Regional Arbitrator Talmadge**

**B94N-4B-C 98103846, March 14, 2000**

The arbitrator determined that a station manager violated the Joint Statement when on two occasions he verbally intimidated carriers. While Arbitrator Talmadge declined to remove the station manager from his administrative duties, because she believed to do so would be premature. The Arbitrator did require that the station manager issue a written apology and that such apology be posted for thirty days.

### **C-20643 Regional Arbitrator Bajork**

**H94N-4H-C 95041405, April 17, 2000**

The arbitrator rescinded the supervisor's promotion and denied him promotions for a five year period, based on serious Joint Statement violations. The arbitrators award in this case was upheld by the Sixth Circuit Court on June 4, 2003 (see [M-01488](#)).

### **C-20990 Regional Arbitrator Stephens**

**G94N-4G-C 98112857, August 26, 2000**

The arbitrator denied the union's request for punitive damages against the Postal Service for a supervisor's sexist comments to a female employee. The Arbitrator noted that the Service admitted in the grievance procedure that the supervisor had in fact acted as charged, and claimed that it had taken administrative/corrective action. What action was taken was not in the record. The arbitrator required as part of his remedy that the Postal Service provide the union with evidence of that action.

### **C-21120 Regional Arbitrator Poole**

**D94N-4D-C 98005421, September 18, 2000**

The Arbitrator ruled that a supervisor violated the Joint Statement when she abused, harassed, bullied and intimidated letter carriers. The arbitrator required that the super-

visor write an apology, that she be barred from supervising in the installation as long as the grievant worked there, that a copy of the arbitrator's decision be placed in the supervisor's OPF for a period of three years, and that the award be attached to any application for promotion for a like period.

### **C-21913 Regional Arbitrator Britton**

**K94N-4K-C 98111598, April 13, 2001**

The Arbitrator found that the Postmaster engaged in a physical altercation with a shop steward. The arbitrator ordered that the Postmaster be removed from the Postal Service. The Postal Service has filed a petition in federal court seeking to vacate the award on the grounds that the arbitrator exceeded his authority (pending as of January, 2002). This case should not be cited in arbitration before its status is determined

### **C-22009 Regional Arbitrator Lurie**

**D94N-4D-C 99281879, April 24, 2001.**

This case provides some excellent language concerning Title 5 (MSPB) and a supervisor's right to seek redress. The arbitrator rejected management claims that a remedy against a supervisor would violate the supervisor's Title 5 or constitutional due process rights.

### **C-22146 Regional Arbitrator Roberts**

**C94N-4C-C 98100429, May 18, 2001**

The arbitrator determined that a supervisor violated the Joint Statement. The grievant in this case was off work for a number of weeks as a result of the supervisor's actions. The arbitrator paid the grievant for the sick leave used, but did not award the punitive damages requested by the union.

### **C-25522 Regional Arbitrator Harris**

**October 13, 2004.**

The arbitrator ordered three supervisors suspended for three days each for violations of the Joint Statement.

See the [October 2004 NALC Arbitration Advocate](#) article "Supervisors Suspended for Joint Statement Violations." for a further discussion of this case.

### **C-27954 Regional Arbitrator Ames**

**December 9, 2008, F06N4FC08237439**

In the case before me, the Union has presented, without rebuttal by Management, a pattern, practice and history by Supervisor \*\*\*\*\* in failing to manage and supervisor employees under his supervision with the requisite dignity and respect as required not only under the M-39 Handbook, but also the JSOV. The evidence record is littered with prior settlement agreements, JSOV training classes, cease and desist orders and suspension of supervisory duties by Supervisor \*\*\*\*\* over the Letter Craft bargaining unit for a period of two years, with no corrective or lasting effect. As such, the Arbitrator finds that the appropriate remedy in this matter is to instruct and Order the Postal

## JOINT STATEMENT ON VIOLENCE

Service to bar Supervisor \*\*\*\*\* from any future supervision of members of the Letter Carrier Craft in the Pacific Area Region.

### **C-27976 Regional Arbitrator Zuckerman January 16, 2009, BO1N4BC08041671**

By removing \*\*\*\*\* from supervising the letter carriers in the South Station facility and having him supervise other letter carriers and/or employees of other crafts, the Arbitrator gives him another chance to comport himself. However, \*\*\*\*\* is on notice that by the terms of the Joint Statement, continued violations of that Statement can lead to his removal from the Postal Service.

See the [May 2009 NALC Arbitration Advocate](#) article "Joint Statement on Violence Revisited" for a further discussion of this case.

### **C-28061 Regional Arbitrator Ames February 6, 2009, F06N4FC08155769**

... it is the Arbitrator's remedy in this matter, that Manager \*\*\*\* is hereby restricted and shall be prohibited, from her day-to-day supervision of Carriers in the entire Stockton area. And, as a further remedy in this ongoing dispute, which has resulted in an atmosphere of open hostility and mistrust between Labor and Management, the Regional parties are hereby instructed to intercede in the Stockton Main-Westlane Stations, by appointing representatives with authority to address and resolve this hostile work environment. Neither party to this dispute can stand idly by and allow another potential Royal Oaks to occur, by failing to take appropriate and intervening action. The Regional parties are hereby instructed to act immediately. The Arbitrator shall also issue a Cease and Desist Order against further violation of Articles 17 and 31 by Local Management.

See the [May 2009 NALC Arbitration Advocate](#) article "Joint Statement on Violence Revisited" for a further discussion of this case.

### **C-28716 Regional Arbitrator Karen Jacobs February 2, 2010**

The management representative has identified the problem, but not recognized it. What he sees as the weakness in the Union's case is exactly the thing that the Joint Statement and the Union states needs to be addressed. How people feel as a result of the way they are treated IS the problem the Joint Statement is addressing. It IS subjective, it IS about how people are made to feel. "We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace." (Joint Statement, paragraph 4, emphasis added) That sentence goes on to prohibit acts of or threats of violence; and it also goes on to equally prohibit harassment, intimidation, threats, or bullying. These latter prohibitions are often subjective in nature. Paragraph 5 "affirm(s) that every employee at every level... should be treated at all times with

dignity, respect, and fairness." By their nature, these things are subjective (and, of course, are subject to tests of reasonableness.) Abuse and intolerance are not justified."

\*\*\*\*\*

I am not ordering counseling, because to be effective there must be a recognition that a problem exists. Neither Supervisor Welk nor management have that recognition. Rather, in relation to Supervisor Welk, I order the following: Rather, in relation to Supervisor Welk, I order the following: Supervisor Welk shall do street observation (including 3999s and brief street observations) no more than two times per carrier per calendar year. On those street observations, Supervisor Welk shall say absolutely nothing to the letter carrier, and shall remain at least 15 feet away from the letter carrier during the street observation. Supervisor Welk's activity in relation to the letter carrier on the street will be observation and note taking. Anything Supervisor Welk wants to say to the letter carrier will be said to the letter carrier the next work day, in the post office, in the presence of someone in a supervisory relationship to Supervisor Welk (ie, not a fellow supervisor of customer service) and a Union representative. Supervisor Welk shall be relieved of 'morning go round' duties unless he is accompanied by, and listened to by someone who is in a supervisory relationship to Supervisor Welk.

Any time Supervisor Welk mentions to a letter carrier anything similar to the things he has referred to as a discussion, a job discussion, or an official job description, or makes a criticism of the person or job performance of any letter carrier, that letter carrier has the right to immediately demand and get Union representation before Supervisor Welk can proceed with the conversation. Any letter carrier has a right to telephone or communicate by other means with management or the Union any time that these orders are not followed.

In any disciplinary action against any letter carrier that is initiated by, participated in by, or based on reports or statements from Supervisor Welk, the Postal Service shall not object to a copy of this award being made a part of the grievance packet for consideration at all levels.

I have intentionally not included a time limit on these orders. This is for several reasons. First, prior corrective measures did not work. Second, at the time of this arbitration, management did not see anything wrong with the workplace environment ~upervisorWelk created for the letter carrier who work for him. Therefore, the order is intended to limit and control the occasions on which Supervisor Welk has violated the Joint Statement.

### **C-29484 Regional Arbitrator Ames**

**May 20, 2011**

The Postal Service, through the conduct of Postmaster Chirayunon on July 2, 2010, did violate the Joint Statement on Violence and Behavior in the Workplace, the National Agreement and its supplements. Therefore the Postal Service is directed to remove the Postmaster from further supervision of the Carrier Craft at the Cupertino, California Post Office.

See also

[Letter Carrier Duties](#)  
[Cross Craft Assignments](#)  
[Express Mail](#)  
[Rural Routes](#)

Article 1, Section 1 of the National Agreement gives NALC exclusive jurisdiction over City Letter Carrier work.

## ARTICLE 1. UNION RECOGNITION

1.1 Section 1. Union The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level—City Letter Carriers.

The JCAM provides the following explanation:

The positions currently designated in the letter carrier craft—and thus within the jurisdiction of NALC for representational purposes—are listed in Article 41.1.A. Article 1.1 does not speak directly to the question of the precise jurisdiction of NALC or of those unions which are exclusive bargaining representatives for other groups of U.S. Postal Service employees.

As acknowledged in the JCAM, Article 1.1 provides little assistance concerning precise jurisdictional boundaries. However, further guidance is provided [C-03232](#) and [C-13791](#), two important national level jurisdiction awards.

### **C-03232 National Arbitrator Garrett** **August 30, 1974**

These [Postal Service] arguments, however skillful an exercise in semantics, overlook the consistent treatment of the City and Rural Carriers as separate "crafts" for purposes of collective bargaining. While their work in many instances may be virtually identical, this in no way can detract from the dominant fact that these two groups have been deemed to be separate "crafts" for many years, both in law and in practice.. Article VII, Section 2A, cannot be interpreted properly except in light of this firmly established meaning of the words "craft" and "crafts" as used therein. **This meaning does not lie in any abstract definition of either "craft." It can only be found in established practice in each given Post Office in assigning work to one or the other of the craft bargaining units..** If this interpretation somewhat limits the flexibility of Management to transfer work from City to Rural Carriers (and thus to change the type of service provided in given areas), it nonetheless is inescapable when Article VII, Section 2A is read in the context in which it was written.. Moreover, the basic policy thus reflected in this provision may well be essential to the maintenance of sound relationships between the Postal Service and the various Unions involved, as well as among the Unions themselves.

### **C-13791 National Arbitrators Mittenthal and Zumas,** **August 1, 1994, H7N-NA-C 42** **"Vienna/Oakton Virginia Case"**

The core of this ruling is that the jurisdiction of a "craft" is to be determined by the "established practice in each given Post office in assigning work" From the standpoint of jurisdiction, the customary way of doing things becomes the contractually correct way of doing things. Work always performed by rural carriers in a given area is presumptively within NRLCA's jurisdiction just as work always performed by city carriers in a given area is presumptively within NALC's jurisdiction. This heavy reliance on "practice" was a means of insuring the stability of each craft bargaining unit (Emphasis added)

## In General

### **C-00755 National Arbitrator Mittenthal** **December 8, 1982, H1C-4P-C 1792**

The assignment of a city carrier to mail distribution and other tasks at a lock box unit in Fargo, North Dakota did not violate the 1981 National Agreement.

### **C-03247 National Arbitrator Garrett** **January 17, 1977, NC-NAT-1576**

The arbitrator found that the Postal Service did not violate the National Agreement by having clerks sort mail for apartments buildings into "directs" and having the carrier separate the mail in the apartment mail room rather than in the office.

### **C-12786 National Arbitrator Snow** **February 19, 1993, H7N-1A-C 25966**

"[T]he Employer did not violate the parties' National Agreement when it made available temporary letter carrier transport duties [Bus Driver] to the Motor Vehicle Craft exclusively."

### **C-13007 National Arbitrator Snow** **May 20, 1993, H7C-NA-C 96**

The employer violated Article 4, Section 3 by failing to offer current employees the opportunity to apply for Remote Video Encoding work.

## Delivery

See also [Rural Routes](#)

### **M-01700 Memorandum of Agreement** **January 14, 2009**

This agreement concerns delivery jurisdiction in Buras, LA 70041. In a continuing effort to address the difficulties of providing mail delivery in the wake of hurricane Katrina the parties entered into a temporary agreement that allows the rural letter craft to service approximately 40 city delivery points. This agreement is in force for one year and will be reviewed at that time. (See also [M-01670](#), [M-01588](#))

## **M-01188 Step 4**

**March 3, 1994, S0N-3C-C 13061**

The issue in this grievance is whether management violated the National Agreement by assigning delivery of first class and priority mail within the boundaries of established city delivery to Clerks and Special Delivery Messengers.

During our discussion we mutually agreed that the delivery of first class and priority mail on a route served by a letter carrier is letter carrier work. The propriety of a cross craft assignment can only be determined by the application of Article 7.2.

## **M-01125 Step 4**

**April 8, 1993, H0N-4J-C 9940**

The issues in this grievance are whether Management violated the National Agreement by assigning delivery of first class and priority mail to a Special Delivery Messenger and whether the grievance was filed within contractual time limits.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that the delivery of first class and priority mail on a route served by a letter carrier is letter carrier work. The propriety of a cross craft assignment can only be determined by the application of Article 7.2. See also [M-01080](#)

## **M-01080 Step 4**

**June 9, 1992, H7N-3A-C 40704**

The issue in this grievance is whether the delivery of Priority and First Class Mail by Special Delivery messengers violates the terms and conditions of the National Agreement.

In the particular fact circumstances of this case, the work described, i.e., the delivery of First Class and Priority Mail on a route served by a Letter Carrier, is Letter Carrier work. The propriety of a Cross Craft assignment can only be determined by the application of Article 7 Section 2.

## **M-00415 Step 4, March 30, 1977, NCS 5258**

Delivery of Special Delivery Mail may be made by regular city carriers when the conditions of Part 166.311 of the Postal Service Manual are met.

## **M-01224 Step 4**

**August 16, 1995, E90N-4E-C 94055266**

The issue in this grievance is whether Management violated the National Agreement by permitting a Commercial Mail Receiving Agency (CMRA) to deliver mall merchant's mail.

During our discussions the parties agreed that CMRA's are only allowed to handle merchant's mail when PS Form 1583 (Application of Delivery Through Agent) has been submitted by a merchant authorizing the release of their

mail to a CMRA. Without a signed PS Form 1583, mail may not be released to a CMRA. These guidelines are contained in the Domestic Mail Manual (DMM), Section D 042. In this case, there are no signed PS Form 1583's for all merchants at the Mall.

## **Collections**

### **M-01034 Pre-arb**

**March 12, 1992, H7N-5T-C-44288**

The issue in this grievance is whether the establishment of a Collection/Distribution Clerk duty assignment in Canoga Park, California, violated the National Agreement.

During the discussion, it was mutually agreed that the following constitutes full settlement of this grievance:

- 1) Position MO-28 will be abolished in accordance with contractual provisions.
- 2) The collection duties at issue in this grievance (Canoga Park) will be reassigned to city carriers.
- 3) This settlement does not constitute a waiver of management's rights to assign collection duties in accordance with the National Agreement.

### **M-00348 Step 4**

**June 14, 1985, H1N-5F-C 26543**

The key position description for special delivery messengers provides that special delivery messengers' duties and responsibilities include the delivery and collection of mail.

However, once the letter carriers receive appropriate instruction on the proper handling of these cards, either a management representative or another designated employee may document the number of cards given to each letter carrier on a daily basis.

### **C-11209 Regional Arbitrator Byars**

**September 16, 1991**

Management did not violate the contract by assigning 3 hours of collections to MVS.

### **C-10117 Regional Arbitrator Martin**

**June 29, 1990**

Management violated the contract by assigning a PTF clerk to run collections.

## **Spreading, Withdrawing Mail**

### **C-03244 National Arbitrator Garrett**

**January 30, 1978, NBS 4334**

Management may properly assign clerks to distribute mail to carrier cases. See also [M-00010](#)

## **M-00892 USPS Letter, January 3, 1989**

"Assistant Postmaster General Mahon's letter pertaining to our position on the issue of spreading mail to carriers in no manner is designed to abate the provisions of Section 116.6 of the M-39 Handbook, entitled "Carrier Withdrawal of Letters and Flats", which addresses the fact that carriers may be authorized to make up to two withdrawals from the distribution cases prior to leaving the office, plus a final clean up sweep as they leave the office."

## **M-01099 Step 4 August 6, 1992, H0N-1T-C 8391**

The issue in this grievance is whether the withdrawal of mail is letter carrier craft work.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

The assignment of letter carriers to withdraw mail from distribution cases conforms with the relevant provisions of the M-39 Handbook (Section 116.6, Carrier Withdrawal of Letters and Flats).

## **M-00287 Step 4 July 29, 1977, NCS 6733**

Clerks should not withdraw mail from the carrier's case.

## **M-01134 APWU Step 4 November 29, 1982, H1C-3D-C 10719**

The question in this grievance is whether management violated Article 7 of the National Agreement by allowing carriers to withdraw mail from distribution cases. The union contends that this work belongs to the clerk craft.

Our review of pertinent regulations including the national agreement together with the information provided in the case file did not support a finding that a contractual violation occurred. Accordingly, we find no violation of the national agreement and the grievance is denied.

## **Transporting Mail**

### **C-24430 National Arbitrator Steven Briggs, E90N-4E-C 95001512, July 16, 2003**

National Arbitrator Briggs held that the Postal Service violated the National Agreement by reassigning a one-hour AM shuttle run at the Lynwood, Washington Post Office from the City Letter Carrier craft to the Clerk craft. As a remedy, the Postal Service was directed to return the work in question to the Letter Carrier craft and to make whole any Letter Carrier craft employee adversely affected by the violation. Arbitrator Brigg's award is consistent with a long line of national level arbitration decisions establishing that craft jurisdiction is determined by local practice.

### **C-15602 National Arbitrator Snow B90V-4B-C 93032199, July 24, 1996**

The Postal Service did not violate the national agreement when it assigned other than Motor Vehicle Service Division employees to transport bulk quantities of Express Mail.

### **C-10616 Regional Arbitrator Erbs February 20, 1992**

Management did not violate the contract when it assigned letter carriers to do the pickup of mail from contract stations and transport it to the GMF.

Lawn crossing is governed by the Article 41.3.N which provided the following:

**N.** Letter Carriers may cross lawns while making deliveries if customers do not object and there are no particular hazards to the carrier.

The JCAM explains this provision as follows:

**Lawn Crossing.** Although in his Cincinnati Lawn Crossing decision (NC-NAT-13212, August 20, 1979, C-03228) National Arbitrator Sylvester Garrett did not set down clear standards for determining when customers have objected to “carriers” crossing their lawns and when hazards exist which would make crossing lawns unsafe. Garrett did set down the following general guidelines:

1. A carrier may be instructed broadly to take all “obvious shortcuts” and to cross all lawns where there is no reason to believe the customer may object. However, the determination of what constitutes an obvious shortcut or whether a hazard exists is made in the first instance by the carrier. The carrier’s judgment can be exercised only in the light of the specific conditions at the location involved.

2. A supervisor may conclude, after personal observation and discussion with the carrier, that a particular lawn should be crossed and order the carrier to cross the lawn. The carrier may not ignore such an order with impunity. His remedy is to file a grievance. However, discipline should not be imposed upon a carrier who had exercised his discretion and not crossed lawns, merely because a supervisor later decides that some of the lawns could have been crossed.

3. The only proper instruction before and during route inspection is that the carrier deliver the route “in exactly the same manner as he does throughout the year.” During the route inspection the Examiner “observes but does not supervise.” Therefore, “A carrier cannot...be directed on the day of a route inspection to take any shortcuts which the carrier does not use throughout the year.”

**C-03228 National Arbitrator Garrett  
August 20, 1979, NC-NAT-13212**

The determination of what constitutes an obvious shortcut or whether a hazard exists is made in the first instance by the carrier. See JCAM Discussion above

**C-03219 National Arbitrator Aaron  
November 10, 1980, N8-NA-0219**

Shop Stewards have the right under Article 17 Section 3 of the 1978 National Agreement to investigate grievances as provided therein, including the right to interview postal patron witnesses during working hours in connection with situations in which a letter carrier has made an initial determination that a particular customer would object to his lawn being crossed and where a supervisor has overridden

that determination and issued an order that such lawn be crossed.

(See also [C-20039](#) Regional Arbitrator Parkinson.)

**M-00273 USPS Letter  
June 15, 1978, NC-NAT-13212**

Postal Service policy does not advocate that management issue blanket orders requiring letter carriers to cross every lawn or take every shortcut.

**M-00721 Step 4  
May 27, 1977, NCS 6072**

The fact that a patron may not have any mail on a given day does not restrict the carrier from crossing the lawn.

**M-00160 Letter, August 7, 1986**

The Office of Delivery and Retail Operations indicates that the position of the Postal Service is that where a lawn has been chemically treated and a sign has been posted to that effect, the letter carrier serving that delivery would not be required to cross that lawn during the period the potential hazard remained in effect.

**M-00177 Step 4  
August 6, 1981, H8N-4J-C 25212**

If the carrier made an initial determination that a particular postal customer did not wish his/her lawn to be crossed and the supervisor overrode that determination, management may not deny requests for investigation pursuant to Article XVII, Section 3 of the National Agreement by a shop steward. See also [M-00164](#)

**M-00275 Step 4  
January 15, 1980, N8-N-0007**

It is management's position that letter carriers are expected to take available short cuts if the customers do not object and there are no particular hazards to the carrier. Notwithstanding, blanket instructions to all carriers to cross all lawns would not be considered proper.

**M-00274 Letter, June 27, 1977, NCW 5806**

Where the customer objects in writing to the carriers crossing their lawns, local management may investigate and should inform the carriers not to cross those specific customers lawns.

The contract's No Layoff provisions are found in Article 6.

**M-00123 Step 4**

**April 30, 1985, H1N-4E-C 35515**

Whether the grievant met the pay period requirement for attainment of protected status can only be determined by evaluating the fact circumstances. If the grievant's OWCP claim is approved, then no break in service occurred. If the claim is not accepted, then a break did occur.

**M-00088 Step 4**

**September 25, 1984, H1C-1E-C 28103**

The question raised in this case is whether the grievant was improperly required to begin a new 6 year period in a work status in order to achieve protected status on returning to duty after an absence of more than one year: The union contends that Article 6.A.3. did not intend to include time on maternity leave as time not worked for purposes of retaining protected status. During our discussion, we agreed to resolve this case based on our having no dispute relative to the meaning and intent of Article 6. Section A.3.a.3

**M-00785 Step 4**

**May 22, 1987, H4N-3S-C 31204**

Leave without pay for maternity reasons is not considered "work" for the purposes of achieving protected status pursuant to the provisions of Article 6.A.3.

**M-00469 Step 4**

**November 7, 1980, N8-W-0490**

The grievant is a "protected employee" for lay-off purposes as he was a member of the regular work force on September 15, 1978, the date of Arbitrator Healy's award. The fact that he resigned and was subsequently reinstated has no bearing on his protected status.

**M-00929 Step 4**

**May 30, 1989, H7N-1P-C 13349**

Time spent in National Guard Service is considered "work" for the purposes of achieving no layoff protection under the provisions of Article 6, Section A.3.a.1.

## Leave, in General

### **M-00147 Pre-arb**

**September 30, 1985, H1N-2B-C 2563**

Leave which is applied for consistent with the National Agreement and Local Memorandum of Understanding is awarded by seniority without regard to full-time or part-time status.

### **M-00841 Step 4**

**May 4, 1988, H7C-NA-C 9**

An employee who is on extended absence and wishes to continue eligibility for health and life insurance benefits, and those protections for which an employee may be eligible under Article 6 of the National Agreement may use sick leave and/or annual leave in conjunction with leave without pay (LWOP) prior to exhausting his/her leave balance. The employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

### **M-00165 Executive Order 5396**

**(Herbert Hoover) July 17, 1930**

With respect to medical treatment of disabled veterans who are employed in the executive civil service of the United States, it is hereby ordered that, upon the presentation of an official statement from duly constituted medical authority that medical treatment is required, such annual sick leave as may be permitted by law and such leave without pay as may be necessary shall be granted by the proper supervisory officer to a disabled veteran in order that the veteran may receive such treatment, all without penalty in his efficiency rating.

### **M-00866 Pre-arb**

**October 28, 1988, H4N-4F-C 11641**

Executive Order 5396 [M-00165], dated July 3, 1930, does apply to the Postal Service and absences meeting the requirements of that decree cannot be used as a basis for discipline. See also M-00388, M-00787

### **M-01818 Prearbitration Settlement**

**May 16, 2013**

The issue in this case involves changes to questions used in the automated Interactive Voice Response (IVR) system.

After reviewing this matter, we mutually agree that the subject issue has been resolved. Revisions to the IVR system on February 1, 2013, addressed the outstanding issues presented in this case. These changes were outlined in a January 31, 2013, letter to National President Rolando which states in relevant part:

*Currently when an employee who calls the Employee Service Line (877-477-3273, Option 4) to request unscheduled leave is unable to successfully negotiate the*

*prompts, the caller is transferred to a contracted Call Center. There an agent collects the employee's information and enters it into the enterprise Resource Management System (eRMS). Beginning February 1 the IVR system will instead direct **the employee to contact their supervisor** in this circumstance. This agreement is without prejudice to the position of either party in this or any other case or circumstance.*

### **C-18501 Regional Arbitrator Olson**

**E94H-4E-C 97019847, July 13, 1998**

The arbitrator held that management violated the provisions of ELM 513.332 by requiring supervisors to ask employees calling in sick questions listed on a local document titled Unscheduled Leave Request issued by the District Manager.

## Administrative Leave

See also [Administrative Leave for Acts of God](#)

### **M-01669 Letter of Agreement**

**January 23, 2008**

We agree that the forthcoming national-level dispute on this issue will cover all city letter carriers who were denied administrative leave to attend the 2008 Nevada caucuses or subsequent similar presidential caucuses and who instead were granted annual leave or Leave Without Pay to attend such 2008 presidential caucuses. Accordingly, the National Association of Letter Carriers is not required to initiate local grievances to preserve its right to request a remedy for the subject denials of administrative leave.

### **M-00905 Step 4**

**January 4, 1989, H4N-1K-C 24809**

Blood leave will not be unreasonably denied consistent with the guidelines in ELM Section 519.

### **C-09415 Regional Arbitrator R.G. Williams**

Management violated PSDS 384 Civil Defense by denying grievant's request for 40 hours of administrative leave for civil defense training.

### **C-00314 Regional Arbitrator Epstein**

**June 18, 1983, C1C-4B-C 4455**

Management did not violate the contract by denying the grievant's request for administrative leave for donating blood.

### **C-10319 Regional Arbitrator Fogel**

**October 5, 1990,**

Management did not violate the contract when it required an employee placed on administrative leave during an investigation to call-in each day.

## **C-10530 Regional Arbitrator Lange**

**January 11, 1991**

Management has the authority to dictate reasonable requirements that constrain an employee's freedom of action during the time that the employee is on administrative leave.

## **C-11170 Regional Arbitrator Zack**

**June 1, 1990**

A request to participate in an annual town meeting falls within the ambit of ELM provisions relating to granting administrative leave for the purpose of voting.

## **Annual Leave**

### **M-01515 USPS Letter**

**February 12, 2004**

Memorandum of Policy—Leave computation Date Corrections—erroneous Credit. This memorandum is to announce the new policy and process for handling Leave Computation Date Corrections when an employee has been erroneously credited for prior military or civilian service that is not creditable under USPS leave policy. This new policy is effective for any accounts receivables process on or after February 7, 2004 (pay period 05/04).

### **M-00508 Step 4**

**June 15, 1984, H1N-5D-C 19202**

Employees who have annual leave approved are entitled to such leave except in emergency situations.

### **M-00184 Step 4**

**September 8, 1981, H8N-5C-C 18666**

While not contractually obligated to, management should give reasonable consideration to requests for annual leave cancellation.

### **M-00365 Step 4**

**April 30 1985, H1N-3A-C 40314**

Whether a carrier transferring from the Irving Post Office to the Case Range Station must be allowed to also transfer scheduled leave can only be determined by evaluating local contractual requirements and fact circumstances. See also [M-00480](#)

### **M-00708 Step 4**

**May 12, 1977, NCE 4868**

The grievant was granted 40 hours annual leave, covering the period from August 16, 1976, through August 21, 1976. However, when the grievant returned from vacation, he found that his advance commitment for 40 hours annual leave was reduced to 32 hours. Under the circumstances, the reduction of annual leave from 40 hours to 32 hours was inappropriate. Accordingly, the grievance is sustained.

### **M-00334 Step 4**

**April 5, 1973, NW 3155**

The Postmaster will cease and desist from canceling the employee's bid vacation period during the choice period due to count and inspection week.

### **M-00535 Step 4**

**March 11, 1985, H1N-1J-C 34481**

An employee in a 204b position should not be precluded from bidding for choice vacation periods.

### **M-00865 Step 4**

**March 17, 1977, ACC 10648**

Granting additional periods of annual leave in the choice period subsequent to the initial bidding for choice vacations is not prohibited by Article X, Section 2D. of the National Agreement. We further agreed that if the needs of the Postal Service permit, an employee, by combining a choice vacation bid with an approved application for unscheduled absence, could have five consecutive weeks of annual leave during the choice vacation period.

### **M-01017 USPS Letter**

**January 29, 1982**

This refers to our meeting of January 12, during which we discussed the various provisions set forth in the revised M-39 Handbook. With regard to our discussion on committed annual leave vs. canceling annual leave for route inspection purposes, this will clarify that the provision set forth in Article 10, Section 4, D, is controlling. It is not the intent of the Postal Service to cancel annual leave approved during the vacation planning process in order to comport with subsequently scheduled route inspection periods.

### **M-00492 Step 4**

**March 12, 1984, H1N-5H-C 18583**

Normally, employees on the overtime desired list who have annual leave immediately preceding and/or following non-scheduled days will not be required to work overtime on their off days. However, if they do desire, employees on the overtime desired list may advise their supervisor in writing of their availability to work a nonscheduled day that is in conjunction with approved leave.

### **M-01367 Step 4**

**October 22, 1998, E94N-4E-C 98053676**

The Step 4 decision H1N-5H-C 18583 ([M-00492](#), above) applies to "spot" or incidental leave also.

### **C-00268 Regional Arbitrator Levin**

**September 24, 1984, N1C-1A-C 15271**

Management violated Article 10 when it did not permit grievant to "buy back" 160 hours of AL which had been forfeited as excess to the carry-over limit.

**C-09481 Regional Arbitrator R.G. Williams**

**November 20, 1989, S7N-3R-C 20939**

Management improperly denied grievant's request for emergency annual leave.

**C-10949 Regional Arbitrator Lange**

**July 9, 1991, W7N-5T-C 22023**

Management improperly denied requests for annual leave for the month of December.

**C-00154 Regional Arbitrator Dennis**

**March 4, 1985, N1C-1M-C 30525**

Management did not violate the contract when it informed employees that they could not be guaranteed more than three weeks vacation during prime time.

**C-00283 Regional Arbitrator Colleran**

**November 22, 1982, N1C-1M-C 6141**

Management improperly terminated a past practice of permitting employees more than three weeks of annual leave during the choice period.

**C-10937 Regional Arbitrator Searce**

**July 5, 1991, S7N-3C-C 36361**

Management properly counted reservists called-up for Operation Desert Storm as being in "military leave" status and was, therefore, entitled to block off slots on the AL schedule.

## Leave, Bereavement

**M-01833 Joint Questions and Answers**

**March 6, 2014**

Question 32: Are CCAs covered by the Memorandum of Understanding, Re: Bereavement Leave?

Yes, however, CCAs do not earn sick leave and therefore may only request annual leave or leave without pay for bereavement purposes.

**M-01645 Memorandum**

**September 11, 2007**

Re: Bereavement Leave

City letter carriers may use a total of up to three workdays of annual leave, sick leave or leave without pay, to make arrangements necessitated by the death of a family member or attend the funeral of a family member. Authorization of leave beyond three workdays is subject to the conditions and requirements of Article 10 of the National Agreement, Subsection 510 of the Employee and Labor Relations Manual and the applicable local memorandum of understanding provisions.

Definition of Family Member. "Family member" is defined as a:

(a) Son or daughter—a biological or adopted child,

stepchild, daughter-in-law or son-in-law;

(b) Spouse;

(c) Parent; or

(d) Sibling—brother, sister, brother-in-law or sister-in-law; or

(e) Grandparent.

Use of Sick Leave. For employees opting to use available sick leave, the leave will be charged to sick leave for dependent care, if eligible.

Documentation. Documentation evidencing the death of the employee's family member is required only when the supervisor deems documentation desirable for the protection of the interest of the Postal Service.

## Leave, Court

The regulations concerning court leave are found in ELM Section 516. They provide, in part:

*516.21 Definition Court leave is the authorized absence from work status (without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve as a juror, as a witness in a nonofficial capacity on behalf of a state or local government, or as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. The court or judicial proceeding may be located in the District of Columbia, a state, territory, or possession of the United States, including the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.*

*516.22 Eligibility Court leave is granted to full-time and part-time regular employees. Certain part-time flexible employees are granted court leave as provided and governed by applicable collective bargaining agreements. Other employees are ineligible for court leave and must use either annual leave or LWOP to cover the period of absence from postal duties for court service but may retain any fees or compensation received incident to such court service. Court leave is granted only to eligible employees who would be in work status or on annual leave except for jury duty or service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. An employee on LWOP, when called for such court service, although otherwise eligible for court leave, is not granted court leave but may retain any fees or compensation received incident to*

*court service.*

**C-06821 National Arbitrator Mittenthal  
February 10, 1987, H1N-3U-C 35720**

Management did not violate ELM Section 516 by requiring the grievants to report to work before their scheduled jury duty.

**C-03223 National Arbitrator Gamser  
October 3, 1980, N8-E-0088**

Where there has been a practice to permit employees to temporarily change their work schedule to conform to the days on which the employee is called to serve on jury duty or make a court appearance, the Postal Service may not unilaterally change that practice. See also [M-00501](#), [M-00056](#), [M-01063](#)

**M-01063 APWU Step 4  
January 21, 1988, H4C-5B-C-44765**

The question in this grievance is whether or not a past practice has been established to allow an employee to voluntarily change their work schedule to coincide with the days the employee was required to be in court under the circumstances which would make them eligible for court leave.

We mutually agreed, in accordance with Arbitrator Gamser's decision dated October 3, 1980, that where it is established in an appropriate proceeding that management of an installation has consistently interpreted the provisions of the E&LR Manual and the related provisions of any earlier manual, regulation, or the Federal Personnel Manual, to allow employees to change their work days, as well as their work hours, to coincide with the court circumstances above, management must continue such practice.

**M-00110 Step 4  
February 3, 1977, NCC 3978**

The grievant was summoned by the court to testify in his official capacity as a letter carrier. In such circumstances, he is in on official duty status and entitled to his regular compensation without regard to any entitlement to court leave.

**M-00772 Memo, Herbert A. Doyle  
January 12, 1987**

An employee who appears as a witness in a third-party action which has been assigned to the Postal Service, is in official duty status for the time spent in court and for the time spent traveling between the court and the work site.

**M-00108 Step 4  
January 31, 1977, NCN 4402**

The grievant in this instance is entitled to court leave as a result of being subpoenaed by the District Court of Massachusetts to be a witness for the State.

**M-00641 Step 4  
April 15, 1977 NCE 4997**

Under the provisions of Public Law 91-563 (5-USC-6332) is provided that when an employee is summoned to serve as a witness in a non-official capacity on behalf of a state or local government, he is entitled to court leave during the time he is absent as a witness.

**M-00337 Step 4  
October 30, 1973, NW 5109**

A full-time employee should be granted court leave when he appears as a witness in behalf of any State or Municipal government, as well as when he appears as a witness for the Federal Government.

**M-00602 Pre-arb, NC 4513**

The grievance is sustained. Under Part 721.652 and .653 of the Postal Manual, the grievant should not have been required to report to work before serving court duty. In the instant case, the grievant should have been temporarily detailed to a schedule of hours conforming to the court day.

**M-00657 Step 4  
January 13, 1978, NCS 6629**

The grievant is not entitled to compensation for appearing in court on his non-scheduled day.

**M-01030 Pre-arb  
December 10, 1991, H7N-1P-C-17979**

This grievance concerns the granting of Leave Without Pay (LWOP) to an employee who volunteered to serve on a grand jury.

The granting of LWOP is a matter of administrative discretion. Each request is examined closely and a decision made based on the needs of the employee, the needs of the USPS and the cost to the USPS, and such decision must be reasonable.

**M-01051 APWU Pre-arb  
October 30, 1980, H4C-4K-C-5277**

The issue in this grievance is whether time spent by the grievant at the NLRB hearing was official duty. During that discussion, it was mutually agreed that the following would represent full settlement of this case:

1. The said subpoena issued to the grievant constituted a proper authority.
2. The grievant shall be compensated in accordance with Part 516.42 of the ELM, and such compensation shall terminate (except travel and subsistence expenses) upon the employee's release from the subpoena.

**C-00203 Regional Arbitrator Roumell  
April 6, 1984, C1T-4F-C 27336**

Management violated the contract when it denied a re-

quest for a change of schedule for jury duty on the basis that only four days were involved; "If the grievant has a right...he has a right unlimited by the extent of time involved."

**C-09882 Regional Arbitrator P. Williams  
February 26, 1990**

Management did not violate the contract when it refused grievants' requests to have their non-scheduled days changed to coincide with days they were excused from court duty.

## Leave, Enforced

**M-01154 USPS Internal Memorandum  
April 19, 1990**

"In *Pittman v. Merit Systems Protection Board*, 832 F. 2d 598 (Fed. Cir. 1987), 87FMSR 7054, the Federal Circuit held that the placement of an employee on enforced leave for more than 14 days (even in situations where the agency has medical documentation stating that the employee is physically unable to carry the duties of his or her position) is inherently disciplinary and is tantamount to an appealable suspension. The court held that "indefinite enforced leave is tantamount to depriving the worker of his job--without any review other than that by the agency itself changes its mind and decides that he can perform his job." *Id.*, at 600."

"The MSPB follows the precedent of the Federal Circuit, and considers the court's *Pittman* decision binding in regard to claims of constructive suspension arising from periods of enforced leave which exceed 14 calendar days."

## Leave, Incidental

**C-05670 National Arbitrator Mittenthal  
January 29, 1986, H1N-NA-C 61**

LMU provisions which grant employees the right to take incidental leave are not in conflict or inconsistent with the National Agreement and are, therefore, valid and enforceable. However:

"To the extent to which LMU clauses allow an employee to make his initial selection within the non-choice period, such clauses are 'inconsistent or in conflict with...' the plain meaning of Section 3.D."

**M-00712 Step 4  
July 21, 1977, NCC 7451**

All requests for leave on Saturday should be treated on an equal basis as has been the past practice at this facility.

**M-00528 Step 4  
June 21, 1984, H1N-5D-C 20399**

Article 10 does not require that annual leave outside of the choice vacation period be taken in increments of 5 or 10

working days. However, the local parties may have established a variety of conditions under which incidental leave requests may be handled.

**C-10901 Regional Arbitrator Cushman  
June 13, 1991, S4N-3P-C 28517**

Management violated the LMU when it did not grant one day of incidental annual leave; grievant is entitled to eight hours of administrative leave at his convenience.

## Leave, Maternal

**M-00785 Step 4  
May 22, 1987, H4N-3S-C 31204**

Leave without pay for maternity reasons is not considered "work" for the purposes of achieving protected status pursuant to the provisions of Article 6.A.3.

**M-00088 Step 4  
September 25, 1984, H1C-1E-C 28103**

The question raised in this case is whether the grievant was improperly required to begin a new 6 year period in a work status in order to achieve protected status on returning to duty after an absence of more than one year: The union contends that Article 6.A.3. did not intend to include time on maternity leave as time not worked for purposes of retaining protected status. During our discussion, we agreed to resolve this case based on our having no dispute relative to the meaning and intent of Article 6.A.3.

## Leave, Military

**M-01590 Step 4 Settlement  
November 14, 1979**

Employees who are members of the National Guard and who are called to active duty to replace striking prison guards are entitled to additional military leave under existing regulations.

**M-01603 Butterbaugh v. Department of Justice (02-3331), U.S. Court of Appeals for the Federal Circuit  
July 24, 2003**

Federal employees claimed that the employing agency violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) when it charged them military leave for reserve training when they were not scheduled to work. The Court agreed, concluding that the agency had violated 5 U.S.C. § 6323(a)(1) by charging the leave. (See [M-01604](#) below regarding postal employees.)

**M-01604 Miller v. Postal Service, Merit Systems Protection Board, March 7, 2007**

The Board ruled that a postal employee is not covered by 5 U.S.C. § 6323 as in *Butterbaugh* (see [M-01603](#) above). However, the MSPB said it had authority under USERRA to enforce such an employee's right under the USPS Employee and Labor Relations Manual to be charged military

leave only for work days.

**M-01605 Interpretive Step Settlement  
March 12, 2007**

Article 41.2.D.2 of the National Agreement provides that city letter carriers who enter the military shall not have their seniority broken or interrupted because of military service. This provision applies to city letter carriers restored in the same craft in the same installation after return from military service and to city letter carriers involuntary returned after military service to the same craft in an installation other than the one they left. Such involuntary reassignment may only occur when a city letter carrier vacancy in the applicable regular work force category and type (e.g. full-time regular or part-time flexible, as appropriate) is not available in the home installation at the time of return. Whether such vacancy is available must be determined based on the individual facts of each case. Nothing in Article 41.2.D.2 supplants or diminishes any rights that an employee has under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

**M-01538 USPS LETTER  
March 18, 2005**

FEHBP and FEGLI implementation changes for career employees absent to perform active duty military service. Civilian employees of the U.S Postal Service who serve in the National Guard or Reserve and are called to active duty (voluntarily or involuntarily) in support of a contingency operation as defined in Title 10 U.S.C. 101(a)(13), are eligible for full payment of FEHBP premiums by the Postal Service.

**M-01544 USPS Letter  
July 8, 2005**

Full-time employees, other than the D.C. National Guard, receive fifteen (15) days of military leave at the beginning of each fiscal year. Part-time employees, other than the D.C. National Guard, are eligible to receive one (1) hour of military leave for each twentieth-six (26) hours in a pay status and/or military Leave Without Pay (LWOP) in the preceding fiscal year provided the employee's pay for military leave does not exceed eighty (80) hours.

**C-13793 National Arbitrator Mittenthal  
August 31, 1994, H7N-NA-C 34861**

In accordance with ELM 517.53, national guardsmen performing marijuana eradication are entitled to military leave for law enforcement provided they are both "enforcing the law" and "providing military assistance".

**M-01478 Step 4  
February 3, 2003, A98N-4A-C-02094236**

During our discussion we agreed that the grievant was called to active duty as a member of the Army National Guard of the United States and that members of the Army National Guard meet the eligibility requirements of Part 517.21 of the Employee and Labor Relations Manual (ELM)

to receive paid military leave. The parties further agree that determining whether the grievant qualified for the "Law Enforcement Allowance" under Part 517.431 of the ELM is a fact question that must be based on the specific facts of this case.

**M-01465 USPS Letter  
June 4, 2002**

USPS Letter concerning change in military leave provisions of ELM Section 517.53. Non-work days will not be charged against the paid military leave regardless of whether they fall within a period of absence or fall at the beginning or end of an active duty period.

**M-00174 Letter  
December 12, 1977**

It is the policy of the U. S. Postal Service to allow any employee, who so desires, to serve in the National Guard or Reserve. Any action discouraging employees from such service will not be permitted. When such service creates a work schedule conflict, every effort will be made to resolve the conflict as satisfactorily as possible.

**M-00156 Step 4  
August 29, 1979, NCN 19069**

The union is requesting military leave for those employees called to active duty during the prison guard strike in New York in April, 1979. After reviewing this matter, it is our determination that the duties performed by these employees would, out of necessity, be considered law enforcement duties.

**M-00339 Step 4  
June 25, 1973, NS 3963**

When employees have regular weekly and/or week-end (reserve) training meetings, that conflict with scheduled work requirements in the Postal Service, their absence from work may be covered in one of the following manner:

- a. Use of annual leave.
- b. Request leave without pay.
- c. Arrange a mutually agreeable trade of work days for the period involved with another employee who is qualified to replace the absent employee.

**M-01158 Step 4  
January 14, 1994, HON-5R-C 8065**

Further during our discussion, we mutually agreed that an employee's request for military leave is provided for in section 517.71 of the ELM. Specifically stated:

An employee who has official duty orders or official notices signed by appropriate military authority for weekly, bi-weekly or monthly training meetings and who has a conflict with scheduled work requirements may choose one of the four ways of meeting military obligation.

- A. Use of military leave not in excess of 15 calendar days.
- B. Use annual leave.
- C. Use LWOP.
- D. Arrange a mutually agreeable trade of workdays and days off with another employee who is qualified to replace the absent employee. Such trades must be cleared with the responsible supervisor and must be in accordance with the terms of collective bargaining agreements.

**C-10169 Regional Arbitrator Levin  
August 7, 1990**

Management properly denied paid military leave to the grievant for time spent receiving a required physical examination.

**M-01506 USPS Policy Letter  
November 25, 2003**

On November 14, President of the United States George W. Bush issued a memorandum to the heads of Executive departments and agencies directing them to provide five (5) days of uncharged leave to Federal civil servants who were called to active duty in the continuing Global War on Terrorism.

The Postal Service recognizes the service and sacrifice of members of the Reserve Forces and the Air and Army National Guard, and wishes to ensure that Postal Service employees, who are not covered by the President's Memorandum, are included in this directive. The Postal Service will continue its tradition of being a model for employer support of the Guard and Reserve.

This is notification that Postmaster General John E. Potter has determined that postal employees should be included in this benefit. We know that your organization will join Postmaster General Potter in supporting this initiative.

**M-01453 CAU Publication  
USERRA Rights, December 2001**

Contract Administration Unit Publication reviewing letter carrier rights under the Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA). Includes explanation of letter carriers' bidding and restoration rights.

**M-01833 Joint Questions and Answers  
March 6, 2014**

Question 18: If a transitional employee is deployed to active duty in the military during the period of testing, will he/she have the opportunity to be hired as a CCA upon return from active duty?

Yes, consistent with applicable laws and regulations.

**M-01833 Joint Questions and Answers  
March 6, 2014**

Question 19 Does the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) apply to CCAs?

Yes.

**M-01687 U.S. Department of Labor, Assistant Secretary for Veterans' Employment and Training, July 22, 2002**

... Therefore, in determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the civilian employer should be combined with the months and hours that would have been worked during the twelve months prior to the start of the leave requested but for the military service.

## PTF Leave

Leave for part-time flexible employees is governed by ELM Section 512.523 which states:

**512.523(a).** *A part-time flexible employee who has been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave) in a service week is not granted paid annual or sick leave during the remainder of that service week. Absences in such cases are treated as non-duty time, not chargeable to paid leave of any kind. Supervisors should avoid granting leave resulting in the requirement for overtime pay.*

**512.523(b).** *Part-time flexible employees who request leave on days that they are scheduled to work, except legal holidays, may be granted leave provided they can be spared. The combination of leave and work hours charged to these employees cannot exceed 8 hours on any one day. The installation head may also consider a request for annual leave on any day a part-time flexible employee is not scheduled to work. The 40 hours paid service in a service week specified in 512.523a may not be exceeded.*

**September 30, 1985 H1N-2B-C 2563**

Leave which is applied for consistent with the National Agreement and Local Memorandum of Understanding is awarded by seniority without regard to full-time or part-time status.

**M-01000 APWU Settlement Agreement  
June 17, 1980, A8-W-0449**

The parties agree that the reference to "40 hours or more of paid service (work, leave, or a combination of work and leave)" contained in Section 512.523a of the Employee and Labor Relations Manual does not refer to overtime

hours or work.

The parties further agree that in no case may the total of straight time hours and all paid leave hours exceed 8 hours per service day or 40 hours per service week.

## **M-01589 Step 4 Settlement**

**June 21, 1982**

We mutually agreed that there was no interpretive dispute between the parties at the National level as to the meaning and intent of Article 19 of the National Agreement as it relates to a Part-time Flexible requesting leave or a day he/she is not scheduled for duty.

In accord with Part 512.523 of the ELM, installation heads may consider requests for annual leave on any day a Part-time Flexible is not-scheduled to work~ However, 40 hours paid service in a service week may not be exceeded

The criteria for converting part-time flexibles to full-time regulars under the Memorandum of Understanding relating to maximization are not affected by approval or: such leave"

## **Leave Sharing**

### **M-01656 Memorandum**

**September 11, 2007**

Re: Leave Sharing

The Postal Service will continue a Leave Sharing Program during the term of the 2006 Agreement under which career postal employees will be able to donate annual leave from their earned annual leave account to another career postal employee, within the same geographic area serviced by a postal district. In addition, career postal employees may donate annual leave to other family members that are career postal employees without restriction as to geographic location. Family members shall include son or daughter, parent, and spouse as defined in ELM Section 515.2. Single donations must be of 8 or more whole hours and may not exceed half of the amount of annual leave earned each year based on the leave earnings category of the donor at the time of donation. Sick leave, unearned annual leave, and annual leave hours subject to forfeiture (leave in excess of the maximum carryover which the employee would not be permitted to use before the end of the leave year), may not be donated, and employees may not donate leave to their immediate supervisors. To be eligible to receive donated leave, a career employee (a) must be incapacitated for available postal duties due to serious personal health conditions or pregnancy and (b) must be known or expected to miss at least 40 more hours from work than his or her own annual leave and/or sick leave balance(s), as applicable, will cover, and (c) must have his or her absence approved pursuant to standard attendance policies. Donated leave may be used to cover the 40 hours

of LWOP required to be eligible for leave sharing.

For purposes other than pay and legally required payroll deductions, employees using donated leave will be subject to regulations applicable to employees in LWOP status and will not earn any type of leave while using donated leave. Donated leave may be carried over from one leave year to the next without limitation. Donated leave not actually used remains in the recipient's account (i.e., is not restored to donors). Such residual donated leave at any time may be applied against negative leave balances caused by a medical exigency. At separation, any remaining donated leave balance will be paid in a lump sum.

(The preceding Memorandum of Understanding. Leave Sharing, applies to City Carrier Assistant Employees.)

### **M-01407 Memorandum of Understanding, (Relevant Part) March 21, 2000**

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that the following represents the parties' agreement with regard to implementation of the upgrade issue emanating from the September 19, 1999 Fleischli Award, our agreement regarding case configuration when using the vertical flat casing work method, and additional provisions relative to the 1998 National Agreement.

The Memorandum of Understanding Re: Leave Sharing found on page 161 of the 1994 National Agreement will be renewed for the remainder of the term of the 1998 National Agreement.

### **M-01409 Memorandum of Understanding, April 7, 2000**

It is hereby agreed and understood by the U. S. Postal Service and National Association of Letter Carriers (NALC), AFL-CIO that the Memorandum of Understanding Re: Sick Leave for Dependent Care and the Memorandum of Understanding Re: Leave Sharing contained in the 1994-1998 National Agreement, expired with the term of that contract on September 19, 1999. By Memorandum of Understanding dated March 21, 2000, both these memoranda were renewed for the remainder of the term of the 1998 National Agreement.

Therefore, the NALC will withdraw from the grievance/arbitration procedure, all grievances at all steps, challenging the denial of either Sick Leave for Dependent Care or Leave Sharing during the period of September 20, 1999 through March 20, 2000. The parties agree that requests submitted for Leave Sharing and Sick Leave for Dependent Care on March 21, 2000 and for the remainder of the term of the 1998 National Agreement, will be addressed in accordance with the provisions of those two memoranda. Further, it is agreed that any request for Sick Leave for Dependent Care or Leave Sharing that was granted during the period of September 20, 1999 through March 20, 2000

will be honored.

**M-01022 USPS Letter  
November 8, 1991**

Letter from Assistant Postmaster General transmitting instructions for the Leave sharing Program.

**M-01293 Step 4  
March 31, 1998, A94N-4A-C 97090426**

Donated leave under the leave share program is considered paid status for holiday leave purposes

## Leave, Sick

See also [Medical Certification](#)

**M-00079 Step 4  
November 9, 1983, H1N-5G-C 14955**

Under ELM 513.362, an employee is required to provide "acceptable evidence of incapacity to work." The form in question has been determined by local management to meet that requirement. Accordingly, the form may be provided as a convenience to an employee, and its use by employees is optional.

**C-03231 National Arbitrator Garrett  
November 19, 1979 NC-NAT-16285**

Whether the Postal Service properly may impose discipline upon an employee for "excessive absenteeism" or "failure to maintain a regular schedule" when the absences on which the charges are based include absences on approved sick leave must be determined on a case-by-case basis under the provisions of Article XVI.

**M-00489 Step 4  
November 3, 1983, H1N-5B-C 3489**

For the purposes of ELM 513.362, an absence is counted only when the employee was scheduled for work and failed to show. A nonscheduled day would not be counted in determining when the employee must provide documentation in order to be granted approved leave.

**M-00199 Step 4  
March 21, 1975, NBC 3502 (N-82)**

The Form 3971 clearly reflected that management had disapproved the grievant's request for sick leave. However, the records reflect that the three days in question were charged to LWOP, not AWOL. Since LWOP is considered approved absence, local officials will be notified to grant the grievant sick leave pay for the three days in question. See also [M-00707](#)

**M-00932 Step 4  
May 21, 1974, NB-S-1129**

Neither sick leave nor leave without pay can be charged against an employee unless requested by that employee.

**M-00665 Step 4  
May 27, 1977, NCS 5591**

A part-time flexible employee is not guaranteed a set number of hours sick leave any time requested nor may sick leave be used merely to obtain or round out a (40) hour week. However, we agreed that generally a part-time flexible should be guaranteed sick leave commensurate with the number of hours that the employee was realistically scheduled to work or would reasonably have been expected to work on a given day.

**M-01329 Step 4  
May 26, 1998, A94N-4A-C 98054688**

Step 4 settlement concerning the use of sick leave by Part-time flexible employees under the provisions of ELM 513.421 (see file)

**M-01059 Step 4  
March 30, 1984, H1N-3W-C-21270**

The question raised in this grievance involves a local policy concerning the procedure to call in and advise management of an employee's absence.

After further review of this matter we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. It was mutually agreed that any local policy establishing a call-in procedure must be in compliance with Section 513.332 of the Employee and Labor Relations Manual (ELM).

**M-00301 Step 4  
July 12, 1985, H1C-5B-C 31977**

The union contends that the two-call requirement for unexpected illness/injury is contrary to the regulation contained in Part 513.332 of the ELM. It is the position of the Postal Service that the January 4, 1985 policy, as written, is unreasonable and therefore improper. Accordingly, the grievance is sustained and the said policy shall be rescinded.

**M-01166 Step 4  
October 4, 1993, HON-5R-C 4914**

The issue in this grievance is whether a sick leave may be approved for counseling recommended by a physician due to symptoms of anxiety and stress.

During our discussion, we mutually agreed to the following as full settlement on this case. The parties at the local level are instructed to meet regarding this matter. If the union is able to document that the counseling was medically necessary then the sick leave request will be handled in accordance with normal leave approval procedures.

**C-04396 Regional Arbitrator Britton  
July 10, 1984, S1N-3U-C 4356**

An established past practice of allowing someone other than the affected employee to call in sick may not be unilaterally changed.

**C-00242 Regional Arbitrator Cohen**  
**October 18, 1982, C8C-4C-C 19575**

An employee may be given sick leave even though not totally disabled. Management acted improperly by refusing grievant's request to change his approved annual leave to sick leave.

**C-00006 Regional Arbitrator Cohen**  
**January 11, 1982, C8C-4G-C 22983**

Management violated the contract by establishing a local leave policy which required an ill employee to call in on each day of an absence.

**C-13342 Regional Arbitrator Epstein**  
**January 21, 1994, I90N-4I-C 94047336**

The Postal Service violated the agreement when it denied sick leave to an employee who was so distressed by the impending death of a close relative that he was unable to work.

## Sick leave, advanced

The regulations concerning advanced sick leave are found in ELM 513.

*513.5 Advanced Sick Leave*

*513.51 Policy*

*513.511 May Not Exceed Thirty*

*Days Sick leave not to exceed 30 days (240 hours) may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not the employee has an annual leave or donated leave balance.*

*513.512 Medical Document Required*

*Every request for advanced sick leave must be supported by medical documentation of the illness.*

*513.52 Administration*

*513.521 Installation Heads' Approval*

*Officials in charge of installations are authorized to approve these advances without reference to higher authority.*

*513.522 Forms Forwarded*

*PS Form 1221, Advanced Sick Leave Authorization, is completed and forwarded to the Eagan ASC when advanced sick leave is authorized.*

*513.53 Additional Sick Leave*

*513.531 Thirty-Day Maximum*

*Additional sick leave may be advanced even though liquidation of a previous advance has not been completed provided the advance at no time exceeds 30 days. Any advanced sick leave authorized is in addition to the sick leave that has been earned by the employee at the time the advance is authorized.*

*513.532 Liquidating Advanced Sick Leave*

*The liquidation of advanced sick leave is not to be confused with the substitution of annual leave for sick leave to avoid forfeiture of the annual leave. Advanced sick leave may be liquidated in the following manner:*

*a. Charging the sick leave against the sick leave earned by the employee as it is earned upon return to duty.*

*b. Charging the sick leave against an equivalent amount of annual leave at the employee's request provided the annual leave charge is made prior to the time such leave is forfeited because of the leave carryover limit.*

**C-00191 Regional Arbitrator Foster**  
**June 11, 1984, S1C-3A-C 28150**

The arbitrator found that management violated the contract by refusing grievants' requests for advance sick leave.

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"Part 513.511 of the Employee and Labor Relations Manual does not mandate the granting of advance sick leave, but rather employs the permissive word "may" where there is "reason to believe the employee will return to duty." The obvious purpose of this quoted condition is that there should exist a reasonable expectation that the employee will be able to return to duty and work at least long enough to repay the advanced sick leave. While there will frequently be some uncertainty as to whether that is the case at the time of the request, the decision is left to the exercise of sound managerial discretion that may not be abused by an arbitrary denial unsupported by a factually based good reason. Accordingly, the critical question in this case is whether management had sufficient evidence at the time of the decision to reasonably believe that the Grievant would return to duty and repay the advance sick leave if it was granted."

**C-10455 Regional Arbitrator Axon**  
**December 15, 1990, W7N-5R-C 21549**

Management violated the contract by refusing grievants' requests for advance sick leave. See also [C-08199](#)

**C-26893 Regional Arbitrator Cenci  
February 2, 2007, B01N-4B-C 06215482**

... management is not required to interview an employee or request the employee's explanation of sick leave usage before denying a §513.511 request. However, by not doing so management may place itself in a situation where the request is being denied almost entirely on the impermissible basis that the employee has exhausted his accumulated sick leave. In the circumstances of this case, I conclude that a full and fair investigation would have included an opportunity for the grievant to explain his sick leave usage before his request was denied.

## Sick Leave, PTF

**M-01374 Step 4  
December 22, 1998, I94N-4I-C 98093715**

The issue in this grievance is whether Management violated the National Agreement by recording the grievant's (who is a PTF) request for sick leave as a non scheduled day.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Rather, it requires the application of ELM Section 513.421 (c) which provides:

c. Limitations in 513.421b apply to paid sick leave only and not to a combination of sick leave and workhours. However, part-time flexible employees who have been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave) in a service week are not granted sick leave during the remainder of that service week. Absences, in such cases, are treated as non-duty time which is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

We further agreed that the restriction on granting sick leave to PTF employees "who have been credited with 40 hours or more of paid service" applies only to PTF employees who have already been credited with 40 hours of service at the time the request is made. In the circumstances presented in this case the requested sick leave should have been granted since the employee was scheduled to work and had only been credited with 31.9 hours of paid service on the day the request was made.

## Sick Leave, for Dependent Care

*ELM Section 513*

*513.12 Sick Leave for Dependent Care A limited amount of sick leave may also be used to provide for the medical needs of a family member. Nonbargaining unit employees, and bargaining unit employees if provided in their national agreements, are allowed to take*

*up to 80 hours of their accrued sick leave per leave year to give care or otherwise attend to a family member (as defined in 515.2) with an illness, injury, or other condition that, if an employee had such a condition, would justify the use of sick leave. If leave for dependent care is approved, but the employee has already used the maximum 80 hours of sick leave allowable, the difference is charged to annual leave or to LWOP at the employee's option. (See 515 for information about FMLA entitlement to be*

**M-01657 Memorandum  
September 11, 2007**

Re: Sick Leave for Dependent Care

The parties agree that, during the term of the 2006 National Agreement, sick leave may be used by an employee to give care or otherwise attend to a family member with an illness, injury or other condition which, if an employee had such condition, would justify the use of sick leave by that employee. Family members shall include son or daughter, parent, and spouse as defined in ELM Section 515.2. Up to 80 hours of sick leave may be used for dependent care in any leave year. Approval of sick leave for dependent care will be subject to normal procedures for leave approval.

**M-01407 Memorandum of Understanding, [Relevant part] March 21, 2000**

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that the following represents the parties' agreement with regard to implementation of the upgrade issue emanating from the September 19, 1999 Fleischli Award, our agreement regarding case configuration when using the vertical flat casing work method, and additional provisions relative to the 1998 National Agreement.

The Memorandum of Understanding Re: Sick Leave for Dependent Care found on page 162 of the 1994 National Agreement will be renewed for the remainder of the term of the 1998 National Agreement.

**M-01409 Memorandum of Understanding,  
April 7, 2000**

It is hereby agreed and understood by the U. S. Postal Service and National Association of Letter Carriers (NALC), AFL-CIO that the Memorandum of Understanding Re: Sick Leave for Dependent Care and the Memorandum of Understanding Re: Leave Sharing contained in the 1994-1998 National Agreement, expired with the term of that contract on September 19, 1999. By Memorandum of Understanding dated March 21, 2000, both these memoranda were renewed for the remainder of the term of the 1998 National Agreement.

Therefore, the NALC will withdraw from the grievance/arbitration procedure, all grievances at all steps, challenging

the denial of either Sick Leave for Dependent Care or Leave Sharing during the period of September 20, 1999 through March 20, 2000. The parties agree that requests submitted for Leave Sharing and Sick Leave for Dependent Care on March 21, 2000 and for the remainder of the term of the 1998 National Agreement, will be addressed in accordance with the provisions of those two memoranda. Further, it is agreed that any request for Sick Leave for Dependent Care or Leave Sharing that was granted during the period of September 20, 1999 through March 20, 2000 will be honored.

**M-01363 Step 4**  
**October 22, 1998**

We mutually agree at this level that the consultation with the son's speech pathologist would qualify under the Sick Leave for Dependant Care memorandum.

**C-18452 Regional Arbitrator Powell**  
**C94N-4C-C 98022262**

The grievant, who had requested Sick Leave for Dependant Care because of his son's illness, was required to provide medical certification. The arbitrator held that since there was no evidence of sick leave abuse, the request was unwarranted. The Postal service was ordered to reimburse the grievant for expenses. See also [C-18462](#).

## Leave, Sick, Restricted

**M-00002 Step 4**  
**August 23, 1977, NCC 7450**

Management should inform employees prior to placing them on restricted sick leave that their usage of sick leave demonstrates a pattern of abusing the use of sick leave. See also [M-00704](#)

**M-00664 Step 4**  
**October 19, 1976, NCE 3042**

Management should take into account absences which are attributable to the employee's disability and as soon as a substantial improvement is shown in the employee's attendance record, consideration will be given to removing his name from the restricted list.

**M-00705 Step 4**  
**Oct 31, 1977, NCC 8354**

The set percentage of sick leave usage, in and of itself, should not be the sole determining factor on taking further corrective action

**C-00070 Regional Arbitrator DiLeone**  
**September 16, 1981, C8C-4G-C 16130**

Management improperly placed the grievant on restricted sick leave.

**C-00330 Regional Arbitrator Caraway**  
**October 17, 1983, S1C-3A-C 11234**

Management violated the contract when it used a restricted sick leave letter which went beyond the basic conditions set forth in the ELM.

## Leave Without Pay

**M-00932 Step 4**  
**May 21, 1974, NB-S-1129**

Neither sick leave nor leave without pay can be charged against an employee unless requested by that employee.

**M-01058 APWU Step 4**  
**December 6, 1985, H4C-1E-C-6349**

The basic dispute in this grievance concerns whether or not employees who have no leave to cover vacations during the choice vacation period are entitled to the automatic granting of LWOP to cover the absence.

We mutually agreed that this grievance does not fairly present a nationally interpretive dispute. The approval of LWOP under the above circumstances is subject to the provisions of Part 514, ELM. The parties recognize that LWOP may be granted to cover the employee's absence when that employee has no leave to cover vacation during choice vacation period. However, approval of such request for LWOP is a matter of administrative discretion based upon the needs of the employee, the needs of service, and the cost to the service.

Accordingly, the grievance is remanded to Step 3 where those issues of Local concern, such as LMU application, past practices, etc., may be addressed.

**M-01381 APWU Pre-arb**  
**April 20, 1999 Q90C-4Q-C 95048663**

This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning Paid Leave and LWOP' found on page 312 of the 1998 National Agreement. The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as the parties further agreement on the use of paid leave and LWOP. We further agree that:

As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, absences for family care or serious health problem of employee (policies to comply with the Family and Medical Leave Act.).

In accordance with Article 10, Section 6, when an em-

employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. As we have previously agreed, this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

**M-01235 APWU Memorandum  
November 14, 1991**

The basic intent of this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is when an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave when they reach the point where they may exhaust their leave benefits.

**M-01371 Step 4  
January 13, 1999, F94N-4FJ-C- 97100062**

The issue contained in this grievance whether an employee when requesting LWOP under FMLA, must exhaust paid leave before the approval of LWOP. As in this case, where an employee has insufficient sick leave to cover an FMLA approved absence which qualifies for sick leave usage, LWOP cannot be denied.

**M-01136 APWU Step 4  
December 20, 1973, AB-NAT-34**

This case concerned a... local policy not to grant leave without pay for scheduled vacations. This was inconsistent with Postal Service policy that requests for leave without pay be considered on an individual basis, giving due regard to the total circumstances involved, and that decisions approving or disapproving such requests be based on reasons of merit.

In discussing this matter with you... we emphasized that authorizing leave without pay is a matter of administrative discretion. Except for disabled veterans, military reservists and National Guardsmen, who are entitled to leave without pay in certain circumstances, an employee cannot demand that it be granted. It is recognized, of course, that an employee will be granted leave without pay if requested under the provisions of Article 24 of the National Agreement, provided the terms and conditions specified therein are met.

We also indicated that, where an employee intermittently requests and is granted approval to be absent from work for the purpose of conducting union business, it is not the intent of the Postal Service that such employee be required to use annual leave to cover the absence. If management determines that the employee's services can be spared and it approves the requested absence, then the

employee has the option of using annual leave or leave without pay to cover the absence.

**M-01382 APWU Memorandum  
November 13, 1991**

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent of this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is when an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave prior to reaching the point where they may exhaust their leave benefits.

It was not the intent of this MOU to increase leave usage (i.e. approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore, the employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

This MOU does not change Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. However, this option is available to an employee only if they are at the point of exhausting their annual leave balance.

This MOU does not establish a priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve basis or other local procedure. This memorandum of understanding has no effect on any existing leave approval policies or other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks.

## RMD & eRMS Programs

### **M-01468 Prearbitration Settlement, September 9, 2002, Q98N 4Q C 01051141**

The Interpretive issue is whether or not the Resource Management Database (RMD) or its web based counterpart enterprise Resource Management System (eRMS), violates the National Agreement.

It is mutually agreed that no national interpretive issue is fairly presented. The parties agreed to settle this case based on the following understandings:

The eRMS will be the web based version of RMD, located on the Postal Service intranet. The eRMS will have the same functional characteristics as RMD.

The RMD/eRMS is a computer program. It does not constitute a new rule, regulation or policy, nor does it change or modify existing leave and attendance rules and regulations. When requested in accordance with Articles 17.3 and 31.3, relevant RMD/eRMS records will be provided to local shop stewards.

The RMD/eRMS was developed to automate leave management, provide a centralized database for leave related data and ensure compliance with various leave rules and regulations, including the FMLA and Sick Leave for Dependent Care Memorandum of Understanding. The RMD/eRMS records may be used by both parties to support/dispute contentions raised in attendance related actions.

When requested, the locally set business rule, which triggers a supervisor's review of an employee's leave record, will be shared with the NALC branch.

Just as with the current process, it is management's responsibility to consider only those elements of past record in disciplinary action that comply with Article 16.10 of the National Agreement. The RMD/eRMS may track all current discipline, and must reflect the final settlement/decision reached in the grievance arbitration procedure.

An employee's written request to have discipline removed from their record, pursuant to Article 16.10 of the collective bargaining agreement, shall also serve as the request to remove the record of discipline from RMD/eRMS.

Supervisor's notes of discussions pursuant to Article 16.2 are not to be entered in the supervisor's notes' section of RMD/eRMS.

RMD/eRMS users must comply with the privacy act, as well as handbooks, manuals and published regulations relating to leave and attendance.

RMD/eRMS security meets or exceeds security requirements mandated by AS 818.

It is understood that no function performed by RMD/eRMS now or in the future may violate the National Agreement.

### **M-01597 Postal Service Correspondence December 19, 2006**

Regarding supervisory activation of the "Deems Desirable" option in eRMS and the Restricted Sick Leave List (RSL List) Provisions of ELM Section 513.39: A supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interests of the Postal Service must be made on a case by case basis, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious, or unreasonable. Availability of this eRMS option does not expand or diminish supervisory authority, or change policy concerning medical documentation in any way.

# LEAVE (ADMINISTRATIVE LEAVE FOR "ACTS OF GOD")

Section 519 of the ELM allows management to grant administrative leave to employees due to "Acts of God". It reads, in part:

519.1 Administrative leave is absence from duty, authorized by appropriate postal officials, without charge to annual or sick leave and without loss of pay.

519.211 "Acts of God" involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope or impact. It must prevent groups of employees from working or reporting to work.

519.213 Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to "Acts of God" were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence, have reported to duty.

519.214(c) Part-Time Flexible Employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled tour. The combination of straight time worked and administrative leave may not exceed 8 hours in a service day. If there is a question as to the scheduled work hours, the part-time flexible employee is entitled to the greater of the following:

- (1) The number of hours the part-time flexible worked on the same service day in the previous service week; or
- (2) The number of hours the part-time flexible was scheduled to work; or,
- (3) The guaranteed hours as provided in the applicable national agreement.

## The three criteria

ELM Section 519.211, specifies three criteria which must be met before administrative leave may be granted for "Acts of God". First, the "Act of God" must create a community disaster. Second, the disaster must be general, rather than personal, in scope and impact. Third, it must prevent groups of employees from working or reporting to work. The majority of arbitrators agree that all three of these criteria must be met before a request for administrative leave is upheld (See [C-00074](#), [C-00235](#)).

It is up the Postmaster to determine whether absences from duty, allegedly due to "Acts of God" were, in fact, due to such cause, or whether the employee or employees in question could have, with reasonable diligence, reported for duty. However, the Postmaster's decision is not

beyond question, and is subject to review by an arbitrator (See [C-00359](#)).

## What is an "Act of God"?

A definition commonly used by arbitrators in determining whether an "Act of God" has occurred which is sufficient to justify the granting of administrative leave, is: "A natural occurrence of extraordinary and unprecedented impact whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight." (See [C-04205](#), [C-09057](#)).

Snowstorms are most often the reason for granting administrative leave. To qualify as an "Act of God", the storm must be of such severity to disrupt normal community functions. Generally, arbitrators consider factors such as the amount of snow, the length of time it fell, wind strength and temperature in determining the severity of the storm (See [C-00411](#)). Not every snowstorm or rainstorm can be classified as an "Act of God" merely because of its unusual or above average intensity. The general rule is that an "Act of God" must create "disaster conditions" to justify granting administrative leave (See, [C-04205](#)).

1. The "Act of God" must involve a community disaster.

According to the arbitrator in [C-03964](#), "use of the term 'disaster' means, insofar as the community is concerned, a complete shutdown of all of the services of a community except for emergency services such as fire, police and hospitals." In this case, the arbitrator believed there was no doubt that the severe snowstorm which had occurred was an "Act of God". However, the arbitrator looked to the fact that even though there were no mail deliveries, over 5000 employees in a nearby military base, both civilian and military, reported for work. Thus, the impact on the community was not great enough to constitute a disaster, and administrative leave was denied.

Other factors arbitrators will consider include: whether a state of emergency has been declared, evidence of massive road closings, and whether the state police or local authorities have advised persons to stay home (See [C-04964](#), [C-04205](#), [C-05432](#)). In [C-00411](#), the arbitrator granted administrative leave where there was a three-day snowstorm and the National Guard was called out to rescue people stranded in their cars, while other stranded travelers were forced to sleep in schools (See also, [C-00402](#), [C-00074](#)).

According to the arbitrator in [C-03491](#), "Bad conditions, poor weather, difficult conditions and the like, are insufficient to constitute a disaster. A disaster must be an extreme situation." In this case, where the storm did not block main roads and during which many businesses were able to operate normally, the arbitrator denied administrative leave. (See also, [C-06622](#)).

## When is a disaster general in scope and impact?

According to the arbitrator in [C-00542](#), the "scope and impact" of the storm is indicated by the amount of absenteeism among employees scheduled to work that tour. Many arbitrators will consider the number of absences on a given day, but most look to the pattern of absenteeism to make a determination of scope and impact.

Where it can be shown that employees from a large general area were prevented from reporting to work by a storm, administrative leave will usually be upheld (See, [C-09024](#)). Maps are useful in demonstrating areas where employees live and whether the storm prevented employees from specific areas or general areas from reporting to work (See [C-00359](#), [C-00410](#)). Most arbitrators will consider a particular employee's difficulties in reporting to work. However, if other employees living in the same area were able to report, arbitrators usually find the disaster to have been personal in scope and impact, unless the employee can demonstrate otherwise. (See [C-03489](#), [C-04964](#), [C-08197](#)).

In [C-09025](#), the arbitrator found that the severe thunder and wind storm which hit the area was a community disaster which was general in its scope and impact. However, the arbitrator denied administrative leave where he found that the conditions which prevented the grievants from reporting to work were not generally encountered by other employees.

Occasionally, arbitrators determine the scope and impact based upon whether the Postal Service has suspended operations or curtailed mail delivery. In [C-01176](#), the arbitrator denied administrative leave where there was little impact on Postal operations, and held that, since there was no curtailment of mail, it was "impossible to conclude that there was a disaster situation which was general in nature." (See also, [C-09033](#), [C-04483](#)). However, most arbitrators agree that the ELM does not require the Post Office to close its doors before administrative leave is granted (See [C-00402](#)). In [C-00713](#), the arbitrator stated, "the determination of an entitlement to administrative leave does not depend upon whether the Post Office was closed or not. Section 519.211 imposes no requirement that the office be closed or operations curtailed before employees may receive such leave." (See also, [C-00447](#), [C-03433](#), [C-04542](#)).

## What constitutes "groups of employees"?

Arbitrators most often deny administrative leave to employees because "groups of employees" were not prevented from reporting to work. Arbitrators are divided on their interpretation of what constitutes a "group". In [C-04205](#), the arbitrator stated, "As a rule of thumb, it has

been held that 50% of the employees in the group, must be unable to come to work because of disaster conditions. The rationale of the 50% rule is that if half or more of the employees in the group, exercising reasonable diligence are unable to get to work, it is persuasive evidence that the conditions were most abnormal. If less than 50% of the employees in the group are unable to get to work, the inference may be drawn that with the exercise of reasonable diligence, employees could get to work." (See also, [C-00235](#), [C-03964](#), [C-04483](#), [C-09025](#), [C-09033](#), [C-09068](#)).

Other arbitrators reject that rule. The arbitrator in [C-00447](#) held, "it is not determinative that a significant number of employees were able to report to work. The manual only requires that groups of employees must be prevented from working." The 14% of the workforce unable to report because of the snowstorm were granted administrative leave (See also [C-00713](#)). Other arbitrators fall somewhere in the middle of this spectrum, and will allow administrative leave if it can be demonstrated that the group is "substantial". According to the arbitrator in [C-01357](#), "The requirement is not that all employees be unable to report to work but that the groups of employees who were unable to do so be general, substantial and that each employee has used reasonable diligence to get to work."

The Postal Service's method of grouping employees can alter the percentages dramatically. In [C-00448](#), the Postal Service grouped employees over a 24 hour period, and using these numbers was able to demonstrate that more than 50% of the employees reported to work. The arbitrator held that this was improper, since weather conditions had changed over the 24 hour period. The arbitrator ruled that the Postal Service should group them by tour of duty instead.

## The postmaster has the discretion to grant administrative leave.

Most arbitrators will not substitute their judgment for the judgment of the Postmaster unless it was arbitrary or capricious. The ELM gives the Postmasters the discretionary authority to grant administrative leave. It does not require that administrative leave be granted. (See [C-09033](#)). According to the arbitrator in [C-03205](#), "The only time an arbitrator might consider overturning the Postmaster's decision in such cases would be a situation where the requirements spelled out in the manual were met, and the Postmaster's decision appeared to be arbitrary or capricious." (See also [C-02340](#), [C-03368](#)).

In [C-00680](#), administrative leave was granted to those employees who arrived late to work during a severe snowstorm, but denied to those employees who failed to report to work. The arbitrator held that by granting administrative leave in this limited fashion, management recognized that conditions existed which justified administrative leave. In

## LEAVE (ADMINISTRATIVE LEAVE FOR "ACTS OF GOD")

this case, the Postmaster testified that he had never previously granted administrative leave to those employees who failed to come to work, because he believed that employees would have less incentive to make an effort to get to work in the future. The arbitrator held that the Postmaster was arbitrary in his decision and that there was not a valid reason for denying administrative leave.

Most arbitrators agree that Section 519.211 is applicable to a "scheduled tour" on any day, including a day outside an employee's regular schedule. However this does not change the provisions of ELM Section 433.1 which mandates that an employee cannot be given more than 40 hours of straight time pay in a service week.

National Arbitrator Mittenenthal held in [C-06365](#), that, where the granting of administrative leave would have given the employees more than 40 hours of straight time pay, ELM Section 433.1 is an overriding limitation on the scope of administrative leave, and denied the employees' request, even though they had met the other three criteria.

### Proof of "reasonable diligence"

To justify a request for administrative leave, most arbitrators require the employee to have exercised reasonable diligence in attempting to report to work. Some arbitrators will make this determination based upon the general conditions of the area, and do not require specific proof. Other arbitrators require the employee to present specific proof that they have exercised reasonable diligence and still were unable to report to work.

In [C-00616](#), the arbitrator held that where the Postmaster concluded that some employees did not exercise reasonable diligence because their neighbors were able to report to work, this established a prima facie case which the Union had to refute by submitting proof that the absent employees did, in fact, exercise reasonable diligence. In [C-03433](#) the arbitrator denied requests for administrative leave where the Postal Service did not suspend operations and the arbitrator was given no evidence of the diligence of the employees.

In [C-00581](#), where the storm was of sufficient severity to force a halt to community activity and had an equally severe effect on the Service, the arbitrator granted administrative leave to the two grievants who testified. However, the arbitrator denied administrative leave to the other employees who failed to produce affidavits or other evidence that they had exercised reasonable diligence in their efforts to report to work. According to the arbitrator in [C-00411](#), "Proof of such effort will involve the various means available to the employee to get to work and the feasibility of those means. Such means can be a personal automobile, or various specialized automotive vehicles such as 4-wheel drive vehicles, snowmobiles, trucks and

the like." The arbitrator held that an employee must show that alternate means were unavailable or the effort would have been futile, before administrative leave is granted (See also, [C-09024](#)).

According to the arbitrator in [C-05290](#), in determining reasonable diligence, one must look to the general norm or a reasonable range of expected behavior. In this case, even though half of the employees were able to report to work, the arbitrator held that the storm was severe enough to be a legitimate basis for the judgment of many that reporting in would be futile, unsafe, and imprudent (See also, [C-00402](#)).

### Converting other leave to administrative leave

Generally, where employees report to work, and management has work available, administrative leave will not be warranted if the employee elects to leave early. In [C-00614](#), management gave employees who reported to work and worked most of their shift the option of leaving early, or performing additional work that was available. In this situation, the arbitrator held that administrative leave was not justified for those employees who elected to leave early (See also, [C-01590](#), [C-01850](#)).

When an employee has been granted annual leave or leave without pay to cover an absence due to an "Act of God", most arbitrators hold that this will not prevent the employee from receiving administrative leave, if it is later determined to be warranted.

In addition, when management grants administrative leave to excuse those who arrived late or left early during a disaster, most arbitrators consider this to be a recognition by management that the three criteria were met. In these circumstances those who were unable to report to work often are granted administrative leave as well.

In [C-00680](#), management granted administrative leave to those employees who arrived late to work, but denied it to those who were unable to report to work. The arbitrator held that by granting administrative leave to late employees, management recognized that the conditions justifying administrative leave were present. Therefore, the arbitrator found that management acted unreasonably, and that administrative leave was warranted for those employees who were unable to report to work on that day. See also [C-00411](#), [C-00614](#).

## National Level Arbitration

### **C-06365 NALC National Arbitrator Mittenthal** **August 8, 1986**

Mittenthal held that, where the granting of administrative leave would have given the employees more than 40 hours of straight time pay, ELM Section 433.1 is an overriding limitation on the scope of administrative leave, and denied the employees' request, even though they had met the other three criteria.

## Supporting Cases

**C-00074** Regional Arbitrator Cohen  
January 18, 1980

**C-00235** Regional Arbitrator Cohen  
July 26, 1982

**C-00359** Regional Arbitrator Cohen  
January 12, 1981 See also **C-00402**, **C-00410**, **C-00411**

**C-00447** APWU Regional Arbitrator Stutz  
November 9, 1983

**C-00448** APWU Regional Arbitrator Marx  
August 26, 1983 See also **C-00542**

**C-00581** Regional Arbitrator Zumas  
October 25, 1982

**C-00614** Regional Arbitrator Grabb  
November 14, 1983

**C-00616** Regional Arbitrator Dworkin  
March 11, 1985

**C-00680** Regional Arbitrator Zumas  
May 16, 1983

**C-00713** Regional Arbitrator Dobranski  
October 9, 1981

**C-01357** Regional Arbitrator Goldstein  
August 2, 1982

**C-01590** Regional Arbitrator Epstein  
July 6, 1981

**C-03368** Regional Arbitrator McConnell  
March 16, 1983

**C-04205** Regional Arbitrator Bowles  
March 23, 1984

**C-04542** Regional Arbitrator Bernstein  
April 17, 1983

**C-05290** Regional Arbitrator Jacoboski  
October 31, 1985

**C-05432** Regional Arbitrator Mikrut  
January 2, 1986

**C-08197** Regional Arbitrator Cushman  
July 25, 1988

**C-09024** Regional Arbitrator Dobranski  
December 29, 1982

**C-24662** Regional Arbitrator Steinberg  
September 24, 2003

**C-25590** Regional Arbitrator Jonathan Klein  
November 20, 2004

**C-25644** Regional Arbitrator Frank  
December 17, 2005

**C-26130** Regional Arbitrator Durham  
September 1, 2005

**C-26227** Regional Arbitrator Tobin  
October 31, 2005

**C-27613** Regional Arbitrator Soll  
April 15, 2008

## LEAVE (FAMILY AND MEDICAL)

The Postal Service regulations implementing the provisions of the Family and Medical Leave Act (FMLA) are found in ELM Section 515.

### **M-01805 U.S. Department of Labor, February 2013 Employee Rights and Responsibilities Under the Family and Medical Leave Act**

#### **C-29873 National Arbitrator Shyam Das April 18, 2012**

Arbitrator Das directed the Postal Service to cease and desist from requiring employees to submit FMLA medical certifications using only the Department of Labor (DOL) WH-380 forms.

#### **M-01817 Interpretive Step Settlement May 16, 2013**

The subject case concerns whether management is required to accept the union's version of a form used to request Family and Medical Leave Act (FMLA) protection.

The parties agree that the issue in this case was addressed in the national arbitration award for cases Q06C-4Q-C11 001666 and Q06N-4Q-C 11008239 (Shyam Das). (C-29873)

#### **M-01812 Interpretive Step, Q06N-4Q-C 11 002599 May 24, 2013**

The subject case concerns proposed revisions to the Employee and Labor Relations Manual which required employees to use Department of Labor forms to certify Family and Medical Leave Act protection.

The Employee and Labor Relations Manual revisions published December 13, 2012 resolve the instant grievance.

#### **M-01547 USPS Letter July 26, 2005**

On July 19, 2005, in the case of Harrell v. U.S. Postal Service, the United States Court of Appeals for the Seventh Circuit ruled that the Postal Service's return to work provisions in ELM 865 cannot be applied to bargaining unit employees returning from FMLA-protected absences.

The ELM provisions before the court allowed management, prior to an employee's return to work from a FMLA-protected absence, to request detailed medical information when the absence was caused by a number of specified medical conditions, or if the absence exceeded 21 days. The ELM provisions recently changed. The new ELM provisions authorize return to work clearance when management has a reasonable belief, based upon reliable and objective information, that the employee may be unable to perform the essential functions of his/her position or may pose a direct threat to health or safety. This standard comports with the requirements of the Rehabilitation Act that employers make medical inquiries only when there is a reasonable, objective basis to do so.

The Postal Service will comply with the Harrell decision in those facilities located within the three states subject to the court's jurisdiction; Indiana, Illinois, and Wisconsin.

#### **C-23261 National Arbitrator Nolan, Q98N-4Q-C 01090839 April 28, 2002**

National dispute involving Publication 71 is arbitrable. The Postal Service had argued that NALC could not resolve in arbitration a dispute concerning the Family and Medical Leave Act, a federal law. Arbitrator Nolan also rejected a series of additional management arguments that the case was not arbitrable, including claims that the grievance was untimely and that Publication 71 is not covered by Article 19.

#### **C-25724 National Arbitrator Das, January 28, 2005, Q00C-4Q-C 03126482**

In applying ELM 513.332 in the context of the RMD process, ACS's may ask questions necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury or for a condition which requires ELM 865 return-to-work procedures, in a manner consistent with the Findings in this decision, but may not otherwise require employees to describe the nature of their illness/injury.

The Postal Service's current process for initiating FMLA review by a third health care provider, at issue in this case, is not consistent with the FMLA or with ELM 515.1 and 515.54, and implementation of that process violates Articles 5 and 10.2.A of the National Agreement. The Postal Service is directed to rescind that process.

#### **M-01558 Prearbitration Settlement January 11, 2006**

A Step B team has the authority to determine if an employee's FMLA certification of a serious health condition provides the information required to protect the absence, in accordance with the FMLA, and to determine whether a certification for a chronic condition is acceptable, with regard to the duration and frequency, when it uses descriptors such as "unknown", "indefinite" or "intermittent."

#### **M-01635 USPS Letter January 9, 2008**

USPS response to NALC inquiry: In accordance with ELM 515.51, employees can submit their FMLA information to a supervisor or the FMLA Coordinator. The Postal Service is considering revisions to ELM 515.51. In the interim, the field will be informed that supervisors should be forwarding the employee's FMLA information to the FMLA Coordinator, whenever received.

#### **M-01552 USPS Letter August 30, 2005**

Letter from the Postal Service concerning new FMLA certification for a previously certified FMLA medical condition when the employee asks for leave for the previously certified FMLA medical condition in a new leave year.

## LEAVE (FAMILY AND MEDICAL)

### **M-01271 USPS Publication**

**March 1995**

Internal USPS publication entitled Family and Medical Leave Act (FMLA) Reference Material for US Postal Service.

### **M-01378 USPS Memorandum**

**November 22, 1995**

Postal Service Headquarters Memorandum concerning FMLA Issues.

### **M-01379 USPS Letter**

**September 12, 1996**

Postal Service Headquarters letter concerning FMLA Issues.

### **M-01281 Prearbitration Settlement**

**February 26, 1997, F90N-4F-D 95043198**

The provisions of ELM Section 515, "Absence for Family Care or Serious Health Condition of Employee" are enforceable through the grievance arbitration procedure.

### **M-01270 Prearbitration Settlement**

**October 16, 1997, F94N-4F-D 97026204**

In a disciplinary hearing involving just cause, the union may argue as an affirmative defense that management's actions were inconsistent with the Family and Medical Leave Act

### **M-01371 Step 4**

**January 13, 1999, F94N-4FJ-C- 97100062**

The issue contained in this grievance whether an employee when requesting LWOP under FMLA, must exhaust paid leave before the approval of LWOP. As in this case, where an employee has insufficient sick leave to cover an FMLA approved absence which qualifies for sick leave usage, LWOP cannot be denied.

### **M-01424 Prearbitration Settlement**

**Q94N-4Q-C 99224270, March 28, 2000**

There is no dispute that an employee who requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year. LWOP may be taken in conjunction with annual or sick leave for which the employee is qualified. An employee need not exhaust annual or sick leave prior to requesting LWOP.

### **M-01222 USPS Letter**

**February 7, 1994**

**NOTE: Partly Overruled by M-01687, below.**

Question: Do employees retain the no-layoff protection when FMLA interrupts the 20 day pay periods worked per year during the six year period of continuous service?

Answer: Yes. However, since the maximum FMLA time off is 12 weeks or 6 pay periods per leave year, loss of the no-layoff protection would normally be for other reasons. The

only time FMLA would interrupt the years required for protection is in cases where more than 12 weeks of FMLA during two different leave years result in more than 6 pay periods of absence during an individual employee's anniversary year. In these rare cases the no-layoff protection must manually be restored. This is accomplished by sending a memorandum to the Minneapolis Information Service Center.

Question: Does OWCP and Military Leave count towards the 1250 work hour criteria for eligibility for FMLA?

Answer: No. Whether an employee has worked the minimum 1250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. OWCP and Military Leave do not qualify as work under these principles.

### **M-01687 U.S. Department of Labor, Assistant Secretary for Veterans' Employment and Training, July 22, 2002**

... Therefore, in determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the civilian employer should be combined with the months and hours that would have been worked during the twelve months prior to the start of the leave requested but for the military service.

### **M-01320 Pre-arbitration Settlement**

**May 21, 1998, C94N-4C-C 96031384**

The parties do not dispute the fact that there is no "laundry list" of serious health conditions. Rather, the circumstances determine whether a condition is serious, not the diagnosis. Therefore, every request for FMLA leave must be considered on a case-by-case basis, applying the definitions to the information provided by the employee and the employee's health care provider.

In the instant case, the information on the grievant's WH-380 appeared to be complete and the supervisor believed that the three day absence did not qualify for FMLA coverage. However, since that initial documentation, the grievant has disclosed additional information which suggests that his illness may have been the result of a chronic condition. Since it is arguable that the supervisor should have considered this supplemental documentation, the parties agree that the grievant's absence will be treated as though it were an absence protected under the FMLA.

### **C-23261 National Arbitrator Nolan**

**April 28, 2002, Q98N-4Q-C 01090839**

The arbitrator found that NALC's grievance challenging revisions to Publication 71 was arbitrable. The grievance was subsequently resolved by the prearbitration settlement M-01474, below.

## LEAVE (FAMILY AND MEDICAL)

### **M-01474 Prearbitration Settlement Q98N-4Q-C 01090839, December 9, 2002**

The issue is whether Publication 71, "Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act", violates the National Agreement by requiring "supporting documentation" for an absence of three days or less in order for an employee's absence to be protected under the Family and Medical Leave Act (FMLA).

After viewing this matter, we agree that no national interpretive issue is presented. The parties agree to resolve the issue presented based on the following understanding:

The parties agree that the Postal Service may require an employee's leave to be supported by an FMLA medical certification, unless waived by management, in order for the absence to be protected. When an employee uses leave due to a condition already supported by an FMLA certification, the employee is not required to provide another certification in order for the absence to be FMLA protected.

We further agree that the documentation requirements for leave for an absence of three days or less are found in Section 513.361 of the Employee and Labor Relations Manual which states in pertinent part that:

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

### **M-01436 Step 4 April 3, 2001, B94N-4B-C 98056900**

When an employee is awarded back pay, the hours an employee would have worked if not for the action which resulted in the back pay period, are counted as work hours for the 1250 work hour eligibility under the Family Medical Leave Act (FMLA).

If an employee substitutes annual or sick leave for any part of the back pay period that they were not ready, willing and able to perform their postal job, the leave is not counted as work hours for the 1250 work hour eligibility requirement under the FMLA.

If a remedy modifies an action, resulting in a period of suspension or leave without pay, that time is not counted as work hours for the 1250 hours eligibility requirement under the FMLA.

### **M-01381 APWU Pre-arbitration Settlement April 20, 1999 Q90C-4Q-C 95048663**

This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning "Paid Leave and LWOP" found on page 312 of the 1998 National Agreement. The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as the parties' further agreement on the use of paid leave and LWOP. We further agree that:

1. As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

2. Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, absences for family care or serious health problem of employee (policies to comply with the Family and Medical Leave Act.).

3. In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. As we have previously agreed, this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

### **C-14107 Regional Arbitrator Lurie November 27, 1994, H90N-4H-D 94068273**

"Because the grievant's absence was protected leave under the provisions of the FMLA, the reliance upon that leave as a basis for her removal from the Postal Service was in violation of the Act, and is void, as a contravention of public policy and the laws of this Country. The citation of that leave was also a violation of Article 19 of the Agreement, inasmuch as the Act has been expressly endorsed by the Postal Service, and integrated into its handbooks and manuals." See also [C-18540](#), [C-18477](#)

### **C-27066 Regional Arbitration Cenci April 26, 2007, B01N-4B-C 06187305**

... FMLA 90 also notes that not all absences under the FMLA will be predictable and that certification cannot be withheld because a health care provider did not submit an exact schedule of leave.

The Form 2 submitted by the grievant met the requirements set forth in FMLA-90 in my view, and the grievant should not have been required to provide further clarification. His condition is chronic and it is difficult to see how its duration could be described more precisely than as "indefinite".

# LETTER CARRIER DUTIES

See also [CMU/Markup](#)  
[Cross Craft Assignments](#)  
[DPS Work Methods](#)  
[Express Mail](#)  
[Jurisdiction](#)  
[Marriage Mail](#)  
[Parcels](#)  
[Pivoting](#)

**M-00464 Step 4**  
**October 6, 1978, NCS 11115**

Local management can properly request letter carrier employees to estimate their work load, to the best of their ability, when the employees request overtime or auxiliary assistance. The information obtained by the carrier's estimation is not intended to be used to discipline carriers or to set work standards.

**M-00286 Step 4**  
**October 15, 1981, H8N-5B-C 19305**

The amount of time required by a carrier to learn a particular route is a judgment call best handled at the local level.

**M-00416 Step 4**  
**March 4, 1983, H1N-3T-C 13107**

A newly appointed carrier or a carrier permanently assigned to a route with which the carrier is not familiar will be allowed a reasonable period to become familiar with the route and to become proficient. A specific amount of time has not been designated at the national level. Therefore, what constitutes "reasonable" in this case must be based upon the fact circumstances as they exist at the local level.

**M-00035 Step 4**  
**March 28, 1978, NCW 10498**

Management is to observe the duties of the letter carrier position as found in the P-11 Handbook.

## Checks, Accepting

**M-00427 Letter**  
**April 10, 1974**

In determining the acceptability of checks for payment of COD charges, letter carriers should be guided by local practice as expressed in the postmaster's instructions.

**M-00038 Step 4**  
**September 10, 1982, H1N-5G-C 4724**

The Postmaster will discontinue the use of the "checklist of unsatisfactory casing procedures."

**M-00656 Step 4**  
**November 14, 1977, NCS 7404**

Handbook M-41 is part of the letter carrier's route book. All changes in the Handbook provisions should appropri-

ately be posted by the letter carriers in order that they are familiar with all changes concerning their responsibilities.

**M-01012 Step 4**  
**October 1, 1991, H7N-3C-C 34862**

We mutually agreed that letter carriers are required to sign for stamps-by-mail. Additionally, appropriate credit will be reflected on line 14 of PS Form 1838 during route examinations.

**M-00729 Step 4**  
**September 20, 1977, NCS 6630**

Requiring carriers to place a map of their delivery area in the route book and to mark the map with the line of travel is not in violation of the National Agreement.

**M-01250 Step 4**  
**B90N-4B-C 93047134, January 4, 1996**

The issue in this grievance is whether Management violated the National Agreement by assigning supervisors to perform "station input" into the Decision Support Information System (DSIS) computer. [W]e agreed to remand this case for application of Section 111.2 of Handbook M-39, to the parties at Step 3 for further processing or to be rescheduled for arbitration as appropriate.

**M-01283 Step 4**  
**March 5, 1997, I94N-4I-C 97030394**

The issue in these cases is whether management violated the National Agreement by not assigning CSBCS station input sort file update work to the carrier craft.

The parties mutually agreed that the work in question has not been designated to any particular group, level or position description or craft and that the work is assigned to management or its designee and management may assign the work to be performed by any qualified and available personnel.

## Address Management System (AMS)

**M-01274 Step 4**  
**January 2, 1997, E94N-4E-C 96073621**

The parties did agree that the Address Management Systems Specialist position description, in Item #4, provides for maintaining route delivery line of travel information, however, this does not include making unilateral changes in the carrier's line of travel.

**M-01376 Step 4**  
**February 22, 1999, H94N-4H-C 98076450**

The issue in these grievances is whether management violated the National Agreement when AMS duties were added to the position of Growth Management Coordinator. After reviewing these matters, we mutually agreed that no national interpretive issue is fairly presented in this case. There is no nationally recognized position of Growth Man-

agement Coordinator. Therefore, we agreed that the AMS function is a managerial function which may be delegated.

## **M-01377 Step 4**

**February 22, 1999, G94N-4G-C 97067155**

AMS function is a managerial function which may be delegated and regardless of the methodology employed to change the information contained on Form 313, the actual work associated with making such changes on Form 313 is letter carrier work.

## **Arrow Keys**

### **M-01205 Step 4**

**March 6, 1995, E90N-4E-C 94037609**

The grievance concerning a local practice of allowing letter carriers to take home arrow keys rather than checking them in on a daily basis as required by M-41 Section 261.21. It was resolved as follows:

"We agree to the following in order to clarify what appear to be conflicting regulations. The procedures of M-41 261.21 and 431 are applicable. The regulations in POM 644.2 provide an exception for permanently assigned keys which is not applicable to this situation."

## **Carrier Alert**

### **M-01794 Joint Statement of Support on the 30th Anniversary of Carrier Alert, June 15, 2012**

In July 1982 the United States Postal Service and the National Association of Letter Carriers (NALC) launched Carrier Alert, a joint effort to partner with local social service agencies across the country to offer a measure of security for one of the most vulnerable segments of our society-homebound citizens.

During its 3D-year history Carrier Alert has leveraged Letter Carriers' unique daily presence in America's communities to keep a watchful eye on elderly, infirm, and disabled citizens. The value of the program has been repeatedly demonstrated as alert Letter Carriers have helped thousands of these citizens receive assistance. In many cases this action has literally saved lives.

The all-volunteer Carrier Alert program is a natural extension of the role Letter Carriers and the Postal Service play in America's neighborhoods. Together, the Postal Service and its Letter Carriers are committed to serving the people and communities in ways that go beyond simply delivering the mail. We show how deeply we care for the communities we serve.

As we celebrate the 30th anniversary of Carrier Alert, we encourage all NALC branch leaders and local Postmasters to recommit themselves to working with local social service agencies to support the program and to extend its

reach to those who most need the peace of mind it offers.

## **Case Labels**

### **C-03329 National Arbitrator Aaron**

**March 16, 1983, H1N-3Q-C 1288**

Relabeling of letter carrier cases, including filling out of forms 313 is bargaining unit work which may not be performed by supervisors. See also [C-01409](#), [C-05654](#), [M-00204](#), [M-00203](#).

### **M-00658 Step 4**

**October 17, 1978, NCS 11549**

There is no absolute requirement that management must utilize color coded printed labels for carrier cases. See also [M-00659](#).

### **M-00691 Step 4**

**February 8, 1977, NCS 4482**

The supervisor is within his rights to make corrections or changes on PS Form 313. To this extent, the grievance is denied. However, the supervisor should not prepare the actual label.

### **M-00926 Step 4**

**May 11, 1989, H7N-4C-C 7206**

Regardless of the methodology employed, including the use of a computer, the work associated with filling out Forms 313 is letter carrier work.

### **M-00040 Pre-arb**

**February 25, 1982, H8N-5D-C 16010**

To the maximum extent possible, the carrier regularly assigned to the route will complete PS Form 313. See also [M-00900](#)

### **M-00967 USPS Letter**

**November 1989**

Collection of Class [Label] Data. The office of Labor Relations has requested us to remind you of an agreement with the National Association of Letter Carriers (NALC) that any changes affecting the city letter carriers' case labels should be provided by city letter carriers. The agreement states that regardless of the methodology employed to change label information, the actual work associated with making such changes is the responsibility of the letter carrier. To the maximum extent possible, the letter carrier assigned to the route should complete the form.

### **M-01248 Step 4**

**H90N-4H-C 95051140, April 15, 1996**

The issue in this grievance is whether Management violated the National Agreement by requesting a change in the labels on carrier cases.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

During those discussions, we mutually agreed that as stated in the applicable provisions of the M-39 handbook (section 117.41), delivery unit managers are responsible for the efficient use of the CLASS case labels on all carrier cases. They must schedule frequent reviews of carrier-case layout to assure maximum efficient use of available equipment, route layout, and housekeeping. However, if the change to the case separations or the labels results in the approved DPS work method that was chosen under the Work Method memo being less efficient, that issue should be addressed at the local level, consistent with the USPS-NALC Joint Training Guide, "Building Our Future By Working Together."

## **M-01460 Prearbitration Settlement** **April 26, 2002, E94N-4E-C-99150536**

The issue in this case is whether management violated the National Agreement when a clerk was assigned duties related to case labels, maintenance work orders and, when detailed as an acting supervisor, accident investigations.

After reviewing this matter, we mutually agree that no national interpretive issue is fairly presented in this case. We agree that the current provisions of Part 253 of Handbook M-41 require the carrier to keep the Edit Book and PS Form 1621 accurate and up to date. We also agree that a determination of whether a clerk improperly performed duties associated with case labels and maintenance work orders must be based on the specific fact circumstances of this case. Furthermore, the parties agree that an employee detailed as an acting supervisor may perform any supervisory duties, including investigation accidents.

## **Casing Mail**

### **M-00951 USPS Letter** **February 24, 1982**

As you know, we encourage right handed distribution. However, for those employees who have historically distributed left handed, where is no prohibition against continuing in such a manner provided such employees can orient mail properly in the case and perform assigned duties efficiently. See also [C-00379](#), below.

### **C-00379 APWU National Arbitrator Bloch** **September 14, 1981, A8-C-598**

The issuance of a Regional Directive making mandatory right-hand distribution by distribution clerks does not violate the 1978 National Agreement. See also [M-00951](#), above.

### **C-03247 National Arbitrator Garrett** **January 17, 1977, NC-NAT-1576**

The arbitrator found that the Postal Service did not violate the National Agreement by having clerks sort mail for apartment buildings into "directs" and having the carrier separate the mail in the apartment mail room rather than in the office.

### **M-00760 Step 4** **May 22, 1974, NBS 11**

We recognize that the casing of "slugs" or "large pieces" by part-time flexible employees after the departure of the carriers may impede the subsequent casing of first class letter sized mail by the carriers the following day. To provide relief in this situation, management shall assure that the casing of the mail in question by part-time flexible employees does not interfere with the carriers' casing of first class letter sized mail.

### **M-00402 Letter** **November 15, 1977**

Local management determines what is or is not a "thin flat" and whether a carrier will fold "thin flats" and place them in the letter case.

### **M-00655 Step 4** **June 1, 1977, NCC 5913**

Management should instruct employees performing casing assistance not to load letter separations with large pieces and flats that would hinder sorting additional letter mail. See M-39, Section 122.32.C.2

### **M-00738 Step 4** **July 8, 1977, NCS 5894**

In abnormal circumstances such as where carrier cases have three and four deliveries to a separation and sequence of delivery cannot be maintained during casing, the National Agreement, Article XLI, Section 3(l) anticipates that the required sequencing of letter mail will be accomplished in the office while traying or strapping out.

### **C-09420 Regional Arbitrator Skelton**

Management did not violate the contract when it required the grievant to sort 16 apartment deliveries to each separation, rather than 2 deliveries per separation.

## **Cellular Phones**

### **M-01331 Pre-arbitration Settlement** **June 23, 1998, H94N-4H-C 97033967**

It is mutually agreed that there is no dispute at this level concerning a carrier's responsibility for cellular telephones. The parties further agree that management may document that letter carriers have been given appropriate instructions on the proper handling of such cellular telephones. However, as these cellular telephones are not currently identified as "accountable items" in part 261 of Handbook M-41, carriers are not currently required to sign/initial to verify receipt of these cellular telephones.

However, once the letter carriers receives appropriate instruction on the proper handling of the cellular telephones, either a management representative or another designated employee may document the serial number of the cellular telephone given to each letter carrier on a daily basis.

## Collection cards

### **M-01361 Step 4**

**October 22, 1998, D94N-4D-C 96071608**

This grievance concerns the use of collection cards in an effort to improve service through proper collection of mail and the use of locally developed forms. After reviewing this matter, we mutually agreed that there is no dispute at this level concerning a carrier's responsibility for the collection of mail, and for the proper use of cards used to verify and/or remind carriers of such collections. The parties further agree that management may document the fact that letter carriers have been given appropriate instruction on the proper handling of such cards. However, as these cards are not currently identified as accountable items in part 261 of Handbook M-41, carriers are not currently required to sign/initial to verify receipt of these cards. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 325.12 of the Administrative Support Manual (ASM). The locally developed forms at issue were not promulgated according to the ASM, Section 325.12. Therefore, management will immediately discontinue their use until such time as they comply with the above cited provision.

### **M-01287 Prearbitration Settlement**

**May 15, 1997, G90N-4G-C 95035453**

This grievance concerns the use of "collection verification cards" in an effort to improve service through proper collection of mail.

After reviewing this matter, it was mutually agreed that there is no dispute at this level concerning a carrier's responsibility for the collection of mail, and for proper use of cards used to verify and/or remind carriers of such collections. The parties further agree that management may document the fact that letter carriers have been given appropriate instruction on the proper handling of such cards. However, as these cards are not currently identified as "accountable items" in part 261 of Handbook M-41, carriers are not currently required to sign/initial to verify receipt of these cards.

## Customer Connect

### **M-01549 USPS Letter**

**August 30, 2005**

In all instances, when Customer Connect is introduced at an installation the Customer Connect Program becomes the only program for city letter carriers in that installation for submitting leads.

### **M-01621 Memorandum of Understanding**

**June 4, 2007**

Updates and reiterates required and agreed upon mandates for the Customer Connect program.

### **M-01655 Memorandum of Understanding**

**September 11, 2007**

The parties reemphasize their joint commitment to the growth and long-term success of the Customer Connect Program and pledge to continue to work jointly at all levels of our organizations to enhance this important effort.

## Delivery Confirmation

### **M-01455 Prearbitration Settlement**

**January 24, 2002, Q98N-4Q-C-00131997**

The issue in this grievance concerns the Delivery Confirmation Program, Enhanced Signature Capture.

After reviewing this matter, we mutually agreed to settle this grievance on the following basis:

The electronic information for Delivery Confirmation service items will continue to be handled in accordance with the applicable section(s) of the Privacy Act.

Carriers will not be held liable for loss or theft of signature waiver items for which they have signed as acknowledgment of delivery in accordance with the mailer's or addressee's instructions and postal regulations.

Time credit will continue to be given during a route count and inspection for the Enhanced Signature Capture activity, as it has been, and will continue to be credited in total street time.

## EPM Offices

### **M-00231 Step 4**

**March 29, 1982, H8N-4F-C 20295**

Offices utilizing the Expedited Preferential Mail System are expected to normally follow all prescribed procedures. We understand that these procedures may be altered on occasion, as dictated by the needs of the service. However, a daily deviation from the EMP procedures may indicate the need for a review by the postmaster or his designee.

### **M-00397 Step 4**

**August 2, 1977, NCS 6524**

Under the expedited preferential mail system, non-preferential mail is normally cased in the afternoon. However, management may use its discretion in determining whether overtime should be authorized or if casing should be deferred until the next morning.

## Global Positioning Satellite (GPS)

### **M-01705 USPS Letter**

**May 15, 2009**

Is a response to a letter from Director of City Delivery Dale Hart asking about the installation of Global Positioning Satellite (GPS) systems in postal vehicles. The May 15,

2009 letter states, "there is no nationwide implementation plan of GPS devices." Additionally, when GPS devices are installed in delivery units, city carriers will be advised in advance of the installation and the vehicles which will receive GPS.

## Hampers

### **M-01477 Pre-arb**

**March 4, 2003, Q98N-4Q-C-00099268**

The parties agree that placing inverted plastic trays in the bottom of the 104-P hamper as an insert is one way, among others, to address any local bending and lifting concerns.

This agreement fully and completely resolves the issue of whether there is a bending/lifting hazard or violation of the National Agreement when city carriers use a 1046-P plastic hamper and, accordingly, will be applied to all disputes on this issue, including all grievances currently pending at any level of the grievance-arbitration procedure.

## Managed Service Points (MSP)

### **M-01458 Step 4 Settlement**

**March 13, 2002, Q98N-4Q-C-01045840**

The Managed Service Points (MSP) initiative is a national program intended to facilitate management's ability to assess and monitor city delivery route structure and consistency of delivery service. The following reflects the parties' understanding of MSP:

The parties agree that management will determine the number of scans on a city delivery route. Time credit will continue to be given during route count and inspections and will be credited in total street time.

MSP does not set performance standards, either in the office or on the street. With current technology, MSP records of scan times are not to be used as timecard data for pay purposes. MSP data may not constitute the sole basis for disciplinary action. However, it may be used by the parties in conjunction with other records to support or refute disciplinary action issued pursuant to Article 16 of the National Agreement.

City letter carriers have the option of using a personal identification number (PIN) other than the last four digits of their social security number.

Section 432.33 of the Employee and Labor Relations Manual (ELM) remains in full force and effect when MSP is implemented. It provides that 'Except in emergency situations, or where service conditions preclude compliance, no employee may be required to work more than 6 continuous hours without a meal or rest period at least hour.'

Lunch locations for both the incumbent and carrier technician on a city delivery route continue to be determined in compliance with Section 126.5.b(2) of the 39. PS Form 1564A Delivery Instructions' lists the place and time that city letter carriers are authorized to leave the route for lunch. However, the parties recognize that, consistent with local instructions and operational conditions, city letter carriers may be authorized to leave at a different time and/or place. Notwithstanding this, the parties agree that city letter carriers will scan MSP scan points as they reach them during the course of their assigned duties.

## Mark-Up, CMU

### **M-00410 Step 4**

**June 24, 1983, H1N-3U-C 17722**

Carriers may be required to rework mail from the CMU in accordance with Section 180 of the M-39 Handbook.

### **M-00477 Step 4**

**May 2, 1985, H1N-3W-C 32759**

In offices where there is a CFS/CMU site, letter carriers shall not be required to forward or return any class of mail, including oversized parcels. Letter carriers shall continue to endorse undeliverable as addressed in accordance with current policy.

### **M-00741 Step 4**

**January 13, 1978, NCN 7165**

Carriers may not be required to review a large amount of C.M.U. Mail without additional office time.

### **M-00191 Step 4**

**October 10, 1975, NBW 6032**

The practice of the Central Mark-Up Clerk "red marking" mail and returning it to the carrier for verification is improper. Existing U. S. Postal Service policy requires that if a change of address notice is not on file, the Central Mark-Up Clerk is to return the mail to the sender. Further, requiring letter carriers to retain completed Forms 3982 at the carrier case for one year is contrary to existing instructions.

### **M-01023 Step 4**

**August 10, 1982, H1N-3W-C 6335**

Carriers will be allowed to return mark-up mail and misthrows to the throwback case or other designated location. It is our mutual understanding that the carrier case is not the designated location. See also [M-00070](#), [M-00117](#), [M-00265](#)

### **M-01026 Postal Bulletin 21652**

**December 31, 1987**

Postal Bulletin notice specifying procedures for handling third-class Bulk Business Mail (BBM).

## Modified Equipment

### **M-00894 Step 4**

**February 10, 1989, H7N-1P-C 7159**

Modifications of any carrier casing equipment may only be made in accordance with the provisions of the National Agreement, including the applicable Section(s) of Article 34 and Article 4. In addition, Headquarters' approval must be obtained before testing, and the National Association of Letter Carriers at the national level, must be notified of the test in the appropriate manner. See also [M-00959](#)

### **M-01076 Step 4**

**June 26, 1992, H0N-3F-C 320**

The issue in this grievance is whether management violated the National Agreement by adjusting routes based on inspections performed using five-shelf cases.

During our discussion, we mutually agreed that, since the M-39 provides only for standard six-shelf letter cases, route inspections and adjustments should not have been performed on non-standard cases.

### **M-01130 Step 4**

**January 13, 1993, H7N-2N-C 41759**

The issue in this grievance is whether three shelf letter cases are authorized as casing equipment. During our discussion we mutually agreed that letter cases with fewer than four shelves are not currently authorized and will not be used. Accordingly, we agreed that the use of the three shelf case will be discontinued.

### **M-01187 Step 4**

**March 3, 1994, H0N-5K-C 15850**

We further agreed that modifications of any casing equipment may only be made in accordance with the provisions of the National Agreement, including applicable Section(s) of Article 34 and Article 4, except as otherwise specifically provided in a Memorandum of Understanding or other settlement. In addition, the Memorandum of Understanding on casing equipment dated September 17, 1992, allows the local parties to jointly agree to use a four or five shelf case configuration.

### **M-01240 Step 4**

**July 25, 1995, J90N-4J-C 95012688**

The issue in this grievance is whether Management violated the National Agreement by allowing a carrier to utilize a homemade cardboard tray device to the fixed tray in a Long Life Vehicle, to assist in the delivery of DPS mail.

During our discussion the parties agreed that the USPS/NALC Joint Training Guide on Building Our Future by Working Together, dated September 1992, does not authorize changes in work methods in the delivery of DPS mail without local agreement. Whether this is such a change, and whether its use is prohibited, is suitable for

regional/local determination.

## Priority Mail

### **M-01341 Step 4**

**April 21, 1998, D94N-4D-C 97104406**

This grievance concerns management's requirement that the city carrier sign for delivery confirmation priority mail prior to delivery in an effort to improve service.

After reviewing this matter, we mutually agreed that there is no dispute at this level concerning a carrier's responsibility for the delivery of mail or management's right to assign the carriers work during the normal performance of their duties. The parties also agreed there is currently nothing in Handbook M-41 which identifies priority mail pieces as accountable.

## Samples

### **M-00342 Step 4**

**May 31, 1985, H1N-1M-C 27834**

It is the position of the Postal Service that the handling of samples by park and loop carriers should be determined on a case-by-case basis. Normally, the carrier would case the detached labels (if any) in the office. Prior to pulling the case, management at the local level will determine the manner in which the carriers will identify the number of samples needed for each relay or the entire route. However, carriers will not be expected to memorize the number of stops per relay on the route.

### **M-00779 USPS Letter**

**February 6, 1987**

All samples should be delivered within the normal standard for ordinary third-class mail. In all cases, delivery must be completed within five days of receipt of the detached labels and samples.

If a sample is too large for delivery into a customer's mailbox, it should be left outside of the box provided it is afforded adequate protection or delivered in accordance with instructions or known desires of the addressee:

A sample too large for delivery into an approved apartment house receptacle will be deposited in the rack underneath the boxes or on a nearby table or other location provided by the building management.

In all cases where a sample is left outside of the mailbox, use a rubber band to hold the sample and address card together.

When delivery cannot be accomplished, complete and leave Form 3849-A, "Delivery Notice of Receipt," and return sample and card to the delivery unit.

# LETTER CARRIER DUTIES

Under no circumstances should a detached address label be delivered without a sample or a sample without a detached address label.

## Satchel Carts

### **C-06155 Regional Arbitrator Rotenberg**

**May 12, 1986, C4N-4B-C 5659**

Management violated the national agreement by withdrawing the grievant's satchel cart.

## Stools

### **M-00682 Step 4**

**May 5, 1977, NCS 5139**

Information in the file does not substantiate that the grievant's use of a stool interferes with or affects the carrier's efficiency and standard job performance. Accordingly, the grievance is sustained.

### **M-00285 Step 4**

**March 20, 1973, NCS 6146**

The employee could not reach top shelf of the case while sitting on a stool. As a result, he would place mail for the top shelf aside and later stand up and case this mail. Since this second handling of the mail is an inefficient practice, management properly instructed the employee not to use the stool.

## Street Duties

See also [Lawn Crossing](#)

### **M-00004 Step 4**

**August 4, 1977, NCN 7044**

Street supervision will be conducted in a proper and businesslike manner and it will not be accomplished with the intent of harassing a carrier.

### **M-00039 Step 4**

**June 11 1982, H1N-5C-C-1155**

It is not a requirement for a carrier on a foot route to carry 4 inches of flats on his arm while delivering mail. Carriers may opt to carry flats on their arm, unless instructed not to, as part of their daily routine, provided there is no loss in carrier efficiency. However, management may reasonably expect the carrier to perform his duties and travel his route during route inspections in the same manner as he/she does throughout the year (Part 915, M-41 and Part 234.224, M-39).

### **M-00504 Step 4**

**May 21, 1984, H1N-1E-C 25147**

Letter Carriers may be required to finger flat mail between stops as required by Part 321.5, M-41 Handbook. Obviously, the physical fingering activity may not be the same as for letter mail which is held in the hand. Flat mail is nor-

mally withdrawn from a satchel. The idea is to have all mail ready for deposit when the carrier reaches the delivery point and to avoid backtracking. Safety should be a prime consideration, by all means.

### **M-00042 Step 4**

**May 17, 1982, H8N-3W-C 34930**

The procedures for handling postage due mail. The current instructions in the Financial Handbook for Post Offices (F-1) are controlling in this matter until the M-41 is revised at a future date.

### **M-00335 Step 4**

**November 17, 1972, NC 672 (50)**

The only exception whereby a motorized carrier may make deliveries without a satchel is a dismount to make a limited (one or two) number of deliveries from a single stop.

### **M-00483 Step 4**

**September 26, 1980, N8-W-0378**

Normally, letter carriers deliver mail during daylight hours; however, there is no contractual provision which would preclude management from assigning carriers to deliver mail in other than daylight hours.

### **C-10514 Regional Arbitrator Witney**

**January 7, 1991**

Management did not violate the contract when it required carriers to deliver mail after dark.

## Throwback Case

### **M-00255 Step 4**

**December 15, 1982, H8N-3U-C 35786**

The question raised in this grievance involves the proper layout of the carrier throwback case. The dispute pivots on whether Exhibit 2-8 of Methods Handbook, Series M-41 or Exhibit 1-1 of Methods Handbook, Series M-39, should be utilized. The date of Exhibit 2-8 of Methods Handbook, Series M-41 is June 14, 1974. The date of exhibit 1-1 of Methods Handbook, Series M-39 is January 30, 1981. Hence, local management was proper in relabeling the throwback case in compliance with the latest instructions.

### **M-01023 Step 4**

**August 10, 1982, H1N-3W-C 6335**

Carriers will be allowed to return mark-up mail and misthrows to the throwback case or other designated location. It is our mutual understanding that the carrier case is not the designated location. See also [M-00070](#), [M-00117](#), [M-00265](#)

## Vertical Flat Cases

### **M-00983 Memorandum of Understanding**

**January 10, 1990**

The parties recognize the need to change existing equipment and methods so that the USPS may remain competitive and efficient. The purpose of the change is to provide the USPS and the letter carriers with a more efficient method of performing their duties and recouping the benefits of this change.

The NALC and USPS agree to jointly implement vertical flat casing (VFC). The following conditions are jointly agreed to.

The EI Process (where it exists) will be utilized to implement vertical flat cases. The expectation is that EI groups will participate in the determination of the predominant case configuration (6,5 or 4 shelf) for each unit. Exceptions to the predominant case configuration within each unit will be made on a route-by-route basis. Carriers will have input into the size and number of separations within the case(s) on their routes.

Where the EI process does not exist, joint labor/management efforts will be established to implement VFC. Whether or not the EI process is utilized to implement VFC, carrier input concerning the case configuration will be solicited.

This casing change is a permanent method for casing carrier flats. Any subsequent change to cases will be by agreement of the parties or management will follow the existing contractual guidelines.

The parties agree to complete this VFC review within 2 years. Also, they will jointly develop implementation guidelines and a criteria to be used when equipment decisions need to be made.

The city delivery, route examination and adjustment (as outlined in the M-39 Handbook, Chapter 2) processes will remain unchanged as a result of the VFC implementation. However, the parties acknowledge that this equipment change necessitates language changes in our handbook and manuals as they relate to flat casing equipment and methods, in order to recoup the benefits of this change.

The work design committee will address other changes to the applicable handbooks and manuals, as appropriate.

### **M-00991 USPS Internal Memorandum**

**March 15, 1991**

In January 1990 the Postal Service and the National Association of Letter Carriers signed a Memorandum of Understanding agreeing to jointly implement Vertical Flat Casing (VFC). At that time, detailed implementation instructions

were issued (Vertical Flat Casing-Information and Guidelines) and joint presentations were made in all regions. Since then we have become aware of a few issues that need clarification.

There has been discussion concerning the 15 minutes per route savings attributed to Vertical Flat Casing in the budget process. This national average savings projection is not applicable at the individual route level. As you may recall from the Corporate Delivery Plan, two engineering studies documented that VFC savings potential from individual routes would vary due to a number of factors including the type and number of possible deliveries, flat mail, volume, etc. While certain routes will save more than the average, others will save less, and a number will not even be converted to VFC. In the aggregate, the in office savings from VFC should approximate 15 minutes per route. These factors must be taken into consideration when evaluating the savings potential from individual routes within a unit.

The Vertical Flat Casing agreement did not commit the Postal Service or the National Association of Letter Carriers to any changes to carrier casing equipment other than the "strip & clip" modifications that allow for the VFC casing configurations to be put into place. There is no agreement or approval to cut-off case legs, weld brackets to the inside of cases, bolt additional shelves to the top of cases, etc. These types of equipment modifications are not part of the Vertical Flat Casing guidelines. Managers, supervisors and letter carriers should not make modifications to equipment that are inconsistent with those identified in the VFC implementation guidelines.

### **M-01256 Step 4**

**October 2, 1996, H90N-4H-C-95033604**

The issue in this grievance is whether Management violated the National Agreement by requiring city carriers to use the one-bundle system while using a 5 shelf case configuration.

During our discussion, it was agreed that the explanation Building our Future by Working Together of the September 1992 MOU on Case Configuration states that the two-bundle and modified two bundle casing systems may be used with four or five shelf letter cases. However, use of the one-bundle system on other than the standard six-shelf letter case requires a joint agreement between the local parties.

Occasionally, local managers use unauthorized and prohibited methods to discipline employees. A commonly used unauthorized method is issuing "letters of concern," "letters of instruction" and the like. They are typically used by supervisors in an attempt to establish a paper record as the basis of further discipline. The Postal Service has repeatedly agreed that all such "letters" are prohibited

If supervisors need to address minor performance problems or irregularities, Article 16 authorizes only two methods. They may hold a private, non-disciplinary "discussion" with an employee (see Article 16, Section 2) or they may issue official discipline in the form of a letter of warning, subject to challenge through the grievance/arbitration procedure (see Article 16, Section 3).

**M-00387 USPS Policy Letter  
November 17, 1982**

Letters of Instruction and Letters of Information or similar type missives are not appropriate and will be discontinued immediately.

**M-01335 Step 4  
July 17, 1998, J94N-4J-C 98075371**

The issue in this case is Letters of Information/Letter of Concern which are issued to employees. After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing or to be scheduled for arbitration, as appropriate with the following understanding:

The letter dated November 17, 1982, signed by James C. Gildea, regarding Letters of Information/Letters of Concern [M-00387] will be controlling in the instant case, and such letters will be removed from the employee files.

M-00074 The local office will immediately discontinue the use of "Letters of Concern." issued to letter carriers who have been bitten by dogs.

**M-00389 Step 4  
January 31, 1983, H1N-3P-C 11303**

A letter of Instruction as contained in this file is inappropriate.

**M-00390 Step 4  
February 2, 1983, H1N-3P-C 8036**

A letter of Awareness as contained in this file is inappropriate.

**M-00768 Step 4  
March 19, 1987, H4N-3Q-C 22215**

Management violated the National Agreement when the grievant was issued a letter because he was not available for a discussion. During our discussion, we mutually agreed that letters of instructions and letters of informative

or similar type missives are not appropriate and the use of such letters must be discontinued in this facility.

**M-00912 Step 4  
March 23, 1989, H7N-4M-C 7533**

The issue in this grievance is whether the National Agreement was violated by the issuance of an accident incident letter. Letters such as these are not appropriate. Management will discontinue using these letters.

**M-01334 Pre-arbitration Settlement  
July 16, 1998, H90N-4H-C 96029292**

The issue in this grievance is whether management violated the National Agreement by developing a local form which was not approved in accordance with the ASM. The development of local forms is governed by the ASM. This grievance concerns a letter which is being issued to employees locally, entitled, "Accident Repeater Alert!!!"

During our discussion, we mutually agreed that the development of local forms is governed by the ASM. Therefore, the issuance of the "Accident Repeater Alert!!! letter will be discontinued.

**M-00706 Step 4  
December 2, 1977, NCW 9088**

Management is not prohibited from giving written informational notices to employees regarding attendance. However, if management desires to bring specific or potential attendance problems to the employee's attention, a personal discussion is more appropriate.

## In general

### **M-01170 Prearb**

**April 29, 1993, H7N-NA-C 60**

During our discussion, we mutually agreed that ELM Section 355.1 will be revised by adding a new section which will read as follows:

355.14 (New Section) The light duty provisions of the various collective-bargaining agreements between the U.S. Postal Service and the postal unions require that installation heads show the greatest consideration for full-time regular or part-time flexible employees requiring light duty or other assignments, giving each request careful attention, and reassign such employees to the extent possible in the employee's office.

### **C-18906 National Arbitrator Snow**

**H1C-5K-C 24191, April 29, 1991**

The Employer violated the national Agreement when management denied the grievant a bid assignment due to her inability to work overtime. Because the grievant was the senior bidder for the open position and met all published qualification standards, she should have been awarded the position. An inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty". Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment. (Emphasis in original)

### **M-01360 Step 4**

**E94N-4E-C 98057013, October 22, 1998**

After reviewing this case, we mutually agreed that no national interpretive issue is fairly presented in this case, with the following understanding (From the Snow award in Case Number H1C-5K-C 24191)

An inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty". Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment.

### **M-00583 Step 4**

**February 7, 1983, H8N-NA-C 53**

While the Postal Service strives to accommodate all injured employees, its responsibilities toward employees injured on duty differ from its responsibilities toward employees whose injuries or illness are not job related. As outlined in Part 546, Employee and Labor Relations Manual, the Postal Service has certain legal obligations to employees with job related disabilities pursuant to 5 U.S.C. Section 1851 and Office of Personnel Management regula-

tions. Article 21, Section 4, of the National Agreement acknowledges these legal obligations toward employees injured on the job and Article 13 recognizes the importance of attempting to accommodate employees whose injuries or illness are not job related. However, the statutory and regulatory responsibilities toward on-the-job injuries are obligatory in nature and given priority consideration when assigning ill or injured employees.

The provisions promulgated in Part 546 of the Employee and Labor Relations Manual for reemploying employees partially recovered from a compensable injury on duty were not intended to disadvantage employees who occupy assignments properly secured under the terms and conditions of the collective bargaining agreement. This includes employees occupying permanent or temporary light-duty assignments acquired under the provisions set forth in Article 13 of the National Agreement.

### **C-09474 Regional Arbitrator R. Williams**

**November 24, 1989, S7N-3Q-C 23061**

Management violated the contract when it provided eight hours of light duty work per day to two PTF employees, but only four hours of light duty work to a senior regular.

### **C-00383 National Arbitrator Bloch**

**October 5, 1983, H1C-4B-C 7361**

Where a clerk obtained a letter carrier position as a result of a letter carrier being assigned light duty on the clerk craft, management acted improperly when it returned the clerk to the clerk craft after the letter carrier grieved the light duty assignment.

### **M-00140 Letter**

**March 23, 1977**

The Postal Service has reexamined its position concerning the meaning of Article XIII, B.2.A. pertaining to who shall bear the cost of the physical examination referred to therein when the employee requesting permanent reassignment to light duty or other assignment is directed to be examined and certified by a physician of the installation head's choice. The Postal Service will, henceforth, pay the designated physician's bill for such physical examination. However, the right is reserved to the installation head to determine when such examinations are appropriate and necessary and every employee request shall not automatically trigger the examination process at Postal Service expense.

### **M-00153 Step 4**

**November 26, 1979, N8-W-0096**

The grievant was inappropriately required to report for the light duty assignment in question, as he had not requested such an assignment. Accordingly, inasmuch as he was directed to work a schedule different from his normal schedule and in another craft, and such assignment was not for his own personal convenience and sanctioned by the Union, the grievant is entitled to receive out-of-schedule

premium pay for the period he worked in other than his normal work schedule.

**M-00146 Step 4**  
**March 28, 1977, NCW 4288**

The fact that no specific types of assignments, number of assignments or hours of duty have been negotiated locally within different crafts does not negate this responsibility of management. It is our position that the posture in question in this case, that "temporary light duty assignment between crafts may not be made absent any provision to that effect in the local memorandum of understanding", is inconsistent with the terms and conditions of Article XIII of the National Agreement and is not enforceable as Postal Service policy.

**M-00564 USPS Letter**  
**March 23, 1977**

The Postal Service has reexamined its position concerning the meaning of Article XIII, B.2.A pertaining to who shall bear the cost of the physical examination referred to therein when the employee requesting permanent reassignment to light duty or other assignment is directed to be examined and certified by a physician of the installation head's choice. The Postal Service will, henceforth, pay the designated physician's bill for such physical examination.

**M-01437 Step 4**  
**April 9, 2001, H90N-4H-C 96029235**

The parties agree that the local practice of requiring an automatic update of medical information every 30 days is contrary to the intent of Article 13 and, therefore, will be discontinued. Consistent with the provisions of Article 13.4.F. of the National Agreement, an installation head may request an employee on light-duty to submit to a medical review at any time: The installation head shall review each light duty reassignment at least once each year, or at any time the installation head has reason to believe the incumbent is able to perform satisfactorily in other than the light duty assignment the employee occupies. This review is to determine the need for continuation of the employee in the light duty assignment. Such employee may be requested to submit to a medical review by a physician designated by the installation head if the installation head believes such examination to be necessary.

## Eligibility

**M-00078 Step 4**  
**November 3, 1983, H1N-5L-C 14379**

An employee must have 5 years of cumulative Postal Service in order to be eligible to submit a voluntary request for permanent reassignment to light duty.

**C-10282 Regional Arbitrator Belshaw**  
**September 20, 1990**

A employee with 11 years of total service, but with only 4 years after reinstatement, has the "five years of service" necessary for assignment to permanent light duty.

**C-10215 Regional Arbitrator Snow**  
**August 3, 1990, W7N-5H-D 17639**

Management violated Articles 2 and 13 when it did not "reasonably accommodate" or provide light duty to a carrier with four years of service and a non-job related disability.

**M-00295 Step 4**  
**September 30, 1983, H1N-2D-C 5870**

The specific restrictions contained in the local memo that essentially preclude the authorization of a light duty assignment beyond 9 months is improper. Thus, any absolute language that limits the amount of time a light or limited duty will be authorized, without qualification, shall be stricken from the memo. See also [M-00080](#).

**M-01005 Step 4**  
**September 30, 1983, H1N-2D-C 6298**

The question in this grievance is whether the local memorandum setting forth a policy regarding light duty assignments violates Article 13 of the National Agreement.

The facts in the case file indicate that the policy specifically includes a provision that "temporary light or limited duty assignments will be authorized... for a period not to exceed 6 months... An extension for 1-3 months... may be permitted with medical certification."

During our discussion of this matter, we agreed to the following as a full settlement of this case:

The specific restrictions contained in the local memo that essentially preclude the authorization of a light duty assignment beyond 9 months is improper. Thus, any absolute language that limits the amount of a time a light or limited duty will be authorized, without qualification, shall be stricken from the memo.

## Schedule

**C-00935 National Arbitrator Mittenthal**  
**June 12, 1987, H1C-4E-C 30528**

Full-time regular employees on light-duty are not guaranteed eight hours a day or forty hours a week. They may be sent home on occasion before the end of their scheduled tours due to lack of work. See also [M-00718](#)

**M-00733 Step 4**  
**November 14, 1977, NCW 8182**

The employee's "normal schedule does not apply when that employee requests light duty."

## **M-00734 Step 4**

**April 15, 1977, NCS 5127**

The installation head may change an employee's regular schedule in order to afford light duty work to an employee without incurring an overtime obligation.

## **M-00735 Step 4**

**April 11, 1977, NCC 2498**

An employee who is not working his regular schedule while on light duty is not entitled to overtime pay for such an assignment.

## **Duties**

### **M-00487 Step 4**

**August 31, 1977, NCS 7445**

Management will instruct employees on light or limited duty to perform only duties which are permitted by the instructions of the physician on Form 2533.

### **M-00008 Step 4**

**October 13, 1977, NCW 8182**

Local management will make a reasonable effort to reassign the employee to available light duty in his own craft prior to scheduling light duty in another craft.

## **Bidding**

### **M-00752 Memorandum**

**March 16, 1987, H1N-NA-C 119**

The following procedures will be used in situations in which a regular letter carrier, as a result of illness or injury, is temporarily unable to work his or her normal letter carrier assignment, and is working another assignment on a light duty or limited duty basis, or is receiving Continuation of Pay (COP) or compensation as a result of being injured on the job, sick leave, or annual leave, or Leave Without Pay (LWOP) in lieu of sick leave.

#### **I. Bidding**

A) A regular letter carrier who is temporarily disabled will be allowed to bid for and be awarded a letter carrier bid assignment in accordance with Article 41, Section 1.C.1, or, where applicable, in accordance with the provisions of a local memorandum of understanding, provided that the letter carrier will be able to assume the position within the six (6) months from the time at which the bid is placed.

B) Management may, at the time of submission of the bid or at any time thereafter, request that the letter carrier provide medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within six (6) months of the bid. If the letter carrier fails to provide such certification, the bid shall be disallowed, and, if the assignment was awarded, it shall be reposted for bidding. Under such circumstances, the letter carrier shall

not be permitted to re-bid the next posting of that assignment.

C) If at the end of the six (6) month period, the letter carrier is still unable to perform the duties of the bid-for position, management may request that the letter carrier provide new medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within the second six (6) months after the bid. If the letter carrier fails to provide such new certification, the bid shall be disallowed and the assignment shall be reposted for bidding. Under such circumstances, the letter carrier shall not be permitted to re-bid the next posting of that assignment.

D) If at the end of one (1) year from the placement of the bid the letter carrier has not been able to perform the duties of the bid-for position, the letter carrier must relinquish the assignment, and shall not be permitted to re-bid the next posting of that assignment.

E) It is still incumbent upon the letter carrier to follow procedures in Article 41.1.B.1 to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

#### **II. Higher Level Pay**

Letter carriers who bid to a higher level assignment pursuant to the procedures described in the preamble and Part I Bidding, above, will not receive higher level pay until they are physically able to, and actually perform work in the bid-for higher level position.

## **Overtime**

### **M-00795 Step 4**

**July 11, 1986, H4N-5B-C 9731**

We agreed that employees on light duty and limited duty may sign the "Overtime Desired" list. We further agreed the parties at Step 3 are to apply Article 13, Section 3.B., and Part 546 of the Employee and Labor Relations Manual to the specific fact circumstances involved in this case. Also whether or not the grievant's physical condition and status was such that he could work overtime is a question that can only be answered based on the facts involved.

See also [OWCP](#)

## **M-01768 National Settlement November 22, 2005**

By letter dated September 28, 2004, the NALC brought three issues identified in the above-cited case to the national level to determine if the parties had an interpretive dispute over the application of Employee & Labor Relations Manual Section 546.

After discussion on several occasions between our representatives, the Postal Service responded with its position on the three issues by letter dated August 19, 2005. [[M-01550](#)].

We mutually agree that the issues raised by the NALC are not interpretive. This case is therefore remanded through the National Business Agent's office to the Step B team who are to resolve the case in accordance with the attached August 19, 2005 correspondence. If the Step B team is unable to resolve the dispute, it is suitable for regular arbitration

## **M-01550 USPS Letter August 19, 2005**

This is in response to your September 28 correspondence regarding Valley Stream, New York "Limited Duty Grievances" and whether they raise three interpretive issues pursuant to Article

15.2 Step B(e) of the National Agreement. The Postal Service does not believe the grievances raise any interpretive issues. The following is our response to the three concerns raised by the NALC.

First, the NALC is concerned that "...management appears to assert that it has no duty to provide limited duty to an injured letter carrier if the carrier cannot deliver mail, even though the employee is capable of performing casing and other letter carrier duties in the office."

The Postal Service makes no such assertion. The Postal Service may provide casing duty and other city letter carrier duties to city letter carriers suffering a job-related illness or injury when it is available within the employee's medical limitations on record. When this occurs, it does not preclude, based on medical documentation, the Postal Service from offering the employee a duty assignment the essential functions of which the employee can perform. All assignments will comply with the Employee and Labor Relations Manual (ELM) Section 546 and the Rehabilitation Act, if appropriate, based on individual circumstances.

Second, the NALC is concerned that "...it appears to be management's position that it has no duty to provide limited duty if available work within the employee's limitations is less than 8 hours per day or 40 hours per week."

The Postal Service makes no such assertion. The Postal Service may provide work of less than eight hours a day or

forty hours a week to city letter carriers suffering a job-related illness or injury when it is available within the employee's medical limitations on record. When this occurs, it does not preclude, based on medical documentation, the Postal Service from offering the employee a duty assignment, the essential functions of which, the employee can perform. All assignments will comply with the Employee and Labor Relations Manual (ELM) Section 546 and the Rehabilitation Act, if appropriate, based on individual circumstances.

Third, the NALC is concerned that "... it appears to be management's position that there is no obligation to provide limited duty when the employee's treating physician indicates that the employee is unlikely to fully recover from the injury."

The Postal Service makes no such assertion. If an employee reaches maximum medical improvement and can no longer perform the essential functions of the city letter carrier position, the Postal Service is obligated to seek work in compliance with ELM Section 546 and, if applicable, the Rehabilitation Act.

We do not believe these issues to be interpretive, nor do we believe we have a dispute on the application of ELM Section 546 or the Rehabilitation Act.

## **M-01706 Prearbitration Settlement June 18, 2009**

This grievance was filed regarding the Postal Service's application of the National Reassessment Program (NRP). The grievance contained three issues. The first issue involves the Union's contention that through the NRP the Postal Service has implemented a new 'necessary work' standard for the creation and continuation of limited duty and rehabilitation assignments. The second issue involves the Union's contention that as part of the NRP the Postal Service has developed new criteria for assigning limited duty. The third issue concerned the potential impact of the NRP on employees assigned to light duty under Article 13 of the Agreement.

In resolution of these issues the parties agree as follows:

1. The NRP has not redefined or changed the Postal Service's obligation to provide limited duty or rehabilitation assignments for injured employees. The ELM 546 has not been amended and remains applicable to all pending grievances.
2. The Postal Service has not developed new criteria for assigning limited duty. Injured employees will continue to be assigned limited duty, in accordance with the requirements of ELM 546 and 5 C.F.R., Part 353.
3. Employees on existing non-workers' compensation light duty assignments made pursuant to Article 13 of the

National Agreement will not normally be displaced solely to make new limited duty or rehabilitation assignments unless required by law or regulation. The foregoing sentence does not establish any guarantee of daily work hours for employees in a light duty assignment.

All grievances which have been held in abeyance will be processed in accordance with the foregoing.

This settlement is without prejudice to the right of the Postal Service to propose changes to ELM 546 in accordance with the Article 19 process. (See also [M-01707](#)).

### **M-01807 USPS Letter to Area Vice Presidents March 19, 2012**

Subject: Employee Medical Restrictions

When craft employees provide medical documentation indicating that they have a disability and cannot work more than eight hours, or that they require other accommodations that may impact their ability to deliver the mail in an efficient manner, this can be challenging for a manager with limited resources who is trying to move the mail. However, the answer is neither to work disabled employees outside of their restrictions, nor to discipline them for being unable to complete their route. Significant liability may result from those courses of action.

A decision was recently issued against the Postal Service in an Equal Employment Opportunity Commission (EEOC) case based upon a finding of disability discrimination and retaliation. The EEOC Administrative Judge awarded the employee, a letter carrier, \$200,000 in compensatory damages, 39 days of back pay, \$12,420 for psychological treatment, and \$115,659 in attorney fees, expert witness fees and costs.

This case is significant because it highlights a growing trend in USPS EEOC complaints- allegations that managers are disregarding employees' medical restrictions. In this particular case, the judge found that management was on notice of the carrier's restrictions by virtue of medical documentations she had submitted to management, as well as her statements regarding those restrictions. The carrier's primary restrictions were a limitation that she could work no more than eight hours per day and a requirement that she be granted a ten minute stretch break every hour. The judge determined that the carrier was frequently required to work more than eight hours and that her workload was not adjusted to allow for the ten minute breaks. There was also a finding that the carrier was harassed when she attempted to abide by her medical restrictions.

Human Resources and the Law Department have more appropriate ways to work through these issues. Therefore, it is critical that operations managers seek their assistance when faced with medical restrictions to ensure that the

proper process is followed, and to ensure that Postal Service operational and financial resources are not compromised. There are valuable resources at <http://blue.usps.gov/uspslaw/ReasonableAccom.htm> on reasonable accommodations, including area law office contacts.

### **M-01119 USPS Letter January 13, 1993**

Postal Service letter instructing that in accordance with OWCP regulations a written description of proposed restricted or limited duty assignments must be provided. Sample letter with minimum requirements attached.

### **M-00487 Step 4 August 31, 1977, NCS 7445**

Management will instruct employees on light or limited duty to perform only duties which are permitted by the instructions of the physician on Form 2533.

### **M-01487 Pre-arb May 29, 2003, Q98N-4Q-C-00065688**

The issue in the case concerns proposed revisions to the Employee and Labor Relations Manual, Issue 14, transmitted by letters dated September 29 and November 12, 1999. After reviewing this matter, we mutually agree to close this case with the following understanding:

The language formerly contained in Section 864.42 of the Employee and Labor Relations Manual (ELM) which stated, "In cases of occupational illness or injury, the employee will be returned to work upon certification from the treating physician, and the medical report will be reviewed by a medical officer or contract physician as soon as possible thereafter" is still in full force and effect and will be placed back into the next edition of the ELM. The change will be identified in a future edition of the Postal Bulletin.

### **M-00914 Step 4 April 13 1989, H4N-2L-C 45826**

The issue in these grievances is whether management violated the National Agreement when it refused to post several potential opt assignments claiming the assignments were reserved for limited duty. We mutually agreed that no national interpretive issue is fairly presented in these cases. We further agreed that there is not authority for management to withhold routes "reserved" for limited duty.

### **M-00795 Step 4 July 11, 1986, H4N-5B-C 9731**

We agreed that employees on light duty and limited duty may sign the "Overtime Desired" list. We further agreed the parties at Step 3 are to apply Article 13, Section 3.B., and Part 546 of the Employee and Labor Relations Manual to the specific fact circumstances involved in this case. Also whether or not the grievant's physical condition and status was such that he could work overtime is a question that can only be answered based on the facts involved.

## **M-00887 Step 4**

**November 16, 1988, H4N-4C-C 38635**

The issuance of local forms, and the local revision of existing forms is governed by Section 324.12 of the Administrative Support Manual (ASM). The locally developed forms at issue were not promulgated according to ASM, Section 324.12. Therefore, management will discontinue their use. See also [M-00849](#), [M-00852](#).

The form at issue in this case was a locally developed list of available limited duty assignments provided to physicians. (See file)

## **M-01116 Prearb**

**May 18, 1992, H7N-1Q-C 30532**

The issue in these grievances is whether management may send a letter to an employee and/or the employee's physician informing them that limited duty is available.

During our discussion, we mutually agreed that in order to resolve these particular grievances that standard letters would be developed at the national level to replace the letters which were being used locally. Copies of those letters are attached. The Union will provide comments on the content of these letters, without prejudice to the positions of the parties regarding whether Article 19 is applicable or whether such letters should be developed nationally or locally. After comments, if any, are received, these letters will be transmitted and used by the field instead of those letters at issue in these grievances.

The parties further agree that this settlement is limited solely to the question of letters issued to inform employees of their obligation regarding limited duty availability and to inform physicians of limited duty availability.

## **M-01146 USPS letter**

**October 14, 1983, H1C-NA-C 74**

The union's purpose in submitting this matter to Step 4 was to raise the following question: Are limited duty employees covered by the collective bargaining agreement? As I indicated during our discussion, the answer to that question is set forth in Section 546 of the Employee and Labor Relations Manual (ELM). Specifically, 546.2 provides as follows:

Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement.

In view of the foregoing, I do not believe that our respective organizations have a dispute over this issue. Where reemployment occurs under the circumstances described in Section 546, such reemployment must be in keeping with the provisions of any applicable collective bargaining agreements.

## **C-10245 Regional Arbitrator Ables**

**July 10, 1990, E7N-2L-C-17358**

Management is ordered to cease and desist from embarrassing and humiliating the grievant, as it did by forcing her to come to work when she was clearly not able to work following an on-the-job injury.

## **M-01352 USPS Letter**

**May 1, 1997**

USPS letter stating that it is not the policy of the Postal Inspection Service to conduct criminal background checks on all employees who file injury compensation claims.

## **C-27777 Regional Arbitrator Klein**

**September 9, 2008, C01N-4C-C 0863831**

The Postal Service violated the National Agreement when it failed to provide the grievant with copies of the documents which were presented to his physician as part of its inquiry into information regarding the grievant's medical condition, and his ability to return to full or limited duty. Further, management was required to provide the grievant with a copy of his physician's response when it was received.

## **Pay**

### **C-00843 National Arbitrator Aaron**

**September 3, 1982, H8-C-4A-C 11834**

Employees who had been on compensation under the Federal Employees' Compensation Act and who after more than one year were partially recovered from their injuries and were reinstated to the same level and step they had occupied at the time of their separation were not entitled to the salary levels they would have occupied had they been continuously employed from the dates of their separation to the dates of their reinstatement.

Arbitrator Aaron decided this case as a purely contractual issue and declined to look at external law. It is the position of the NALC that, notwithstanding Arbitrator Aaron's decision in this case, the Federal Employees' Compensation Act requires that employees, who have been on compensation for more than one year and are partially recovered from injuries, are when reinstated entitled to the salary levels they would have occupied had they been continuously employed from the dates of their separation to the dates of their reinstatement. The Contract Administration Unit should be contacted in any cases concerning this issue.

### **C-03212 National Arbitrator Gamser**

**March 12, 1980, N8-NA-0003**

The arbitrator held that the Postal Service is not required to make out-of schedule payments to employees on limited duty. However, he continued that:

"Having so concluded, it is necessary to add that this de-

termination does not give the USPS the unbridled right to make an out-of-schedule assignment when the disabled employee could be offered such a work opportunity during the hours of his or her regular tour."

## Bidding

### **M-00752 Memorandum**

**March 16, 1987, H1N-NA-C 119**

The following procedures will be used in situations in which a regular letter carrier, as a result of illness or injury, is temporarily unable to work his or her normal letter carrier assignment, and is working another assignment on a light duty or limited duty basis, or is receiving Continuation of Pay (COP) or compensation as a result of being injured on the job, sick leave, or annual leave, or Leave Without Pay (LWOP) in lieu of sick leave.

A) A regular letter carrier who is temporarily disabled will be allowed to bid for and be awarded a letter carrier bid assignment in accordance with Article 41, Section 1.C.1, or, where applicable, in accordance with the provisions of a local memorandum of understanding, provided that the letter carrier will be able to assume the position within the six (6) months from the time at which the bid is placed.

B) Management may, at the time of submission of the bid or at any time thereafter, request that the letter carrier provide medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within six (6) months of the bid. If the letter carrier fails to provide such certification, the bid shall be disallowed, and, if the assignment was awarded, it shall be reposted for bidding. Under such circumstances, the letter carrier shall not be permitted to re-bid the next posting of that assignment.

C) If at the end of the six (6) month period, the letter carrier is still unable to perform the duties of the bid-for position, management may request that the letter carrier provide new medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within the second six (6) months after the bid. If the letter carrier fails to provide such new certification, the bid shall be disallowed and the assignment shall be reposted for bidding. Under such circumstances, the letter carrier shall not be permitted to re-bid the next posting of that assignment.

D) If at the end of one (1) year from the placement of the bid the letter carrier has not been able to perform the duties of the bid-for position, the letter carrier must relinquish the assignment, and shall not be permitted to re-bid the next posting of that assignment.

E) It is still incumbent upon the letter carrier to follow procedures in Article 41.1.B.1 to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

Letter carriers who bid to a higher level assignment pursuant to the procedures described in the preamble and Part I Bidding, above, will not receive higher level pay until they are physically able to, and actually perform work in the bid-for higher level position.

## Removal From Assignment

### **C-03855 National Arbitrator Mittenthal**

**November 14, 1983, H8N-5B-C 22251**

Management may not declare vacant the duty assignment of an employee on temporary limited duty and post the assignment for permanent bid. Cf [M-00999](#)

### **M-00999 Step 4**

**January 12, 1989, H1N-3W-C 30804**

If it is determined that the disability is permanent, management's actions in removing the grievant from her bid assignment were proper. If, however, the disability is determined to be temporary, the decision of Arbitrator Mittenthal, case H8N-5B-C 22251 [[C-03855](#)] should be applied.

### **M-01219 Step 4**

**June 29, 1995, H0N-5S-C 8772**

Whether or not an employee is permanently disabled and may therefore be removed from a duty assignment is an issue of fact that should be resolved on a case by case basis. We further agree that, for purposes of removing an employee from a duty assignment, there is no predetermined period of disability after which an employee may be considered permanently disabled. Therefore, the award of Arbitrator Collins in H1C-NA-C 101 is not conclusive of the outcome of this case.

## Acceptance "Under Protest"

### **M-01120 Memorandum of Understanding**

**January 29, 1993**

1. By accepting a limited duty assignment, an employee does not waive the opportunity to contest the propriety of that assignment through the grievance procedure, whether the assignment is within or out of his/her craft.

2. An employee whose craft designation is changed as a result of accepting a limited duty assignment and who protests the propriety of the assignment through the grievance procedure shall be represented during the processing of the grievance, including in arbitration, if necessary, by the union that represents his/her original craft.

For example, if a letter carrier craft employee is given a limited duty assignment in the clerk craft, and grieves that assignment, the employee will be represented by the NALC. If a clerk craft employee is given a limited duty assignment in the letter carrier craft, and grieves that assignment, the employee will be represented by the APWU

## **M-00896 Step 4**

**February 10, 1989, H4N-3W-C-50311**

The issue in this grievance is whether, by accepting a limited duty assignment, a letter carrier waives the opportunity to contest the propriety of such assignment through the grievance procedure.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that by accepting a limited duty assignment a letter carrier does not waive the opportunity to contest the propriety of that assignment through the grievance system.

## **C-09596 Regional Arbitrator P.M. Williams**

**December 29, 1989, S7N-3A-C-8643**

The arbitrator found that a limited duty job offer in the clerk craft, which a letter carrier had accepted under protest, violated the provisions of ELM 546.141. He reinstated the employee to the letter carrier craft and ordered that limited duty be provided in accordance with ELM 546.141.

## **C-16339 Regional Arbitrator DiLauro**

**February 19, 1997, C94N-4C-C 96034716**

The arbitrator found that management violated the grievant's rights under ELM 546.141 by threatening her with the loss of her job and OWCP benefits if she did not accept a modified clerk position. The grievant accepted the assignment "under protest". The arbitrator found that an agreement made under duress is not binding. Furthermore the arbitrator found that the modified clerk position was a violation of the grievant's rights under ELM 546.141 and ordered her returned to the carrier craft without loss of seniority.

## **Cross Craft**

### **C-07233 National Arbitrator Bernstein**

**August 7, 1987, H1N-1J-C 23247**

"Section 546.14 (of the ELM) must be read to impose a continuing duty on the Service to always try and find limited duty work for injured employees in their respective crafts, facilities and working hours. The fact that such duty might not be available at any point in time does not mean that it will never become available, because there are many changes that can take place. Therefore, the Service must be prepared to modify a limited duty assignment outside of the employee's craft, facility or hours, when work within those conditions becomes available."

### **C-13396 National Arbitrator Snow**

**October 11, 1993, H0C-3N-C 418**

"The arbitrator concludes that the employer violated the parties' collective bargaining agreement when it reassigned a full-time [letter carrier] employee who was partially recovered from an on-the-job injury to full-time

regular status in the Clerk Craft. Unless in an individual case, the Employer can demonstrate that such assignments are necessary, notwithstanding the conversion preference expressed in the parties' agreement, the Employer shall cease and desist from reassigning partially recovered employees to full-time status when those reassignments impair the seniority of part-time flexible employees."

### **C-18860 National Arbitrator Snow**

**H94N-4H-C 96090200, November 4, 1998**

"The arbitrator concludes that the Employer violated its agreement with the National Association of Letter Carriers when it reassigned a full-time regular partially disabled, current employee of the Carrier craft to the Clerk craft as a part-time flexible worker."

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"Management must be diligent in being certain that it can keep promises it makes to each craft. If promises to one craft infringe on rights of another, the Employer is obligated to negotiate the authority to implement such rights within the craft whose rights are being infringed.

The APWU is correct in asserting that those reassignments and reemployment decisions under Section 546 of the ELM must be accomplished in accordance with commitments made by management in the APWU agreement. Simply because complying with one agreement would violate the other does not relieve management of its obligation to comply with both.

In order to comply with ELM Section 546.141(a), the Employer is not permitted to change the status of a disabled employee when switching crafts; but if the employee is a full-time regular worker and there are part-time flexible workers in the gaining craft, then reassigning the employee as a full-time regular worker could violate conversion rights of part-time flexible employees in the gaining craft.

Such an assessment, however, must be based on the APWU's agreement with the Employer, not that of the NALC. Whether or not such a transaction violates the APWU agreement is not before the arbitrator in this dispute. The only question to be answered is whether transferring the grievant to a part-time flexible position would violate the Employer's obligation with regard to the NALC. That question must be answered in the affirmative"

### **C-23742 National Arbitrator Das**

**October 31, 2002, E90N-4E-C 95076238**

The Postal Service was not required to post under Article 37a of the APWU CBA a rehabilitation assignment created for a partially recovered letter carrier.

"In this case, the Postal Service created a full-time assignment with fixed hours and days off consisting of various clerk duties that were within the medical restrictions of

the injured letter carrier. This rehabilitation assignment was not a residual vacancy in the Clerk Craft, but was a "position uniquely created to fit those restrictions," as provided for in ELM Section 546.222."

"Section 546.222 specifically recognizes the reassignment of a partially recovered employee to a different craft to provide appropriate work and authorizes the Postal Service to establish a "uniquely created" position for that purpose..."

"As the Postal Service stresses, this assignment would not have existed, but for the obligation to find work for the injured employee..."

"...the rehabilitation assignment in question was not created to meet the operational needs of the Postal Service, but to fit the medical restrictions of the injured employee with minimum disruptive impact on the employee..."

### **M-01434 Memorandum of Understanding March 1, 2001**

The parties agree to resolve all outstanding issues with respect to the permanent reassignment of full-time letter carrier craft employees with job-related injuries to the clerk craft as part-time flexible employees as follows:

1. The parties will jointly identify all full-time carrier craft employees who were reassigned to part-time flexible positions in the clerk craft following a job-related injury.

2. Each employee so identified will be paid thirty-five (\$35) dollars for each pay period that he/she was in part-time flexible status following his/her reassignment into the clerk craft. Such payment shall be subject to the appropriate payroll deductions.

3. Pending grievances with respect to the reassignment of any employee covered by this Memorandum shall be remanded to the local parties. The grievant's current medically defined work limitation tolerance (see ELM 546.611) shall be considered. Following such review:

(a) If the parties agree that there is adequate work within the grievant's medically defined work limitation tolerance in the letter carrier craft, he/she shall be reassigned back as a full-time regular employee with full retroactive carrier craft seniority.

(b) If the parties agree that there is not adequate work within the grievant's medically defined work limitation tolerance in the letter carrier craft, NALC will withdraw its request that the grievant be reinstated in the letter carrier craft.

(c) If the parties disagree, any disputes with respect to the grievant's medically defined work limitation tolerance and/or the availability of work within those limitations in

the letter carrier craft, shall be arbitrated at the area level based upon the fact circumstances.

(d) Evaluation and/or reassignment of the grievant as agreed to in paragraphs a, b, and c above, must be consistent with ELM Section 546.

This represents a full and complete resolution of any and all grievances, complaints and/or appeals arising out of the reassignment into the clerk craft. This settlement is intended solely to resolve the dispute with respect to the reassignment of the employees identified in paragraph one above into the clerk craft and is otherwise not precedential and is without prejudice to either party. (See also [M-01435](#))

### **C-19717 APWU Nat. Arbitrator Dobranski J90N-1J-C 92056413, June 14, 1999**

The Postal Service did not violate the APWU National Agreement by assigning rural letter carriers to temporary limited duty work in the clerk craft when no work was available within their medical restrictions within their own craft.

### **C-05136 National Arbitrator Mittenthal January 4, 1985, H1C-4K-C 17373**

When a carrier is assigned permanent limited duty in the clerk craft pursuant to Part 540 of the ELM, a clerk is not entitled to be reassigned to the position vacated by the carrier.

### **M-01833 Joint Questions and Answers March 6, 2014**

Question 17: May CCAs who have an on the job illness or injury be assigned to work in other crafts?

Only if the assignment to another craft is consistent with Section 546 of the Employee and Labor Relations Manual and relevant Department of Labor regulations.

## **ELM Section 546.14**

### **M-01010 Prearb October 26, 1979, N8-NAT-003**

Prearbitration settlement revising ELM 546.14.

### **M-01418 Step 4 J94N-4J-C 96037387, March 3, 2000**

Those portions of the October 26, 1979 pre-arbitration settlement of Case Number N8-NAT-003 ([M-01010](#)) pertaining to the settlement of grievances is no longer in effect. The settlement applied only to individual grievances relating to the initial implementation of the ELM procedures in 1979.

### **M-01264 Step 4 January 28, 1997, G90N-4G-C 95026885**

We agreed that the provisions of ELM 546.14 are enforceable through the provisions of the grievance/arbitration

process.

## **M-00308 Pre-arb**

**December 24, 1985, H1C-3D-C 38668**

Full-time regular employees on limited duty will not be scheduled day-to-day with varying reporting times.

## **C-00936 National Arbitrator Aaron**

**January 24, 1983, H1C-5D-C 2128**

Pursuant to the provisions of 546.141 of the ELM, A full-time rural carrier who has incurred an on-the-job injury must be offered a full-time regular position in another craft that minimizes adverse or disruptive impact on the employee.

## **C-09589 Regional Arbitrator Lange**

Management violated ELM 546.141 when it assigned the grievant to work limited duty on Tour 3; remedy is out-of-schedule OT and child care expenses.

## **C-09443 Regional Arbitrator Lange**

**December 7, 1989, W7N-5L-C 14886**

Management violated ELM 546.141 when it assigned the grievant to work limited duty outside of his station; when such a grievance is filed management bears the burden of showing compliance with ELM 546.141.

## **C-09406 Regional Arbitrator Goodman**

**October 4, 1989, W7N-5T-C 12431**

Management violated 546.141 of the ELM when it changed the schedule and the work location of a carrier assigned to limited duty.

## **C-11252 Regional Arbitrator Purcell**

**October 5, 1991**

Management violated the contract when it refused to permit a letter carrier transferred to the clerk craft for limited duty to return to the letter carrier craft to perform router work.

## **C-01414 Regional Arbitrator Goldstein**

**June 29, 1981, C8N-4J-C 12091**

Where grievant was assigned limited duty in the clerk craft, and where work within his limitations was available in the carrier craft, grievant is awarded premium pay for time worked outside of schedule.

## **M-00817 Pre-arb**

**March 9, 1988, H4N-5K-C 10972**

When an employee has partially overcome a disability and is available for assignment to limited duty, management may change the employee's regular work schedule in accordance with part 546.14 of the ELM, but only on a prospective basis. Management may not change the employee's regular work schedule retroactively. The requirement set out in part 434.61 of the ELM and elsewhere, that employees be given notice of a temporary schedule change by Wednesday of the preceding service week

does not apply to schedule changes for limited duty assignments pursuant to Part 546.14 of the ELM.

## **M-00583 Step 4**

**February 7, 1983, H8N-NA-C 53**

While the Postal Service strives to accommodate all injured employees, its responsibilities toward employees injured on duty differ from its responsibilities toward employees whose injuries or illness are not job related. As outlined in Part 546, Employee and Labor Relations Manual, the Postal Service has certain legal obligations to employees with job related disabilities pursuant to 5 U.S.C. Section 8151 and Office of Personnel Management regulations. Article 21, Section 4, of the National Agreement acknowledges these legal obligations toward employees injured on the job and Article 13 recognizes the importance of attempting to accommodate employees whose injuries or illness are not job related. However, the statutory and regulatory responsibilities toward on-the-job injuries are obligatory in nature and given priority consideration when assigning ill or injured employees.

The provisions promulgated in Part 546 of the Employee and Labor Relations Manual for reemploying employees partially recovered from a compensable injury on duty were not intended to disadvantage employees who occupy assignments properly secured under the terms and conditions of the collective bargaining agreement. This includes employees occupying permanent or temporary light-duty assignments acquired under the provisions set forth in Article 13 of the National Agreement.

# LOCAL MEMORANDUMS OF UNDERSTANDING

Article 30 of the National Agreement enables the local parties to negotiate over certain work rules and other terms and conditions of employment. Since the start of full postal collective bargaining in 1971, most of letter carriers' contractual rights and benefits have been negotiated at the national level. However, some subjects have been left to the local parties to work out according to their own preferences and particular circumstances. A period of "local implementation," has followed the completion of each National Agreement.

A more detailed explanation of these rules and procedures can be found in the NALC Guide to Local Negotiations.

**Article 30.A.** Presently effective local memoranda of understanding not inconsistent or in conflict with the 2011 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding (LMOU).

Local Memorandums of Understanding (LMOU). Local Implementation procedures result in the execution of a Local Memorandum of Understanding—a local, enforceable agreement between the NALC and the Postal Service.

Article 30.A provides that a currently effective LMOU remains in effect during the term of a new National Agreement unless the parties change it through subsequent local implementation or the related impasse procedures. It states the rule that no provision of a Local Memorandum of Understanding may be "inconsistent or in conflict" with the National Agreement. This means that an LMOU may add to the National Agreement's rules but may not contradict them. An LMOU may not, for example, alter the Article 9 wage provisions or the Article 8 overtime rules. See the discussion under the national Memorandum of Understanding on local implementation ([M-01658](#)), below, concerning claims that an LMOU provision is "inconsistent or in conflict" with the National Agreement. As indicated in items six and seven of the MOU, the parties' rights to challenge provisions as inconsistent or in conflict are limited.

**Inconsistent or in Conflict.** Local memorandums must agree with the National Agreement—that is, no local memo provision may be inconsistent or in conflict with the National Agreement. However, the 2001 National Agreement contained new language in Article 30.C and the Article 30 Memorandum which now limits the parties' right to challenge existing LMOU provisions on the grounds that they are inconsistent or in conflict with the National Agreement. Under the new rules, LMOU items existing prior to the 2001 local implementation period may not be chal-

lenged as inconsistent or in conflict unless one of the following conditions was met:

1. The provision(s) was already subject to a pending arbitration appeal as of April 25, 2002.
2. The provision(s) becomes inconsistent or in conflict as a result of a new or modified provision(s) of the National Agreement.
3. The provision(s) becomes inconsistent or in conflict as a result of an amendment or a modification of the National Agreement after the implementation period.

However, challenges under Article 30.C.2 or 30.C.3 above must be made during the local implementation period following the change to the National Agreement. LMOU items added or modified during 2007 local implementation will not be subject to challenge on the grounds that they are inconsistent or in conflict with the National Agreement, except as a result of new or modified provision(s) of the National Agreement, until the period of local implementation of the 2011 National Agreement.

## 22 Items

### **C-03206 National Arbitrator Mittenthal September 21, 1981, N8-W-0406**

An LMU is valid and enforceable so long as it is not inconsistent or in conflict with the National Agreement. This is true even if the subject of the LMU is outside of the 22 items for local implementation set forth in Article 30. While matters outside the 22 items may not be submitted for impasse resolution, if management enters into an agreement concerning a matter outside the 22 items it is thereafter bound by such agreement.

### **C-13080 National Arbitrator Mittenthal July 12, 1993, H0C-NA-C 3**

Management may not seek to change or eliminate through the impasse arbitration procedure LMU provisions which cover matters outside the 22 items listed in Article 30, Section B.

## Leave, Holiday Provisions

### **C-05670 National Arbitrator Mittenthal January 29, 1986, H1N-NA-C 61**

LMU provisions which grant employees the right to take incidental leave are not in conflict or inconsistent with the National Agreement and are, therefore, valid and enforceable.

### **C-09404 National Arbitrator Mittenthal October 6, 1989, H4C-4C-C 24016**

An LMU provision stating that "incidental leave will be granted upon request provided the allowable maximum

percentage of leave is not exceeded" is not inconsistent or in conflict with the ELM. Interpretation of an LMU provision is a subject for regional, not national, arbitration.

**C-00146 Regional Arbitrator Leventhal**  
**March 14, 1985, W1C-5G-C 6261**

Management violated a valid local memorandum of understanding when it did not schedule regular volunteers for holiday work, but instead scheduled PTFs employees.

## Negotiations Period

**C-14489 National Arbitrator Mittenthal**  
**June 2, 1995, H7N-1F-C 39072**

The local parties may not negotiate wholesale changes to a LMU outside of the 30 day period provided by Article 30, Section B.

## Retreat Rights

**C-06986 Regional Arbitrator Carey**  
**March 7, 1987, N4N-1K-I 901242**

An LMU provision providing for a trial period by the successful bidder route (Retreat Rights) is not in conflict or inconsistent with the National Agreement. See also [C-06883](#), [C-06879](#), [C-06768](#), [C-01612](#)

## Wash-Up Time

**C-25374 National Arbitrator Nolan,**  
**July 25, 2004**

Sections 8.9 and 30.B.1 prohibit negotiation of LMOU provisions that provide wash-up time to all employees without consideration of whether they perform dirty work or are exposed to toxic materials. Local parties remain free to define the employees

## Other. Subjects

**M-01183 Step 4**  
**March 23, 1994, H0N-4N-C 4199**

The issue in this grievance is whether the union can declare items contained in the Local Memorandum of Understanding (LMOU), to be in conflict and inconsistent with the National Agreement.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

During our discussion we agreed that under Article 30 Section A, of the National Agreement, the union can claim any LMOU item to be in conflict and inconsistent with the National Agreement.

**M-01171 APWU Prearb**  
**November 26, 1992, H7C-NA-C 89**

During the discussions, it was mutually agreed that when

facilities are consolidated or when a new installation is established as a result of administrative changes, such action does not change the coverage of any existing LMOU. Matters associated with the "consolidation" are addressed by application of Article 30.E.

Also it was mutually agreed that when finance numbers within an installation are changed, deleted or created, such changes, in and of themselves, do not change the coverage of an existing L.M.O.U. covering the installation.

**M-00519 Step 4**  
**August 1, 1984, H1N-3A-C 30742**

Part 584.8, ELM, specifically authorizes the head of an installation to determine when seasonal changes of uniform will take place. Whether or not the language of this LMU is inconsistent with the postmaster's decision making authority relative to the seasonal wearing of ties can only be determined by review of the fact circumstances, to include the context of the discussions leading to the 1981 LMU language, past practice, etc.

**M-01005 Step 4**  
**September 30, 1983, H1N-2D-C 6298**

The question in this grievance is whether the local memorandum setting forth a policy regarding light duty assignments violates Article 13 of the National Agreement.

The facts in the case file indicate that the policy specifically includes a provision that "temporary light or limited duty assignments will be authorized... for a period not to exceed 6 months... An extension for 1-3 months... may be permitted with medical certification."

During our discussion of this matter, we agreed to the following as a full settlement of this case:

The specific restrictions contained in the local memo that essentially preclude the authorization of a light duty assignment beyond 9 months is improper. Thus, any absolute language that limits the amount of a time a light or limited duty will be authorized, without qualification, shall be stricken from the memo.

**C-10694 Regional Arbitrator Francis**  
**August 18, 1990**

Management violated the contract by unilaterally deleting and refusing to honor various provisions of the LMU prior to exhaustion of the impasse/arbitration procedure.

**C-10026 Regional Arbitrator Powell**  
**May 15, 1990, E4N-2G-C 34281**

Management did not violate the contract when it used as a base for determining the number of employees entitled to leave the number of employees on the roster, rather than the number of employees authorized in the complement.

### **C-12924 Regional Arbitrator Lurie**

**April 1, 1993, S0N-3C-C 15012**

The Postal Service violated Article 8, Section 2.C and the Local Memorandum of Understanding by changing the grievant's schedule from consecutive to non-consecutive days off.

### **C-27503 Regional Arbitrator Marks Barnett**

**February 25, 2008, E01N-4E-C 07236170**

It is important to note that the LMOU refers to "routes", not to employees. The claim that the change made by Management to Route 24052 did not impact any employees does not satisfy its obligations under the LMOU. What Management did in this case was to unilaterally change Route 24052, a route with a fixed schedule, to a route with a rotating schedule. This worked a forfeiture because Management unilaterally eliminated Route 24052 as a fixed schedule route. This is precisely what the DRT in the Westwood decision said should be avoided. To be sure, if this was done to an encumbered route, the result would be much harsher than what was done in this case. But that does not make Management's action any less violative of the LMOU.

See also [Forms, Locally Developed](#)

**Memorandum of Understanding  
2006 National Agreement, June 12, 1991**

The parties agree that local attendance or leave instructions, guidelines, or procedures that directly relate to wages, hours, or working conditions of employees covered by this Agreement, may not be inconsistent or in conflict with Article 10 or the Employee and Labor Relations Manual, Subchapter

**M-00481 Step 4  
July 6, 1983, H8N-3W-C 28787**

Any local policy establishing a call-in procedure must be in compliance with Section 513.332 of the Employee and Labor Relation Manual.

**M-00076 Step 4  
October 28, 1983, H1N-5D-C 14305**

Local management may request the carriers to comply with his more stringent seat belt policy; however, the postmaster may not require more than what is required in accordance with current national policy as set forth in Postal Bulletin 21389, dated February 3, 1983.

**M-00351 Step 4  
June 14, 1985, H1N-3W-C 4872**

Local policy regarding absence control must comport with postal regulations in relation thereto as set forth in Chapter 5 of the Employee and Labor Relations Manual.

**M-00500 Step 4  
May 2, 1984, H1N-5C-C 18518**

Any local attendance control policy must conform to the provisions of subchapter 510 of the Employee and Labor Relations Manual (ELM). Whether or not the local policy is in accord with these ELM provisions is a local dispute and is suitable for regional determination.

**M-01419 Step 4  
April 26, 2000, D94N-4D-C 99181860**

A local attendance control program cannot be inconsistent with Article 10 of the National Agreement and Chapter 510 of the Employee and Labor Relations Manual (ELM). Disciplinary action which may result from a local attendance control policy must meet the "just cause" provisions of Article 16 of the National Agreement.

**M-00497 Step 4  
March 30, 1984, H1N-3W-C 21270**

Any local policy establishing a call-in procedure must be in compliance with Section 513.332 of the Employee and Labor Relations Manual (ELM).

**M-00296 Step 4  
November 21, 1983, H1N-5D-C 14785**

A local Attendance Program cannot be inconsistent with ELM 510. Disciplinary action which results from a local

policy must meet the just cause provision of Article 16.

**M-00411 Step 4  
January 12, 1983, H1N-5K-C 6754**

The issue in this grievance involves the requirement of carriers to record their daily leaving and return times on a tablet placed on the carrier cases. Such leaving and returning time notations are inappropriate and will be discontinued upon receipt of this decision.

**C-12424 National Arbitrator Mittenthal  
October 5, 1992, H7N-1P-C 23321**

A local policy requiring medical clearance by the Division Medical Officer for return to duty following non-occupational illness or injury was not a violation of the Agreement. To the extent that the policy was applied to those returning from an extended absence due to occupational illness or injury, it would be in conflict ELM section 864.42, and would thus be a violation of the Agreement.

**C-00330 Regional Arbitrator Caraway  
October 17, 1983, S1C-3A-C 11234**

Management violated the contract when it used a restricted sick leave letter which went beyond the basic conditions set forth in the ELM.

**C-00006 Regional Arbitrator Cohen  
January 11, 1982, C8C-4G-C 22983**

Management violated the contract by establishing a local leave policy which required an ill employee to call in on each day of an absence.

**M-01184 Step 4  
February 14, 1994, H0N-1F-C 2820**

The issue in this case is whether an internal management document can constitute a violation of the National Agreement.

The parties agree that internal correspondence between management officials is not a grievable matter. However, the union may, and in fact has, in separate grievances, grieved action taken by management consistent with the opinion expressed in the document.

## Time

### ELM Section 432.34 provides the following:

Meal Time. Except in emergency situations or where service conditions preclude compliance, no employee may be required to work more than six continuous hours without a meal or rest period of at least one-half hour.

#### **M-00093 Pre-arb** **April 4, 1985, H1N-5K-C 20446**

Except in emergency situations or where service conditions preclude compliance, no employee may be required to work more than 6 consecutive hours without a meal or rest period of at least 1/2 hour. Where service conditions permit, an employee may request to schedule their lunch period after completion of 6 hours' work.

#### **M-00624 Step 4** **October 27, 1977, NCN 8378**

Management is allowed to extent a letter carriers lunch period if required by such factors as the necessary time and distance to eating facilities.

## Location

Authorized lunch locations are recorded on *Form 1564-A, Delivery Instructions*. See M-41, Section 251.6 and Exhibit 251.

#### **M-00065 Step 4** **June 15, 1983, H1N-5G-C 10222**

Re Lunch: Those carriers not included in items 1 through 4 of footnote 2, on Form 1564-A, shall not be required to complete those portions of the form annotated by footnote 2, except at their option.

#### **M-00622 Step 4** **August 23, 1985, H1N-5A-C 25384**

Management is proper in authorizing lunch locations in accordance with the M-39 Handbook and the instructions contained on Form 1564A. Letter carriers, however, are free to pursue activities other than eating lunch during their authorized meal period so long as such activities are not in violation of postal regulations.

#### **M-00545 Step 4** **June 25, 1985, H1N-5G-C 10663**

Carriers are permitted to pursue personal activities within applicable postal regulations during their authorized lunch period as long as there is no additional expense to the Postal Service; the assigned vehicle is parked at the authorized park point, and; the mail is properly secured. See also [M-00263](#)

#### **M-00262 Step 4** **July 9, 1982, H8N-4E-C 5081**

Management should determine at what point on the route the carrier should break for lunch. The distance to a suitable lunch location should be measured from that point, and if the lunch place is more than one-half mile from the point of lunch break, the carrier is entitled to transportation to and from lunch.

#### **M-00654 Step 4** **May 23, 1977, NCN 5477**

The information presented in this case is lacking in any substantive evidence to establish any reasonable basis for disallowing the grievant to continue to have his lunch at his home. To this extent, we find the grievance is sustained.

#### **C-06096 Regional Arbitrator Pribble** **March 14, 1986, C4N-4K-C 8595**

Management's cancellation of a previously authorized lunch location was arbitrary, where the reason given for the cancellation was that the location was "too far" and where the location was no greater distance from the route than another authorized location.

#### **C-03902 Regional Arbitrator Britton** **November 10, 1983, S1N-3D-C 1697**

Management's cancellation of a previously authorized lunch location was improper, where the location required a 1.4 mile deviation, and where another authorized location required 2.2 miles of travel.

#### **C-03997 Regional Arbitrator Foster** **January 3, 1984, S1N-3Q-C 18088**

The determination of a lunch location requires a balancing of the interests of management and the interests of the employee. The saving of slightly more than one mile of travel cost, and a few minutes of travel time, is not of sufficient magnitude to justify management's denial of grievant's selected locations.

### Management Rights

#### ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

The Postal Service's "exclusive rights" under Article 3 are basically the same as its statutory rights under the Postal Reorganization Act, 39 U.S.C. Section 1001(e). While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions. For example, the Postal Service's Article 3 right to "suspend, demote, discharge, or take other disciplinary action against" employees is subject to the provisions of Articles 15 and 16.

**Article 3.F Emergencies.** This provision gives management the right to take whatever actions may be necessary to carry out its mission in emergency situations. An emergency is defined as "an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."

#### Emergencies—Local Implementation Under Article 30.

Article 30.B.3 provides that a Local Memorandum of Understanding (LMOU) may include, among other items, "Guidelines for the curtailment or termination of postal operations to conform to orders of local authorities or as local conditions warrant because of emergency conditions."

#### **C-05670 National Arbitrator Mittenthal January 29, 1986, H1C-NA-C 59**

Article 3 rights are not absolute. They are subject to the provisions of the National Agreement.

#### **C-03206 National Arbitrator Mittenthal September 21, 1981, N8-W-0406**

A local agreement restricting management's rights is not in conflict with Article 3. Article 3 does give management certain rights, but it does not prohibit local management from bargaining to limit those rights.

#### **C-00170 Regional Arbitrator Dolson April 2, 1984, C1C-4C-C 9427**

Quoting the Elkouris: "Even where the agreement expressly states a right in management, expressly gives it discretion as to the matter, or expressly makes it the 'sole judge' of the matter, management's action must not be arbitrary, capricious, or taken in bad faith."

### Management Responsibilities

#### **M-00052 Step 4 March 31, 1983, H1N-5D-C 8746**

Applicable regulations require that employees clock in and out on time. Local management is responsible for ascertaining that this requirement is accomplished without requiring employees to wait beyond reporting time to obtain their badge cards and/or time-cards.

#### **M-00033 Step 4 March 28, 1978, NCN 10487**

Management should make every effort to protect known unlisted telephone numbers provided by employees.

### Labor-Management Committee Meetings

#### **Article 17.5 Labor-Management Committee Meetings**

A. The Union through its designated agents shall be entitled at the national, area, and local levels, and at such other intermediate levels as may be appropriate, to participate in regularly scheduled Joint Labor- Management Committee meetings for the purpose of discussing, exploring, and considering with management matters of mutual concern; provided neither party shall attempt to change, add to or vary the terms of this Collective Bargaining Agreement.

B. All other national level committees established pursuant to the terms of this Agreement shall function as subcommittees of the national level Labor-Management Committee.

C. Meetings at the national and area (except as to the Christmas operation) levels will not be compensated by the Employer. The Employer will compensate one designated representative from the Union for actual time spent in the meeting at the applicable straight time rate, providing the time spent in such meetings is a part of the employee's

**M-00109 Step 4**

**November 29, 1978, NCS 11794**

The Postmasters designee has the appropriate authority to deal with the issues considered during the Labor-Management meetings.

**M-00448 Step 4**

**October 24, 1978, NCS 11532**

It is necessary for management to make every effort to respond to all issues discussed at labor-management meetings in as short a time as is practical.

# MARRIAGE MAIL, THIRD BUNDLES

The procedures to be followed in the delivery of third bundles differs depending upon whether the mail involved is "pre-sequenced" or "simplified address".

**I. Simplified address mail** (e.g. "Postal Patron") is mail without a specific address affixed. The proper procedure for the handling of such material is specified in the April 17, 1980 Settlement Agreement (M-00159) which provides that in all instances carriers may be required to deliver the mailing as a third bundle. Except on mounted curbside delivery routes, the Postal Service's response to the October 29-30 National Joint City Committee meeting, Item E (M-00603) provides the further restriction that, "Normally, only one such mailing should be carried at one time". It is NALC's position that management has the burden of proof whenever they assert that circumstances are not "normal". See also M-01097

**II. Pre-sequenced mail** is letter or flat sized mail with a specific address affixed that arrives pre-sequenced in the order of delivery. The proper procedure for the handling of such material is specified in M-39, Section 121.33. Carriers on curb-line (mounted) routes normally handle such mail as a third bundle. Such mail should not be delivered as a third bundle on a park and loop route. However, on dismount deliveries only, Letter Carriers on park and loop routes may be required to deliver pre-sequenced mail as a third bundle (C-03003) Garrett, September 29, 1978.

**III. Detached label mailings:** The procedure for the delivery detached label mailings on park and loop routes is governed by the April 17, 1980 Settlement agreement (M-00159). Carriers should case the address cards and carry the unaddressed pieces as a third bundle. See also M-00723. The proper procedures when two detached address label card mailing are identically addressed and to be delivered on the same days are described in M-00750 and M-00608.

**IV.** There are no contract or manual provisions limiting the number of bundles that may be required on a mounted route.

## **M-00750 Pre-arb April 28, 1987 H1N-5H-C 27400**

1. When a single detached address card mailing is to be delivered, the address label cards are cased and the unaddressed flats are placed at the back of the regular flat bundle.

2. When two detached address label card mailings are identically addressed (intended for the same deliveries), and both mailings are to be delivered on the same day:

A) The address label cards for both mailings are cased, the unaddressed flats for each mailing are collated together and the appropriate number placed at the back of the regular flat bundle. When the address label

cards are delivered, the appropriate unaddressed flat pieces are obtained from the back of the flat bundle and delivered along with the address label cards.

B) An alternative is to case the address label cards for both mailings, collate the unaddressed flats from one mailing with the regular flats and place the appropriate number of unaddressed flats from the remaining mailing at the back of the regular flat bundle. When the address label cards are delivered, the appropriate unaddressed flat piece from one mailing is obtained along with the regular flats and the appropriate unaddressed flat piece from the remaining mailing is obtained from the back of the flat bundle. Both are delivered along with the address label cards. NOTE: If the unaddressed flats represent less than 100% coverage in a swing or relay, this alternative is not desirable since it would require the carrier to refer back to the address label cards that were previously cased in order to determine the precise deliveries for which the unaddressed flats are intended.

C) These procedures do not apply to portions of routes where delivery is to apartment buildings, NDCBUs, or other similar central delivery points. In those instances it may not be necessary to collate the unaddressed flat pieces. Additionally, these procedures do not apply on curb-line deliveries served by motorized routes or curb-line deliveries that may be on a portion of a park and loop route.

3. When swings, loops, etc. of two detached address label card mailings are not identically addressed (intended for the same deliveries) and these mailings are to be delivered on the same day, it is not appropriate to carry the unaddressed flats for both mailings at the back of the regular flat bundle.

## **C-03003 National Arbitrator Garrett September 29, 1978, NBN 3908**

Letter carriers on a park and loop route may be required to carry pre-sequenced flat mail as a third bundle on dismount deliveries, i.e. those situations where a letter carrier leaves the vehicle to deliver mail to one or more customers at a single delivery point such as a large apartment house

## **M-00159 Settlement Agreement April 17, 1980**

The NALC agrees that city letter carriers will carry "simplified address" mail without casing such mail and by placing such mail pieces on the bottom of the appropriate mail bundle, working from both ends of the bundle as they effect delivery of the mail. The USPS agrees to advise all mailers that all pieces of mail presented for mailing under the provisions of 122.412 (DMM) must be tied, so far as practicable, in packages or bundles of fifty (50) as required. The USPS agrees that, for the purpose of aiding carriers unfamiliar with the park and loop route, the num-

## MARRIAGE MAIL, THIRD BUNDLES

ber of possible deliveries on each relay of park and loop routes shall be entered on Forms 1564A by the regularly assigned carrier. This information should be updated for each route in conjunction with updates of Forms 1621. Verification of the information will be accomplished during the week of count and inspection.

### **M-01097 Pre-arb September 10, 1992, H7N-5R-C 19788**

The issue in these grievances is whether management improperly required carriers to delivery Simplified Address Mail when carriers on park and loop routes were required to carry two full-coverage simplified address circulars, one flat-size and one letter-size, on the same day.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases.

Accordingly, we agreed to remand these cases to the parties at Step 3 for application of the April 17, 1980 Settlement Agreement and the Postal Service's response to the October 29-30, 1975 National Joint City Delivery Committee Meeting (Item E) [[M-00603](#)], to the extent applicable.

### **M-00043 Step 4 October 6, 1982, H1N-5B-C 5329**

The carriers received appropriate time for casing the detached labels and whereas the mail itself is not addressed, collating would not be appropriate. This type mailing is not a third bundle as referred to in Section 322.12 of Methods Handbook, Series M-41.

### **M-00603 National Joint City Delivery Meeting October 29-30, 1975, Item E**

"Patron mailings" i.e. mail without a specific address should not be cased, since there is no possibility of misdelivery and there is no prescribed sequence of delivery. These items can be handled without treating them as a third bundle. For example, by placing them at the bottom of regular letter mail bundles and working from ends, or by carrying them separately in the satchel and working them there. Normally, only one such mailing should be carried at one time.

### **M-00369 Step 4 November 28, 1984, H1N-3T-C 37042**

Grievant's route is not a park and loop route but consists of curb-line and NDCBU delivery. It is the position of the Postal Service that local management is properly requiring the grievant to take out the detached label cards as a third bundle. This position is in accord with the April 17, 1980, Settlement Agreement between the U. S. Postal Service and the NALC and Arbitrator Garrett's award in case Nos. NB-N-3908 (C-03003).

### **M-00343 Step 4 May 10, 1985, H1N-5H-C 22198**

It is the position of the Postal Service that carriers using

satchel carts to effect the delivery of mail are not restricted by contractual provisions from delivering sequenced mail as a third bundle. We believe the satchel cart is a conveyance similar to a vehicle in that no weight limitations exist.

### **M-00067 Step 4 June 9, 1983, H1N-3U-C 13925**

The proper methods of recording the disputed card mailing is contained in Management Instruction PO-610-79-24 (Delivery Unit Volume Recording). Sections VI.B.3 or 4 contain instructions for the flats. In accordance with these instructions, the route would receive credit for both the cards and the unlabeled flats. The cards would be credited in Column 7 on the PS 3921 and the flats would be included in Column 1 on the PS 3921-A.

### **M-00494 Step 4 March 30, 1984, H1N-5H-C 16802**

The parties at this level agree that marriage mailings received on park and loop routes are handled in accordance with the April 17, 1980, settlement agreement concerning Simplified Address Mail. See also [M-00509](#).

### **M-00600 National Joint City Delivery Meeting Nov 16, 17, 1983, page 5.**

Marriage mail should be recorded for each route. Managers should be contacting the carriers to determine the volume.

### **M-00600 National Joint City Delivery Meeting Nov 16, 17, 1983, page 4**

Preparation of simplified address mail may be accomplished in the office or on the street, as long as the time is credited somewhere, either as office or street time.

### **M-00608 National Joint City Delivery Meeting September 25, 1985, page 4**

Proper preparation and delivery procedure when two detached address label card mailings are identically addressed (intended for the same deliveries) and both mailings are to be delivered on the same day.

### **M-00288 Step 4 December 21, 1983, H1N-4B-C 21341**

Marriage mailings received on foot routes are prepared for delivery in accordance with the park and loop instructions in the Settlement Agreement for Simplified Mail dated April 17, 1980. When handled in accordance with these instructions, the individual pieces are included within the relays. As such, no additional reimbursement is warranted.

### **M-00825 Step 4 March 4, 1988 H4N-4M-C 27183**

Present policy does not permit the delivery of occupant flats without the detached address cards.

## **M-00723 Step 4**

**June 15, 1984, H1N-2B-C 10526**

The USPS agrees that, for the purpose of aiding carriers unfamiliar with the park and loop route, the number of possible deliveries on each relay of park and loop routes shall be entered on Forms 1564A by the regular assigned carrier. This information should be updated for each route in conjunction with updates of Forms 1621. Verification of the information will be accomplished during the week of count and inspection."

In view of this agreement, we would expect that mailings prepared in the above described manner would not necessitate that the carrier take a total piece count. For example, if a relay has 40 stops, the carrier would count and extract 10 pieces from the bundle of 50, not count and extract 40 pieces.

If the carrier has no way to determine the number of pieces in the bundle then he/she would have to count out the appropriate number of mailings for the route. However, carriers assigned to curb-line routes are expected to work directly from the bundles or sacks.

## **M-01403 Step 4**

**February 03, 2000 G94N-4G-C 97121978**

The issue in this grievance is whether management may eliminate detached address mail (Marriage mail) from the PS form 1840 in evaluating routes during a 6-day mail count and route inspection.

During our discussions we mutually agreed that such adjustments must be made in accordance with the provisions of Handbook M-39, subchapter 24.

We agreed that there presently are no provisions permitting certain days of the route examination to be excluded from the 6-day average, as outlined on the 1840, based on locally developed criteria.

## **M-01402 Step 4**

**January 24, 2000, I94N-4I-C 99216131**

The parties agree that there is no prohibition to the number of bundles that may be carried on a mounted route. However, the parties recognize that the provisions of Handbook M-41, as written, appear inconsistent with this agreement (sections 322.12, 322.23 and 222a and b) Accordingly, we agree that management will amend Handbook M-41, as soon as feasible, to reflect the above understanding and [that these changes] will appear in the next printed version of the M-41.

## Article 7.3 Employee Complements

**Maximization of Full-Time Employees.** Article 7, Section 3 contains the National Agreement's main "maximization" language, setting forth management's obligations to create full-time regular letter carrier positions. Sections 3.A-3.D set forth the following requirements.

### Section 3. Employee Complements

7.3.A. The Employer will staff at least one full-time regular city letter carrier per one full-time regular city letter carrier route, as defined in Article 41.1.A.1, plus each Carrier Technician position; however, the Employer's obligation shall not exceed a ratio of 1.18 full-time regular city letter carriers per full-time city letter carrier routes. As long as part-time flexible employees remain on the rolls, the Employer shall staff all postal installations which have 200 or more workyears of employment in the regular work force as of the date of this Agreement with 88% full-time employees in the letter carrier craft.

**200 or More Workyears.** Whether an installation is classified as a 200 workyear office is determined as of the National Agreement's effective date. The classification does not change during the life of the Agreement. The hours of bargaining-unit employees in the crafts covered by the 1978 National Agreement are counted in making this determination; see the memorandum of understanding and related discussion under Article 7.3.B & C above. The On Rolls Complement Report provided to NALC on an accounting period basis is used to monitor compliance with the 88 percent full-time requirement for 200 workyear offices.

**Counting Employees.** Although the work hours of five postal crafts are counted to determine classification as a 200 workyear installation, the 88 percent full-time requirement applies to letter carriers working at such facilities. Only regular work force letter carriers are included in the 88/12 calculation. Full-time regular carriers, including reserve and unassigned regulars, and full-time flexible carriers (see explanation below) are counted as "full-time employees." Part-time flexibles and part-time regulars are counted as not full-time.

**Counting Full-time Flexibles.** Although existing full-time flexible carriers may be counted as full-time in measuring compliance with the 88 percent requirement, Arbitrator Mittenthal found that, if an office fell below the required full-time percentage at the same time that a part-time flexible met the criteria for conversion to full-time flexible under the MOU, "the Postal Service must first convert pursuant to the [88]% staffing requirement and thereafter

convert pursuant to the Memoranda." Thus, the conversions to full-time flexible under the MOU would be in addition to the conversions to full-time regular necessary to bring the office to 88 percent (National Arbitrator Mittenthal, H1N-C-NA-120, September 5, 1989 C-09340). See also the discussion of full-time flexible carriers following Article 7.3.D.

### C-09340 National Arbitrator Mittenthal September 5, 1989, H1C-NA-C-120

A part-time flexible properly converted to full time flexible under the 1981 Memoranda is thereafter properly counted as a "full-time employee" for purposes of satisfying the 90% staffing requirement under Article VII, Section 3A. To this extent, the grievance is denied.

When part-time employees are entitled to conversion to full-time status under both the Memoranda and Article VII, Section 3A at the end of a given accounting period, the Postal Service must first convert pursuant to the 90% staffing requirement in Section 3A and thereafter convert pursuant to the Memoranda. To this extent, the grievance is granted.

### M-01839 Memorandum of Understanding July 2, 2014

**Re: Article 12 - Reversion to Part-time Flexible Status**  
Full-time city letter carriers who are subject to excessing outside the installation/craft who choose to revert to part-time flexible status and remain in the installation/craft pursuant to Article 12.4.0, 12.5.C.5.a(7) or 12.5.C.5.b(5) will be counted as full-time career city letter carriers for application of the provisions of Article 7 of the National Agreement.

This agreement is effective upon signature of the parties and is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

### M-01833 March 6, 2014

#### Joint Questions and Answers—OTHER PROVISIONS

#### Question No. 4: How will the provisions of Article 7.3.A be monitored for compliance?

The Postal Service will provide the national union with a report every other pay period that lists the number of full-time city letter carrier routes defined in Article 41.1.A by category, the number of Carrier Technician positions, and total number of full-time city letter carriers.

#### Question No. 5: How is the Article 7.3.A ratio of full-time regular city letter carriers per route determined?

The ratio is determined based on the number of full-time city letter carrier routes nationwide.

## **Question No. 6: Will the part-time flexible employee classification be phased out?**

Yes, as part-time flexible (PTF) employees are converted to full-time in accordance with existing contractual processes, the PTF classification shall be phased out. There shall be no new hiring of PTF employees.

### **M-01824 Memorandum of Understanding August 13, 2011**

#### **Re: Residual Vacancies - City Letter Carrier Craft**

The parties agree to use the following procedures during the term of this agreement to facilitate filling residual full-time regular city letter carrier duty assignments (referenced in Article 7.3.A of the 2011 collective bargaining agreement):

Residual city letter carrier assignments covered by this agreement (which are not subject to a proper withholding order pursuant to Article 12 of the collective bargaining agreement) will be filled in the following order:

1. Within 28 days of an assignment becoming residual (or for current residual vacancies no later than the first day of the third full pay period after the effective date of this agreement) the assignment will be filled by:  
a) assignment of an unassigned full-time regular or full-time flexible city letter carrier in the same installation and then, b) conversion to full-time status of a part-time flexible city letter carrier in the same installation as the residual vacancy, pursuant to Article 41.2.B.6(b) of the National Agreement.
2. Residual vacancies that cannot be filled through step 1 will be posted in eReassign for a 21 day period during the next available posting cycle (in installations with no available part-time flexible or unassigned/full-time flexible employees the residual vacancies will be posted in eReassign for a 21 day period during the first available posting cycle after the effective date of this agreement). Application for these vacancies will be accepted only from career city letter carriers. Consideration will be given based on the order the applications are received and will include reassignment requests already pending in eReassign as of the date of this agreement. Requests from part-time flexible city letter carriers will be acted upon without regard to normal transfer considerations.
3. Residual vacancies that remain after step 2 will be filled by acceptance and placement of voluntary reassignment (transfer) requests from other crafts from within the installation or through eReassign, and conversion of city carrier assistants to full-time career status in the same installation as the residual vacancies. Reassignments from other crafts will be made consistent with the terms of the Memorandum of Understanding, Re: Transfers. The number of reassignments

granted to employees from other crafts is limited to the one in four or one in six rule as defined in the Memorandum of Understanding, Re: Transfers, as applicable. Conversion of city carrier assistants to full-time career status will take place no later than the first day of the third full pay period after either the close of the posting cycle or, when an employee is being considered for transfer, the date the employee or employer rejects the offer/request.

Part-time flexible city letter carriers who elect reassignment to another installation through this agreement will receive retreat rights back to their original installation. Retreat rights will be offered to the first residual vacancy in the original installation that occurs when there are no part-time flexible city letter carriers on the rolls of the original installation. City letter carriers who exercise retreat rights will have their craft seniority restored, augmented by time worked in the other facility, upon return to the original installation. Failure to accept retreat rights ends the opportunity to retreat back to the original installation.

During the term of this agreement no reassignments in the city letter carrier craft will be made within or between installations or from other crafts, unless the reassignment is made based on a mutual exchange, through the Article 12 involuntary reassignment process, or pursuant to this agreement.

City letter carriers accepting a voluntary reassignment under this agreement will begin a new period of craft seniority in the gaining installation.

Employees moving between installations pursuant to the terms of this agreement are solely responsible for any and all costs related to relocation.

The union will be provided a list of all residual vacancies posted in eReassign each posting cycle.

This agreement is effective from the date of signature until March 31, 2014, unless extended by mutual agreement of the parties. However, either party may terminate this agreement earlier by providing 30 days written notice to the other party.

This agreement is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

### **M-01834 Memorandum of Understanding March 31, 2014**

#### **Re: Full-time Regular Opportunities - City Letter Carrier Craft**

The parties agree to extend the August 30, 2013 *Memorandum of Understanding Re: Residual Vacancies - City Letter Carrier Craft* through May 31, 2014.

Effective June 1, 2014, the parties agree to use the following process to facilitate placement of employees into full-time regular opportunities which include: 1) residual full-time regular city letter carrier duty assignments referenced in Article 7.3.A of the 2011 collective bargaining agreement, and 2) newly created full-time unassigned regular (incumbent only) positions which increase full-time complement and are in addition to the duty assignments referenced in Article 7.3.A.

Full-time regular opportunities in the city letter carrier craft covered by this agreement (which are not subject to a proper withholding order pursuant to Article 12 of the collective bargaining agreement) will be filled as follows:

1. Full-time regular opportunities defined above will be filled within 28 days of becoming available in the following order:

a. if the opportunity is a residual vacancy(s), assignment of an unassigned full-time regular or full-time flexible city letter carrier in the same installation

b. conversion to full-time regular status of a part-time flexible city letter carrier in the same installation pursuant to Article 41.2.8.6(b) of the collective bargaining agreement

2. Full-time regular opportunities that cannot be filled through Item 1 above will be posted in eReassign for a 21 day period during the next available posting cycle. The eReassign posting will indicate the installation and number of full-time regular opportunities available. Application for these full-time opportunities will be accepted from all qualified employees. However, only requests from part-time flexible city letter carriers will be approved under Item 2. Approval of such requests will be made based on the order the applications from part-time flexible city letter carriers are received and will include reassignment requests from part-time flexible city letter carriers already pending in eReassign as of the date of this agreement. Requests from part-time flexible city letter carriers will be acted upon without regard to normal transfer considerations. Requests from all other qualified employees may only be considered under Item 3 below.

3. Full-time regular opportunities that remain after Item 2 will be filled by 1) conversion of city carrier assistants to full-time regular career status in the same installation as the full-time regular opportunities or 2) acceptance and placement of voluntary reassignment (transfer) requests pending in eReassign from qualified bargaining unit employees (including full and part-time regular city letter carriers) or reassignment of bargaining unit employees within the installation (if there are insufficient requests from qualified bargaining unit em-

ployees, non-bargaining unit employees may be reassigned to a full-time regular opportunity). Reassignment (transfer) requests will be made with normal considerations contained in the Memorandum of Understanding, *Re: Transfers*, based on the order the applications are received. The number of career reassignments allowed under this paragraph is limited to one in every four full-time opportunities filled in offices of 100 or more work-years and one in every six full-time opportunities filled in offices of less than 100 work-years. At least three or five, as applicable, of full-time opportunities will be filled by conversion of city carrier assistants to full-time regular career status based on their relative standing in the same installation as the full-time opportunities. Such conversions will take place no later than the first day of the third full pay period after either the close of the posting cycle or, when an employee is being considered for transfer, the date the employee or employer rejects the offer/request.

Part-time flexible city letter carriers who elect reassignment to another installation through this agreement will receive retreat rights back to their original installation. Retreat rights will be offered to the first full-time regular opportunity in the original installation that cannot be filled through Item 1 above. City letter carriers who exercise retreat rights under this paragraph will have their craft seniority restored, augmented by time worked in the other facility, upon return to the original installation. Failure to accept retreat rights ends the opportunity to retreat back to the original installation.

During the term of this agreement no reassignments in the city letter carrier craft will be made within or between installations or from other crafts, unless the reassignment is made pursuant to this agreement, based on a mutual exchange, through the Article 12 involuntary reassignment process, or by mutual agreement of the national parties.

Employees accepting a voluntary reassignment under this agreement will begin a new period of craft seniority in the gaining installation.

Non-probationary employees converted to full-time/career or transferred to an installation may participate in bidding for vacant duty assignments that are posted pursuant to Article 41.1.8 of the collective bargaining agreement. If an installation is filling more than one full-time regular opportunity (including at least one residual vacancy) on a date when an employee(s) is being assigned/converted/reassigned, such employee(s) will be allowed to exercise their preference for residual assignments by the use of existing local practices.

Employees moving between installations pursuant to the terms of this agreement are solely responsible for any and all costs related to relocation.

The union will be provided a list of installations and the number of full-time regular opportunities posted in eReassign each posting cycle.

This agreement is effective from the date of signature until March 31, 2015, unless extended by mutual agreement of the parties. However, either party may terminate this agreement earlier by providing 30 days written notice to the other party.

This agreement is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

### **M-01835 Memorandum of Understanding March 31, 2014**

*Re: Sunday Delivery—City Carrier Assistant Staffing*

The parties recognize the importance of successfully implementing the continued expansion of Sunday parcel delivery service, which began testing in approximately 900 delivery zones on November 10, 2013. The parties agree that during the test, the most cost-effective resource for this service would be the use of city carrier assistants (CCAs) without increasing the rate of overtime usage.

Many CCA resources are being used to temporarily fill full-time regular residual vacancies. Pursuant to the August 30, 2013 Memorandum of Understanding *Re: Residual Vacancies - City Letter Carrier Craft* and the March 31, 2014 Memorandum of Understanding *Re: Full-time Regular Opportunities - City Letter Carrier Craft*, the parties are in the process of permanently filling residual vacancies and full-time regular opportunities by assignment of unassigned regulars, conversion of part-time flexible employees to full-time regular status, acceptance of transfer requests and conversion of CCAs to full-time regular career status.

During implementation of the Memorandum of Understanding *Re: Residual Vacancies - City Letter Carrier Craft* and the Memorandum of Understanding *Re: Full-time Regular Opportunities - City Letter Carrier Craft*, the national parties may find it necessary to temporarily exceed the CCA caps in Article 7.1.C of the National Agreement when implementing the process outlined therein. Additionally, the parties recognize that additional CCAs may be needed in order to perform Sunday parcel delivery in a cost effective manner during the test.

The national parties will meet on a weekly basis to monitor implementation of the Memorandum of Understanding *Re: Residual Vacancies - City Letter Carrier Craft*, the Memorandum of Understanding *Re: Full-time Regular Opportunities - City Letter Carrier Craft*, and the Sunday parcel delivery test. These meetings will include discussion of the authorization of any CCAs (by District) that are deemed necessary as indicated above. If, as a result of these weekly meetings, there is a disagreement over increased

CCA resources, that matter will be referred to the NALC National President and the Vice President, Labor Relations for discussion and resolution. In the event there remains a disagreement over additional CCA staffing, the District(s) at issue will reduce its CCA complement to conform to the provisions of Article 7.1.C of the National Agreement.

City carrier assistants converted to full-time regular career status during the term of this agreement will not serve a probationary period when hired for a career appointment provided the employee successfully served as a city carrier transitional employee directly before his/her initial CCA appointment.

This agreement is effective from the date of signature until March 31, 2015, unless extended by mutual agreement of the parties. However, either party may terminate this agreement earlier by providing 30 days written notice to the other party.

This agreement is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

**Remedy for Violation.** The appropriate remedy for violations of Article 7.3.A was specified in a national memorandum of understanding dated April 14, 1989 (M-00920). The parties agreed that the remedy will be the following:

Any installation with 200 or more man years of employment in the regular workforce which fails to maintain the staffing ratio in any accounting period, shall immediately convert and compensate the affected part-time employee(s) retroactively to the date which they should have been converted as follows:

A. Paid the straight time rate for any hours less than 40 hours (five 8 hour days) worked in a particular week.

B. Paid the 8 hour guarantee for any day of work beyond five (5) days.

C. If appropriate, based on the aforementioned, paid the applicable overtime rate.

D. Further, the schedule to which the employee is assigned when converted will be applied retroactively to the date the employee should have been converted and the employee will be paid out-of-schedule pay.

E. Where application of Items A-D above, shows an employee is entitled to two or more rates of pay for the same work or time, management shall pay the highest of the rates.

7.3.B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations; however, nothing in this paragraph B shall detract from the USPS' ability to use the awarded fulltime/part-time ratio as provided for in paragraph 3.A. above.

Article 7.3.B establishes a general obligation to maximize the number of full-time employees and minimize the number of part-time flexible employees in all postal installations. However, in the 1990 National Agreement the following sentence was added: "nothing in this paragraph B shall detract from the USPS' ability to use the awarded full-time/ parttime ratio as provided for in paragraph 3.A. above." This means that if management has met the 88 percent full-time staffing requirement for 200 workyear of-fices provided by Article 7.3.A, then Article 7.3.B does not require any further maximization of full-time positions.

**C-00421 National Arbitrator Garrett  
January 26, 1976, AB-N-3744**

The arbitrator held that the general maximization obligation in Article 7, Section 3 [B] applies to all size offices, is of a continuing nature and is in addition to the specific 90/10 staffing obligation in Article 7, Section 3 [A]. He found that the Union had presented a prima facie case for greater maximization but had been unable to demonstrate that any PTF employees met the criteria in Article 7, Section 3 [C] by working 8 hours within 10, on the same 5 days each week for six months

The arbitrator ordered the Postal Service to seek to schedule at least one part-time flexible in accordance with Article 7.3[C]. If no significant inefficiency resulted after six months, the PTF was to be converted to full-time regular. Thereafter, this procedure was to be repeated experimentally until the number of full-time employees was maximized.

**C-02978 National Arbitrator Gamser  
October 12, 1978, NC-E-9358, Toms River**

Adopting the reasoning of Arbitrator Garrett in C-00431, above, The arbitrator wrote the following:

"In the instant case, although the data submitted by the Union did not establish, as the Union claimed, that some fifteen additional part-time flexible carrier positions could immediately be converted to full-time regular positions, the data regarding hours worked in the carrier craft by regulars, flexes and casuals through the period ending May 18, 1978, certainly created a strong inference that the Postmaster at Toms River could re-establish his present carrier work schedules and create at least four additional full-time assignments on a temporary basis with only a minimal, if any, impact upon efficiency or impairing required flexibility."

"Within thirty days after receipt of this award, the Postmaster at Toms River shall review with the Local Union a work schedule in the carrier craft which shall provide for the scheduling of four additional part-time flexible positions on the basis of eight hours within ten per day on the same five days each week. These additional assignments shall be for a six-month period. If, after a six month trial period, it can be established that such scheduling has had an adverse impact upon the efficiency of the operation or has resulted in undue increased costs, then these assignments may be discontinued. If no significant inefficiencies or costs result from such scheduling, those four positions shall be converted to full-time regular positions. Thereafter, or sooner if circumstances warrant, the Postmaster shall meet again with the Local Union for the purpose of reviewing and implementing further scheduling of additional part-time flexible positions in the same manner with the end in view of meeting the obligation to maximize the number of full-time employees as contemplated in Section 3 of Article VII of the National Agreement."

**M-01563 Pre-arbitration Settlement  
February 2, 2006**

Article 7.3.B includes no provisions for reversion of full-time letter carrier duty assignments. Rather, consideration of reversion of reserve letter carrier assignments is initiated pursuant to the applicable provisions of Article 41.1.A.1 of the National Agreement.

7.3.C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

**Demonstration of Regular Schedule and Assignment.**

A PTF carrier working a regular schedule meeting the criteria of Article 7.3.C on the same assignment for six months demonstrates the need to convert the duties to a full-time assignment. The six months must be continuous. Step 4, H7N-3W-C 27937, April 14, 1992 (M-01069). Time spent on approved paid leave does not constitute an interruption of the six month period, except where the leave is used solely for purposes of rounding out the workweek when the employee otherwise would not have worked. Step 4, H7N-2A-C 2275, April 13, 1989 (M-00913). For the purposes of Article 7.3.C, a part-time flexible employee not working all or part of a holiday or observed holiday (as defined in Article 11) does not constitute an interruption in the six-month period.

Where the Local Memorandum of Understanding provides for rotating days off, a PTF employee who works the same rotating schedule, eight hours within ten, five days each week on the same uninterrupted temporarily vacant duty assignment over a six-month period has met the criteria of Article 7.3.C. of the National Agreement (Step 4, A94

N-4A-C 97040950, January 7, 2000 [M-01398](#)).

National Arbitrator Mittenthal held in H1N-2B-C-4314, July 8, 1985 ([C-05070](#)), that time spent by a PTF on an assignment opted for under the provisions of Article 41 (Article 41.2.B) counts toward meeting these maximization criteria. However, the provisions of Article 7.3.C will be applied to an uninterrupted temporary vacant duty assignment only once (Step 4, A94N-4A-C 97040950, January 7, 2000 [M-01398](#)).

Article 7.3.C applies to all installations regardless of size (Step 4, H7N-3F-C-39104. December 6, 1991 [M-01032](#)).

### **C-05070 National Arbitrator Mittenthal July 8, 1985, H1N-2B-C 4314**

Time spent by a PTF on an assignment opted for under the provisions of Article 41 Section 2.B.4 should be credited towards meeting the maximization criteria in Article 7 Section 3.C.

### **M-01398 Pre-Arbitration Settlement A94N-4A-C 97040950, January 7, 2000**

The issue in these grievances is whether the time worked over a six month period by a PTF letter carrier on an "opt" pursuant to Article 41.2.B.4, with rotating non-scheduled days, demonstrates the need for converting the assignment to a full-time position pursuant to Article 7.3.C.

After reviewing this matter, the parties mutually agreed that this case requires the application of Arbitrator Richard Mittenthal's July 28, 1985 decision in case No. H1N-2B-C 4314. Accordingly, the fact that the entire six month period was spent on one "hold-down" assignment is not an exception to the maximization provisions of Article 7.3.C of the National Agreement.

We further agreed that in offices where the Local Memorandum of Understanding provides for rotating days off, a PTF employee who works the same rotating schedule, eight hours within ten, five days each week on the same uninterrupted temporary vacant duty assignment over a six month period has met the criteria of Article 7.3.C of the National Agreement.

Additionally, we agreed that the provisions of Article 7.3.C will be applied to an uninterrupted temporary vacant duty assignment only once.

### **M-01032 Step 4 December 6, 1991, H7N-3F-C-39104**

The issue in this grievance is whether the criteria for conversion found in Article 7.3.C apply only to offices which have 125 or more man years of employment.

After reviewing this matter, we mutually agreed that no

national interpretive issue is fairly presented in this case. Article 7.3.C contains no provision which limits its application only to those offices with 125 or more man years of employment.

### **M-00913 Step 4 April 13 1989, H7N-2A-C 2275**

For the purposes of meeting the six month requirements of Article 7.3.C., approved annual leave does not constitute an interruption in assignment, except where the annual leave is used solely for purposes of rounding out the work-week when the employee would otherwise not have worked.

### **M-01475 Interpretive Step Settlement December 20, 2002, C98N-4C-C 02070691**

After reviewing this matter, we mutually agree that no national interpretive issue is presented in this case. Time worked on an occupied position pursuant to Article 41.2.B.4 of the National Agreement is subject to the maximization provisions of Article 7.3.C. If the office was under withholding at the time the triggering criteria was met, a full-time position should have been created pursuant to Article 7.3.C and the resulting residual vacancy should have been withheld pursuant to Article 12.5.B.2 of the National Agreement. We agree to remand this case to the Dispute Resolution Team, through the National Business Agent, for resolution in accordance with this guidance.

### **M-01837 Prearbitration Settlement March 31, 2014**

The issue in this case is whether the maximization provisions of Article 7.3.C apply to time worked by a part-time flexible city letter carrier on an unoccupied duty assignment.

After reviewing this matter, the parties agree to the following:

Time worked on an "unoccupied position" pursuant to Article 41.2.8.4 of the National Agreement is subject to the maximization provisions of Article 7.3.C. However, if the office is under withholding at the time the triggering criteria is met, a full-time position will be created pursuant to Article 7.3.C and the resulting residual vacancy will be withheld pursuant to Article 12.5.8.2 of the National Agreement.

Additionally, we agree that the provisions of Article 7.3.C will be applied to an uninterrupted temporary vacant duty assignment only once.

Any grievance currently held for this case will be discussed to determine whether any issues remain in dispute. Such cases will, as appropriate, either be closed or processed with this understanding in accordance with Article 15.Step B or Article 15.4.8.5.

7.3.D. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

**Auxiliary Route Growth to Full-Time.** To accommodate growing routes, Article 7.3.D provides for the conversion of an auxiliary route to full-time when a route inspection shows the route has become a fulltime assignment. See M39 Section 242.122 which provides that regular routes should consist of as nearly 8 hours daily work as possible.

#### **M-00222 Step 4**

**December 7, 1973, NBS 185**

Maximization is possible only in individual units where full-time assignments are available. The existence of eight (8) auxiliary routes in eight (8) separate stations or branches, as in this case, does not meet the criteria for establishing full time assignments.

## **Regional Arbitration Awards**

### **Article 7.3.B Cases**

#### **C-08230 Regional Arbitrator Ordman**

**August 15, 1988, C4N-4E-C 15204**

The maximization obligation in Article 7.3.B is in addition to the 90/10 obligation in Article 7.3.A. The service was ordered to create an additional full-time position by combining an auxiliary route and a part time-router assignment. See also [C-00944](#)

#### **C-10713 Regional Arbitrator Martin**

**July 20, 1990**

Total hours used by part-time flexibles is an important -- perhaps determinative -- criterion to be used in evaluating whether management has complied with its general obligation to maximize.

#### **C-10587 Regional Arbitrator Nolan**

**February 9, 1991**

Management violated the contract when it did not combine work from segmentation assignments and auxiliary routes to form a full-time assignment.

### **Article 7.3.D Cases**

#### **C-10930 Regional Arbitrator Germano**

**June 30, 1991, N7N-1K-C 35702**

Management violated the contract when it did not convert an auxiliary route to a full-time position.

**Historical Background.** The employee classification "full-time flexible" is unique in that it does not appear in Article 7. Rather, it was created as a result of National Arbitrator Mittenenthal's July 7, 1980 award in C-03234. In the award Arbitrator Mittenenthal held that he had the authority to remedy the failure of the parties' National Joint Committee on Maximization to agree on maximization criteria under the pertinent Memorandum of Understanding incorporated into the 1978 National Agreement.

This decision resulted in the parties negotiating the February 3, 1981 Full-time Flexible Memorandum M-01025 and the Letter of Intent reprinted below. The memorandum was subsequently strengthened by the currently effective 1987 memorandum incorporated into the National Agreement.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES POSTAL SERVICE  
AND  
NATIONAL ASSOCIATION OF LETTER CARRIERS,  
AFL-CIO**

**Re: Maximization/Full-time Flexible - NALC**

Where a part-time flexible has performed letter carrier duties in an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months (excluding the duration of seasonal periods on seasonal routes, defined in Article 41, Section 3.R of the National Agreement), the senior part-time flexible shall be converted to full-time carrier status.

This criteria shall be applied to postal installations with 125 or more man years of employment.

It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible nonscheduled days, and flexible reporting locations within the installation depending upon operational requirements as established on the preceding Wednesday.

The parties will implement this in accordance with their past practice.

**Date: July 21, 1987**

**LETTER OF INTENT  
BETWEEN THE  
UNITED STATES POSTAL SERVICE  
AND THE  
NATIONAL ASSOCIATION OF LETTER CARRIERS,  
AFL-CIO**

**Re: Maximization**

This letter memorandum sets forth our mutual intent regarding the attached Memorandum of Understanding relating to maximization.

1. This Memorandum of Understanding is in settlement of the arbitration pending in case No. N8-NA-141, and satisfies the obligations of the parties pursuant to the Arbitrator's decision in N8-NA-0141 and the Memorandum of Understanding relating to maximization dated September 15, 1978.

2. The initial 6 month measuring period to be evaluated pursuant to the Memorandum of Understanding shall be August 1, 1980, through January 31, 1981. Conversions based upon this initial period shall be made no sooner than April 1, 1981, and are expected to be concluded by May 1, 1981. This conversion process shall not interfere with or delay conversions which would otherwise be implemented pursuant to the existing National Agreement. Henceforth, the 6 month measuring periods will be monitored on a continuing basis, and conversions required shall be implemented promptly.

3. Conversions required pursuant to this Memorandum of Understanding shall be in addition to (but not duplicative of) conversions that may be required pursuant to existing provisions of the National Memorandum of Understanding. The criteria established by this Memorandum of Understanding are supplementary to, not in limitation or diminishment of, existing criteria in the National Agreement.

4. Subject to operational requirements, the intent of the parties is to avoid unnecessary disruptions in existing patterns of reporting times, non-scheduled days and reporting locations for those PTF's converted pursuant to these criteria, to the extent the duties of the position converted are consistent with those performed by the PTF during the measuring period.

5. Employees converted to full-time positions pursuant to this Memorandum of Understanding may bid on assignments posted for bids by employees in the craft, and shall be full-time regular city letter carriers under the National Agreement.

6. In those installations where conversions have been made under this Memorandum of Understanding, and there are subsequent reversions or excessing, any reductions in full-time letter carrier positions shall be from among those position(s) converted pursuant to this Memorandum of Understanding until they are exhausted.

7. The parties will establish a national level committee to review and resolve any problems relating to the initial period of implementation, in accordance with their mutually expressed intentions. Accordingly, grievances filed at the local level relating to the initial period of implementation shall be stayed without prejudice to either party, and the

time limits deemed extended by mutual consent, in order to permit review by the national committee. Upon such review, questions of fact may be referred to the normal grievance machinery.

8. The parties recognize their continuing obligation to discuss other respects in which maximization may be implemented in accordance with the National Agreement.

**Date: February 3, 1981.**

The JCAM explains full time flexible positions as follows:

**Full-time Flexible Positions and Maximization.** A 1978 memorandum of understanding similar to the 1987 memorandum above first established a type of letter carrier status—"full-time flexible"—not mentioned in Article 7. The 1981 Letter of Intent reprinted above was created in settlement of a grievance brought under the 1978 memorandum, and remains in effect under the 1987 memorandum. The currently effective 1987 memorandum applies the full-time flexible maximization requirement to offices with 125 or more workyears of employment; the 1978 memorandum applied only to installations with 150 or more workyears of employment.

**Another Maximization Requirement.** The memorandum creates a separate, additional obligation to maximize full-time positions beyond the maximization obligations of Article 7.3.A-D. See paragraph 3 of the Letter of Intent. In other words, even though management has complied, for example, with the 88 percent full-time requirement in a 200 workyear facility (Article 7.3.A), further conversions to full-time flexible may still be required when the requirements of this memorandum are met. As noted above under Article 7.3.A, if an office falls below 88 percent, conversions must first be made to full-time regular to bring the office to 88 percent. However, after full-time flexible positions have been created these are counted as full-time toward the 88 percent requirement.

### **C-09340 National Arbitrator Mittenthal September 5, 1989, H1C-NA-C-120**

A part-time flexible properly converted to full time flexible under the 1981 Memoranda is thereafter properly counted as a "full-time employee" for purposes of satisfying the 90% staffing requirement under Article VII, Section 3A. To this extent, the grievance is denied.

When part-time employees are entitled to conversion to full-time status under both the Memoranda and Article VII, Section 3A at the end of a given accounting period, the Postal Service must first convert pursuant to the 90% staffing requirement in Section 3A and thereafter convert pursuant to the Memoranda. To this extent, the grievance is granted.

This specific maximization obligation is similar to that of Article 7.3.C, because it is triggered by a PTF carrier working a relatively regular schedule over a six-month period. However, where Article 7.3.C requires work on the same assignment, this memorandum requires only that the PTF carrier be performing letter carrier duties of any kind.

**39-Hour Report.** Every pay period, the Postal Service provides the NALC with a report that lists the names of PTF city letter carriers who have worked 39 hours or more during each service week during the previous six months in offices with 125 or more work years. This report is distributed by the NALC to its branches through its regional offices. It is designed to make it unnecessary for shop stewards to regularly request timekeeping data to monitor the Maximization Memorandum.

If a name is listed in an installation, it does not automatically result in the conversion of the senior PTF to full-time flexible in that installation. Local management may examine the work hours of the listed PTF to determine if all the criteria of the memorandum has been met.

In order for the hours worked to meet those criteria, the hours worked must be eight hours within nine or eight hours within ten (based on the size of the office), worked over five days of the service week (not six or seven), not during seasonal periods on a seasonal route, and worked in the performance of city letter carrier craft duties.

Local management may also review the actual number of hours worked each day and week of the six month period. By tracking of 39 hours rather than 40 hours each service week, the parties recognized that a conversion should be made if the PTF missed the 40 hours by only minutes on a day or days during the service week. In addition, local management may examine whether approved leave was used solely to reach the triggering level of hours worked during any of the service weeks during the six-month period.

If there is no dispute that all these criteria have been met, then the senior part-time flexible employee, not necessarily the part-time flexible employee listed on the report, shall be converted to full-time flexible city letter carrier status in the installation. In such cases there is no need for the union to request additional timekeeping data or conduct any additional investigation. However, if local management asserts that an employee listed in the report did not meet all the conversion criteria discussed above, the union should be given the data which management relied upon to make the decision. The union is not precluded from disputing local management's decision through the grievance procedure.

This process has been developed by the national parties to avoid grievances and cumbersome exchanges of infor-

mation requests and rebuttal on the issue, focus on the exchange of information, and insure that the intent of the national parties is determined at the local level.

**Nature of Full-time Flexible Position.** When a PTF carrier's work over a 6-month period meets the criteria of this memorandum, the senior PTF must be converted to full-time flexible (FTF). Under the memorandum a full-time flexible carrier has a flexible schedule which is established week-to-week and posted on the Wednesday preceding the service week. However, that schedule may involve varying daily reporting times, varying nonscheduled days and varying reporting locations within the installation depending on operational requirements.

The Letter of Intent, reprinted above, provides the following:

- Full-time flexible assignments are incumbent only assignments. They are not filled when vacated (Step 4, G94N-4G-C 99225675, January 13, 2000, [M-01400](#)).
- Full-time flexible employees may bid on full-time regular positions (paragraph 5);
- Subject to operational requirements, full-time flexibles should not be subjected to unreasonable disruptions in reporting times, non-scheduled days and reporting locations (paragraph 4); and
- Full-time flexible employees are subject to reductions in full-time positions when reversions (Article 41.1) or excessing (Article 12.5) takes place. Nothing in paragraph 6 of the Letter of Intent changes the parties' understanding that any excessing still must be from the junior full-time carrier, regardless of his/her status as full-time regular or full-time flexible.

### **C-28631 Regional Arbitrator Duffy February 1, 2010**

Management violated the National Agreement it reverted a full-time Reserve Letter Carrier position while an Full-time Flexible.

### **M-01432 Prearbitration Settlement July 18, 2000, F90N-4F-C 93022407**

Full-time flexible assignments are incumbent only assignments and may not be withheld under the provisions of Article 12, Section 5.B.2 of the National Agreement. See also [M-01400](#)

### **M-00791 Pre-arb October 29, 1987, H4N-3F-C 45541**

1) Full-time flexible letter carriers may exercise their preference by use of seniority for available craft duty assignments in accordance with the provisions of Article 41.2.B.3.

2) Notwithstanding the foregoing, if, prior to the exercise of his/her preference, a full-time flexible employee has been assigned a schedule for a service week by the preceding Wednesday in accordance with the Article 7 Memorandum of Understanding dated February 3, 1981, then the employee shall remain in that assignment for the balance of the service week before assuming the opted-for assignment.

3) In no event shall the employee be prevented from assuming the opted-for assignment for a period of more than one week.

### **M-01046 APWU Step 4 October 17, 1988, H4C-NA-C-100**

The issue in this grievance is whether the Memorandum of Understanding on Maximization requires the conversion of an assignment to full-time when a part-time flexible employee meets all the criteria for conversion, while working in a full-time assignment temporarily left vacant by a full-time employee who is on leave.

The parties agree that the language of the Memorandum of Understanding, which applies only to those offices of 125 or more man years of employment requires the conversion of the senior part-time flexible to full-time status. The return of the full-time employee from extended absence may, dependent upon the local fact circumstances, require the reversion of the full-time flexible position pursuant to Article 12 of the National Agreement.

### **M-01069 Step 4 April 14, 1992, H7N-3W-C 27937**

The issue in this grievance is whether the Memorandum of Understanding regarding Maximization/Full-time Flexible-NALC requires that the six month period be consecutive. After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The six month measuring period in the MOU means six consecutive months.

### **M-01047 APWU Step 4 August 29, 1988, H4C-4K-C-16421**

For conversion under the provisions of the Article 7 Memorandum of Understanding leave will be counted toward the 39 hour requirement provided it is not taken solely to achieve full-time status. In addition, all other provisions of the Article 7, Memorandum of Understanding must be met in order to convert the senior part-time flexible to full-time.

Section 513.361 of the *Employee and Labor Relations Manual (ELM)* reads:

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted sick leave (see 513.36) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

Stated simply, ELM 513.361 establishes three rules:

- 1) For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave, and
- 2) For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved), however
- 3) For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

This handbook provision, which is incorporated into the National Agreement by reference in Article 19, has been the subject of a larger number of regional level contract arbitrations than any other contract term. Virtually all of the arbitrations have concerned situations in which a supervisor required an employee not in restricted sick leave status to submit medical documentation for an absence of three days or less. The purpose of this paper is to summarize the awards issued as a result of those arbitrations, and to summarize Step 4 settlements concerned with ELM 513.361 (Section V of this paper deals with issues concerning submission and acceptance of certification).

## What constitutes "three days"?

In Case [M-00489](#), NALC and USPS agreed that "an absence is counted only when the employee was scheduled for work and failed to show." Therefore, non-scheduled days are not counted in determining length of absence unless the employee had been scheduled to come in on overtime on the non-scheduled day.

## Burden of Proof

When a supervisor has required an employee to submit

medical certification, the burden is upon the NALC to show that the Postal Service arbitrarily, capriciously or unreasonably required the employee to obtain medical documentation. According to the arbitrator in [C-00418](#), the "burden is heavy." The NALC "must prove that the supervisor was arbitrary and unjustified in his request."

## What circumstances justify requests for medical certification for an absence of three days or less, when the employee is not in restricted sick leave status?

The hundreds of arbitration cases in which medical certification is contested may be divided into two groups: 1) Those in which the supervisor's request for certification was found justified, and 2) Those in which the supervisor's request was found not justified. Examination of these cases discloses certain patterns, as may be seen below:

### 1) Circumstances in which a request for certification was found justified.

In [C-05348](#), the arbitrator ruled that certification was properly required when a heated discussion between the supervisor and the employee concerning the employee's duties was followed by a request for sick leave by the employee. "The Service's interest would be threatened if all employees who are upset, even if some justification exists for their feeling, can leave the work floor for the balance of the day and still receive compensation." The same conclusion has been drawn in other cases where an employee outwardly shows that s/he is unhappy with her or his assigned duty and then asks for sick leave. In [C-03347](#) the arbitrator stated, "Given the appearance of the grievant's good health just prior to the undesirable assignment, there was sufficient grounds for suspicion that the sudden inability to work coinciding with the notice of an undesirable route assignment was too coincidental, thereby placing the burden on the grievant to establish his illness by medical documentation." (See also [C-01597](#), [C-04714](#), [C-05101](#) and [C-06565](#))

The request for medical documentation has usually been found proper when the employee asked for sick leave after his or her request for auxiliary assistance has been denied. In [C-04627](#), the supervisor had denied the employee's request for assistance delivering mail and the employee then had asked for sick leave. The arbitrator concluded that the supervisor's actions were proper under the circumstances. The fact that the employee had not asked for sick leave until he was denied assistance delivering mail, coupled with his leaving work the previous day because of illness, made it reasonable for the supervisor to consider the possibility that the grievant was not truly ill. The same situation arose in [C-06123](#) in which the arbitrator stated,

"Considering the fact that the direction to the grievant to obtain medical documentation came after he had come to work and worked for two and a half hours without complaint, and had asked for auxiliary help and been denied it, and been told he would have to complete his route, even though it might entail overtime, it would appear that it was reasonable of the supervisor to insist upon documentation." (See also [C-04086](#), [C-04782](#) and [C-04909](#))

Arbitrators have concluded that medical documentation was properly requested by a supervisor when the employee called in for sick leave for a day for which the employee had previously requested annual leave. (See [C-01160](#), [C-04897](#), [C-06747](#) and [C-06751](#))

Arbitrators have not always ruled in favor of certification required of an employee who requested sick leave for a day preceding or following a day off or a holiday. Under such circumstances, however, arbitrators have been generally sympathetic to supervisors' concerns and have required only minimal further support of supervisory decisions to require certification. In [C-03057](#) the arbitrator stated that, "Concern by the supervisor of the grievant's pattern of taking sick leave and annual leave on Saturday unless overtime was involved, as well as the fact that he had only eight hours of sick leave to his credit were legitimate reasons for requesting medical documentation." (See also [C-04209](#), [C-04117](#), [C-04967](#) and [C-06167](#))

## **2) Circumstances in which a request for certification was found not justified.**

While a supervisor has discretion to request medical certification, such discretion must be exercised on a case-by-case basis rather than requiring that all employees submit certification for absence on a certain day. In national level settlement [M-00662](#), NALC and USPS agreed that local management's requirement that substantiation for illness must be submitted by any and all carriers absent on the day following a holiday was "contrary to national policy".

Where the supervisor does not have a factual basis for requiring certification and instead relies on a mere feeling that certification should be provided, arbitrators generally find certification to have been unreasonably required. In [C-00008](#) the medical documentation request was ruled to have been unjustified because there was "no pattern that could raise suspicion and indicate that an employee's undocumented request should not be accepted." The Arbitrator found that three absences in a thirty-four week period were insufficient to deem the employee's sick leave request "suspicious."

Where an employee appeared sick at the time leave was requested, arbitrators usually rule that certification should not have been required. In [C-01224](#), the request for medical documentation was not reasonable when the employee actually appeared ill to the supervisor at the time

she requested sick leave. The arbitrator pointed out that "an employee can have a lousy record of attendance but still can become ill at work which would justify excusing him from work." In [C-04033](#) the arbitrator stated, "The single, isolated incident of the grievant leaving work due to illness on a prior occasion, with no indication otherwise in the grievant's work record that he was a malingerer likely to abuse sick leave, is not sufficient to produce a substantial doubt in the mind of a reasonable person that the grievant left his route on the day in question simply because he did not want to complete the overtime assignment." In this case the supervisor had conceded that the grievant had the outward appearance of being sick by the hoarseness in his voice.

Further, it is unreasonable for a supervisor to require medical documentation of an employee requesting sick leave without an inquiry into the employee's illness. In [C-03860](#) the supervisor's request for medical documentation was found improper because the supervisor had not questioned the employee about his illness before asking for medical documentation. The Arbitrator stated, "To conclude that the grievant was not ill because [the supervisor] perceived no outward manifestation was not enough." (See also [C-03819](#), [C-04002](#) and [C-05015](#))

Many arbitrators have ruled that the workload at the facility at the time the sick leave request is made is a factor which the supervisor should consider when deciding whether to require medical documentation of an employee. However, heavy mail volume alone is usually ruled to be an insufficient reason for requesting medical documentation. In [C-00276](#) the employee had no history of sick leave abuse and had not tried to leave earlier on in the day for personal reasons. The arbitrator ruled that management's request for medical documentation based only on heavy mail volume was unreasonable. Similarly, in [C-06723](#) the arbitrator concluded, "The mere fact that management would be inconvenienced by an employee's absence, or that other employees may have been previously required to provide medical documentation in similar situations, or that productivity and/or efficiency may be negatively impacted by an employee's unscheduled absence, are insufficient reasons--in and of themselves--to justify the requiring of an employee to provide medical documentation to verify an unscheduled absence."

Finally, although the Postal Service often argues that medical documentation is properly required where the employee calls in sick on a day preceding or following a day off, that reason alone is insufficient to require medical documentation. The arbitrator in [C-03744](#) stated, "The station's need for more carriers to tide-over a holiday is, in itself, not a sufficient reason for requiring medical certification." The arbitrator concluded that the possibility that the grievant was seeking to lengthen a holiday was not demonstrated by any statement or action. (See also [C-00418](#), [C-00451](#), [C-01641](#) and [C-02886](#))

## What constitutes proper documentation?

Section 513.364 of the *Employee and Labor Relations Manual* reads as follows:

When employees are required to submit medical documentation pursuant to these regulations, such documentation should be furnished by the employee's attending physician or other attending practitioner. Such documentation should provide an explanation of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.

Until such time as acceptable evidence substantiating an employee's illness is presented, management may refuse to approve the requested sick leave. (See [M-00132](#)) However, pursuant to national level settlement [M-00001](#), a physician's certification of illness need not appear on a form 3971: "appropriate medical statements written on a doctor's office memoranda or stationary which are signed by the doctor are considered to be an acceptable medical certification." Indeed, provided the requirements of the ELM are satisfied, such certification may be presented on preprinted forms. (See [M-00079](#))

Statements from lay persons are not acceptable as medical documentation. (See [C-00102](#); grievant returned with a note from her husband and this was deemed unacceptable by the supervisor.) In [M-00803](#), however, the parties agreed that less traditional medical practitioners, naturopaths, were "attending practitioner[s]," within the meaning of ELM 513.364.

## Remedies

Once it has been concluded by the arbitrator that the supervisor has violated Part 513.361 of the *Employee and Labor Relations Manual* by arbitrarily, capriciously or unreasonably requiring medical documentation of an employee who requested sick leave, a remedy is due.

### 1) Reimbursement for medical documentation

The remedy most frequently granted to the employee who was improperly required to obtain medical documentation is reimbursement for the cost of the medical documentation. As the arbitrator in [C-01624](#) pointed out, "where a gross error is made by the supervisor and the effects of the error falls upon an employee who is not on Restricted

Sick Leave and who has not 'taken advantage' of a very substantial sick bank, since his sick leave payments have been negligible, the Employer ought to bear the responsibility of paying the cost of a medical documentation which the grievant has been directed to procure." (See also [C-00452](#), [C-00508](#), [C-01224](#), [C-01624](#), [C-01641](#), [C-03744](#), [C-04129](#), [C-04195](#), [C-04436](#), [C-04636](#), [C-04974](#), [C-05015](#) and [C-06723](#))

An exception to the generally accepted remedy of reimbursement for the cost of the documentation is found where the employee was reimbursed by the employee's medical insurance. (See [C-00417](#) and [C-00479](#)) In [C-00417](#) the arbitrator reasoned, "the Arbitrator does have power and jurisdiction to fashion an appropriate remedy, which is in this type of case, reimbursement. However, it is elementary that there cannot and should not be double recovery. No employee should be able to seek payment by the Employer after having already received payment through an insurance carrier. The aim and purpose of the remedy is to make the employee whole, not to enrich the employee or penalize the employer."

### 2) Reimbursement for medical treatment

The pre-arbitration decision [M-00989](#) established that an arbitrator has the authority to grant relief in the form of the Postal Service paying for doctor's bill when it is found that supervisory personnel did not have reasonable and sufficient grounds to require medical verification from an employee for absences of 3 days or less.

Upon finding that an employee was improperly required to obtain certification, most arbitrators have ruled that the employee is entitled to be reimbursed for the cost of the medical examination. However, arbitrators have consistently ruled against reimbursement for medical treatment. In [C-00008](#) the grievant was denied reimbursement for the cost of a tetanus shot he received. The arbitrator concluded that the grievant would have gone to a doctor to receive a tetanus shot regardless of the medical documentation requirement. Requests for reimbursement for the cost of a prescription were denied in [C-03032](#) ("Proof of filling the prescription was not required to meet the Employer's medical verification and therefore the Grievant elected to fulfill is this prescription and take the medication at his own risk") and [C-04033](#) ("the purchase was a personal choice and benefit which grievant may not charge to the Postal Service"). In [C-03860](#) the grievant was compensated for the cost of a "brief office visit" yet denied reimbursement for an electrocardiogram, urinalysis, accusan, and chest x-ray. The arbitrator pointed out, "all the supervisor required was certification of incapacity to work, not a series of expensive testing procedures."

### 3) Reimbursement for time spent traveling to and from the doctor's office and reimbursement for transportation costs.

In addition to being reimbursed for the cost of the medical documentation, some arbitrators have ruled that the employee is entitled to reimbursement for the time it took to travel to and from the doctor's office (see [C-00067](#) and [C-00418](#)), and transportation costs related to the doctor's visit. (See [C-02886](#), [C-03819](#) and [C-04744](#)) However, reimbursement for travel expenses and time spent traveling to and from the doctor's office was denied in [C-00243](#) and [C-00451](#). In [C-00243](#) the arbitrator ruled: "The testimony indicates that the doctor's office was located approximately two miles from the Grievant's home and that it was not particularly off the course of travel between the Post Office and the Grievant's home. Therefore, the Grievant is not entitled to any compensation for mileage or time spent in connection with the visit to the doctor's office." The arbitrator in [C-00451](#) stated, "The claim for \$10, for the one hours time that the grievant spent in the doctor's office, is denied. So is the request for \$.40 mileage charge for use of the grievant's car going to and from the doctor's office. Both of these items would have been utilized by the grievant if he had gone to work instead of remaining home on December 23, 1982. His savings in not going to work recompensed him for these requested charges so he suffered no loss and required no reimbursement."

## Supporting cases

### **M-01547 USPS Letter July 26, 2005**

On July 19, 2005, in the case of Harrell v. U.S. Postal Service, the United States Court of Appeals for the Seventh Circuit ruled that the Postal Service's return to work provisions in ELM 865 cannot be applied to bargaining unit employees returning from FMLA-protected absences.

The ELM provisions before the court allowed management, prior to an employee's return to work from a FMLA-protected absence, to request detailed medical information when the absence was caused by a number of specified medical conditions, or if the absence exceeded 21 days. The ELM provisions recently changed. The new ELM provisions authorize return to work clearance when management has a reasonable belief, based upon reliable and objective information, that the employee may be unable to perform the essential functions of his/her position or may pose a direct threat to health or safety. This standard comports with the requirements of the Rehabilitation Act that employers make medical inquiries only when there is a reasonable, objective basis to do so.

The Postal Service will comply with the Harrell decision in those facilities located within the three states subject to the court's jurisdiction; Indiana, Illinois, and Wisconsin.

### **M-01629 USPS Letter August 3, 2007**

Response to NALC inquiry:

The Postal Service's position is that ELM 513.362 and 513.354 are consistent with the Rehabilitation Act and do

not require the employee to provide a diagnosis.

### **M-00001 Step 4**

#### **March 3, 1977, NCE 5066**

Appropriate medical statements written on a doctor's office memoranda or stationery which are signed by the doctor are considered to be an acceptable medical certification in lieu of a completed PS Form 3971. See also [M-00555](#), [M-00598](#), [M-00710](#)

### **M-00096 Pre-arb**

#### **May 2, 1985, H1C-3T-C 40742**

Rubber stamp and facsimile signature is acceptable, subject to verification on a case-by-case basis. See also [M-00855](#)

### **M-01003 Step 4**

#### **October 26, 1982, H1N-4C-C 7091**

The question raised in this grievance involves the local requirement that employees provide, in addition to Form 3971, a separate statement of the reason for an absence due to illness. It was mutually agreed that the following would represent a full settlement of this case:

A blanket order for all employees to provide medical reasons for absences due to illness in a separate statement is improper. Section 513.36 of the Employee and Labor Relations Manual provides instructions for documentation requirements and is to be followed.

### **M-00079 Step 4**

#### **November 9, 1983, H1N-5G-C 14955**

Under ELM 513.362, an employee is required to provide "acceptable evidence of incapacity to work." The form in question has been determined by local management to meet that requirement. Accordingly, the form may be provided as a convenience to an employee, and its use by employees is optional.

### **M-00089 Step 4**

#### **September 6, 1984, H1C-NA-C 113**

There may be situations in which an attending physician or other attending practitioner may authorize a staff member to sign a document on behalf of the attending physician or other practitioner (e.g. An attending physician or practitioner instructs his/her nurse to complete and sign a document for the attending physician or practitioner). Such documentation may be subject to verification, if the need arises.

### **M-00132 Step 4**

#### **May 2, 1985, H1N-2D-C 5311**

Employees are required to submit medical documentation or other acceptable evidence substantiating their absence when required to do so by a supervisor. Until such time as the documentation is submitted, approval of sick leave by the supervisor is not necessary.

**M-00270 Step 4****October 26, 1982, H1N-4C-C 7091**

A blanket order for all employees to provide medical reasons for absences due to illness in a separate statement is improper.

**M-00489 Step 4****November 3, 1983, H1N-5B-C 3489**

For the purposes of ELM 513.362, an absence is counted only when the employee was scheduled for work and failed to show. A nonscheduled day would not be counted in determining when the employee must provide documentation in order to be granted approved leave.

**M-00662 Step 4****May 12, 1976, NCW 1473**

All carrier employees were notified that any absences on the day following the holiday would require substantiation from the employee. In our view, to cover all employees in one craft with the referenced requirement is contrary to national policy. Therefore, the grievance is sustained.

**M-00663 Step 4****April 28, 1976 NCS 892**

Information contained in the grievant's file indicates that he has presented a physician's certification that he suffers from a continuing chronic illness condition. Therefore, in the future, management should exercise discretion before requiring the grievant to produce medical certification for absences related to that illness.

**M-00701 Step 4****September 10, 1973, NS 4877**

Carrier required to use 8 hours sick leave to obtain Doctor's statement—carrier credited with administrative leave.

**M-00799 Step 4****December 19, 1986, H4N-3A-C 15991**

The Employee and Labor Relations Manual contains no prohibition against the submission of a pre-printed form; however, it is understood that any medical documentation or other acceptable evidence submitted must meet the requirements set forth in Part 513.364 of the ELM.

**M-00803 Step 4****June 18, 1985, H1N-5D-C 29943**

A naturopath is considered an "attending practitioner" under ELM 513.364.

**M-00883 Step 4****September 6, 1984, H1C-NA-C 113**

There may be situations in which an attending physician or other attending practitioner may authorize a staff member to sign a document on behalf of the attending physician or other practitioner (e.g. An attending physician or practitioner instructs his/her nurse to complete and sign a document for the attending physician or practitioner). Such documentation may be subject to verification, if the need arises.

**M-00989 Pre-arb****January 13, 1982, H8N-4B-C 3972**

An arbitrator has the authority to grant relief in the form of the Postal Service paying for doctor's bill when it is found that supervisory personnel did not have reasonable and sufficient grounds to require medical verification from an employee for absences of 3 days or less.

**M-01033 Pre-arb****March 10, 1992, H7N-3F-C-9555**

This grievance concerns the meaning of the word "hospitalization" as used in Part 342.2 of Handbook EL-311.

During our discussion, we mutually agreed that the term "hospitalization" as used in Part 342.2 of Handbook EL-311, Personnel Operations, EL-311, does not include outpatient visits to the hospital.

**C-09950 Regional Arbitrator Taylor****April 6, 1990**

"If the [certification of illness] provided was insufficient then the grievant should have been advised in a timely manner and told why the documentation was deficient."

**C-18452 Regional Arbitrator Powell****C94N-4C-C 98022262**

The grievant, who had requested Sick Leave for Dependant Care because of his son's illness, was required to provide medical certification. The arbitrator held that since there was no evidence of sick leave abuse, the request was unwarranted. The Postal service was ordered to reimburse the grievant for expenses. See also C-18462.

**C-01641 Regional Arbitrator Bowles****April 23, 1981, C8N-4F-C 13163**

An arbitrator has authority to order reimbursement of the cost of obtaining a medical certificate.

See also [Fitness for Duty Exams](#)

**C-06462 National Arbitrator Mittenthal  
September 19, 1986, H1C-NA-C 121-122**

Management may require an employee to be examined by a Postal Service physician only in non-emergency situations where the examination will not interfere with or delay the employee's appointment with his chosen physician.

**C-00790 National Arbitrator Gamser  
October 21, 1982, H8T-4H-C 10343**

Time spent receiving medical treatment for an on-the-job injury at the direction of the Postal Service in order to minimize Postal Service Compensation liability constitutes work time for overtime purposes under Article VIII, Section 4 of the National Agreement; the Arbitrator will not deal with external law.

**M-01117 Management Instruction  
MI EL 540-91-1, January 25, 1991  
B. Free Choice**

1. Physician. Under the Federal Employees' Compensation Act (FECA), an employee is guaranteed the right to a free choice of physician. The employee's immediate supervisor is responsible for fully explaining this right to the employee. The following provisions apply:

a. The postal medical officer or contract physician's evaluation is not required before an employee makes an initial choice of physician or receives continuation of pay. If an employee declines first aid treatment or medical evaluation by the postal medical officer or contract physician, authorization for first aid medical examination and treatment by the physician of the employee's choice must not be delayed or denied. An employee's declination in such cases may not be used as a basis to discontinue pay or to controvert a claim.

b. If the postal medical officer, contract physician, or health unit nurse provides initial evaluation and/or first aid treatment to an employee and then further medical care for the injury is needed, such an initial evaluation or treatment does not constitute the employee's initial choice of physician. An employee may elect either to continue medical treatment with the contract physician beyond the first aid treatment or to select a physician of his or her own choice.

c. If an employee elects to continue medical treatment with the postal medical officer or contract physician beyond the first aid treatment, that physician becomes the employee's initial physician of choice.

2. Timing. An employee cannot be required or compelled to undergo medical examination and/or treatment during non-work hours.

**M-01008 MSPB Decision  
November 19, 1987**

Under 5 CFR Part 353 (MSPB), probationary employees who recover within one year of the commencement of compensation have an unconditional right to be restored to their former or equivalent positions. See also [M-01009, C-16189](#).

**M-01102 Step 4  
September 22, 1992, H7N-1N-C 28417**

The issue in this grievance is whether management violated the national agreement by establishing a policy instructing supervisors to visit the office of the physician treating an employee injured on the job at the time of the initial treatment.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed the intent of a local policy must not be in conflict with the provisions of the ELM. According to ELM 543.14, in the case of an employee needing emergency treatment, "when appropriate, a supervisor accompanies the employee to the doctor's office or hospital to make certain that the employee receives prompt medical treatment." However, ELM 543.223 provides that "in non-emergency situations, a postal supervisor is not authorized to accompany the employee to a medical facility or physician's office." (emphasis added)

We further agreed that a supervisor will not accompany the employee on the initial visit or visit the physician's office at the time of the initial visit in non-emergency situations.

See also [M-01071](#)

**M-00882 Step 4  
November 18, 1988, H7N-1P-C 11811**

Consistent with ELM 543.222, a postal supervisor is not authorized to accompany an employee to a medical facility or physician's office in non-emergency situations, other than the USPS medical unit. The parties further agree that an employee is not required to seek or accept treatment at the USPS medical unit.

**M-01161 Prearb  
December 10, 1993, H7N-5F-C 26185**

It is agreed that an employee cannot be required or compelled by the postal Service to undergo a scheduled medical examination and/or treatment during nonwork hours.

**M-01438 Prearbitration Settlement  
April 19, 2001, Q98N-4Q-C 96017152**

In applying the language of the EL-505, it is mutually understood that an employee will not be required to take a functional capacity test if the employee's treating physician recommends against it for medical reasons.

## **M-00564 USPS Letter**

**March 23, 1977**

The Postal Service has reexamined its position concerning the meaning of Article XIII, B.2.A pertaining to who shall bear the cost of the physical examination referred to therein when the employee requesting permanent reassignment to light duty or other assignment is directed to be examined and certified by a physician of the installation head's choice. The Postal Service will, henceforth, pay the designated physician's bill for such physical examination.

## **M-01350 Step 4**

**J94N-4J-C 97009363, November 5, 1998**

The issue in this case is whether management is required to compensate an employee for time spent in a medical facility, after the employee's tour of duty has ended, as a result of a management directed medical evaluation. After reviewing this matter, it has been decided to sustain this case.

## **M-01033 Pre-arb**

**March 10, 1992, H7N-3F-C-9555**

This grievance concerns the meaning of the word "hospitalization" as used in Part 342.2 of Handbook EL-311.

During our discussion, we mutually agreed that the term "hospitalization" as used in Part 342.2 of Handbook EL-311, Personnel Operations, EL-311, does not include outpatient visits to the hospital.

## **Return to Duty Exams**

### **C-12424 National Arbitrator Mittenthal**

**October 5, 1992, H7N-1P-C 23321**

A local policy requiring medical clearance by the Division Medical Officer for return to duty following non-occupational illness or injury was not a violation of the Agreement. To the extent that the policy was applied to those returning from an extended absence due to occupational illness or injury, it would be in conflict ELM section 864.42, and would thus be a violation of the Agreement.

### **Memorandum of Understanding Incorporated into August 19, 1995 Interest Arbitration Award. Published in 1998 National Agreement.**

The parties reaffirm their understanding concerning the review of medical certificates submitted by employees who return to duty following extended absences due to illness.

We mutually agree to the following:

1. To avoid undue delay in returning an employee to duty, the on-duty medical officer, contract physician, or nurse should review and make a decision based upon the presented medical information the same day it is submitted.

Normally, the employee will be returned to work on his/her next workday provided adequate medical documentation is submitted within sufficient time for review.

The reasonableness of the Service in delaying an employee's return beyond his/her next workday shall be a proper subject for the grievance procedure on a case-by-case basis.

## **M-01395 Step 4**

**October 25, 1999, H90N-4H-C 95069850**

Local policies concerning documentation for returning to work after medical absences of 21 days or more must be consistent with the provisions of the EL-311

## **C-03007 National Arbitrator Gamser**

**July 25, 1979, NCN 4174**

Where there was a conflict of the physicians of the Postal Service and the employee and the Postal Service is dilatory in seeking the opinion of a third doctor, the employee is entitled to be made whole for the period between the time the employee furnished his personal doctor's statement that he was able to return to work and the time at which he was finally returned to work after a favorable opinion from a third physician.

## **M-00553 Step 4**

**September 5, 1985, H1N-5D-C 29673**

To avoid undue delay in returning an employee to duty following extended absences due to illness, the on-duty medical officer, contract physician, or nurse should review and make a decision based upon the presented medical information the same day it is submitted. Normally the employee will be returned to work on his/her next workday provided adequate medical documentation is submitted within sufficient time for review. See also [M-01148](#)

## **M-01414 Prearbitration Settlement**

**A90N-4A-C96034188, June 26, 2000**

These cases concern the procedure to be followed by injured employees (non-work related) returning to work when a medical review is required prior to their return to work. The specific issue presented is whether medical clearances are done on or off the clock.

We agree that the Postal Service can require a medical clearance by a physician designated by the installation head as provided for by EL-311. All such medical clearances are obtained by the employee(s) while off the clock in accordance with the appropriate handbooks and manuals including the EL-311 and the ELM.

However, if the employees in question had already clocked in, they will be compensated for time lost up to, but not to exceed, the appropriate work hour guarantees.

### **M-00973 Step 4**

**November 28, 1984, H1N-1E-C 31854**

An employee returning to duty after an extended absence must submit evidence of his/her being able to perform assigned postal duties. If local policy dictates that the employee must be seen and cleared by the postal medical officer, the employee shall be reimbursed for travel expenses incurred to attend the examination.

### **C-09558 Regional Arbitrator Barker**

Grievant was properly considered AWOL when she returned to work after an illness of 26 days without a medical clearance from her own physician and two days were required for USPS physician to clear her.

### **C-10820 Regional Arbitrator Mitrani**

**April 24, 1991**

Management was not required to reimburse an employee for time or expenses involved in obtaining medical clearance to return to duty.

## Introduction

The Merit Systems Protection Board is a federal agency established in January, 1979, under the provisions of the Civil Service Reform Act of 1978. The Act abolished the old Civil Service Commission and put in its place the Merit Systems Protection Board (MSPB) and two other federal agencies: the Office of Personnel Management, which manages the federal workforce; and the Federal Labor Relations Authority, which regulates labor relations in most of the federal establishment, but not the Postal Service.

The MSPB's major function is protecting *merit principles*—that is, ensuring that decisions affecting federal workers are based on merit alone. As such, the MSPB protects federal employees from partisan political pressure and other illegal abuse by federal agency management. The protection of merit principles benefits federal employees and helps guarantee the efficiency of government services provided to the public.

The Board itself is located in Washington, D.C. and is comprised of three persons, appointed by the President, who serve staggered, seven-year terms. Only two of the three may come from the same political party. A listing of MSPB regional and field offices is available at the MSPB Website. You may contact those offices to file an appeal or if you have questions or need additional information.

## Letter Carriers and the MSPB

For letter carriers and other postal employees, the MSPB functions much like a highly-specialized "grievance procedure." A carrier dissatisfied with certain actions taken by the Postal Service or the Office of Personnel Management (OPM) can challenge these actions through a MSPB appeal. Note, however, that MSPB appeals are handled and decided very differently than grievances brought under the National Agreement. NALC does not represent letter carriers in MSPB proceedings.

MSPB appeal procedures cover letter carriers and other postal workers only in certain limited situations. Letter carriers may appeal to the MSPB four different kinds of actions by the Postal Service or by the Office of Personnel Management. These actions, which are discussed more fully below, are:

- 1) Office of Personnel Management final reconsideration decisions regarding civil service retirement.
- 2) USPS decisions regarding restoration to duty following recovery from compensable disability.
- 3) Violations of USERRA rights.
- 4) USPS discipline in excess of 14-day suspension, or discharge, of a preference eligible employee.

### 1. Office of Personnel Management final reconsideration decisions regarding civil service retirement.

A letter carrier who applies for a retirement annuity—whether optional, deferred, or disability retirement—receives an Initial Decision from OPM. If unsatisfied with the result, the carrier may request reconsideration within 30 days after the date of the Initial Decision. After reconsidering, OPM issues a written Final Reconsideration Decision.

Upon receiving an adverse Final Reconsideration Decision from OPM, an employee may appeal to the MSPB within 20 days after the Decision's effective date. (See 5 Code of Federal Regulations 831.110,831.1205.)

### 2. USPS decisions regarding restoration to duty following recovery from compensable disability.

Any letter carrier—whether still on the USPS rolls or not—who requests restoration to full or limited duty following recovery from compensable disability may, under 5 C.F.R. 353.401, appeal the following Postal Service actions to the MSPB:

- Failure or refusal to restore the employee to full or limited duty; or
- A restoration to duty which the employee believes to be unsatisfactory.

The MSPB appeal must be filed within 20 days of the written notice of such USPS actions. For information on Carriers' restoration to duty rights, see 5 C.F.R. 353 and Chapter 546 of the Postal Service's *Employee and Labor Relations Manual*.

### M-01008 MSPB Decision November 19, 1987

Under 5 CFR Part 353 (MSPB), probationary employees who recover within one year of the commencement of compensation have an unconditional right to be restored to their former or equivalent positions. See also [M-01009, C-16189](#).

Postal employees who protest not being restored to duty following recovery from a compensable injury have a right to appeal to the MSPB and a right to arbitration on the same matter. National Arbitrator Das addressed the issue in [C-18158](#):

*The parties are in agreement that Article 16 .9 does not apply to appeals to the MSPB pursuant to 5 USC §8151 and 5 CFR 353 in so called "restoration to duty" cases. Under those Federal provisions, all Postal Service employees are provided certain rights to appeal to the MSPB in cases where they protest not being restored to duty following recovery from compensable injury. Such rights are not limited to preference eligible veterans and are not derived from the Veterans Preference Act referred to in Article 16 .9.*

In recent years, letter carriers have both appealed cases to the MSPB and filed grievances when the Postal Service refused to provide limited duty under the National Re-assessment Process. Management raised the issue of arbitrability in these cases and argued that employees did not have a right to both MSPB appeals and arbitration. In each case, arbitrators ruled that carriers recovering from a compensable injury protesting restoration to duty had a right to both MSPB and arbitration.

## Supporting Cases

C-29832, Arbitrator Simon, March 22, 2012

C-30157, Arbitrator Halter, March 16, 2012

C-30162, Arbitrator Miles, March 16, 2012

### 3. Violations of USERRA Rights

Letter carriers with USERRA rights may file certain alleged violations of USERRA rights to the board. There are two types of cases that fall within the Board's jurisdiction under USERRA. The first type is a reemployment case, in which an appellant claims that a federal agency has failed to comply with its obligations to reemploy the appellant after he or she has completed a period of military service. The second type is a "discrimination" case, in which an appellant claims that a federal agency has denied the appellant initial employment, reemployment, retention in employment, promotion, or any "benefit of employment" on the basis of the appellant's military service. See *Clavin v. U.S. Postal Service*.

#### M-01604 Miller v. Postal Service

##### Merit Systems Protection Board, March 7, 2007

The Board ruled that a postal employee is not covered by 5 U.S.C. § 6323 as in *Butterbaugh* (see M-01603). However, the MSPB said it had authority under USERRA to enforce such an employee's right under the USPS Employee and Labor Relations Manual to be charged military leave only for work days.

### 4. USPS discipline in excess of 14-day suspension, or discharge, of a preference eligible employee.<sup>1</sup>

"Preference eligibles" are certain classes of veterans and the survivors of veterans. MSPB appeal procedures are available only to those preference eligibles who have completed at least one year of current continuous service in the same or similar Postal Service positions. The complete legal definition of preference eligible is found at 5 USC §2108.

The Veterans' Preference Act provides that such a preference eligible employee may be disciplined for more than 14 days, or discharged, "only for such cause as will promote the efficiency of the service" [5 United States Code 7513(a)].

<sup>1</sup> Lesser discipline may not be appealed to the MSPB; however, it may be challenged through the contractual grievance-arbitration procedure.

### M-01154 USPS Internal Memorandum

April 19, 1990

In *Pittman v. Merit Systems Protection Board*, 832 F. 2d 598 (Fed. Cir. 1987), 87FMSR 7054, the Federal Circuit held that the placement of an employee on enforced leave for more than 14 days (even in situations where the agency has medical documentation stating that the employee is physically unable to carry the duties of his or her position) is inherently disciplinary and is tantamount to an appealable suspension. The court held that "indefinite enforced leave is tantamount to depriving the worker of his job--without any review other than that by the agency itself changes its mind and decides that he can perform his job." *Id.*, at 600." "The MSPB follows the precedent of the Federal Circuit, and considers the court's *Pittman* decision binding in regard to claims of constructive suspension arising from periods of enforced leave which exceed 14 calendar days.

**NALC does not** represent letter carriers in MSPB proceedings. Furthermore, letter carriers considering the appeal of an adverse action to the MSPB should be aware that many of the procedural protections provided by the National Agreement do not apply to MSPB proceeding. For example:

- **Expired Discipline.** Article 16, Section 10 provides that the records of a disciplinary action against an employee shall not be considered in any subsequent disciplinary action if there has been no disciplinary action initiated against the employee for a period of two years. This contractual protection does not apply to MSPB proceeding. In fact, the Postal Service routinely relies upon discipline that cannot be considered in the grievance/arbitration procedure when defending adverse actions in MSPB cases.
- **Unadjudicated Discipline.** Under the National Agreement, an arbitrator may not consider past discipline that has been grieved but not yet resolved or adjudicated. See JCAM Article 16 and C-03910, National Arbitrator Fasser, June 18, 1977. This contractual protection does not apply to MSPB proceedings which have different procedural rules (*United States Supreme Court United States Postal Service v. Gregory*, 534 U.S. 1, 122 S. Ct. 431 (2001)).

### Claims that arbitration is barred because appeal was made to the Merit Systems Protection Board (or, previously, to CSC)

The Veterans Preference Act guarantees "preference eligible" employees certain special rights concerning their job security. A preference eligible employee may file both a grievance and an MSPB appeal on a proposed removal or suspension of more than fourteen days. The rights of preference eligible employees to appeal certain adverse actions<sup>2</sup> to the MSPB or through the grievance arbitration procedure are the subject of Article 16, Section 9 which provides the following:

**Article 16, Section 9. Veterans' Preference** A preference eligible is not hereunder deprived of whatever rights of appeal are applicable under the Veterans' Preference Act. If the employee appeals under the Veterans' Preference Act, however, the time limits for appeal to arbitration and the normal contractual arbitration scheduling procedures are not to be delayed as a consequence of that appeal; if there is an MSPB appeal pending as of the date the arbitration is scheduled by the parties, the grievant waives access to the grievance-arbitration procedure beyond Step B.<sup>3</sup>

The Joint Contract Administration Manual Provides the following explanation of Article 16.9:

**MSPB Dual Filings.** The Veterans' Preference Act guarantees "preference eligible" employees certain special rights concerning their job security. (Federal law defines a "preference eligible" veteran at Title 5 United States Code Section 2108; see EL-312, Section 483). A preference eligible employee may file both a grievance and an MSPB appeal on a removal or suspension of more than fourteen days. However, Article 16.9 provides that an employee who exercises appeal rights under the Veterans' Preference Act waives access to arbitration when they have an MSPB appeal pending as of the date the grievance is scheduled for arbitration by the parties. The date of the arbitration scheduling letter is considered "the date the arbitration is scheduled by the parties" for the purposes of Article 16.9.

This language has been modified to reflect the parties' agreement that an employee should receive a hearing on the merits of an adverse action. It supersedes the 1988 Memorandum of Understanding on Article 16.9. While a preference eligible city letter carrier may appeal certain adverse actions to the MSPB, as well as file a grievance on the same action, the employee is not entitled to a hearing on the merits in both forums. This provision is designed to prevent the Postal Service from having to defend the same adverse action in an MSPB hearing as well as in an arbitration hearing. If a city letter carrier has an MSPB appeal pending on or after the date the arbitration scheduling letter is dated, the employee waives the right to arbitration.

The parties agree that the union will be permitted to reacti-

<sup>2</sup> The provisions of Article 16.9 apply to all "adverse actions" as defined by 5 USC §7512, otherwise appealable to the MSPB. This includes involuntary resignation or involuntary retirement, which have been defined as constructive removal, and enforced leave (in excess of 14 days) which has been defined as constructive suspension. See C-18158, National Arbitrator Das, November 12, 1997 and USPS Policy Memorandum M-01154.

<sup>3</sup> The 1977 arbitration awards C-00021, C-01103 and C-01518 by national arbitrator Gamser are obsolete and have been superseded by revised language in Article 16.9

vate an employee's previously waived right to an arbitration hearing if that employee's appeal to the MSPB did not result in a decision on the merits of the adverse action, or the employee withdraws the MSPB appeal prior to a decision on the merits being made. It is understood that this agreement does not preclude the parties from raising other procedural issues from the original arbitration appeal.

Additionally, the Union is not precluded from raising as an issue in arbitration whether any Postal Service backpay liability should include the period between the time the right to arbitration was waived by the employee and the time the Union reactivated the arbitration appeal.

### **EEO and EEO/MSPB Mixed Cases—Dual Filings.**

Article 16.9 does not bar the arbitration of a grievance where a grievant has asserted the same claim in an Equal Employment Opportunity (EEO) complaint. Nor does it apply where a preference eligible grievant has appealed the same matter through the EEOC and then to the MSPB under the "mixed case" federal regulations. (National Arbitrator Snow, D90N-4D-D 95003945, January 1, 1997, C-16650)

### **C-16650 National Arbitrator Snow January 1, 1997**

Article 16.9 does not bar the arbitration of a grievance where a grievant has asserted the same claim in an Equal Employment Opportunity (EEO) complaint. Nor does it apply where a preference eligible grievant has appealed the same matter through the EEOC and then to the MSPB under the "mixed case" federal regulations.

The Joint Contract Administration Manual Provides at page 15-6 the following explanation of the special procedures to handle disciplinary grievances files by preference eligible employees.

**Preference Eligible Employees.** Grievances concerning proposed removal actions which are subject to the thirty day notification period in Article 16.5 will be held at Formal Step A of the grievance procedure until the decision letter is issued.

Consistent with the Dispute Resolution Process Memorandum, the employee will remain on the job or on the clock until after the Step B decision has been rendered or 14 days after the appeal is received at Step B, except for emergency or crime situations as provided for in Articles 16.6 and 16.7.

The union does not file a separate grievance on the decision letter. Rather, the union may make additions to the file based on the decision letter at either Step A or Step B. This does not preclude any arguments by management regarding the relevance of the additions.

Grievances concerning proposed removal actions which are not subject to the thirty day notification period in Article 16.5 are not held at the Formal A step pending receipt of the decision letter. Rather, the union may later add the decision letter to the proposed removal grievance. This does not preclude any arguments by management regarding the relevance of the additions.

## Proposed Discipline v. Decision Letter

As noted above, under the MSPB procedures, preference eligible employees must first be issued a letter of proposed discipline and then a final decision letter after they have been given the opportunity to respond to the charges. A grievance should be filed at the time a preference eligible employee receives a Letter of Proposed Discipline. It is not necessary to file a separate grievance concerning the Decision Letter.

The American Postal Workers Union (APWU) has agreed in a national level settlements ([M-01137](#) and [M-01038](#)) that for employees in the APWU bargaining units, the time limits of Article 15, Section 2 run from the proposed discipline notice, not from the decision letter. NALC was not party to that settlement and has a different bargaining history concerning this issue (See [M-00939](#)). It is NALC's position that, for letter carriers, a grievance filed within fourteen days of receipt of the decision letter is timely.

Although arbitrators have ruled both for and against NALC's position on this issue, NALC believes Regional Arbitrator Britton ruled correctly in finding that the APWU/USPS memo did not apply in an NALC case, and that a grievance filed protesting a letter of decision was arbitrable. See [C-12205](#), July 17, 1992.

**Caution**, the Postal Service's position concerning this issue is currently unsettled and NALC's position has never been tested at national level arbitration. Unless this issue is resolved, **always grieve the letter of proposed discipline**: Never wait until receipt of the decision letter to file a grievance. No one would want his/her grievance to become a national level test case.

## Bargaining History

### [M-00939](#) NALC Step 4 September 26, 1974, NB-E-1681

This grievance involves the refusal on managements part to accept a grievance pertaining to a Notice of Charges-Proposed Removal from a steward prior to the time that a decision had been rendered on the previously mentioned proposal. A grievance may be filed upon receipt of a Notice of Proposed Removal.

### [M-01038](#) APWU Memorandum of Understanding, August 12, 1991

his memorandum addresses the time limits that must be met in order to grieve a proposed removal.

1. For the purpose of grievance procedure appeals, the time limits of Section 2 of Article 15 of the National Agreement shall run from the proposed removal notice, not from a decision letter on the proposed removal.
2. Once a grievance on a notice of proposed removal is filed, it is not necessary to file a grievance on the decision letter.
3. Receipt of a notice of proposed removal starts the 30 day advance notice period of Section 5 of Article 16 of the National Agreement.

### [M-01137](#) APWU Step 4 September 16, 1992, H7V-1F-D 39176

The issue in this grievance concerns the time limits that must be met in order to grieve a proposed suspension of more than fourteen days and whether a decision letter must be grieved. During our discussion we mutually agreed to close this case based upon the following understanding:

1. For the purpose of grievance procedure appeals, the time limits of Section 2 of Article 15 of the National Agreement shall run from the proposed suspension notice, not from a decision letter on the proposed suspension.
2. Once a grievance on a notice of proposed suspension is filed, it is not necessary to file a grievance on the decision letter.
3. Receipt of a notice of proposed suspension starts the 30 day advance notice period of Section 5 of Article 16 of the National Agreement.

### [C-12205](#) Regional Arbitrator Britton SON-3W-D 04320, July 17, 1992

APWU/USPS memo providing that a grievance must be filed concerning a notice of proposed removal is "of questionable application" in an NALC arbitration—grievance filed protesting notice of decision is arbitrable.

## Supporting Cases

### Proposed Discipline v Decision Letter

- [C-09730](#) Regional Arbitrator Howard, July 18, 1989
- [C-12205](#) Regional Arbitrator Britton, July 17, 1992
- [C-20825](#) Regional Arbitrator Duda, June 11, 2000
- [C-22909](#) Regional Arbitrator McGown, December 24, 2001
- [C-24356](#) Regional Arbitrator Reeves, June 8, 2003
- [C-11262](#) Regional Arbitrator Klein, October 9, 1991
- [C-10489](#) Regional Arbitrator Cushman, December 7, 1990

## Supporting Cases

### **C-16841, Arbitrator Britton**

**May 15, 1997 C-16650**

As found herein, the Grievant is entitled to be informed of his MSPB appeal rights under the Veteran's Preference Act in a timely manner and to have his "Proposed Removal" heard by the installation head within ten (10) days. The procedural error of the Employer of initially issuing a Notice of Removal rather than a proposed removal and failing to timely advise the Grievant of his MSPB rights and the right to meet with the Postmaster prior to Step 1 deprived the Grievant of the due process to which he is entitled and constitutes harmful error. Consequently, the removal letter was improper and violated Article 16 Section 5 of the National Agreement. In view of the above findings, it is deemed by the Arbitrator to be unnecessary to this opinion that he further consider the additional procedural arguments as to whether there was concurrence, progressive discipline, double jeopardy or disparate treatment or address the substantive arguments on the merits of whether there was just cause for the Grievant's removal. (C-16841)

### **C-09730 Regional Arbitrator Howard**

**July 18, 1989, E7N-2B-D 3329**

Removal grievance was timely where filed within 14 days of Notice of Decision.

### **C-11262 Regional Arbitrator Klein**

Although grievant had an MSPB appeal pending at the time his grievance was appealed to arbitration, the grievance is nonetheless arbitrable because MSPB failed to address the merits of his case.

### **C-10489 Regional Arbitrator Cushman**

**December 7, 1990**

A non-preference eligible who appealed discharge to MSPB did not thereby waive access to arbitration, because Article 16, Section 9 pertains only to preference eligibles.

### **C-09937 Regional Arbitrator Skelton**

**April 5, 1990**

Where both a grievance and an MSPB appeal were filed concerning a denial of light duty, the grievant's settlement of the MSPB appeal precludes arbitration of the grievance.

However, see [C-03723](#), [C-01181](#) and [C-10485](#) for counter-examples.

**41.2.E.** Change in Which Seniority is Modified When mutual exchanges are made between letter carriers from one installation to another, the carriers will retain their seniority or shall take the seniority of the other exchangee, whichever is the lesser.

Article 41.2.E applies only to mutual exchanges—between part-time flexible carriers as well as between full-time carriers. This contractual provision does not mean that exchanging carriers exchange their routes as well as their positions. The routes involved in the exchange are posted in accordance with the provisions of Article 41.1. Note that the Employee and Labor Relations Manual (ELM) provides the following:

351.61 Mutual Exchanges—General Policy Career employees may exchange positions (subject, when necessary, to the provisions of the appropriate collective bargaining agreement) if the officials in charge at the installations involved approve the exchange of positions. Mutual exchanges must be made between employees in positions at the same grade levels. The following employees are not permitted to exchange positions:

- a. Part-time flexible employees with full-time employees.
- b. Bargaining unit employees with nonbargaining employees.
- c. Nonsupervisory employees with supervisory employees.

Effective with the 2006 National Agreement, for the purposes of mutual exchanges, city letter carriers in grades CC-01 and CC-02 are considered as being in the same grade.

## **MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO**

### **Re: Mutual Exchanges**

The parties agree that in applying the relevant provisions of Section 351.6 of the Employee and Labor Relations Manual, city letter carriers in grades CC-01 and CC-02 are considered as being in the same grade. This agreement applies solely to determining whether employees are eligible for mutual exchanges.

Date: September 11, 2007

For additional information on mutual exchanges, see Article 12 pages 12-44–12-45.

### **EL-311, PERSONNEL OPERATIONS**

**Section 512.4 Mutual Exchanges.** Career employees may exchange positions (subject, when necessary, to the provisions of the appropriate collective-bargaining agreement) if the exchange of positions is approved by the officials in charge of the installations involved. Part-time flexible employees are not permitted to exchange positions with full-time employees, nor bargaining-unit employees with nonbargaining unit employees, nor nonsupervisory employees with supervisory employees. Mutual exchanges must be between positions at the same grade. An exchange of positions does not necessarily mean that the employees involved take over the duty assignments of the positions.

Note: A regular rural carrier may exchange only with another regular rural carrier at a different installation. See also ELM 351.6.

### **M-01646 Memorandum September 11, 2007**

Re: Mutual Exchanges

The parties agree that in applying the relevant provisions of Section 351.6 of the Employee and Labor Relations Manual, city letter carriers in grades CC-01 and CC-02 are considered as being in the same grade.

### **C-10180 Regional Arbitrator Levak August 8, 1990**

Management did not violate the contract when it denied a request for a three-way mutual exchange.

### **C-11087 Regional Arbitrator Axon August 14, 1991, W7N-5R-C 26833**

The arbitrator held that the Postal Service violated the National Agreement when it denied the grievant's request for a mutual exchange. He found that the union met its burden of demonstrating that management acted in an arbitrary and capricious manner by showing that Postal Service managers made their decision without any reasonable basis in fact.

### **C-12634 Regional Arbitrator Brandon December 8, 1992, SON-3D-C 12026**

The arbitrator held that the Postal Service violated the National Agreement when it gave a "general refusal" to the grievant's request for a mutual exchange.

### **M-01002 Step 4 November 30, 1982, H1N-5D-C 4930**

In the instant case, a mutual exchange of carriers between two postal installations was authorized. Local management assigned the incoming carrier to the route vacated by the departing carrier. It was mutually agreed that the following would represent a full settlement of this case:

The vacated route should have been posted for bid. Upon

receipt of this decision and as soon as administratively possible, the postmaster will post route 1148 for bid in accordance with Article 41, Section 1 of the National Agreement.

**M-01149 APWU Step 4**

**December 23, 1983, H1C-5H-C 16429**

All duty assignments vacated as a result of mutual exchanges pursuant to ELM 351.6 must be posted for bid, in accordance with the provisions of Article 37, Section 3.A.1, of the National Agreement

# NATIONAL LABOR RELATIONS ACT (NLRA)

Article 5, Prohibition of Unilateral Action, specifically incorporates the National Labor Relations Act into the National Agreement.

## See Also:

### Past Practice Weingarten Rights

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

(The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

**Prohibition on Unilateral Changes.** Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours or working conditions during the term of a collective bargaining agreement.

In H1N-5G-C 14964, March 11, 1987 (C-06858) National Arbitrator Bernstein wrote concerning Article 5:

The only purpose the Article can serve is to incorporate all the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism—it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

Not all unilateral actions are prohibited by the language in Article 5—only those affecting wages, hours or working conditions as defined in Section 8(d) of the National Labor Relations Act. Additionally, certain management decisions concerning the operation of the business are specifically reserved in Article 3 unless otherwise restricted by a specific contractual provision.

### C-06858 National Arbitrator Bernstein March 11, 1987, H1N-5G-C 14964

Article 5 of the National Agreement serves to incorporate all of the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This

incorporation has significance primarily in terms of enforcement mechanism—it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

### C-03769 National Arbitrator Aaron July 6, 1983, H1T-1E-C 6521, at page 7

An arbitrator should rule on the merits of unfair labor practice charges that have been deferred to arbitration under Collyer.

### M-01092 USPS v NLRB, No. 91-1373 D.C. Cir, June 30, 1992

Decision by the U.S. Court of Appeals for the D.C. Circuit upholding an NLRB decision concerning Weingarten rights (M-01093). The Board held that Postal Inspectors violated the Weingarten doctrine by refusing a request by a steward to consult with an employee prior to the employee's interrogation by the Inspectors.

### M-01066 U.S. Court of Appeals, District of Columbia, Cook Paint and Varnish v. NLRB

A steward may not be required to divulge information given by a grievant in connection with the steward's handling of a grievance.

### M-00634 NLRB Memorandum July 9, 1979

Memorandum intended to serve as a guideline concerning a union's duty of fair representation under the Labor-Management Relations Act.

### M-00546 NALC Legal Memorandum November 30, 1981

Recent decisions of the National Labor Relations Board and the United States Court of Appeals for the Ninth Circuit established that: (1) when an employee being interviewed by an employer is confronted by a reasonable risk that discipline would be imposed, the employee has a right to the assistance of - not mere presence of - a union representative; and (2) that an employer violates the Act when it "refuses to permit the representative to speak, and relegates him to the role of a passive observer".

### M-00640 NLRB Advisory Opinion January 22, 1985

The Union was privileged to demand that only Union members be chosen to serve on Employee Involvement Program work-teams because these teams will potentially be engaging in collective bargaining. Therefore, the Employer did not violate Section 8(a)(3) of the Act by agreeing to and enforcing such a limitation on employee participation in the Employee Involvement Program.

## **M-00812 Pre-arb**

**October 30, 1986, H4C-4K-C 5277**

Employees subpoenaed to testify at a NLRB hearing is on official duty and must be compensated in accordance with ELM section 516.42.

## **M-00937 Pre-arb**

**1974, RA-73-1740,**

The Postal Service acknowledges its obligation under Section 9(a) of the National Labor Relations Act, which provides in part: "That any individual employee... shall have the right at any time to present grievances to (his) employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: Provided further, that the bargaining representative has been given the opportunity to be present at such adjustment."

## **M-01051 APWU Pre-arb**

**October 30, 1980, H4C-4K-C-5277**

The issue in this grievance is whether time spent by the grievant at the NLRB hearing was official duty. During that discussion, it was mutually agreed that the following would represent full settlement of this case:

1. The said subpoena issued to the grievant constituted a proper authority.
2. The grievant shall be compensated in accordance with Part 516.42 of the ELM, and such compensation shall terminate (except travel and subsistence expenses) upon the employee's release from the subpoena.

## Article 17, Section 6. Union Participation in New Employee Orientation

During the course of any employment orientation program for new employees, a representative of the Union representing the craft to which the new employees are assigned shall be provided ample opportunity to address such new employees, provided that this provision does not preclude the Employer from addressing employees concerning the same subject.

Health benefit enrollment information and forms will not be provided during orientation until such time as a representative of the Union has had an opportunity to address such new employees.

(The preceding Section, Article 17.6, shall apply to Transitional Employees.)

The JCAM explains Article 17, Section 3 as follows:

**New Employee Orientation.** During new letter carrier orientation, a representative of the NALC shall be provided “ample” opportunity to address the new employees while they are on the clock.

Management must permit new employees to complete PS Form 1187 during new employee orientation time (Step 4, H4N-4J-C 2536, August 29, 1985, [M-00317](#)). Article 17 does not preclude management from being present during the union’s new employee orientation (Step 4, H1C-5D-C-21764, December 17, 1984, [M-00084](#)).

New employee orientation for CCAs is addressed by the parties’ joint Questions and Answers 2011 USPS/NALC National Agreement, dated March 6, 2014 ([M-01833](#)).

### **M-01833 Joint Questions and Answers March 6, 2014**

**Question 38: Will the union be allowed to address newly hired CCAs as part of the orientation process?**

Yes. The provisions of Article 17.6 of the National Agreement apply to CCAs. Accordingly, the union is to be provided ample opportunity to address all newly hired CCAs as part of the hiring process.

### **M-01833 Joint Questions and Answers March 6, 2014**

**Question 39: Is the union provided an opportunity to discuss health insurance, pursuant to Article 17.6, when a CCA becomes a career employee?**

Yes, the union will be provided time to address the NALC Health Benefit Plans that are available to career employees.

### **M-01833 Joint Questions and Answers March 6, 2014**

**Question 40: Do former transitional employees go through the full orientation process when hired as CCAs?**

Only if the employee was not provided orientation when hired as a transitional employee. However, the union will be provided time, as defined in Article 17.6 of the National Agreement to address those CCAs that went through the full orientation process as transitional employees.

## Supporting Cases

### **M-01823 Prearbitration Agreement, June 12, 2013**

Recently our representatives met on this Article 19 appeal which was pending national arbitration. This case is resolved based on the following:

By letter dated May 15, 2013, the Postal Service advised that:

*The final version of Handbook EL-804 included an unintended revision to language regarding on-the-job instructors [Section 137.2, Responsibilities. Provide 3 days (24 hours) of orientation and training when a new employee arrives at the duty station].*

*Handbook EL-804 will be updated to reflect a continuation of the subject language from the predecessor version of the handbook. Please note that the language will be located in Section 136.1 due to other changes made when Handbook EL-804 was updated.*

Without prejudice the position of either party in this case or any other grievance we agree to close this case.

### **M-00447 Step 4 August 10, 1982, H8N-3W-C 34023**

The Union representatives in this installation shall continue to be allowed to distribute union related material to employees during new employee orientation.

### **M-00623 Step 4 August 17, 1984, H1N-5C-C 17024**

If a union representative addresses new employees at an orientation at the MSC level, management is not required to allow them to be addressed again by a local representative.

### **M-00210 Step 4 February 19, 1974, NBW 637**

The orientation for new employees is held after the appointment to a postal position.

**M-00644 Step 4****May 20, 1977, NCW 5872**

Local management will in future instances allow "ample" time for the local union to participate in new employee orientation in conformance with Article XVII, Section 7 of the National Agreement.

**M-00317 Step 4****July 19, 1985, H4N-4J-C 2536**

Completion of SF-1187 as identified in ELM 913.414 will be permitted during employee orientation in the areas designated by management.

**M-00084 Step 4****December 17, 1984, H1C-5D-C 21764**

Article 17 does not preclude management officials from being present when the union addresses new employees during orientation.

## OUT-OF-SCHEDULE PAY

Out-of-schedule pay is an additional fifty percent premium paid for those hours worked outside of, and instead of, a full-time regular employee's regularly scheduled workday or workweek. The regulations controlling out-of-schedule pay are contained in ELM Section 434.6.

### See also [Schedule Changes—Voluntary](#)

All full-time regular letter carriers, including reserve and unassigned regulars, have schedules with fixed reporting times and regularly scheduled days off. Management may temporarily change the schedules of full-time regular employees. However, whenever this is done, the employees whose schedules have been temporarily changed are entitled to additional pay.

If notice of a temporary change is given to an employee by Wednesday of the preceding service week, the employee's time can be limited to the hours of the revised schedule. However, "out-of-schedule" premium is paid for those hours worked outside of, and instead of, the employee's regularly scheduled workday or workweek.

If notice of a temporary schedule change is not given to an employee by Wednesday of the preceding service week, the employee is entitled to be paid for the hours of his regular schedule, whether or not they are actually worked. Therefore any hours worked in addition to the employee's regular schedule are not worked "instead of" his regular schedule. Such hours are not considered as "Out-of-schedule" premium hours. Instead they are paid as regular overtime for work in excess of eight hours per service day or 40 hours per service week.

For example, an employee whose regular schedule of 7 a.m. to 3:30 p.m. was temporarily changed to 6 a.m. to 2:30 p.m. would be paid differently depending upon whether or not prior Wednesday notice was given.

If an employee did receive notification he would be paid an "out-of-schedule premium" for the hour 6 a.m. to 7 a.m. and seven hours straight time pay for the hours 8:00 a.m. to 2:30 p.m.

If the employee did not receive the proper advance notification, he would be paid for nine hours on days the revised schedule was worked. The time between 6 a.m. and 7 a.m. would be paid at the overtime rate and the time between 7 a.m. and 3:30 p.m. - the regular schedule - at the straight time. If the employee was sent home at 2:30 p.m. he would be paid the hour between 6 a.m. and 7 a.m. at the overtime rate; receive straight time pay for the period 7 a.m. to 2:30 p.m., plus one hour administrative leave at the straight time rate for the period 2:30 p.m. to 3:30 p.m.

Bargaining unit employees do not receive "out-of-schedule premium" pay when their schedule is changed to provide

limited or light duty. Nor do they receive "out-of-schedule premium" pay when they request a schedule change for personal reasons. Employees may request such a schedule change by preparing and signing form 3189, Request for Temporary Schedule Change for Personal Convenience. The form must also be signed by both the Union steward and the supervisor before it will be honored.

### **C-00939 National Arbitrator Gamser September 10, 1982, H1C-5F-C 1004**

Unassigned regulars who had their schedules changed in the absence of a bid or assignment to a residual vacancy were entitled to out-of-schedule overtime under Article 8, Section 4.B.

### **C-03212 National Arbitrator Gamser March 12, 1980, N8-NA-0003**

The arbitrator held that the Postal Service is not required to make out-of-schedule payments to employees on limited duty. However, he continues that:

"Having so concluded, it is necessary to add that this determination does not give the USPS the unbridled right to make an out-of-schedule assignment when the disabled employee could be offered such a work opportunity during the hours of his or her regular tour."

### **M-00431 Pre-arb January 27, 1982, H8N-3P-C 32705**

Details of anticipated duration of one week (five working days within seven calendar days) or longer to temporarily vacant Carrier Technician (T-6) positions shall be filled per Article XXV, 1981 National Agreement. When such temporary details involve a schedule change for the detailed employee, that employee will assume the hours of the vacancy without obligation to the employer for out-of-schedule overtime. See also [M-00072](#)

### **M-00353 Step 4 May 24, 1985, H1N-5G-C 24094**

A reserve carrier who does not opt for a "hold-down" shall nonetheless assume the schedule of the "hold-down" if management elects to assign the reserve carrier to the route or assignment anyway.

This settlement establishes the schedule a reserve letter carrier works if assigned to a hold-down by management. It does not waive the carrier's entitlement to out-of-schedule pay. See [M-00940](#)

### **M-00767 Pre-arb April 15, 1985, H1N-1J-C 6766**

Where temporary bargaining-unit vacancies are posted, employees requesting these details assume the hours and days off without the Postal Service incurring any out-of-schedule liability. The bargaining-unit vacancies will not be restricted to employees with the same schedule as the vacant position.

## **M-00615 USPS Letter**

**October 10, 1985**

Postal Service Memorandum discussing the circumstances under which full time employees are entitled to the payment of overtime for work performed outside of, and instead, of their regular schedule on a temporary basis.

## **C-10984 Regional Arbitrator Purcell**

**July 29, 1991**

Where the Grievant was ordered to undergo a fitness-for-duty exam outside of her normal schedule, and where she was paid administrative leave for the balance of the day, Grievant is not entitled to be paid out-of-schedule overtime. Such payment is made only for "work" and Grievant performed no work on the day in question.

## **As Remedy**

### **M-01055 APWU Step 4**

**February 18, 1986, H4C-5K-C-3831**

The issue in this grievance is whether management violated the National Agreement by not placing the next senior qualified bidder in a position within the prescribed time.

The parties at this level agree that "immediately after the end of the deferment period, the senior bidder then qualified shall be permanently assigned..." in accordance with Article 37.3F(3). Those employees who were placed in new assignments after the prescribed time limit should be paid out-of-schedule premium for those hours worked between such time and the effective date of the new assignment. See also [M-00310](#).

### **M-00153 Step 4**

**November 26, 1979, N8-W-0096**

The grievant was inappropriately required to report for the light duty assignment in question, as he had not requested such an assignment. Accordingly, inasmuch as he was directed to work a schedule different from his normal schedule and in another craft, and such assignment was not for his own personal convenience and sanctioned by the Union, the grievant is entitled to receive out-of-schedule premium pay for the period he worked in other than his normal work schedule.

### **C-01647 Regional Arbitrator Bowles**

**August 11, 1981, C8N-4F-C 13593**

An arbitrator lacks authority to order payment of out-of-schedule overtime to a PTF.

## **204Bs**

### **C-00580 National Arbitrator Mittenthal**

**January 27, 1982, A8-W-939**

Article 8 Section 4.B requires the Postal Service to pay out-of-schedule overtime to employees working as 204B's. See also [C-00310](#)

### **M-01039 APWU Pre-arb**

**March 4, 1983, H8C-4G-C-14584**

Employees who are acting supervisors (204-B), are not entitled to out-of schedule premium when they attend a planned, prepared and coordinated training session.

Acting supervisors (204-B) are entitled to out-of-schedule premium when they are detailed to a higher level position, work other than their bid assigned hours and are not involved in a planned, prepared and coordinated training session.

### **C-00161 National Arbitrator Gamser**

**July 27, 1975, AB C 341**

An employees on a regular schedule, detailed to a higher level assignment (e.g. 204b) can not voluntarily waive out-of-schedule overtime pay. When changes of schedule are genuinely for the personal convenience of the employee, out-of-schedule pay may be waived when the waiver is condoned and agreed to by the union.

## **Training**

### **M-00201 Step 4**

**July 28, 1981, H8N-2B-C 10122**

The exceptions to the obligation to pay out-of-schedule overtime is governed by Part 434.62, Employee and Labor Relation Manual. Clearly, Part 434.623e excludes such payment where the employee's schedule is temporarily changed so that the employee may attend recognized raining sessions.

### **M-00302 Step 4**

**May 2, 1985, H1C-4B-C 37025**

While there is no contractual obligation for the Employer to pay out-of-schedule premium to employees in a training situation, the parties recognize the need for the employees to be informed as far in advance as possible when a schedule change for training purposes is needed. Therefore, when it is possible, the employees should be notified of the schedule change by Wednesday of the proceeding week.

### **M-00554 Step 4**

**August 27, 1985, H1N 1K C 39739**

There is no contractual obligation for the employer to pay out-of-schedule premium to employee in a training situation. When it is possible, the employees should be notified of the schedule change by Wednesday of the preceding week.

## Introduction

The Joint Contract Administration Manual (JCAM) is the authoritative source for all overtime issues. It should always be consulted when overtime questions arise.

This is because the overtime provisions of Article 8 can be hard to understand without extensive explanation. Since Article 8 was originally written, the actual overtime rules have been heavily modified by the addition of Penalty Overtime in the 1984 contract, Work Assignment Overtime in 1985 and the "Letter Carrier Paragraph in a 1984 memorandum."

For example, Article 8.5.F states the following:

"Excluding December, **no full-time regular employee will be required** to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week." (emphasis added)

On the other hand, Article 8.5.G states that:

Employees on the "Overtime Desired" list.. **may be required to work** up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of **penalty overtime** pay set forth in Section 4.D for contravention of Section 5.F)." (emphasis added)

Similarly, Article 8.5.C.2.d states that:

"Recourse to the "Overtime Desired" **list is not necessary** in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days."

In fact, if a letter carrier with a bid assignment is not on the overtime desired list, the "Letter Carrier Paragraph" often **does require** "recourse to the Overtime Desired list." Yet the "letter carrier paragraph" is not mentioned anywhere in the body of Article 8, but rather is one part of a separate Memorandum of Understanding.

Finally, the "Work Assignment List" agreement is not fully incorporated into the body of Article 8, but rather is from a Letter of Intent dated May 28, 1985.

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Overtime Limits

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## Joint Statement on Overtime

### M-00833 Joint Statement on Overtime

June 8, 1988

This Joint Statement on Overtime represents the parties' consensus on those commonly encountered situations where a uniform application of overtime procedure is required. This Joint Statement is restricted to those issues specifically set forth herein, but may from time to time be amended to add or refine additional overtime issues jointly identified by the parties.

### Signing Overtime Lists

Carriers may sign an Overtime Desired List (OTDL) only during the two week period prior to the start of each calendar quarter.

An exception exists for letter carriers on military leave during the sign up period. They are permitted to sign the OTDL upon return to work.

Unless local memoranda provide otherwise when a carrier bids or is transferring between units during a calendar quarter, he/she may sign the OTDL in the gaining unit, if he/she was on the OTDL in the losing unit.

Full-time regular letter carriers, including those on limited or light duty, may sign up for either the regular Overtime Desired List (10 or 12 hour) or the "work assignment" overtime, but not both.

Whether or not an employee on limited or light duty is actually entitled to overtime depends upon his/her physical and/or mental limitations.

A letter carrier may request that his/her name be removed from an Overtime Desired List at any time during the quarter. However, management does not have to immediately honor the request if the employee is needed for overtime on the day the request is made.

### Regular Overtime List

Letter carriers signing the Overtime Desired List who prefer to work in excess of 10 hours on a scheduled day up to the maximum of 12 hours on a scheduled day should indicate their preference on the list.

A letter carrier who signs the regular Overtime Desired List is obligated to work overtime when requested. However, Article 8, Section 5.E., provides that employees on the OTDL may be excused from working overtime in exceptional cases.

## Work Assignment

"Work assignment" overtime was established by a memorandum of understanding dated May 28, 1985.

Full-time carriers signing up for "work assignment" overtime are to be considered available for up to 12 hours per day on regularly scheduled days. However, the parties recognize that it is normally in their best interests not to require employees to work beyond 10 hours per day, and managers should not require "work assignment" volunteers to work beyond 10 hours unless there is no equally prompt and efficient way to have the work performed.

Signing up for the work assignment overtime does not create any entitlement or obligation to work overtime on a non-scheduled day.

T-6 or utility letter carriers would be considered available for overtime on any of the routes on their string.

Reserve letter carriers and unassigned regulars are considered available for overtime on the assignment they are working on a given day.

Management may use an employee from the regular OTDL to work regular overtime to avoid paying penalty pay to a carrier who has signed for work assignment overtime; further management may assign any other carrier to perform the work at the straight time rate.

## Overtime Distribution

The Overtime Desired Lists control the distribution of overtime only among full-time regular letter carriers. Management may assign overtime to a PTFS or casual employees rather than to full-time regular employees who are either signed up for "work assignment" overtime or OTDL.

The OTDL is not used when scheduling for holiday coverage.

Overtime opportunities for carriers on the regular OTDL are not distributed by seniority or on a rotating basis. Nor is a carrier on the regular OTDL ever entitled to any specific overtime, even if it occurs on his/her own route.

Rather, Article 8, Section 5.C.2.b, requires that overtime opportunities must be equitably distributed during the quarter. Accordingly, whether or not overtime opportunities have been equitably distributed can only be determined on a quarterly basis. In determining equitability

consideration must be given to total hours as well as the number of opportunities.

Management may require letter carriers on the regular Overtime Desired List to work overtime occurring on their own route on a regularly scheduled day. Overtime worked by carriers on their own route, on a regularly scheduled day is not considered in determining whether overtime opportunities have been equitably distributed. This situation is controlled by Article 8, Section 5.C.2.d, and the prearbitration settlement of H8N-5D-C 18624, July 1, 1982 (M-00135), which states in relevant part:

1) Overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an overtime opportunity" for the purposes of administration of the Overtime Desired List.

2) Overtime that is concurrent with (occurs during the same time as) overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an "opportunity missed" for the purposes of administration of the Overtime Desired List.

## Mandatory Overtime

The "letter carrier paragraph" of the 1984 Overtime memorandum obligates management to seek to use auxiliary assistance, when available, rather than requiring a regular letter carrier not on the Overtime Desired List to work overtime on his/her own assignment on a regular scheduled day.

When full-time regular employees not on the Overtime Desired List are needed to work overtime on other than their own assignment, or on a non-scheduled day, Article 8, Section 5.D, requires that they be forced on a rotating basis beginning with the junior employee. In such circumstances management may, but is not required to seek volunteers from non-OTDL employees.

## 60 hour limit

### C-05860 National Arbitrator Mittenthal April 11, 1986, H4C-NA-C 21, "First Issue"

An employee on the OTDL does not have the option of accepting or declining on the fifth scheduled workday, on the seventh day, or beyond eight hours on a non-scheduled day. Instead, an employee on the OTDL must work until the exhaustion of the 12 and 60 hour limits before an employee not on the list is required to work overtime.

**C-06238 National Arbitrator Mittenenthal  
June 9, 1986, H4C-NA-C 21, "Fourth Issue"**

The 60-hour limit is absolute, and that when reached, the employee may not be worked further.

No uniform remedy is appropriate for violations of the 12 and 60 hour limits. The remedy for such violations may be more than the penalty already paid the employee, but must be determined on a case-by-case basis according to consideration of aggravating and mitigating circumstances.

See [C-06060](#), Mittenenthal, May 12, 1986 for an earlier decision concerning the arbitrability of this dispute

**C-07323 National Arbitrator Mittenenthal  
September 11, 1987, H4C-NA-C 21, "Third Issue"**

"[An employee] having been sent home on his regularly scheduled before the end of his tour on account of the 60-hour ceiling and having experienced on temporary change of schedule, must be paid for the hours he lost that day."

**M-00612 Settlement Agreement  
April 16, 1985**

The 12 hours per day and 60 hours in a service week are to be considered upper limits beyond which full-time employees are not to be worked.

**M-00859 Memorandum  
October 19, 1988**

The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at a additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation. The employment of this remedy shall not be construed as a agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4N-NA-C 21 (3rd issue) and H4N-NA-C 27.

**C-18926 National Arbitrator Snow  
A90N-4A-C 94042668, September 1, 1998**

The remedy provided for in the October 19, 1988 Memorandum (M-00859, above) is the exclusive remedy for violation of the 12 and 60 work hour limits

**M-00590 USPS Letter  
January 29, 1985**

Questions and answers concerning the penalty overtime provisions of Article 8.

**M-01508 JBC Letter  
November 14, 1985**

For the purposes of the application of Article 8, reference to the month of December in Article 8, Section 4 and 5 of the 1984 National Agreement be understood to mean four consecutive service weeks

Note: the dates of the four week penalty overtime exclusion period are published each year in the Postal Bulletin.

**M-01445 Step 4  
September 6, 2001, J94N-4J-C 99050117**

The issue in this grievance concerns the application of the October 19, 1988 Overtime Memorandum and Arbitrator Snow's national level decision in Case No. A90N-4A-C 94041668, alleging separate violations of both the twelve hour and sixty hour limits (Article 8.5.G.2) within one service week.

We mutually agree that the remedy of 50% of the base hourly straight time rate provided in the Memorandum will apply for each hour worked in excess of twelve on a service day (excluding December) by a full time employee. Further, we agreed that the remedy also applies to each hour worked by a full time employee in excess of the sixty during the same service week (excluding December) in which the full time employee has exceeded twelve hours in a service day. To avoid such payment, management must instruct the full time employee to "clock off" and go home; the full time employee would then be paid whatever guarantee applies for the remainder of the service day.

It is also agreed that in those circumstances where the same work hours of a full time employee simultaneously violate both the twelve hour and sixty hour limits (e.g. the thirteenth and fourteenth hour worked on the last service day of the service week are also the sixty-first and second of the service week), only a single remedy of 50% of the base hour straight time rate will be applied.

It is understood that the foregoing does not apply to part time flexible employees and has no impact on the manner by which part time flexible employees are paid penalty overtime pay pursuant to Article 8.4.E.

**M-01176 USPS Letter  
July 20, 1993**

The limitations contained in the National Agreement of 12 hours in a day and 60 hours in a week are inclusive of paid hours. If, for example, an employee had approved leave at the beginning of the service week for 24 hours, the maximum an employee is available to perform duty, i.e., to work, is 36 hours for the remainder of the service week.

Some questions received appear to contemplate that if an employee had leave of any type during the week, we could require that individual to perform services up to 60 hours. This is not the intent nor is it the application of the principles underlying Article 8.

National Arbitrator Richard Mittenthal, in case H4C-NA-C 21 (Fourth Issue) stated that the 60-hour limit is absolute and no employee may be worked past that limitation.

**M-01180 Step 4**  
**June 9, 1994, I90N-4I-C 94023487**

The issue in this grievance is whether both "holiday leave pay" and "holiday worked pay" count toward the 60 hour work limitation found in Article 8.5.G.

During our discussion, we mutually agreed that "holiday leave pay" paid for an employee's holiday or designated holiday is counted toward the 60 hour limit. However, if an employee actually works on a holiday or designated holiday, only those work hours in excess of eight hours are added to the eight hours of "holiday leave pay" when determining hours which count toward the 60 hour limit.

**C-27000 Regional Arbitrator Trosch**  
**March 26, 2007, K01N-4K-C 06022276**

The amounts sought by the Union reflect some increase in those agreed to in the prior resolutions, but are not inappropriate within the concept of the objective of influencing local management to discontinue the repeated violations that leads to a conclusion that the past violations have been egregious.

## Overtime-Ten Hour Daily Limit

**8.5.F.** Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

Article 8.5.F applies to both full-time regular and full-time flexible employees. The **only two exceptions** to the work hour limits provided for in this section are for all full-time employees during the month of December and for full-time employees on the Overtime Desired List during any month of the year (see Article 8.5.G). Both work and paid leave hours are considered "work" for the purposes of the administration of Article 8.5.F and 8.5.G.

**M-00958 Prearb**  
**January 4, 1990, H4N-3U-C 34890**

Consistent with the provisions of Article 8.5.F of the National Agreement, excluding December, a letter carrier who

is not on an overtime desired list may not be required to work over ten (10) hours on a regularly scheduled day.

## Maximum Daily Hours

### Twelve Hour Limit

The maximum daily hours an employee may be required to work is controlled by ELM 432.32 and Article 8, Section 5. The maximum depends upon whether an employee is part-time or full-time and on whether a full-time employee is on the overtime desired list.

ELM Section 432.32 applies to all employees working in the letter carrier craft (including CCAs and part-time flexibles), even during the month of December. It provides:

432.32 Maximum Hours Allowed. Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime **and mealtime** may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions

Article 8.5 provides that:

F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

G. Full-time employees not on the Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.1); and
2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who

are not yet entitled to penalty overtime are available for the overtime assignment.

ELM 432.32 specifically states that it applies "except as designated in labor agreements for bargaining unit employees". Thus, in the case of full-time employees on the OTDL, Article 8.5.G rather than ELM 432.32 is controlling. It should be noted that the term "work", as used in Article 8, means all paid hours, **excluding** lunch.

Read in conjunction Article 8.5 and ELM 432.32 establish the following:

ELM 432.32 applies to all employees. The national agreement does not contain any language creating an exception to the ELM provision. They may not be required to work more than 12 hours in 1 service day, even during December. The 12 hour period **includes** mealtime and may not be extended over a period longer than 12 consecutive hours.

**Non-OTDL full-time employees.** Article 8, Section 5.F specifically provides that, except in December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

**During December,** ELM 432.32 still applies to full time employees not on the Overtime desired List and they may not be required to work more than 12 hours in a service day. The 12 hour period includes mealtime and may not be extended over a period longer than 12 consecutive hours.

**OTDL full-time employees** Article 8.5.G creates an exception to the rule in ELM 432.32 for full-time employees on the Overtime Desired List. They may be required to "work" up to 12 hours in a service day. This 12 hour period **does not include** mealtime and thus may be extended over a period longer than 12 consecutive hours.

**C-06775 National Arbitrator Mittenthal  
January 19, 1987, H4C-NA-C 21, "Second Issue"**  
Management may not ignore the "pecking order" in holiday period scheduling under Article 11, Section 6 in order to avoid penalty overtime pay under Article 8. Management may not treat regular volunteers for holiday period work as having volunteered for up to twelve hours on whatever day(s) they are asked to work.

**M-01833 Joint Questions and Answers  
March 6, 2014**

Question 21: Is there a limit on the number of hours CCAs may be scheduled on a workday?

Yes, CCAs are covered by Section 432.32 of the Employee and Labor Relations Manual, which states: Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions.

**M-01282 Prearbitration Settlement  
February 26, 1997, E90N-4E-C 94053872**

The issue in this case is whether management violated the National Agreement, specifically Section 432.32 of the Employee and Labor Relations Manual (ELM), by working part-time flexible city carriers over 12 hours in a day.

The parties agree that the decision rendered by Arbitrator Snow in case B90N-4B-C 94027390 provides sufficient guidance to address the issue in the instant case. In that case, the arbitrator ruled that ELM 432.32, as currently written, applies to Transitional Employees. It is clear from his ruling that ELM 432.32 also applies to part-time flexible employees. Therefore, this case will be remanded to the parties at the local level to determine the appropriate remedy.

**M-01390 Step 4  
October 25, 1999, H94N-4H-C 99058338**

The issue in this case is whether or not management violated the National Agreement, specifically ELM 432.32, when it worked a PTF over 12 hours in a day. Whether or not a remedy is due in such circumstances is not an interpretive issue. As such, the parties agreed to remand this case to the parties at Step 3 for application of ELM 432.32 and the Joint Contract Administration Manual (JCAM) pages 8-14 and 8-15.

**M-01392 Step 4  
October 25, 1999, E94N-4E-C 99013960**

The issue in this grievance is whether management violated the National Agreement when the grievant, who is on the work assignment list, worked a total of 12.5 hours, including a lunch break on a given day. After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed, that the Joint Contract Administrative Manual page 8-15 is applicable to this case, and states in part, that "Since 'work', within the meaning of Article 8.5.G does not include mealtime, the 'total hours of daily service' for carriers on the overtime desired list may extend over a period of 12.5 consecutive hours."

**M-01272 Step 4  
February 25, 1998, E94N-4E-C 96031540**

The issue in this grievance is whether management vio-

lated Section 432.32 of the Employee and Labor Relations Manual (ELM), by requiring full-time employees (not on the OTDL or work assignment list) and part-time flexible employees to work more than twelve hours a day in the month of December.

After reviewing this matter, we mutually agreed to settle this case as follows:

1. In accordance with Section 432.32 of the Employee and Labor Relations Manual (ELM), part-time employees may not be required to work more than 12 hours in one service day, **even during December**, subject to the exceptions set forth in Section 432.32 of the ELM. The 12 hour period includes mealtime and may not be extended over a period longer than 12 consecutive hours.

In accordance with Section 432.32 of the Employee and Labor Relations Manual (ELM), full-time employees not on the OTDL or the work assignment list may not be required to work more than 12 hours in one service day, even during December, subject to the exceptions set forth in Section 432.32 of the ELM. The 12 hour period includes mealtime and may not be extended over a period longer than 12 consecutive hours.

**M-01485 Step 4**  
**August 29, 2002, E98N-4E-C-02096819**

The parties agree that Step B Teams have the authority to formulate a remedy when resolving disputes after finding a violation of the National Agreement, including cases where part-time flexibles were required to work beyond the 12 hour limit established in Part 432.32 of the Employee and Labor Relations Manual.

## Overtime Desired List

**M-01836 Memorandum of Understanding**  
**March 31, 2014**

*Re: Signing Overtime Lists*

The parties agree to the following regarding employees transferred from another installation or part-time flexible city letter carriers and city carrier assistants who become full-time regulars in the installation following the two week period for signing the overtime lists (Article 8.5.A):

The installation head and branch president or their designees may mutually elect to develop a process that allows employees who transfer from another installation or are converted to full-time following the signup period to place their names on either the overtime desired list or work assignment list.

Local procedures agreed to pursuant to this agreement will remain in effect through the term of this memorandum.

This agreement is effective from the date of signature until March 31, 2015, unless extended by mutual agreement of the national parties. However, either party may terminate this agreement earlier by providing 30 days written notice to the other party.

This agreement is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

**M-00366 Step 4**  
**January 10, 1980, N8-C-0191**

There is no contractual obligation to utilize the Overtime Desired List when scheduling for holiday coverage. See also [M-00168](#).

**M-00490 APWU Step 4**  
**January 16, 1981, H8N-5H-C 13110**

An OTDL with columns for before tour, after tour and non-scheduled days is not in direct conflict with the National Agreement.

**M-00858 Pre-arb**  
**September 12, 1988, H4N-5K-C 4489**

During our discussion we mutually agreed that management may not unilaterally remove an employee's name from the Overtime Desired List if the employee refuses to work overtime when requested. However, employees on the overtime desired list are required to work overtime except as provided for in Article 8, Section 5.E.

**M-00130 Step 4**  
**November 24, 1978, NCC 12937**

There is no contractual obligation for management to post the Overtime Desired List daily.

**C-09484 Regional Arbitrator Sobel**

Management is not required to post the OTDL on a pay period basis.

## Work Assignment List

**M-00589 Work Assignment Agreement**  
**May 28, 1985**

The Postal Service will provide the opportunity, on a quarterly basis, for full-time letter carriers to indicate a desire for available overtime on their work assignment on their regularly scheduled days.

All full-time letter carriers are eligible to indicate their desire for "work assignment" overtime and by doing so are to work the overtime as specified on their regularly scheduled days.

T-6 or utility letter carriers would be considered available for overtime on any of the routes in their string.

Reserve Letter Carriers and unassigned regulars desiring "work assignment" overtime would be eligible for overtime on the assignment on which they are working on a given day.

An annotation on the overtime desired list (ODL) may be used to identify employees desiring "work assignment" overtime.

The ODL provided for in Article 8, Section 5, would continue to function.

"Work assignment" overtime will not be considered in the application of Article 8, Section 5.C.2.b.

Once management determines that overtime is necessary for full-time letter carriers, if the carrier has signed up for "work assignment" overtime, the carrier is to work the overtime as assigned by management.

Full-time carriers signing up for "work assignment" overtime are to be considered available for up to 12 hours per day on regularly scheduled days. However, the parties recognize that it is normally in their best interests not to require and employees to work beyond 10 hours per day, and managers should not require "work assignment" volunteers to work beyond 10 hours unless there is no equally prompt and efficient way in which to have the work performed.

Penalty pay would be due for work in excess of 10 hours per day on 4 of 5 regularly scheduled days.

Penalty pay would be due for overtime work on more than 4 of the employee's 5 scheduled days.

Management could schedule employees from the ODL to avoid paying penalty pay to the carrier on his/her own work assignment.

**M-01273 Step 4**  
**January 2, 1997, B94N-4F-C 96069778**

The issue in this case is whether those Memorandums of Understanding not included in the EL-901, National Agreement, are still in effect.

The parties agreed that the Memorandums of Understanding printed in the EL-901, National Agreement, between the U.S. Postal Service and the National Association of Letter Carriers for 1994-1998, are not the only Memorandums of Understanding in effect and that the "Work Assignment Overtime" Memorandum of Understanding, dated May 28, 1985, is in full force and effect.

**M-01232 Step 4**  
**September 11, 1995, D90N-4D-C 95038004**

The parties agree Reserve Letter Carriers and unassigned regulars who are on the work assignment list are eligible

for overtime on the assignment on which they are working on a given day. See also [M-01252](#)

**M-00910 Step 4**  
**April 6, 1989, H4N-3Q-C 62592**

If the need for overtime arise on a shop steward's route as a result of investigation and/or processing of grievances, and the shop steward has signed for work assignment overtime, the resulting overtime is considered part of the carrier's work assignment for the purpose of administering the overtime desired list.

**M-01280 Step 4**  
**January 28, 1997, D94N-4D-96068072**

The issue in this grievance is whether management violated the National Agreement by providing auxiliary assistance from the Overtime Desired List to a Work Assignment List employee's route, which had overtime work as a result of the "own route" carrier performing union steward duties.

As a result of these discussions, the parties are in agreement that, once management determines that overtime is necessary for full-time letter carriers, if the carrier is signed up for "work assignment" overtime, the carrier is to work the overtime as assigned by management. Full-time carriers signing up for "work assignment" overtime are to be considered available for up to 12 hours per day on regularly scheduled days. However, management could schedule employees from the Overtime Desired List to avoid paying penalty pay to the carrier on his/her own work assignment.

**M-00911 Step 4**  
**February 22, 1989, H4N-4G-C 13743**

A letter carrier who signs for work assignment overtime is both entitled and obligated to work any overtime that occurs on the carrier's assignment on a regularly scheduled day, except when the carrier would perform the work at the penalty overtime rate and when another carrier who had signed the regular OTDL could perform the work at the regular overtime rate.

Note: This settlement does not preclude management assigning overtime to a casual or a PTF rather than an employee on the work assignment list. See [C-06103](#) Mittenthal and [C-00675](#) Zumas.

## Signing lists

**M-00833 Joint Statement**  
**June 8, 1988**

Full-time regular letter carriers, including those on limited or light duty, may sign up for either the regular Overtime Desired List (10 or 12 hour) or the "work assignment" overtime, but not both. Whether or not an employee on limited or light duty is actually entitled to overtime depends upon

his/her physical and/or mental limitations.

#### **M-00027 Step 4**

**August 9, 1977, NCS 7224**

It was agreed that no one would be allowed to sign the list after the beginning of the quarter.

#### **M-00833 Joint Statement**

**June 8, 1988**

Unless local memoranda provide otherwise when a carrier bids or is transferring between units during a calendar quarter, he/she may sign the OTDL in the gaining unit, if he/she was on the OTDL in the losing unit. See also

[M-00377](#), [M-00621](#)

Note: this language applies only to employees transferring between units within an installation. It does not apply to employees who transfer from one installation to another. See [M-01204](#) below.

#### **M-01204 February 28, 1995**

**E90N-4E-C 94039480**

The issue in this grievance is whether an employee transferring from one installation to another may be placed on the gaining installation's Overtime Desired List (OTDL).

During our discussion, the parties agreed that the Joint Statement on Overtime, June 8, 1988, addresses transfer of employees between units within an installation. Transfer from one installation to another is not provided for in this document.

#### **M-00377 APWU Pre-arb**

**August 7, 1985, H1C-1E-C 42949**

Unless otherwise addressed in a Local Memorandum of Understanding, an employee may opt to bring his/her name forward from one overtime desired list to another when he/she is successful bidder on a different tour. The employee will be placed on the list in accordance with their seniority. Unless otherwise addressed in a Local Memorandum of Understanding, an employee who was not on any overtime desired list at the beginning of a quarter may not place his/her name on the overtime desired list by virtue of being a successful bidder to another tour until the beginning of the next quarter. See also [M-00621](#), [M-00833](#)

#### **M-00621 Step 4**

**September 4, 1985, H4N-3U-C 6360**

Management did not violate the National Agreement by not permitting the grievant to place her name on the overtime desired list upon her mid-quarter reassignment. Carriers are only permitted to place their names on the overtime desired list as specified in Article 8, Section 5.A. See also [M-00377](#), [M-00833](#)

#### **M-00820 Step 4**

**April 8, 1988, H4N-1K-C 41588**

A letter carrier on military leave at the time when full-time employees place their names on the overtime desired list may place his/her name on the overtime desired list upon return to work.

#### **M-00795 Step 4**

**July 11, 1986, H4N-5B-C 9731**

We agreed that employees on light duty and limited duty may sign the "Overtime Desired" list. We further agreed the parties at Step 3 are to apply Article 13, Section 3.B., and Part 546 of the Employee and Labor Relations Manual to the specific fact circumstances involved in this case. Also whether or not the grievant's physical condition and status was such that he could work overtime is a question that can only be answered based on the facts involved.

#### **M-00833 Joint Statement**

**June 8, 1988**

A letter carrier may request that his/her name be removed from an Overtime Desired List at any time during the quarter. However, management does not have to immediately honor the request if the employee is needed for overtime on the day the request is made.

#### **M-00715 Step 4**

**June 7, 1983, H1N-2D-C 5524**

When a letter carrier requests that his/her name be removed from the overtime desired list, the request will be granted. However, management does not have to immediately honor the request if the employee is needed for overtime work on the day the request was made or scheduled for overtime in the immediate future.

#### **M-00833 Joint Statement**

**June 8, 1988**

Letter carriers signing the Overtime Desired List who prefer to work in excess of 10 hours on a scheduled day up to the maximum of 12 hours on a scheduled day should indicate their preference on the list.

#### **M-00507 Step 4**

**June 15, 1984, H1N-1M-C 22387**

A 204B employee who anticipates returning to the bargaining-unit and desires to work overtime within the applicable quarter, must initially sign the OTDL, in accordance with Article 8, Section 5.A., of the 1981 National Agreement.

#### **C-10515 Regional Arbitrator Purcell**

**December 31, 1990**

The contract does not require that the OTDL be personally signed; management did not violate the contract by telephoning three employees who were on AL, asking whether they wished to be on the OTDL the next quarter, and adding their names to the OTDL upon receiving affirmative answers.

**M-01121 Memorandum of Understanding  
May 6, 1993**

The Postal Service and the NALC agree to afford part-time flexibles who are converted to full-time regular under the December 21, 1992 Memorandum of Understanding the following access to the overtime desired list (ODL) as a one-time exception to Article 8.5.

Specifically, part-time flexibles who are converted to regular after the quarterly overtime desired list sign-up period has expired may be allowed to sign the ODL within two weeks of the effective date of their conversion or this agreement, whichever comes later. From the time of their sign-up to the end of that quarter, every effort will be made to give these employees an equitable number of overtime opportunities, except to the extent that management needs to give employees who were on the list from the beginning of the quarter additional overtime hours in order to achieve equitable distribution for those employees.

## Mandatory Overtime

**8.5.D** If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

**Mandatory Overtime.** One purpose of the Overtime Desired List is to excuse full-time carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime. However, if the Overtime Desired List does not provide sufficient qualified full-time regulars for required overtime, Article 8.5.D permits management to move off the list and require non-ODL carriers to work overtime on a rotating basis starting with the junior employee. This rotation begins with the junior employee at the beginning of each calendar quarter. Absent an LMOU provision to the contrary, employees who are absent on a regularly scheduled day (e.g. sick leave or annual leave) when it is necessary to use non-ODL employees on overtime will be passed over in the rotation until the next time their name comes up in the regular rotation.

Management may seek non-ODL volunteers rather than selecting non-volunteers on the basis of juniority. Normally, carriers not on the Overtime Desired List may not grieve the fact that they were not selected to work overtime.

The provisions of Article 8.5.D do not apply in the case of

full-time letter carriers working on their own assignment on a regularly scheduled day. That situation is governed by Article 8.5.C.2.d as amended by the letter carrier paragraph.

**M-00833 Joint Statement  
June 8, 1988**

The "letter carrier paragraph" of the 1984 Overtime memorandum obligates management to seek to use auxiliary assistance, when available, rather than requiring a regular letter carrier not on the Overtime Desired List to work overtime on his/her own assignment on a regular scheduled day.

**M-00326 Step 4 Decision  
July 26, 1972**

A review of the material submitted at the fourth step level indicates that the grievants did inform management of their inability to complete their routes in 8 hours. Further, it was demonstrated that they were ordered by management to complete the routes. (Although there was no expressed authorization to complete the delivery of the mail on an overtime basis, the permission would be inherent in the authorization to continue delivery after notification that the grievants were unable to complete the routes.) Therefore, the grievants shall be awarded overtime for the exact amount of time worked on April 7, 1972.

**C-03319 National Arbitrator Aaron  
April 12, 1983, H8N-5B-C 17682 (Torrance CA)**

The Postal Service violated the National Agreement by calling in an employee not on the overtime desired list when employees who were on the list were on duty. See also [C-09402](#), [M-01124](#)

**C-06297 National Arbitrator Mittenthal  
June 26, 1986, H4C-NA-C 21, "Fifth Issue"**

The letter carrier paragraph regarding use of auxiliary assistance is a commitment which may be enforced through the grievance-arbitration procedure. Assuming a violation of the "letter carrier paragraph" of the Article 8 Memorandum no money remedy is appropriate. If management violates the letter carrier paragraph the Postal Service should be ordered to cease and desist. "Should the postal facility in question thereafter fail to comply with such an order, a money remedy might well be appropriate."

**M-01833 Joint Questions and Answers  
March 6, 2014**

Question 20: How are CCAs considered when applying the Letter Carrier Paragraph?

CCAs are considered as auxiliary assistance. Accordingly, management must seek to use CCAs at either the straight-time or regular overtime rate prior to requiring letter carriers not on the overtime desired list or work assignment list to work overtime on their own route on a regularly sched-

uled day.

#### **M-00730 Step 4**

**December 2, 1977, NCS 8526**

Auxiliary assistance is normally granted on the street. However, this does not preclude management from granting auxiliary assistance in the office.

#### **M-01016 Step 4**

**October 10, 1991, H7N-5R-C 16882**

We agreed that the term "auxiliary assistance" as used in the Letter Carrier paragraph of the Article 8 MOU does include the use of part-time flexibles at the overtime rate.

#### **C-03226 National Arbitrator Garrett**

**January 8, 1979, NC-C-7933**

The inescapable conclusion is that the language of 8.5.E on its face reflects an intent to confer relatively broad discretion on local management to excuse employees from overtime work for any one of a number of legitimate reasons "based on equity".

#### **M-00884 Memorandum**

**December 20, 1988**

This Memorandum of Understanding represents the parties consensus on clarification of interpretation and issues pending national arbitration regarding letter carrier overtime as set forth herein. In many places in the country there has been continued misunderstanding of the provisions of Article 8 of the National Agreement; particularly as it relates to the proper assignment of overtime to letter carriers. It appears as if some representatives of both labor and management do not understand what types of overtime scheduling situations would constitute violations and which situations would not. This Memorandum is designed to eliminate these misunderstandings.

1) If a carrier is not on the Overtime Desired List (ODL) or has not signed up for Work Assignment overtime, management must not assign overtime to that carrier without first fulfilling the obligation outlined in the "letter carrier paragraph" of the Article 8 Memorandum. The Article 8 Memorandum provides that "... where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime." Such assistance includes utilizing someone from the ODL when someone from the ODL is available.

2) The determination of whether management must use a carrier from the ODL to provide auxiliary assistance under the letter carrier paragraph must be made on the basis of the rule of reason. For example, it is reasonable to require a letter carrier on the ODL to travel for five minutes in order to provide one hour of auxiliary assistance. Therefore, in such a case, management must use the letter car-

rier on the ODL to provide auxiliary assistance. However, it would not be reasonable to require a letter carrier on the ODL to travel 20 minutes to provide one hour of auxiliary assistance. Accordingly, in that case, management is not required to use the letter carrier on the ODL to provide auxiliary assistance under the letter carrier paragraph.

3) It is agreed that the letter carrier paragraph does not require management to use a letter carrier on the ODL to provide auxiliary assistance if that letter carrier would be in penalty overtime status.

4) It is further agreed that the agreement dated July 12, 1976, signed by Assistant Postmaster General James C. Gildea and NALC President James H. Rademacher, is not in effect. In cases where management violates the letter carrier paragraph by failing to utilize an available letter carrier on the ODL to provide auxiliary assistance, the letter carrier on the ODL will receive as a remedy compensation for the lost work opportunity at the overtime rate.

#### **C-10345 Regional Arbitrator Levin**

**October 16, 1990**

Management did not violate the contract when it did not provide 20 minutes of auxiliary assistance to a carrier not on the OTDL, where 20 minutes of travel time would have been required to provide the assistance.

#### **M-00833 Joint Statement**

**June 8, 1988**

When full-time regular employees not on the Overtime Desired List are needed to work overtime on other than their own assignment, or on a non-scheduled day, Article 8, Section 5.D, requires that they be forced on a rotating basis beginning with the junior employee. In such circumstances management may, but is not required to seek volunteers from non-OTDL employees.

#### **M-00958 Prearb**

**January 4, 1990, H4N-3U-C 34890**

Consistent with the provisions of Article 8.5.F of the National Agreement, excluding December, a letter carrier who is not on an overtime desired list may not be required to work over ten (10) hours on a regularly scheduled day.

#### **M-00543 Step 4**

**June 21, 1985, H1N-5K-C 26406**

Management is not required to solicit volunteers before assigning overtime to employees under Article 8, Section 5.D.

#### **M-00145 Step 4**

**March 25, 1977, NCE 5100**

Local management may require non-volunteers to work overtime on a rotating basis starting with the junior employee after the overtime desired list is exhausted. Article VIII, section 5 of the National Agreement does not require that the junior employees be required to work prior to

working volunteers on overtime.

## **M-00776 Step 4**

**March 28, 1977, NCE 4790**

When no letter carriers from the Overtime Desired List are available, management has the option of mandating overtime by juniority, of using part-time flexible employees, of asking for volunteers, or pivoting work on vacant routes.

## **M-00827 Step 4**

**May 22, 1987, H4N-3N-C 37461**

Employees not on the OTDL forced to work overtime in accordance with Article 8.5.D shall begin a new period of rotation with the start of each quarter.

## **M-00949 Step 4**

**October 6, 1989, H7N-2B-C-20490**

When a route is adjusted by providing router assistance, The work assigned to the router is not part of the route for overtime purposes.

## **Overtime Distribution**

### **M-00854 Pre-arb**

**August 30, 1988, H4N-5K-C 16868**

Article 8, Sections 5.C.1.a and b., do not apply to the Letter Carrier craft.

### **C-06364 National Arbitrator Bernstein**

**September 14, 1986, H1N-5-G-C 2988**

In determining "equitable" distribution of overtime, the number of hours of overtime as well as the number of opportunities for overtime must be considered. See also [M-00370](#)

### **C-06103 National Arbitrator Mittenthal**

**November 26, 1980, M8-W-0032**

The Postal Service may award overtime work to part-time flexible employees prior to full-time regular employees on an "Overtime Desired" List and such action is not a violation of Article VIII, Section 5 of the 1978 National Agreement.

### **C-00675 APWU National Arbitrator Zumas**

**November 21, 1985, H1C-4K-C 27344**

The Postal Service is not contractually obligated to schedule full-time employees on the OTDL rather than utilize casual employees on overtime.

### **C-03319 National Arbitrator Aaron**

**April 12, 1983, H8N-5B-C 17682 (Torrance CA)**

The Postal Service violated the National Agreement by calling in an employee not on the overtime desired list when employees who were on the list were on duty. See also [C-09402](#), [M-01124](#)

### **C-00790 National Arbitrator Gamser**

**October 21, 1982, H8T-4H-C 10343**

Time spent receiving medical treatment for an on-the-job injury at the direction of the Postal Service in order to minimize Postal Service Compensation liability constitutes work time for overtime purposes under Article VIII, Section 4 of the National Agreement; the Arbitrator will not deal with external law.

### **C-06103 National Arbitrator Mittenthal**

**November 26, 1980, M8-W-0032**

A Local Memorandum of Understanding providing that craft employees on the "Overtime Desired" List who were off on vacation shall be contacted in the proper order of selection only for overtime needed on their lay-off days is inconsistent with Article VIII, Section 5.C.1. of the National Agreement.

Note: The above decision in a Mailhandler case is not applicable in the carrier craft. It was based on Article 8, Section 5.C.1, which does not apply to the Letter Carrier craft (See [M-00854](#)).

### **C-09581 Regional Arbitrator Condon**

Management violated the contract when it called in a non-OTDL router two hours early to perform duties not part of his regular assignment.

### **M-00833 Joint Statement**

**June 8, 1988**

Article 8, Section 5.C.2.b, requires that overtime opportunities must be equitably distributed during the quarter. Accordingly, whether or not overtime opportunities have been equitably distributed can only be determined on a quarterly basis. In determining equitability consideration must be given to total hours as well as the number of opportunities.

### **M-00833 Joint Statement**

**June 8, 1988**

The Overtime Desired Lists control the distribution of overtime only among full-time regular letter carriers. Management may assign overtime to a PTFS or casual employees rather than to full-time regular employees who are either signed up for "work assignment" overtime or OTDL. Overtime opportunities for carriers on the regular OTDL are not distributed by seniority or on a rotating basis. Nor is a carrier on the regular OTDL ever entitled to any specific overtime, even if it occurs on his/her own route.

### **M-00112 Step 4**

**October 31, 1978, NCS 12379**

There are no requirements that overtime be scheduled according to seniority in the letter carrier craft.

### **M-00372 Step 4**

**November 30, 1977, NCS 8975**

There is nothing which precludes management from utiliz-

ing part-time flexible employees in an overtime status prior to utilizing Full-Time Regular employees who are on the Overtime Desired List.

**M-00923 Step 4**  
**June 27, 1977, NCS-6094**

A letter carrier on the regular overtime-desired list does not have an absolute right to all overtime on his/her route.

**M-00754 Pre-arb**  
**April 10, 1985, H1N-3F-C 25958**

An employee who cannot be contacted to work on his/her nonscheduled day will not have that call recorded as a missed opportunity. The day in question also will not be counted as a day where the employee was available for overtime.

**M-00587 Step 4**  
**November 9, 1981, H8N-3P-C 16890**

When a hand-off is used as an adjustment, the hand-off is considered to be part of the route through which it is delivered for purposes of the OTDL.

**M-00492 Step 4**  
**March 12, 1984, H1N-5H-C 18583**

Normally, employees on the overtime desired list who have annual leave immediately preceding and/or following nonscheduled days will not be required to work overtime on their off days. However, if they do desire, employees on the overtime desired list may advise their supervisor in writing of their availability to work a nonscheduled day that is in conjunction with approved leave. See also [M-00124](#)

**M-00124 Step 4**  
**August 31, 1977, NCE 7425**

Management will contact the employees who were on sick leave or annual leave the day prior to their nonscheduled day when overtime duties are available for those employees. See also [M-00492](#)

**M-00169 USPS Memo**  
**August 14, 1974**

Employees selected from the "Overtime Desired" list for overtime work may not refuse the overtime assignment, however, an employee may request to be excused from such overtime assignment in exceptional cases based on equity.

**M-00771 Step 4**  
**April 28, 1977, NCC 4645**

The postmaster is instructed that in the future, when someone other than the employee answers telephone requests to work overtime, to take the necessary measures to ensure that the employee has declined the opportunity to work.

**M-00291 Step 4**  
**February 8, 1984, H1N-5D-C 16445**

A full-time regular letter carrier is considered to be a qualified craft employee, and the overtime provisions in Article 8 do not provide for the assignment of the "best qualified" employee available. See also [M-00196](#).

**M-00183 Step 4**  
**February 14, 1974, NBE 610(18V6)**

There is no contractual requirement to distribute overtime in an equitable basis among employees not on the overtime desired list

**M-00135 Pre-arb**  
**July 1, 1982, H8N-5D-C 18624**

Overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an "overtime opportunity" for the purposes of administration of the overtime desired list. Overtime that is concurrent with (occurs during the same time as) overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an "opportunity missed" for purposes of administration of the overtime desired list. See also [M-00113](#)

**M-00113 Step 4**  
**September 23, 1976, NCW 2811**

The amount of overtime accrued on the grievant's own route on regularly scheduled days will not deter him from receiving equitable overtime opportunities on his nonscheduled day if he is on the Overtime Desired list. See also [M-00135](#)

**M-00370 Step 4**  
**May 24, 1984, H1N-4J-C 26500**

In order for overtime opportunities to be distributed equitably in accordance with Article 8, Section 5, the number of hours per opportunity may be considered along with all the other factors such as leave, light duty, qualifications, off days, refusals, unavailability, etc. For example, the fact that one employee received an opportunity to work 8 hours overtime and another employee received an opportunity to work 1 hour overtime may not be the sole criteria for determining equitable opportunity, particularly, when there is considerable time left in the quarter. On the other hand, there is no requirement that overtime hours be equal. Each situation must be handled on a case-by-case basis.

**M-00241 Step 4**  
**July 3, 1972, N-E-380**

The incidental detailing of a part-time flexible employee from another post office for the sole reason of avoiding overtime, will be discontinued. See also [C-05114](#), Aaron

## **M-01396 Step 4**

**October 25, 1999, I94N-4I-C 99212744**

The issue in this grievance is whether the incidental detailing of a PTF employee from another post office was done for the sole purpose of avoiding overtime. Whether or not the detailing of the PTF employee was done for the sole purpose of avoiding overtime is a local issue suitable for local determination.

## **M-01006 Step 4**

**April 18, 1983, H1N-3W-C 14251**

The question raised in this grievance involved whether the assignment of an employee to perform work in another craft while on overtime must be on a voluntary basis.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case.

The parties agree that overtime assignments are not determined by the employee. Management may assign employees to perform work in another craft while they are on overtime. It is further understood that these assignments are predicated on the individual fact circumstances but must be in accordance with Article 7, Section 2, of the National Agreement.

## **C-10717 Regional Arbitrator Liebowitz**

**March 19, 1991**

Management did not violate the contract when it granted AL to a PTF employee, thereby forcing a regular to work mandatory overtime.

## **C-11001 Regional Arbitrator Sobel**

**July 30, 1991**

Management violated the contract by calling in a PTF from another office to work rather than calling in the grievant to work overtime on his nonscheduled day.

## **C-10414 Regional Arbitrator Collins**

**November 15, 1990**

"Article 8.5 cannot be read to require the Service to deliver mail at times when there are no business customers to receive it, or at times when no residential customers want it, or under circumstances where delivery is dangerous or just plain inefficient."

## **C-10421 Regional Arbitrator Liebowitz**

**November 29, 1990**

Management violated Article 8 by its blanket refusal to leave messages of calls for overtime on grievant's answering machine.

## **C-00311 Regional Arbitrator Martin**

**July 19, 1983, C1C-4B-C 7048**

"It is the unilateral and unchallengeable right of management to determine if overtime is to be used, and when that overtime is worked."

## **C-09384 Regional Arbitrator Ables**

**September 28, 1989, E7N-2U-C 20156**

Management violated the contract when it did not call in a carrier on the OTDL to deliver a route, which was otherwise for the most part not delivered.

## **C-09472 Regional Arbitrator Taylor**

**November 15, 1989, S7N-3W-C 22611**

Management acted improperly by approving one hour of overtime for a non-OTDL carrier on his own route when a carrier on the OTDL was available.

## **Operational Windows**

The NALC White Paper [M-01548](#) is the primary source for information and arguments concerning "Operational Windows and " "Simultaneous Scheduling." Since NALC and the Postal Service have not reached agreement on these issues, they are not discussed in the JCAM.

## **C-13902 National Arbitrator Mittenthal**

**January 14, 1991, H4C-NA-C 30**

APWU award in national level "simultaneous scheduling" case. See also Mittenthal [C-09897](#).

## **C-07049 Regional Arbitrator LeWinter**

**May 23, 1987**

When, as here, a party claims that the contract is violated, any practice which contravenes the contract must fall before it. A practice may affect a decision as to remedy, but it cannot vary the terms of the contractual obligations. Therefore, if the Union's claims as to the contractual requirements of Article 8 conflict with the window, the window policy must fall before the contract.

## **C-08707 Regional Arbitrator Levak**

**February 23, 1989**

Further, in order to find in favor of the Service, the Arbitrator would have to conclude that the Beverly Hills management-imposed 4:30 p.m. Operational Window is binding on the Union and somehow overrides the overtime language of the National Agreement. That conclusion, too, is not possible. Such a unilaterally imposed managerial objective, however, soundly grounded in good business practice, cannot override express employee rights granted by the National Agreement. Article 3, Management Rights, allows some unilateral action, but does not aid the position of the Service, since this case involves clearly expressed specific employee rights.

## **C-21675 Regional Arbitrator Klein**

**February 1, 2011**

Management, by the manner in which it applied the 4:30 P.M. Window of Operations, created an artificial "insufficiency" of qualified ODL employees and thereafter relied on that "insufficiency" to justify implementing the provisions of Article 8.5.D. The Postal Service appears to have

determined that any time an ODL employee had to be scheduled for overtime and if that assignment would extend beyond 4:30 P.M., there was automatic justification for concluding that sufficient qualified ODL carriers were not available and that non-ODL carriers would therefore be forced to work the overtime. It appears to the Arbitrator that Management applied the 4:30 P.M. Window in a manner which circumvented the provisions of Article 8.5.G

**C-26287 Regional Arbitrator LaLonde  
October 13, 2005**

Conscious staffing decisions on the part of the Service have implications for the number of individuals handling overtime assignments when coupled with the creation of WOOs [Windows of Operation]. Neither of these actions negate the inherent contractual rights under article 8.5 regarding the utilization of ODL and non-ODL carriers. The use of non-ODL carriers for forced overtime in situations that are not unforeseen or not of an emergency nature clearly violates the language and intent of the National Agreement.

**C-26914 Regional Arbitrator Cenci  
February 16, 2007, B01N-4B-C 06072667**

In the absence of the new evidence and argument that was excluded, the Postal Service has not shown an operational need to assign overtime to carriers who were not on the OTDL in order to efficiently meet delivery goals. The Union has therefore met its burden of proof and established a violation of the National Agreement.

... I decline the Union's request to order the Connecticut District to rescind the 5:00 p. m. operational window in light of Arbitrator Deinhardt's award. This remedy was not requested by the Union at the lower levels of the grievance procedure or at the arbitration hearing and the issue has not, for that reason, been squarely addressed by the Service at either the hearing or in its post-hearing brief.

**C-27037 Regional Arbitrator Roberts  
April 13, 2007, A01N-4A-C 06260654**

Management knew beforehand that at least five (5) Letter Carriers were scheduled off that day. Management also knew beforehand that staffing would be short that same day. Furthermore, the Window of Operation in this case was not a goal or a plan, but instead, an order dated 29 November 2005. And like the above case, it was Management's own obligation to provide the necessary resources to implement its own Window. And their failure to do so resulted in a clear violation.

**C-26646 Regional Arbitrator Campagna  
August 12, 2006, B01N-4B-C 05187029**

... The Service chose not to utilize employees on the OTDL due to the fact that even with their assistance, the Operational Window of 5:00 p.m. would not be met. However, this claim is inconsistent with the Service's position that it's Operational Window "is not an absolute bar, it is a

goal, a plan".

... where, as here, the Service chose to establish its Operational Window at 5:00 p.m., it was their obligation to provide the necessary resources to implement its Window, and their failure to do so resulted in a violation of Article 8.5(G).

**C-26675 Regional Arbitrator Dilts  
September 3, 2006, E01N-4E-C 06042723**

... clearly, Management has the right to schedule simultaneously, but in so doing Management assumes the burden to show that it scheduled simultaneously for "legitimate" or "valid" reasons as identified in the Mittenenthal award. In this case, Management simply did not prove the legitimacy or validity of its reasons for the aggrieved simultaneous scheduling.

**C-26768 Regional Arbitrator Deinhardt  
November 12, 2006, B01N-4B-C 06079858**

... I order that the 5:00 window of operations be rescinded. If management finds that it is unable to deliver mail in a timely manner or is unable to meet nationally mandated time limits, it is not precluded from taking whatever steps are necessary to effect such timely delivery or to meet such mandates, so long as it does so consistent with the requirements of the National Agreement.

**C-27129 Regional Arbitrator Simmelkjaer  
June 16, 2007, B01N-4B-C 06082735**

While the Service's right to establish a WOO pursuant to its business objectives and operational prerogatives under Article 3 cannot be negated, such decision making cannot in its design and operation nullify the protections afforded employees under Article 8.5 G who have opted not to work overtime. Whereas an occasional circumstance may require simultaneous scheduling to fulfill the Service's delivery objectives, such occasions should be the exception as opposed to the fact pattern documented in the instant case.

**C-27312 Regional Arbitrator Simmelkjaer  
October 21, 2007, B01N-4B-C 06087597**

... management's general right under Article 3 to "maintain the efficiency of operations and determine the methods, means and personnel by which... operations will be conducted..." is not tantamount to an "unfettered right to abrogate" the specific right of employees who have opted not to work overtime. Under certain unforeseen and/or non-recurring circumstances such simultaneous scheduling is contractually sanctioned, however, the routine implementation of a WOO which necessitates such scheduling without a compelling business justification violates Article 8.5.G.

**C-27141 Regional Arbitrator Dilts  
June 29, 2007, E01N-4E-C 06260805**

Management also contends that the relevant National Level awards permit an exception to the bar of simultane-

ous scheduling, that bar is time critical situations. The Window of Operation is termed a goal. Clearly, the Dispatch of Value is of substantial importance to the processing of mail at the plant, and is to be afforded deference by the Union and this Arbitrator. However, a goal is a goal. The Dispatch of Value is a goal which does not rise to the level of contractual authority.....

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Finally, the Union's request for a cease and desist order is granted. Management is to cease simultaneous scheduling of non-ODL and ODL employees, without an established practice, operational necessity, or other proper cause for such scheduling - what was enunciated by management in this matter is not good cause for simultaneous scheduling of ODL and non-ODL employees.

**C-27329 Regional Arbitrator Olson**  
**October 7, 2007, F01N-4F-C 06215863**

The unilateral implementation of the 5:00 P.M. "window of operation" by the District not only constituted a violation of Article 5 of the National Agreement, but also did not meet its obligations under law.

**C-28162 Regional Arbitrator Roberts**  
**April 7, 2009, A06N-4A-C 08317386**

By arguing a Window of Operation defense, the Employer assumes a certain burden of proof. It becomes Management's burden to prove that the necessary resources were provided to implement the Window of Operation. When management admits they are understaffed, Article 3 cannot be overpowering so as to offset the negotiated provisions of Article 8.

**C-28543 Regional Arbitrator Dilts**  
**December 6, 2009**

Management's discretion ends, under these facts and circumstances, when it is clearly possible to meet the Dispatch of Value (an operational requirement) without denying the OTDL employees their contractual rights with respect to overtime under Articles 8.5.C.2.a, 8.5.D and 8.5.G. To rely upon the WOO (a goal without the weight of operational requirement) as the sole reason for going to Carrier Laker is a violation of Articles 8.5.C.2.a, 8.5.D and 8.5.G as alleged by the Union in this specific case.

However, the convenience arguments made by the Postal Service add to the gravity of the considerations weighed by Ms.Klimet. Customer convenience is of importance, and must be considered. In this case, the contract intervenes and overwhelms customer convenience in favor of the bargain struck between the National Association of Letter Carriers and the United States Postal Service and memorialized in the 2006 National Agreement at Articles 8.5.C.2.a, 8.5.D and 8.5.G.

## Supporting Cases

C-13902 National Arbitrator Mittenthal  
C-07049 Regional Arbitrator LeWinter  
C-08707 Regional Arbitrator Levak  
C-21675 Regional Arbitrator Klein  
C-26287 Regional Arbitrator LaLonde  
C-26646 Regional Arbitrator Campagna  
C-26675 Regional Arbitrator Dilts  
C-26768 Regional Arbitrator Deinhardt  
C-26914 Regional Arbitrator Cenci  
C-27022 Regional Arbitrator Klein  
C-27037 Regional Arbitrator Roberts  
C-27125 Regional Arbitrator Thomas  
C-27129 Regional Arbitrator Simmelkjaer  
C-27150 Regional Arbitrator Hutt  
C-27141 Regional Arbitrator Dilts  
C-27312 Regional Arbitrator Simmelkjaer  
C-27329 Regional Arbitrator Olson  
C-28162 Regional Arbitrator Roberts  
C-28543 Regional Arbitrator Dilts

## Staffing, Inadequate

**C-26693 Regional Arbitrator Olson**  
**September 23, 2006, F01N-4F-C 06017920**

Frankly, it is obvious to this arbitrator that the Main Office of the Lancaster Post Office was knowingly understaffed, which in turn necessitated the use of employees to work long hours daily, and, of course, beyond the standard eight (8) hour workday or forty (40) hour workweek, which is contrary to the express terms of MOU pertaining to Article 8.

**C-27037 Regional Arbitrator Roberts**  
**April 13, 2007, A01N-4A-C 06260654**

Management knew beforehand that at least five (5) Letter Carriers were scheduled off that day. Management also knew beforehand that staffing would be short that same day. Furthermore, the Window of Operation in this case was not a goal or a plan, but instead, an order dated 29 November 2005. And like the above case, it was Management's own obligation to provide the necessary resources to implement its own Window. And their failure to do so resulted in a clear violation. See also [C-27022](#) and [C-27125](#)

**C-27487 Regional Arbitrator Oliver**  
**February 12, 2008, C01N-4C-C 06264126**

Management has taken the position that it can force overtime on non-ODL carriers on a regular and consistent basis, everyday, in fact. Simply management cannot invoke all of its powers under Article 3 without regard to the rights of the carriers set forth in Article 8. The two articles must be read in pari materia. One article does not have any greater weight or power over the other article. Simply, management has failed to properly forecast and staff its operations at the Duber Station and in particular on August 31, 2006, the subject of this arbitration. They had every opportunity to do so and have failed to do so hop-

ing, that an arbitrator, would find somehow, using the rule of reason or some other rule, that Management had acted in good faith. While this arbitrator does not believe that Management has acted in bad faith, this arbitrator does not believe that management has acted in good faith either. This arbitrator believes that the NALC has proven its case by a preponderance of evidence and that Management has violated the provisions of Article 8 and for that reason, the grievance is sustained and that the carriers that were not on the ODL, but were forced to work overtime on the day in question, shall be granted administrative leave equal to the amount of overtime they were forced to work

## Overtime T-6

Prior to the 1998 National Agreement, Carrier Technicians were referred to as T-6's. The following settlements, although referring to T-6's, apply to Carrier Technicians also.

### **M-00589 Work Assignment Agreement May 28, 1985**

T-6 or utility letter carriers would be considered available for overtime on any of the routes in their string. Note: for complete text of Work Assignment Agreement, see [M-00589](#), above.

**NALC Position.** It is NALC's position that once management has determined that overtime will be assigned to a full-time regular:

1. A T-6 or utility carrier who has signed for work assignment overtime has both a right and an obligation to work any overtime that occurs on any of the five component routes on a regularly scheduled day. However, management is not required to work the T-6 or utility carrier at the penalty overtime rate if there is a carrier from the regular overtime list available to perform the work at the regular overtime rate.

2.a. When overtime is required on the regularly scheduled day of the route of a carrier who is on the OTDL and whose T-6 or utility carrier is on the work assignment list, the T-6 or utility carrier is entitled to work the overtime.

2.b. When overtime is required on the regularly scheduled day of the route of a carrier who is on the work assignment list and whose T-6 or utility carrier is also on the work assignment list, the regular carrier on the route is entitled to work the overtime.

Postal management at the national level agrees with 1 and 2a above. They have not as yet taken a position as to 2b, above. If you get a grievance presenting the 2b issue, please send it to Step 4.

### **M-01322 Step 4**

**October 2, 1998, E94N-4E-C 98097684**

The issue in this grievance concerns the application of overtime provision of Article 8 Section 5 to T-6 letter carriers.

During our discussion we mutually agreed that:

A T-6 carrier technician not on the Overtime Desired List or Work Assignment List may, in accordance with Article 8.5.C.2.d be required to work overtime on the specific route to which properly assigned on a given day only after management has fulfilled its obligation under the "letter carrier paragraph" to seek available auxiliary assistance.

A T-6 carrier technician not on the Overtime Desired List or Work Assignment List may be required to work overtime on routes other than the specific route to which properly assigned on a given day only in compliance with Article 8, Section 5.D in which assignments are rotated among those not on the Overtime Desired List or Work Assignment List, by juniority.

We further agree that the above understanding does not conflict with or modify the May 18, 1985 Work Assignment Agreement which provides that the T-6 letter carriers are considered available for "work assignment" overtime on any of the routes in their string.

### **M-01323 Step 4**

**October 2, 1998, C94N-4C-C 98099737**

The issue in these grievances concerns the application of the overtime provisions of Article 8, Section 5 to T-6 letter carriers.

During our discussion, we mutually agreed that:

Overtime worked by a T-6 carrier on the Overtime Desired List on the specific route to which properly assigned on a given day is not counted in the consideration of the equitable distribution of overtime hours worked and opportunities offered at the end of the quarter.

Overtime worked by a T-6 carrier on the Overtime Desired List is counted in the consideration of the equitable distribution of overtime hours worked and opportunities offered at the end of the quarter when: a) the overtime is not on a regularly scheduled day; or b) the overtime is worked on any route in the delivery unit other than the specific route to which properly assigned on a given day.

We further agree that the above understanding does not conflict with or modify the May 28, 1985 Work Assignment Agreement which provides that the T-6 letter carriers are considered available for "work assignment" overtime on any of the routes in their string.

## Remedies for violations

### **C-00938 National Arbitrator Gamser**

**August 25, 1976, ABS 1659**

Retrospectivity for failure to make out-of-schedule overtime payments may only go back to fourteen days prior to the date on which the Union and the grievant learned of the violation.

### **C-03200 National Arbitrator Gamser**

**April 3, 1979, NCS 5426**

The Postal Service must pay employees deprived of "equitable opportunities" for the overtime hours they did not work only if management's failure to comply with its contractual obligations under Section 5.C.2 shows a "willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter. In all other cases, Gamser held, the proper remedy is to provide "an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done."

### **C-06775 National Arbitrator Mittenthal**

**January 19, 1987, H4C-NA-C 21, "Second Issue"**

Management may not ignore the "pecking order" in holiday period scheduling under Article 11, Section 6 in order to avoid penalty overtime pay under Article 8. Management may not treat regular volunteers for holiday period work as having volunteered for up to twelve hours on whatever day(s) they are asked to work.

### **M-00697 Step 4**

**October 24, 1978, NCC 11037**

The initial instruction that the grievant work off-day overtime was later canceled. There are no provisions for granting a financial remedy.

### **M-00884 Memorandum of Understanding**

**December 20, 1988**

It is further agreed that the agreement dated July 12, 1976, signed by Assistant Postmaster General James C. Gildea and NALC President James H. Rademacher (M-00592), is not in effect. In cases where management violates the letter carrier paragraph by failing to utilize an available letter carrier on the ODL to provide auxiliary assistance, the letter carrier on the ODL will receive as a remedy compensation for the lost work opportunity at the overtime rate.

### **M-00919 Step 4**

**April 13 1989, H4N-1K-C 34118**

A full-time employee sent home upon reaching the sixty (60) hour limit after having worked a partial non-scheduled day is entitled to be paid for the eight (8) hour guarantee provided in Article 8.8.B. Accordingly, the grievant in this case shall be paid for four (4) hours at the

time and one-half rate.

### **M-01209 Step 4**

**October 6, 1994, A90N-4A-C 94023396**

The question raised in this grievance involves the scheduling of non-ODL letter carriers to work overtime rather than ODL letter carriers.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Whether or not management properly schedules ODL and non-ODL carriers on any given day is a local dispute which is suitable for regional arbitration. It is further understood that the remedy for a violation, if any, any not result in the carrier exceeding the workhour limitations of Article 8.5.G for the service day and service week in question.

### **C-10873 Regional Arbitrator Levin**

**May 22, 1991, N7N-1P-C 25356**

When management violated the contract by requiring non-OTDL carriers to work overtime while carriers on the OTDL were available, the appropriate remedy is give the carriers not on the list "administrative time off for the amount of time they worked overtime" and to pay at the overtime rate the carriers on the list for the time they should have worked.

### **C-10054 Regional Arbitrator Foster**

**June 1, 1990**

Where overtime was inequitably distributed, remedy is payment, not correction of opportunities: "In view of the fact that almost a year has passed, it is not likely that future overtime opportunities will provide a meaningful remedy and, in any event, would create the potential of impinging upon the rights of other employees on the OTDL."

### **C-27000 Regional Arbitrator Trosch**

**March 26, 2007, K01N-4K-C 06022276**

The amounts sought by the Union reflect some increase in those agreed to in the prior resolutions, but are not inappropriate within the concept of the objective of influencing local management to discontinue the repeated violations that leads to a conclusion that the past violations have been egregious.

### **C-26646 Regional Arbitrator Campagna**

**August 12, 2006, B01N-4B-C 05187029**

Having established under the specific facts of this case that the Service violated Article 8 of the National Agreement when they mandated the Grievant to work 8 hours of overtime there remains a question of an appropriate remedy. A "make whole" remedy consisting of an additional 50% pay for the day, and eight (8) hours of administrative leave to be used at the Grievant's convenience is in order.

See also **Limited Duty**

**C-06462 National Arbitrator Mittenthal  
September 19, 1986, H1C-NA-C 121-122**

Management may require an employee to be examined by a Postal Service physician only in non-emergency situations where the examination will not interfere or delay the employee's appointment with his chosen physician.

**C-12424 National Arbitrator Mittenthal  
October 5, 1992, H7N-1P-C 23321**

A local policy requiring medical clearance by the Division Medical Officer for return to duty following non-occupational illness or injury was not a violation of the Agreement. To the extent that the policy was applied to those returning from an extended absence due to occupational illness or injury, it would be in conflict ELM section 864.42, and would thus be a violation of the Agreement.

**C-04162 National Arbitrator Aaron  
February 27, 1984, HIN-NAC-C 3**

Local and regional departures from the procedures set forth in Sub-chapter 540 of the ELM are in conflict with those procedures and therefore with the National Agreement. Article 19 does not distinguish between national, local and regional levels of management.

**C-00790 National Arbitrator Gamser  
October 21, 1982, H8T-4H-C 10343**

Time spent receiving medical treatment for an on-the-job injury at the direction of the Postal Service in order to minimize Postal Service Compensation liability constitutes work time for overtime purposes under Article VIII, Section 4 of the National Agreement; the Arbitrator will not deal with external law.

**C-19547 APWU Nat. Arbitrator Dobranski  
G94C-4G-C 96077397, June 1, 1999**

The union notification provisions of Article 7, Section 2.A of the National Agreement do not apply to permanent Rehabilitation Program full-time assignments made under ELM Section 546.

**M-01807 USPS Letter to Area Vice Presidents  
March 19, 2012**

Subject: Employee Medical Restrictions

When craft employees provide medical documentation indicating that they have a disability and cannot work more than eight hours, or that they require other accommodations that may impact their ability to deliver the mail in an efficient manner, this can be challenging for a manager with limited resources who is trying to move the mail. However, the answer is neither to work disabled employees outside of their restrictions, nor to discipline them for being unable to complete their route. Significant liability may result from those courses of action.

A decision was recently issued against the Postal Service in an Equal Employment Opportunity Commission (EEOC) case based upon a finding of disability discrimination and retaliation. The EEOC Administrative Judge awarded the employee, a letter carrier, \$200,000 in compensatory damages, 39 days of back pay, \$12,420 for psychological treatment, and \$115,659 in attorney fees, expert witness fees and costs.

This case is significant because it highlights a growing trend in USPS EEOC complaints- allegations that managers are disregarding employees' medical restrictions. In this particular case, the judge found that management was on notice of the carrier's restrictions by virtue of medical documentations she had submitted to management, as well as her statements regarding those restrictions. The carrier's primary restrictions were a limitation that she could work no more than eight hours per day and a requirement that she be granted a ten minute stretch break every hour. The judge determined that the carrier was frequently required to work more than eight hours and that her workload was not adjusted to allow for the ten minute breaks. There was also a finding that the carrier was harassed when she attempted to abide by her medical restrictions.

Human Resources and the Law Department have more appropriate ways to work through these issues. Therefore, it is critical that operations managers seek their assistance when faced with medical restrictions to ensure that the proper process is followed, and to ensure that Postal Service operational and financial resources are not compromised. There are valuable resources at <http://blue.usps.gov/uspslaw/ReasonableAccom.htm> on reasonable accommodations, including area law office contacts.

**M-00797 Step 4  
April 3, 1987, H4C-3A-C 25605**

Forms CA-8 must be made available to employees in limited duty status on all tours.

**M-01117 Management Instruction  
MI EL 540-91-1, January 25, 1991  
B. Free Choice**

**1. Physician.** Under the Federal Employees' Compensation Act (FECA), an employee is guaranteed the right to a free choice of physician. The employee's immediate supervisor is responsible for fully explaining this right to the employee. The following provisions apply:

- a. The postal medical officer or contract physician's evaluation is not required before an employee makes an initial choice of physician or receives continuation of pay. If an employee declines first aid treatment or medical evaluation by the postal medical officer or contract physician, authorization for first aid medical examination and treatment by

the physician of the employee's choice must not be delayed or denied. An employee's declination in such cases may not be used as a basis to discontinue pay or to controvert a claim.

**b.** If the postal medical officer, contract physician, or health unit nurse provides initial evaluation and/or first aid treatment to an employee and then further medical care for the injury is needed, such an initial evaluation or treatment does not constitute the employee's initial choice of physician. An employee may elect either to continue medical treatment with the contract physician beyond the first aid treatment or to select a physician of his or her own choice.

**c.** If an employee elects to continue medical treatment with the postal medical officer or contract physician beyond the first aid treatment, that physician becomes the employee's initial physician of choice.

**2. Timing.** An employee cannot be required or compelled to undergo medical examination and/or treatment during nonwork hours.

#### **Prearbitration Settlement**

##### **A94N-4A-C 979019738, February 18, 1999**

The issue in this case is whether management violated the National Agreement when it contacted limited duty employees' physicians to receive information and/or clarification on a carrier's medical progress.

The Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the Federal Employees' Compensation Act (FECA) effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician.

##### **C-00936 National Arbitrator Aaron January 24, 1983, H1C-5D-C 2128**

Pursuant to the provisions of 546.141 of the ELM, A full-time rural carrier who has incurred an on-the-job injury must be offered a full-time regular position in another craft that minimizes adverse or disruptive impact on the employee.

##### **C-00843 National Arbitrator Aaron September 3, 1982, H8-C-4A-C 11834**

Employees who had been on compensation under the Federal Employees' Compensation Act and who after more than one year were partially recovered from their injuries and were reinstated to the same level and step they had occupied at the time of their separation were not entitled to the salary levels they would have occupied had they been continuously employed from the dates of their separation to the dates of their reinstatement.

Arbitrator Aaron decided this case as a purely contractual issue and declined to look at external law. It is the position of the NALC that, notwithstanding Arbitrator Aaron's decision in this case, the Federal Employees' Compensation Act requires that employees, who have been on compensation for more than one year and are partially recovered from injuries, are when reinstated entitled to the salary levels they would have occupied had they been continuously employed from the dates of their separation to the dates of their reinstatement. The Contract Administration Unit should be contacted in any cases concerning this issue.

##### **M-00744 Letter**

**April 7, 1980**

The Federal Employees Compensation Act and Postal Service policy prohibit taking action discouraging the reporting of an accident or the filing of a claim for compensable injury with the Office of Workers Compensation Programs.

##### **M-01385 Step 4**

**June 15, 1999, E94N-4E-C 98037067**

The first issue contained in this case is whether management violated the National Agreement when it telephonically contracted limited duty employees' physicians to receive information and/or clarification on a carrier's medical progress. The second issue is whether management violated the National Agreement when it contacted limited duty employees' physicians to receive information and/or clarification on a carrier's medical progress by letter and did not send a copy of the letter to the carrier. During our discussion, it was mutually agreed to close this case at this level with the following understanding.

The Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the Federal Employees Compensation Act (FECA) effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician. The ELM-505 Section 6.3 specifically states that the employee will be sent copies of such correspondence.

##### **M-01681 Department of Labor, Office of Workers Compensation Programs, April 8, 2008**

Response to NALC inquiry:

The Postal Accountability and Enhancement Act modified section 8117 of the Federal Employees' Compensation Act (FECA) to read:

A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period,

except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.

Based on this amendment to the FECA, a U.S.P.S. employee may use annual leave, sick leave or leave without pay during the statutory three-day waiting period prior to accruing the right to compensation for temporary disability lasting less than fourteen days.

**M-01585 Department of Labor, Office of Workers Compensation Programs, April 12, 2000**

Response to a question regarding 20 C.F.R. 10.506, which that limits employing agencies to written contact with physicians treating injured workers covered by FECA.

**M-01625 Department of Labor, Office of Workers Compensation Programs, May 16, 2007**

Responds to a joint NALC/USPS question regarding 20 CFR 10.215(b), which provides:

The first COP day is the first day disability begins following the date of injury (providing it is within the 45 days following the date of injury), except where the injury occurs before the beginning of the work day or shift, in which case the date of injury is charged to COP.

**M-00444 Step 4  
July 19, 1977, NCC 5607**

While the control office in this case is located in the main office, each station and branch of the Columbus facility is supposed to have control point personnel available for employees to report to when an injury occurs as well as reporting back to after being off work on continuation of pay.

**M-00173 Pre-arb  
October 7, 1981 H8N-5L-C 11249**

An employee may be required to report an accident on the day it occurs; however, completion of the appropriate forms will be in accordance with applicable rules and regulations and need not be on the day of the accident.

**M-01161 Prearb  
December 10, 1993, H7N-5F-C 26185**

It is agreed that an employee cannot be required or compelled by the postal Service to undergo a scheduled medical examination and/or treatment during nonwork hours.

**M-00743 Letter  
May 15, 1981**

Accidents or compensation claims are not in themselves an appropriate basis for discipline. See also [M-00486](#)

**M-00563 US Dept Labor Memorandum  
April 14, 1983**

Memorandum clarifying the role of the employing agency at hearings conducted under Section 812(b) of the Federal

Employees' Compensation Act.

**M-00484 Step 4  
August 25, 1977, NCS 7676**

It is not the National Policy of the Postal Service to induce, compel or discourage Postal employees from the exercise of their rights under the Federal Employees' Compensation Act, as amended. Therefore, local management should exercise good judgment to ensure that the interviews may not be interpreted as a program of coercion or intimidation against employees who have sustained on-the-job injuries.

**M-00318 Step 4  
April 29, 1986, H1C-NA-C 106**

Controversion with termination of pay shall only be effected based upon the conditions listed in Part 545.51 of the ELM.

**M-00445 Letter, September 14, 1984  
H8N-3W-C 24612**

The Federal Employees' Compensation Act (5 USC, 8101, et seq.) provides that an employee who is required to appear as a party or witness in the prosecution of a third-party court action is in an active-duty status while so engaged (5 USC, 8131(a)(2)); therefore, such an employee is entitled to be paid for the time spent in court. A postal employee who appears as a witness in a third-party action, which has been assigned to the Postal Service, is in an official duty status for the time spent in court (ELM 516.4) and for the time spent traveling between the court and his or her work site (ELM 438.13). Any time spent traveling between an employee's residence and the court is considered commuting time and, therefore, is not compensable. An employee who prosecutes a third-party action in his or her own name is not entitled to official duty status, as defined in Section 516.41 of the ELM. For administrative purposes, however, those employees will be compensated for court appearances and travel time "as if in an official duty status." An employee who is prosecuting a third-party action in his or her own name is not treated as if in an official duty status for the time spent developing the case. Any time spent preparing the case within an employee's regular work schedule is charged in accordance with the procedures for annual leave or LWOP.

**M-00772 NALC Memo, Herbert A. Doyle  
January 12, 1987**

An employee who appears as a witness in a third-party action which has been assigned to the Postal Service, is in official duty status for the time spent in court and for the time spent traveling between the court and the work site.

**M-00998 Step 4  
April 11, 1991, H7N-3W-C 22137**

The issue in this grievance is whether management may require an employee to complete PS Form 3971 to receive Continuation of Pay (COP).

During our discussion, we agreed that management may require an employee to complete PS Form 3971 to request Continuation of Pay. However, we also agreed that the proper response to an employee who fails to complete PS Form 3971 for COP is appropriate corrective action rather than withholding COP to which the employee is otherwise entitled.

**M-00887 Step 4**  
**November 16, 1988, H4N-4C-C 38635**

The issuance of local forms, and the local revision of existing forms is governed by Section 324.12 of the Administrative Support Manual (ASM). The locally developed forms at issue were not promulgated according to ASM, Section 324.12. Therefore, management will discontinue their use. See also [M-00849](#), [M-00852](#).

The form at issue in this case was a locally developed list of available limited duty assignments provided to physicians.

**M-01091 Prearb**  
**May 18, 1992, H7N-1Q-C 30532**

The issue in these grievances is whether management may send a letter to an employee and/or the employee's physician informing them that limited duty is available.

During our discussion, we mutually agreed that in order to resolve these particular grievances that standard letters would be developed at the national level to replace the letters which were being used locally. Copies of those letters are attached. The Union will provide comments on the content of these letters, without prejudice to the positions of the parties regarding whether Article 19 is applicable or whether such letters should be developed nationally or locally. After comments, if any, are received, these letters will be transmitted and used by the field instead of those letters at issue in these grievances.

The parties further agree that this settlement is limited solely to the question of letters issued to inform employees of their obligation regarding limited duty availability and to inform physicians of limited duty availability.

**M-00229 Step 4**  
**February 10, 1982, H8N-5G-C 21570**

An employee may be required to report an accident on the day it occurs; however, completion of the appropriate forms will be in accordance with applicable rules and regulations and need not be on the day of the accident.

**M-00948 Step 4**  
**October 6, 1989, H7N-4J-D-12845**

The issue in this grievance is whether management violated the National Agreement when it withdrew the grievant from limited duty and issued a Notice of Proposed Removal, under the facts of this case.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that separation of the grievant prior to management having received a response to its recommendation from the department of Labor, was improper.

Accordingly, we agreed to remand this case to the parties at Step 3 with instructions to quash the Notice of Proposed Removal and grant the grievant a make-whole remedy. Notwithstanding the above, we further agreed that this decision shall not be construed to prevent management from re-issuing a notice of removal effective as of the date of the decision of the Department of Labor with respect to this grievant, or the Union's opportunity to further grieve any such subsequent disciplinary action.

**M-00896 Step 4**  
**February 10, 1989, H4N-3W-C 50311**

By accepting a limited duty assignment a letter carrier does not waive the opportunity to contest the propriety of that assignment through the grievance system.

**M-00666 Step 4**  
**April 6, 1976, NCN 7057**

Even though the dog's owner agreed to pay for the medical expenses referenced in the grievance, the OWCP requires submission of the CA forms. Accordingly, the grievance is sustained.

**C-02695 Regional Arbitrator Caraway**  
**November 24, 1982, S1N-3W-C 4642**

Where a supervisor refused to issue Forms CA-1 and CA-16 to a dog-bitten letter carrier, and where COP is subsequently not paid for time missed as a result, USPS is ordered to pay carrier for lost time.

**C-01396 Regional Arbitrator Caraway**  
**August 23, 1982, S1N-3U-C 191**

"Once the employee has filed a CA-1 with the Department of Labor, that agency has sole authority over [that employee's] claim. The arbitrator is divested of authority."

**C-01659 Regional Arbitrator Dobranski**  
**October 20, 1981, C8N-4A-C 20164**

OWCP has exclusive jurisdiction over compensation claims; a grievance filed concerning a claim is not arbitrable.

**C-04936 Regional Arbitrator Scarce**  
**May 28, 1985, S1N-3W-C 19996**

An arbitrator lacks authority to order payment of COP.

**M-01173 OWCP Letter**  
**December 3, 1993**

It has recently been brought to our attention that medical reports from physicians employed by or under contract to employing agencies are being used to create conflicts in medical evidence. We have determined that these reports should not be considered second opinions for the purpose

of making determinations of entitlement based on the weight of medical evidence, or for creating conflicts in medical evidence.

The following paragraph is being added to paragraph 9 of Procedure Manual Chapter 2-810, Developing and Evaluating Medical Evidence, to reflect this determination:

A report submitted by a physician employed by or under contract to the claimant's employing agency may not be considered a second opinion report for the purposes of creating a conflict in medical evidence or for reducing or terminating benefits on the basis that the weight of medical evidence rests with that report. Such a report must receive due consideration, however, and if its findings or conclusions differ materially from those of the treating physician, the CE should make an immediate second opinion referral.

**C-10692 Regional Arbitrator Leventhal  
August 30, 1990**

Management violated the contract when it refused to pay COP to grievant who failed to timely submit CA-1, where management contributed to untimely filing.

**C-09888 Regional Arbitrator Sobel  
March 18, 1990**

Management did not violate the contract by non-scheduling a PTFs carrier injured on-the-job during that portion of the work day the carrier received therapy.

**C-09401 Regional Arbitrator Searce  
September 30, 1989**

"It is the supervisor's obligation to facilitate the notice/filing procedure for a claimed injury; no authority exists to make a judgment as to whether such injury exists or to issue form(s) on convenience."

"The Service violated applicable regulations when it failed to timely issue applicable [compensation] forms to the grievant and to timely assist in their completions; however, such violation was technical in nature and the remedy sought is inappropriate."

**C-10009 Regional Arbitrator Barker  
May 12, 1990**

Management violated ELM 545.62c when it ordered the grievant to return to full duty based on telephone contact with grievant's doctor, but before receiving a revised CA-17.

**C-28016 Regional Arbitrator Irving  
May 25, 2007, E01N4ED07052585**

[T]he Postal Service's case is inconclusive due to insufficient evidence to show deceit or a willful intent to defraud. The primary evidence of the surveillance video did not establish the proof needed to show misconduct by the Grievant as charged. Also, Agent Winder's failure to ap-

pear at hearing to be cross-examined by the Grievant renders his detailed report as hearsay evidence. Because the Sixth Amendment affords the Grievant the right to confront his accusers. The Arbitrator did not find that the purported violations of the Grievant's work restrictions measures against his everyday activities constituted that the Grievant has misrepresented his physical abilities and made false statements during an official investigation. The Grievant simply followed his physician's prescribed course of treatment and returned to full duty when his physician was assured that he could do so without subjecting himself to further injury.

## **M-00477 Step 4**

**May 2, 1985, H1N-3W-C 32759**

In offices where there is a CFS/CMU site, letter carriers shall not be required to forward or return any class of mail, including oversized parcels. Letter carriers shall continue to endorse undeliverable as addressed in accordance with current policy.

## **M-00714 Step 4**

**February 22, 1980, N8-W-0217**

Employees other than letter carriers will be assigned the responsibility for the day-to-day preparation of second notices for parcels.

## **M-00793 Step 4**

**September 11, 1987, H4N-4H-C 34936**

Parcels will be delivered to the addressee or his or her authorized agent. We agreed that the authorized agent may be an apartment manager.

## **M-00742 Step 4**

**April 20, 1976, NCW 951**

In those offices where carriers do not receive their parcel post for sequencing until after they are tied out it would be impractical to reverse a letter. Employees in these circumstances are to sequence the parcel post mail while loading their vehicles.

## **M-01239 Step 4**

**July 25, 1995, E90N-4E-C 94037607**

The issue in this grievance is whether Management violated the National Agreement by requiring letter carriers to leave non-accountable parcel post mail at the delivery address when the patron is not at home or unavailable to receive the parcel.

During our discussions the parties agreed that the practice is moot because it has been discontinued. Further tests of this practice may occur after the national union has been notified. Permanent adoption of this practice may only occur after the appropriate changes are made to handbooks and manuals by Article 19 of the National Agreement.

## **Two Pound Parcels**

M-39 Section 16 Parcel Post (in part)

**161 Parcel Post Delivery Requirements** The day-to-day supervisory requirements for parcel post routes are basically the same as for city letter carrier routes. The office work routine, both before leaving for the route and after returning from the route, is somewhat different, as follows:

- a. Determine workload by inspecting incoming volume. Check parcel post in sacks and containers and include outsides. Determine number of delivery hours needed, based on reasonable efficient performance, and set up runs. More parcels can be delivered per hour when mail volume is high rather than when it is low. (See perform-

ance rates during the last count and inspection period.)

- b. Withhold, generally, all small parcels (not exceeding 2 pounds) to be delivered by foot carriers. Don't delay getting these parcels to the foot carriers.

## **C-03222 National Arbitrator Aaron**

**March 11, 1982, H8N-4E-C 19254**

Management may require foot carriers to carry parcels weighing more than two pounds on an infrequent and non-routine basis, provided there is no equally prompt, efficient and reliable way to effect delivery.

## **M-00581 Remand Agreement**

**October 5, 1983**

Recap of Aaron two-pound parcel award; further provides that in each grievance "management will make a full and detailed statement of the facts which management believes show that the conditions of the [Aaron] award have been satisfied". But see [C-05335](#), [C-05669](#), [C-06499](#)

## **M-00409 Step 4**

**August 5, 1983, H1N-3W-C 20236**

A carrier has the option of reversing a letter in the letter separation as a reminder of a parcel or odd-sized piece of mail for delivery. The word "parcel" in Section 225.16 of the M-41 concerns mail matter which cannot be routed into the flat or letter separations and does not include parcels weighing two pounds or more. Section 322.3 of the M-41 addresses parcels weighing two pounds or more and provides the method of reminding a carrier of the next parcel for delivery. See also [M-00604](#)

## **C-05335 Regional Arbitrator Jacobowski**

**October 9, 1985, C1N-4C-C 8352**

Management did not violate the contract when it required carriers to deliver parcels weighing more than two pounds. See also [C-05669](#), [C-06499](#)

## **C-09672 Regional Arbitrator Germano**

**February 1, 1990, N7N-1W-C 24856**

Management improperly required foot carriers to deliver catalogs weighing more than two pounds.

## **C-05314 Regional Arbitrator Williams**

**October 25, 1985**

Award: The grievance is upheld in part and denied in part.

1. To the extent that Management utilizes a policy, which concludes that it may assign one or two parcels on a frequent or routine basis (daily or almost daily), so long as the total weight does not exceed thirty-five pounds, it is a violation of the Agreement and the Aaron award. Thus, to the extent the policy has become practice, it must cease.
2. However, in terms of the assignments on the days in question, they did not violate the agreement or the Aaron award. Thus, that portion of the grievance is denied.

## See also

[Hold down assignments](#)  
[Guarantees](#)  
[Maximization](#)

### **M-00009 Step 4** **December 21, 1977, NCC 8760**

The regular straight time hourly rate of part-time flexible employees incorporates compensation for the nine holidays cited in Article XI, Section 1 of the National Agreement. For this reason part-time flexible employees are compensated for overtime based upon the same rate as full-time regular employees.

### **M-00518 Step 4** **July 6, 1984, H8N-5K-C 13569**

Part-Time flexible carriers may be assigned to perform clerical duties and may be required to pass examinations on schemes of city primary distribution if their assignment anticipates use of scheme knowledge as provided by Part 124 of the M-41 Handbook.

### **C-03807 National Arbitrator Mittenthal** **July 22, 1983, H1N-5D-C 2120**

A past practice of assigning PTFs carriers to available work by seniority is inconsistent and in conflict with the National Agreement.

### **M-00121 Step 4** **November 22, 1978, NCS 12506**

There is no contractual obligation to equalize part-time flexible hours. However, normally every effort is made to equalize the hours consistent with service needs and the skills required.

### **M-00371 Step 4** **September 15, 1977, NCS 8022**

Management should whenever possible attempt to schedule part-time flexible employees so that as many of the part-time employees as possible can be used without resorting to overtime by the other part-time flexible employees.

### **M-00355 Step 4** **January 13, 1978, NCE 8072**

Management has and when possible, does attempt to equalize part-time flexible employee hours and this effort should be continued.

### **M-00019 Step 4** **December 13, 1977, NCN 7053**

Consideration should be given to granting annual leave in the carrier craft prior to assigning part-time flexible carriers in the clerk craft.

### **M-01004 Step 4** **September 30, 1982, H8N-4B-C 27654**

Part-time flexible carriers cannot be required to "stand-by"

or remain at home, under the threat of discipline, for a call-in or a nonscheduled day. Should a supervisor be unable to contact an employee whose services are needed, the employee merely remains nonscheduled for that day.

### **M-00013 Step 4** **November 8, 1977, NCW 9013**

There is no contractual provision, nor is it intended, that part-time flexible employees are required to remain at their home or to call the Post Office to ascertain whether their services are needed. See also [M-00197](#), [M-00041](#).

### **M-01067 USPS Letter** **February 14, 1972**

PTF employees must be scheduled at least 4 hours per pay period.

## Loaning or Detailing

### **M-01470 Step 4 Settlement** **September 26, 2002, C94N-4C-C-99224809**

PTF employees who agree may be temporarily detailed or "loaned" from one post office (installation) to another.

If a PTF does not agree to be temporarily detailed or loaned to another post office, management may involuntarily detail or loan the employee in accordance with Article 12.5.B.5 of the 2001-2006 National Agreement. Whether the notice requirement of Article 12.5.B.5 was met in this case is not an interpretive issue.

PTF employees may not be temporarily detailed or loaned from one post office to another if the sole reason for the detail or loan is to avoid overtime. Whether in this case the "sole reason" for the details or loans at issue in this case was to avoid overtime is not an interpretive issue.

The contractual rights of the parties as described above will not be altered, amended, or modified by any discussions or agreements with a prospective new hire during the pre-employment selection process. See also [M-01472](#)

### **M-00241 Step 4** **July 3, 1972, N-E-380**

The incidental detailing of a part-time flexible employee from another post office for the sole reason of avoiding overtime, will be discontinued.

### **C-16082 Regional Arbitrator Zigman** **December 5, 1996, E90N-4E-C 95004550**

The arbitrator found that the Postal Service violated the national agreement when it detailed a PTF to another installation for the sole purpose of avoiding overtime. He ordered as a remedy that carriers on the OTDL be paid for the hours they would have worked if the PTF had not been detailed.

### **C-11001 Regional Arbitrator Sobel July 30, 1991**

Management violated the contract by calling in a PTF from another office to work rather than calling in the grievant to work overtime on his nonscheduled day.

Whether or not there exists a valid past practice in this local office to limit PTF's to a 10-hour service week is determined by examination of the fact circumstances.

## MAXIMUM HOURS

### **ELM Section 432.32**

**Maximum Hours Allowed.** The maximum hours of work allowed depends on employee classifications as follows:

c. All other employees. [PTFS] Except in emergency situations as determined by the PMG (or designee), these employees may not be required to work more than 12 hours in one service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and meal time, may not be extended over a period longer than 12 consecutive hours.

### **M-01282 Prearbitration Settlement February 26, 1997, E90N-4E-C 94053872**

The issue in this case is whether management violated the National Agreement, specifically Section 432.32 of the Employee and Labor Relations Manual (ELM), by working part-time flexible city carriers over 12 hours in a day.

The parties agree that the decision rendered by Arbitrator Snow in case B90N-4B-C 94027390 provides sufficient guidance to address the issue in the instant case. In that case, the arbitrator ruled that ELM 432.32, as currently written, applies to Transitional Employees. It is clear from his ruling that ELM 432.32 also applies to part-time flexible employees. Therefore, this case will be remanded to the parties at the local level to determine the appropriate remedy.

### **M-01042 APWU Step 4 April 22, 1986, H4C-2U-C 807**

The issue in these grievances is whether management violated the National Agreement by requiring PTF employees to work 12 1/2 hours in one service day.

During our discussion, we mutually agreed that the following constitutes full settlement of these cases:

Except in emergency situations as determined by the PMG (or designee), these employees may not be required to work more than 12 hours in one service day. In addition, total hours of daily service, including scheduled work hours, overtime, and meal time, may not be extended over a period longer than 12 consecutive hours.

### **M-01043 APWU Step 4 June 17, 1983, H1C-1L-C-9117**

Part-time flexibles may be required to observe a service day lasting more than 10 hours but less than 12 hours.

## PART-TIME REGULARS

### Article 7, Section 1. Definition and Use

A. Regular Work Force. The regular work force shall be comprised of two categories of employees which are as follows:

7.1.A.2. Part-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

Part-Time Regulars. The Step 4 Settlement D94N-4D-C 98031046, August 12, 1998 (M-01337) provides that:

Part-time regulars are regular work force employees who are assigned to work regular schedules of less than 40 hours in a service week.

Part-time regular schedules should not be altered on a day-to-day or week-to-week basis.

Part-time regulars are normally to be worked within the schedules for which they are hired. They can occasionally be required to work beyond their scheduled hours of duty. However, their work hours should not be extended on a regular or frequent basis.

It was also agreed that part-time employees who are expected to be available to work flexible hours as assigned during the course of a service week should be classified as part-time flexibles.

### **M-01833 March 6, 2014**

#### **Joint Questions and Answers—Other Provisions**

**Question No. 1: The Memorandum of Understanding, Re: Part-Time Regular City Letter Carriers, establishes a cap on city letter carrier part-time regular employees as the number employed on the effective date of the 2011 National Agreement. What is the cap?**

682.

**Question No. 2: Is the limit of 682 part-time regular employees a national cap or is it limited to locations that employed part-time regular city letter carriers on the effective date of the 2011 National Agreement?**

It is a national cap.

**Question No. 3: May part-time regular city letter carriers request reassignment pursuant to step 2 of the Memorandum of Understanding, Re: Residual Vacancies - City Letter Carrier Craft?**

Yes. Requests from part-time regular city letter carriers are considered in the same manner as transfer/reassignment requests from full-time city letter carriers.

### **M-01337 Step 4**

#### **August 12, 1998, D94N-4D-C 98031046**

Part-time regulars are regular work force employees who are assigned to work regular schedules of less than 40 hours in a service week.

Part-time regular schedules should not be altered on a day-to-day or week-to-week basis.

Part-time regulars are normally to be worked within the schedules for which they are hired. They can occasionally be required to work beyond their scheduled hours of duty. However, their work hours should not be expanded on a regular or frequent basis.

It was also agreed that part-time employees who are expected to be available to work flexible hours as assigned during the course of a service week should be classified as part-time flexibles.

### **M-01452 Prearbitration Settlement**

#### **April 25, 2001, H94N-4H-C 99112047**

The parties agree that while the filling of a part-time regular city letter carrier craft position is not specifically addressed in Article 41.1, a full-time city letter carrier may apply for a part-time regular letter carrier craft position. Such application should receive consideration prior to seeking to fill the part-time regular city letter carrier craft position from outside the Postal Service, pursuant to Section 241.241 of the EL-312 (December 1999). In the absence of a Local Memorandum of Understanding provision on the matter which is not in conflict or inconsistent with the National Agreement, we agree that this is the manner by which applicants for part-time regular positions should be given consideration.

### **M-00915 Step 4**

#### **April 13 1989, H4N-5C-C 36660**

The issue in this grievance is whether local management has improperly established part-time regular router positions in contravention to the provisions of the [July 21, 1987] Router Memorandum of Understanding. Item 3, of the September 21, 1988, Router Assignment Instructions [M-00885] states that "Router positions should be maximized to full-time, 8-hour positions to the extent practicable." As described in this instant matter, the utilization of the part-time routers is inconsistent with the intent of the aforesaid memorandum. See also M-00916.

### **M-00574 Settlement, November 4, 1971**

The references to "part-time employees" in Article 8, Section 3 applies to part-time regular employees.

**C-23852 National Arbitrator Nolan  
December 27, 2002, B94N-4B-C 97027260**

In the letter carrier craft, the Postal Service may not create part-time regular assignments with six-day schedules.

**M-00358 Step 4  
November 1, 1985, H4N-5G-C 3573**

We mutually agreed that a part-time regular employees' normal work-week is five (5) service days; however, management is not prohibited from using them on six (6) days should the need arise.

**M-01269 Prearbitration Settlement  
December 3, 1997, H94N-4H-C 96042471**

This grievance concerns the utilization of employees who have been classified as part-time regulars.

After reviewing this matter, it was mutually agreed to the following:

Part-time regulars are regular work force employees who are assigned to work regular schedules of less than 40 hours in a service week.

Part-time regular schedules should not be altered on a day-to-day or week-to-week basis.

Part-time regulars are normally to be worked within the schedules for which they are hired. They can occasionally be required to work beyond their scheduled hours of duty. However, their work hours should not be extended on a regular or frequent basis.

It was also agreed that part-time employees who are expected to be available to work flexible hours as assigned during the course of a service week should be classified as part-time flexibles.

It was further agreed to remand this case for further processing consistent with the above understanding, including a determination of what remedy, if any, is appropriate in the case of a violation.

**M-01044 APWU Step 4  
December 6, 1988, H4T-3U-C-43451**

The issue in this grievance is whether PTR's are covered by the 8 within 8, 9, 10 provisions of the National Agreement.

There is no dispute between the parties at this level that Article 8.2.C does not apply to part-time employees.

**M-01040 APWU Step 4  
March 11, 1987, H4C-1J-C-18395**

The issue in this grievance is whether part-time regular employees are entitled to overtime for work performed in excess of their normal schedule but not in excess of 8

hours per day or 40 hours per week.

The parties at this level recognize that part-time regular employees are not entitled to overtime pay until the work performed exceeds 8 hours in a day or 40 hours in a week.

**M-01833 Joint Questions and Answers  
March 6, 2014**

Question 71: Will CCAs be offered part-time regular city carrier vacancies?

While there is no prohibition against a CCA requesting a part-time regular vacancy, the Postal Service is under no obligation to offer or place a CCA into such vacancy

The JCAM has an extensive explanation of past practice under Article 5. It should be carefully studied whenever past practice grievances arise. The short excerpt below explains the three distinct functions of past practice:

**To Implement Contract Language.** Contract language may not be sufficiently specific to resolve all issues that arise. In such cases, the past practice of the parties provides evidence of how the provision at issue should be applied. For example, Article 15, Section 2, Step 3 of the 1978 National Agreement (and successor agreements through the 2000 National Agreement) required the parties to hold Step 3 meetings. The contract language, however, did not specify where the meetings were to be held. Arbitrator Mittenthal held that in the absence of any specific controlling contract language, the Postal Service did not violate the National Agreement by insisting that Step 3 meetings be held at locations consistent with past practice. (N8-NAT-0006, July 10, 1979, [C-03241](#))

**To Clarify Ambiguous Language.** Past practice is used to assess the intent of the parties when the contract language is ambiguous, that is, when a contract provision could plausibly be interpreted in one of several different ways. A practice is used in such circumstances because it is an indicator of how the parties have mutually interpreted and applied the ambiguous language. For example, in a dispute concerning the meaning of an LMOU provision, evidence showing how the provision has been applied in the past provides insight into how the parties interpreted the language. If a clear past practice has developed, it is generally found that the past practice has established the meaning of the disputed provision.

**To Implement Separate Conditions of Employment.** Past practice can establish a separate enforceable condition of employment concerning issues where the contract is "silent." This is referred to by a variety of terms, but the one most frequently used is the silent contract. For example, a past practice of providing the local union with a file cabinet may become a binding past practice, even though there are no contract or LMOU provisions concerning the issue.

## National Level Settlements

**M-00702 Step 4**  
**May 3, 1979, NCS 18037**

In those installations where there was a past practice of allowing coffee breaks longer than the twenty minutes provided for in the National Agreement that past practice should continue.

**M-00517 Step 4**  
**July 5, 1984, H1N-4K-C 13691**

Whether or not such radios or tape cassettes should be permitted is determined by applying Article 14 and past practice at the local office to the fact circumstances.

**M-00242 Step 4**  
**September 13, 1976, NCE 2097**

Management should not deduct reasonable comforts/rest stops from the total street time during route inspections if deduction of the time is contrary to past local practice.

**M-00178 Step 4**  
**July 21, 1977, NCC 7451**

All requests for leave on Saturday should be treated on an equal basis as has been the past practice at this facility.

**M-00786 Settlement Agreement**  
**March 22, 1983**

The following applies to offices which permitted radio headset use prior to November 25, 1982: The use of radio headsets is permissible only for employees who perform duties while seated and/or stationary and only where use of a headset will not interfere with performance of duties or constitute a safety hazard. Employees will not be permitted to wear or use radio headsets under other conditions. See also [M-00499](#).

**M-00297 Step 4**  
**September 28, 1983, H1N-5H-C 14508**

Past practice and any other historical evidence available should be used to determine how the parties have defined a "delivery unit." For example, how is overtime distributed and how is the OTDL established.

**M-00082 Step 4**  
**October 31, 1985, H4N-3U-C 3319**

Whether or not "Reserve Letter Carrier" assignments should be posted for bid can only be determined by application of established past practice to the fact circumstances involved.

**M-00212 Pre-arb**  
**March 22, 1974, NW 3165**

The per diem allowances to the particular grievants will be reinstated and continued as long as they are assigned to the Fort Lewis Military Installation. It is understood, however, that these allowances are contrary to postal regulations and are being continued solely because there had developed a past practice as to the grievants.

**M-00941 Step 4**  
**June 27, 1989, H7N-5H 7814**

In those installations where longer break periods were provided by past local negotiation, the longer break periods will be used.

**M-00549 Pre-arb**  
**October 3, 1986, H4N 5F C 1620**

Article 41.1.A.7 does not specify placement of unassigned regulars by juniority or by seniority. Where a question of established past practice exists it will be determined in regional arbitration.

## **M-00482 Step 4**

**June 24, 1982, H8N-3T-C 36426**

The question raised in this grievance involves whether local management was discriminatory by denying the employee the use of his earphone radio while casing mail. Whether this matter was properly handled can only be determined by applying the fact circumstances involved against the past practice in the local installation.

## **M-00240 Step 4**

**June 24, 1977, NCC 5581**

Letter carriers were permitted to go to the bakery next door to the post office on the clock in order to purchase a roll to eat with their coffee in the morning. The fact that the carriers' starting time was changed by 30 minutes does not, in and of itself, appear to be reasonable grounds on which to discontinue the practice of going to the bakery on the clock in order to purchase a roll. Accordingly, by copy of this letter, the postmaster is instructed to continue the past practice with respect to purchasing rolls, with the understanding that office time will not in any way be expanded by such a practice.

## **M-00179 Step 4**

**May 1, 1981, H8N-5C-C 13673**

This grievance involves whether the carriers in the office in question are entitled to two fifteen minute breaks by virtue of the previous long-standing practice of granting such breaks. Upon review of the issue raised along with other documents provided; including previous route inspection data, it is our determination that the carriers are entitled to 2 fifteen minutes breaks.

## **M-00763 Step 4**

**April 15, 1987, H1N-3U-C 28786**

The right to hold steward elections, on the clock, may be established by past practice.

## **M-00162 Memo**

**January 2, 1979**

At those delivery units where the drinking of coffee was previously permitted, in conjunction with the casing of mail, that practice may be continued.

## **M-01043 APWU Step 4**

**June 17, 1983, H1C-1L-C-9117**

Part-time flexibles may be required to observe a service day lasting more than 10 hours but less than 12 hours. Whether or not there exists a valid past practice in this local office to limit PTF's to a 10-hour service week is determined by examination of the fact circumstances.

## **National Level Arbitration Awards**

### **C-03241 National Arbitrator Mittenthal**

**July 10, 1979, N8N-AT-0006**

The Postal Service is entitled to insist that the location of Step 3 meetings be governed by past practice.

### **C-03807 National Arbitrator Mittenthal**

**July 22, 1983, H1N-5D-C 2120**

A past practice of assigning PTFS carriers to available work by seniority is inconsistent and in conflict with the National Agreement.

## **Regional Level Arbitration Awards**

### **C-00166 Regional Arbitrator Cohen**

**January 30, 1980, ACC 5566**

Management improperly terminated a past practice of permitting a five-minute wash-up period prior to lunch and at end of tour.

### **C-23557 Regional Arbitrator Snow**

**July 12, 2002**

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer's removal of a telephone from the Union's current business office at the facility violated the parties' National Agreement by unilaterally abrogating a past practice without a legitimate basis for doing so. The Employer is ordered immediately to replace a functioning telephone in the Union's office:

### **C-23279 Regional Arbitrator Lurie**

**April 22, 2002**

The Arbitrator, finds that a contractually-binding past practice had arisen pursuant to which the NALC member of the Safety and Health Committee was afforded one hour of official time with which to prepare an agenda for the quarterly Committee meeting. The practice implemented a condition of employment about which the Agreement was silent and, as such, under the JCAM, it was necessary for Management to engage in good faith bargaining with the Union over the impact of rescission on the bargaining unit. The grievance is sustained. The violation has been a continuing one. The Postal Service is directed to pay the NALC Committee member one hour at the straight -time rate for each Committee meeting for which he submitted an agenda, beginning with the October 1997 meeting.

### **C-23104 Regional Arbitrator Snow**

**November 5, 2001**

The Union shall receive reimbursement for all documentable costs it incurred in using outside facilities to make copies that, pursuant to the past practice, should have been made at the postal facility. The Employer shall restore the Union's access to the copiers with the understanding that management may charge the Union the Employer's actual, documentable costs for making copies.

### **C-23057 Regional Arbitrator Wooters**

**February 12, 2002**

Where the practice in New Haven for more than twenty years had been to have carriers make two withdrawals of mail from the clerk cases, management violated Article 7

when it assigned this work to the clerks without notice to or bargaining with the NALC. Over the years, this work had become the exclusive work of the carrier craft and could not be unilaterally withdrawn and awarded to another craft.

Management is directed to restore the prior practice

**C-22958 Regional Arbitrator Marks-Barnett  
January 2, 2002**

The Postal Service is ordered to cease and desist from refusing to observe the past practice of holding Labor-Management meetings on a monthly [basis] and is ordered to hold such meetings each month, continuing to do so until the past practice or the LMOU is changed in accordance with the provisions of the National Agreement.

**C-28435 Regional Arbitrator Cenci  
October 1, 2009**

Management violated Article 5 of the National Agreement when it notified the Union on March 17, 2009 that carriers would be required to remove all personal items hanging at carrier cases. Management unilaterally changed the past practice without giving the Union adequate prior notice and without engaging in good faith bargaining over the impact of the change. The clean case policy is to be rescinded and the practice of permitting carriers to keep personal items at their cases is to be reinstated.

**C-10827 Regional Arbitrator Goldstein  
September 28, 1990, C7N-4A-C 21728**

The arbitrator found that the Union is under no obligation to accept the customary "boiler-plate language" settling cases at Step 3 on a non-citeable, non-precidential basis. Since the prior settlements relied upon by management were themselves "non-citeable", they may not be cited to establish a past practice.

**C-05186 Regional Arbitrator Snow  
September 30, 1985, W1N-5D-C 4592**

Where reserve regular letter carriers have been assigned to specific stations as a matter of past practice, management may not change to a city-wide area bench system of assignment.

**C-04396 Regional Arbitrator Britton  
July 10, 1984, S1N-3U-C 4356**

An established past practice of allowing someone other than the affected employee to call in sick may not be unilaterally changed.

**C-11195 Regional Arbitrator Dworkin  
July 4, 1986**

Management's removal of a makeshift break area violated rights established by binding past practice.

**C-10574 Regional Arbitrator Searce  
January 30, 1991**

"It is a well-established arbitral axiom that so-called 'practices' of the parties cannot and do not abrogate written provisions of a collective bargaining agreement."

**C-00228 Regional Arbitrator Zack  
June 25, 1984, N1C-1J-C 19817**

Management improperly changed a past practice of permitting floor mats.

**C-00164 Regional Arbitrator Caraway  
May 16, 1984, S1V-3A-C 4277**

Management improperly terminated a past practice of permitting clerks to use stools.

**C-00166 Regional Arbitrator Cohen  
January 30, 1980, ACC 5566**

Management improperly terminated a past practice of permitting a five-minute wash-up period prior to lunch and at end of tour.

**C-00155 Regional Arbitrator Eaton  
April 4, 1986, W1C-5D-C 25265**

Management was not bound by past practice of permitting 15 minute breaks, where no management official with "contracting authority" was aware of the practice.

**C-00025 Regional Arbitrator McConnell  
June 28, 1983, E1C-2M-C 2465**

Management did not act improperly by changing a past practice of releasing stewards to hold grievance discussions within one hour.

**C-28149 Regional Arbitrator Bahakel  
March 6, 2009**

After reviewing all of the evidence it appears that the question to be decided is whether Management's rights to assign routes under Article 3 overrides an established past practice which arose from a negotiated agreement regarding non scheduled days at Arcade station. It is clear from the evidence presented that Management has a justifiable business reason for adding a utility route to Arcade station, but where it has made an agreement with the Union whereby Saturday non scheduled days were offered in exchange for the carriers at Arcade absorbing a vacant route, it cannot unilaterally come in and alter that agreement by assigning a new route to the station that affects the carriers non scheduled day without renegotiating that change with the Union. A past practice based on mutual agreement may be changed only by mutual agreement. The binding quality of the practice is not due to the fact that it is a past practice, but is due to the agreement on which it was based. Because Management negotiated with the Union in 2002 and offered the Saturday non scheduled day in exchange for the carriers absorbing a vacant route, any change in this agreement must be negotiated by the parties.

Management's rights under Article 3 are limited by the agreement it has made with the Union.

### **C-28704 Regional Arbitrator Monat March 5, 2010**

To this Arbitrator there is no stronger confirmation of a past practice than multiple statements by supervisors and managers that such a practice exists. Not only was this confirmation made on at least two occasions in writing, Management acknowledged that the practice originated in 1993. The fact that the practice continued after the 1996 LMOU, Item 9 unchanged until the interest arbitration in 2008, was signed off and continued in 2000, 2002, and 2007. This practice was followed even after Item 9C came into being. In Ms. Kelso's statement are found all the elements of a valid past practice: clarity, consistency, acceptability, mutuality and longevity.

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Management of the Phoenix Post Office is ordered to restore the past practice that 14% of the complement of PTR Carrier Collectors shall be afforded AL on any work-day during the choice period at the GMF.

### **C-24015 Regional Arbitrator Snow January 31, 2003**

After nearly 40 years of allowing carriers two 15-minute breaks, the Employer decided in 1997 to give 30 days of notice that management intended to reduce the break periods to 10 minutes. As a justification, the Employer argued that there was nothing in writing in the Local Memorandum of Understanding preventing such a unilateral change. To reach such a conclusion, however, would ignore the reality that a person who implicitly or explicitly makes a promise causes expectations to arise in the other party and, likewise, causes the other party to rely on the promise. Such promises give rise to expectations about what will happen in the future. It, then, becomes a promisor's obligation to make sure that his or her statement comes true until parties negotiate a different course of action. The binding force of such promises is justified because of the positive impact on the efficiency of a workplace as well as on the inextricable weave between the workplace and society itself. It is hard to have soundness in one without the other.

If the Employer now wishes to reduce the length of break periods from 15 to 10 minutes, it must do so through good faith negotiations with the Union and not through unilateral action in violation of Article 5 of the parties' National Agreement.

**M-01053 APWU Pre-arb  
November 21, 1983, H8C-4B-C-29625**

The question in this grievance is whether management violated the National Agreement by not compensating employees for time spent outside their normal schedule completing an in-service examination.

1. Inservice examinations are to be conducted on a no gain-no loss basis.
2. Management will not intentionally schedule inservice examinations in order to avoid any payment applicable under the no gain-no loss principle.

**M-01052 APWU Step 4  
March 10, 1986, H4C-1M-C-5833**

The issue in this grievance is entitlement to compensation for time spent outside of the grievant's regular schedule in an interview. During our discussion, we mutually agreed to settle this case as follows:

1. Any job interviews conducted are to be on a no gain-no loss basis.
2. Management will not intentionally schedule interviews in order to avoid any payment applicable under the no gain-no loss principle.

**C-10629 Regional Arbitrator Roukis  
February 14, 1991, N7N-1N-C 33292**

Management did not violate the contract when it refused a request for a cash advance.

**M-00568 Postal Bulletin  
June 28, 1983**

Postal Bulletin notice on the City Letter Carrier 7:01 Rule. (Reference ELM 432.53)

**M-01349 USPS Letter  
September 22, 1988**

USPS policy does not allow field offices to stop Bank/Direct Deposits until salary advances are collected.

**C-10931 Regional Arbitrator Stephens  
July 5, 1991, S7N-3S-C 36331**

Employee must be paid for time spent after clocking out locking up the office and the parking lot.

**COLA Roll-in**

**M-00245 Step 4  
July 2, 1982, H1N-5K-C 3568**

The file reflects that the delay in processing the required forms was not the fault of the employee. The General Manager has the necessary documentation which will allow the roll-in of this employee's COLA on a retroactive basis.

**M-01090 USPS Letter  
April 2, 1992**

This letter addresses an issue concerning the COLA roll-in provision under the current Collective Bargaining Agreement. Specifically, the issue relates to the application of this provision to a segment of employees covered by the Federal Employees Retirement System (FERS).

The COLA roll-in provision under the current agreement provides employees, who meet the eligibility requirements for an optional retirement, with the opportunity to roll into basic pay the COLA accumulated and paid under the predecessor agreement. This opportunity is available to employees covered under the Civil Service Retirement System and FERS.

Employees covered by FERS are not only eligible for optional retirement, but may also choose an immediate reduced annuity if they meet the required minimum retirement age and have at least 10 years of creditable service, 5 years of which must be creditable civilian service. When implementing the COLA roll-in provision under the current agreement, employees who may have been eligible for an immediate reduced annuity under FERS were not given the opportunity to roll in their COLA.

To remedy this situation, the Postal Service is agreeable to offering the aforementioned FERS employees the option to roll in COLA as specified under the agreement.

**C-00377 National Arbitrator Mittenthal  
December 12, 1983, H1C-3U-C 10899**

A supervisor who could not exercise the COLA roll-in option because of his supervisory status may not later do so when he returns to the bargaining unit.

**Promotion Pay**

**M-01637 Memorandum of Agreement  
August 23, 2007**

TCOLA/Promotino Pay Anomaly Remedy Implementation: The remedy implementation for the national level arbitration decision rendered by National Arbitrator Das on January 6, 2006 in [C-26334](#) (see below).

**C-26334 National Arbitrator Das  
January 6, 2006, E98N-4E-C 02081672**

The June 13, 1990 Memorandum of Settlement for Case No. H7C-NA-C 39 [[M-01011](#), below] requires that ongoing anomaly or ABC lump sum payments made pursuant to Paragraph 6 of that agreement include TCOLA. Remedy and other issues relating to the underlying grievance filed by the NALC's Anchorage Alaska Branch should be addressed by the parties.

**M-01011 Prearb**

**June 13, 1990, H7C-NA-C-39**

1. The United States Postal Service (USPS), American Postal Workers Union, AFL-CIO (APWU) and the National Association of Letter Carriers, AFL-CIO (NALC) hereby agree to a full, final and binding resolution of the above-referenced national level grievance. All those grievance matters currently pending which specifically challenge the step placement of an affected employee who has been promoted to a higher grade and subsequently reassigned to the employee's former grade will be reviewed and resolved in accordance with this Memorandum of Settlement, except that separate issues in those cases not within the scope of this Settlement Agreement are to be handled by the parties in accordance with the usual grievance arbitration procedure.

2. As a consequence of the current promotion practice, some employees promoted from steps A, B and C (referred to herein as affected employees), in some pay periods receive less compensation than if they had not been promoted and had remained in the former grade. To address this promotion pay anomaly, USPS, APWU and NALC agree to the following principle:

No employee will, as a consequence of a promotion, at any time be compensated less than that employee would have earned if the employee had not been promoted but had, instead, merely advanced in step increments in that employee's grade as a result of fulfilling the waiting time requirements necessary for step increases. This includes affected employees who are or were promoted to a higher grade and subsequently reassigned to their former grade.

3. Affected employees will be paid in accordance with the following principle:

For each pay period following the promotion the employee's basic salary will be compared to the basic salary the employee would have received for that pay period if the employee had not been promoted. For those periods when the latter amount is higher the difference will be paid to the employee in a one-time lump sum payment.

Employees affected during the 1984-87 or 1987-90 National Agreements shall be paid a lump sum from a \$80 Million fund established for this special purpose. APWU and NALC will work directly with USPS to develop a method to determine on a mutual basis which affected promoted employees will share in the fund, the amount of the lump sum payment for each employee and the timing of its issuance. It is intended that these one-time lump sum payments will satisfy all employee entitlements which arise out of the employment relationship, including the 1984 and 1987 National Agreements due to the effects of the anomaly and this Memorandum of Settlement, as well as any possible FLSA payments; however, this document should not be construed as constituting any waiver of possible individual rights under that statute.

4. The USPS, APWU and NALC agree that promoted employees will continue to be placed in the grade level and step assigned in accordance with USPS's current practice with waiting time rules applied in accordance with current practice.

5. Effective November 21, 1990, employees who have been promoted from Steps A,B or C and who have been reassigned to their former grade will be placed in the step they would have been in, with credit toward their next step increase, as if all service had been in the original grade. However, such employees who are subsequently re-promoted will be placed in the steps they would have attained, with credit toward their next step increase, as if they had remained continuously in the higher grade since the original promotion.

6. Promoted employees, whether promoted before or after the expiration of the 1987 National Agreement who experience pay anomalies after the term of the 1987 National Agreement will be entitled to a remedy (or remedies) in accordance with the principles stated above. However, the parties agree that this paragraph does not create any liabilities after the term of the 1987-90 National Agreement if promoted employees do not experience pay anomalies.

**M-01811 Prearbitration Settlement**

**April 23, 2013**

On several occasions our representatives met in prearbitration discussions on the above captioned grievance. Time limits were extended by mutual consent.

After reviewing this matter, we agree to resolve this grievance based on the following:

(A) The step and next step date assignment for a city letter carrier following a reduction in grade will be determined as follows:

1. To Former Lower Grade. The employee is assigned to the step and next step date as if service had been uninterrupted in the lower grade since the last time held.
2. To New Lower Grade. The employee is assigned to the step and next step date in the lower grade as if all postal service had been in the lower grade.

(B) The Postal Service will modify the Employee and Labor Relations Manual, Section 422.125, to incorporate the above principle in accordance with Article 19 of the collective bargaining agreement.

(C) The parties will jointly review the salary history for the grievant in this case. The grievant's compensation will be adjusted consistent with application of the principle in paragraph A.

**M-01355 Memorandum of Understanding  
June 28, 1995**

Memorandum of Understanding resolving promotion pay issues arising from the June 13, 1990 Memorandum of Understanding reached in case H7N-NA-C 39 and 73

**M-01338 Prearbitration Settlement  
August 7, 1998, H94N-4H C 97080228**

Claims for over-payment regarding the promotion pay settlement will be processed in accordance with Article 28 of the National Agreement and Section 437 of the ELM.

**M-00845 Step 4  
May 29, 1987, H1N-4C-C 35268**

Step increases are to be computed as if they had served continually in their initial assignment after their return to their former grade. The parties are to apply the provisions of Subchapter 422.261(a) of the Employee and Labor Relations Manual to the specific fact circumstances involved in this case to resolve the issue.

**Payroll Deductions/Allotments**

**M-01650 Memorandum  
September 11, 2007**

Re: Article 17.7.D Payroll Deductions/Allotments

No later than January 4, 2008, the Postal Service will increase the maximum allotments in the existing program by providing one additional allotment for the use of NALC bargaining unit employees.

**Reading Time**

**C-03235 National Arbitrator Garrett  
July 30, 1975, NB-NAT-2705**

Article XLI, Section 3.K. of the new M-41 Handbook requires payment to a carrier for time spent studying the new handbook at the direction or with the permission of the Postal Service, but only for a reasonable time. Whether individual carriers are entitled to compensation under Article XLI, Section 3.K. shall be handled through the Article XV grievance procedure with due regard to the facts in each individual case.

**M-01019 Step 4  
December 16, 1986, H1N-5B-C 14665**

Non-cite settlement providing 20 minutes pay at the straight time rate for time spent reading material sent by management to employees' residences. See also M-00925.

**Restoration—Reinstatement**

**C-00843 National Arbitrator Aaron  
September 3, 1982, H8-C-4A-C 11834**

Employees who had been on compensation under the

Federal Employees' Compensation Act and who after more than one year were partially recovered from their injuries and were reinstated to the same level and step they had occupied at the time of their separation were not entitled to the salary levels they would have occupied had they been continuously employed from the dates of their separation to the dates of their reinstatement.

Arbitrator Aaron decided this case as a purely contractual issue and declined to look at external law. It is the position of the NALC that, notwithstanding Arbitrator Aaron's decision in this case, the Federal Employees' Compensation Act requires that employees, who have been on compensation for more than one year and are partially recovered from injuries, are when reinstated entitled to the salary levels they would have occupied had they been continuously employed from the dates of their separation to the dates of their reinstatement. The Contract Administration Unit should be contacted in any cases concerning this issue.

**C-00432 National Arbitrator Mittenthal  
July 27, 1983, H1C-3W-C 10155**

Management must place employee in assignment for which reinstated employee bid while discharge was pending.

**C-10138 Regional Arbitrator P.M. Williams  
July 18, 1990**

Carrier who was Level 5, Step O when she resigned was properly reinstated at a different office as a Level 5, Step B.

**C-00344 Regional Arbitrator Holly  
October 30, 1973, AS000**

Rehired employee was improperly denied step restoration, where she had been promised before her resignation that she would be rehired at her old step.

**M-00488 Step 4  
February 2, 1981, H8N-3W-C 19684**

Part 420 of the Employee and Labor Relations Manual states the provisions of Chapter 7 of the Old Postal Manual remain in effect for bargaining unit employees. Part 753.312 of the old Postal Manual gives the appointing officer, who in this instance is the Postmaster, the authority to reinstate former postal employees at Step 1 of the salary level of the position or at any higher step which is less than 1 full step above the highest basic compensation received as a postal employee.

**C-11011 Regional Arbitrator Zumas  
October 8, 1990, E7C-2D-C 17702**

Management violated the contract by requiring an employee reinstated within one year to be placed at the bottom step of her grade.

## Saved Rate/Protected Rate

### **M-01572 Postal Service Letter**

**May 31, 2006**

Postal Service response concerning the granting of saved rate to qualified injured or disabled employees whose current salary exceeds the maximum salary of the new grade to which reassigned.

### **M-00092 Pre-arb**

**April 4, 1985, H1N-1J-C 18920**

If an employee, while assigned to the lower grade position and still in the protected rate period, voluntarily bids on a position in that same grade, such a bid is not considered a voluntary reduction to a lower salary standing at the employee's request.

## Saved Grade

### **M-00875 Step 4**

**December 5, 1988, H7N-3T-C 13947**

The issue in this grievance is whether management improperly refused to afford the grievant a saved grade of pay when his position was eliminated.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that since ELM 421.53 is not specifically limited to situations where employees are displaced due to technological or mechanization change, the grievant should be restored to the appropriate saved grade of pay, retroactive to March 12, 1988 and reimbursed \$110.32 taken from his pay on pay period 10, without payment of any interest on any backpay calculated.

### **M-01194 Step 4**

**March 10, 1994, H7N-5S-C-29947**

The interpretive question at the time of appeal which was considered at Step 4 involved the appropriate management level responsible for approval of saved grade.

After reviewing this matter, we mutually agreed that the issue of the appropriate management level for approval of saved grade was resolved by the changes to ELM 421.531 published in Postal Bulletin 21849 dated September 2, 1993.

## Sunday Premium

### **M-01041 APWU Step 4**

**January 27, 1983, H8C-2M-C-10215**

In the instant case, the grievant worked a portion of his scheduled tour, which called for him to work into Sunday, and took annual leave for the remainder of the scheduled tour. The portion of the tour for which the grievant received annual leave was that part which actually fell on Sunday.

The parties agree that under the definition of Sunday premium, an employee who has a scheduled tour, any part of which included Sunday, is entitled to "Sunday premium" for the hours actually worked in that schedule. This is true even though an employee may not work that portion of the tour which falls on the calendar day of Sunday, as was the case in this instance.

## T-COLA

### **M-01637 Memorandum of Agreement**

**August 23, 2007**

TCOLA/Promotion Pay Anomaly Remedy Implementation: The remedy implementation for the national level arbitration decision rendered by National Arbitrator Das on January 6, 2006 in [C-26334](#) (see below).

### **C-26334 National Arbitrator Das**

**January 6, 2006, E98N-4E-C 02081672**

The June 13, 1990 Memorandum of Settlement for Case No. H7C-NA-C 39 requires that ongoing anomaly or ABC lump sum payments made pursuant to Paragraph 6 of that agreement include TCOLA. Remedy and other issues relating to the underlying grievance filed by the NALC's Anchorage Alaska Branch should be addressed by the parties.

### **C-13671 National Arbitrator Mittenthal**

**June 16, 1994, H1N-5D-C 297 et al**

#### **Alaska T-Cola Grievances**

Any employees covered by the grievance who were not party to the federal litigation and hence not beneficiaries of the settlement and who actually worked between April 30, 1987 and July 10, 1992, should receive backpay for whatever FLSA overtime compensation they were denied.

### **M-01164 Step 4**

**October 5, 1993, Q90N-4Q-C 93049666**

During our discussion, I confirmed that the Postal Service implemented payroll system changes for the computation of FLSA overtime in all TCOLA jurisdictions effective paychecks dated July 31, 1992 (USPS pay period July 11-24, 1992). It is further my understanding that these revisions have remedied the problem raised in this grievance. Accordingly, we agreed to close this case.

## Step Increases

### **Memorandum of Understanding**

**1990 National Agreement, June 12, 1991**

RE: Granting Step Increases. The parties agree that periodic step increases will not be withheld for reason of unsatisfactory performance and that all other aspects of the current step increase procedures remain unchanged, unless otherwise provided for by the 1990 National Agreement.

The Employee and Labor Relations Manual (ELM) shall be amended to conform with the above stated agreement.

**M-01060 APWU Step 4**  
**October 23, 1987, H4C-3W-C-37256**

The issue in this grievance is whether there is a requirement for advance notice to employees whose step increases are withheld because of leave without pay usage.

During our discussion, we mutually agreed that current instructions require written advance notice when an employee's step increase is to be withheld. Inasmuch as no advance notice was given in this instance, the grievant's step increase is to be reinstated retroactively to the due date.

**M-01135 APWU Step 4**  
**January 16, 1981, H8C-5K-C 12565**

The question in this grievance involves whether the grievant, who used in excess of 13 weeks of leave without pay, should have her step increase withheld when she did not receive advance written notice.

After reviewing the file, it is our determination that the Notice of Withholding of Step Increase was received by the grievant on June 19, 1980. The step increase was due to be effective on May 31, 1980. Therefore, the notice is considered procedurally defective.

Current instructions require that advance notice must be given to the employee with respect to a decision to withhold an employee's step increase. Since the employee's step increase was due May 31, 1980, she failed to receive the required advance notice. Therefore, we find the grievance is sustained to the extent that the notice of withholding was not timely.

By copy of this letter, the postmaster is instructed to reinstate the grievant's step increase retroactively to May 31, 1980, and make any subsequent adjustments precipitated by this decision.

**M-00819 Letter**  
**April 18, 1988**

A Form 50 is processed to initiate a step deferral and when such deferral is subsequently canceled, appropriate action will be taken to ensure that reference to the canceled action does not appear in the employee's Official Personnel Folder or in the history section of subsequent Form 50's.

**C-00782 APWU National Arbitrator Bloch**  
**May 24, 1985, H1C-5F-C 21356**

An employee detailed to a higher level assignment should receive step increases in the higher level as if promoted to the position

**C-11016 Regional Arbitrator Howard**  
**December 7, 1990**

The Postal Service violated 546.132 of the ELM when upon reemployment it did not credit a formerly disabled employee with the step increases the employee would have acquired in her former position had there been no injury or disability.

See also [Information, Union's Right To](#)

**M-00570 Step 4**

**January 27, 1983, H1N-1N-D 5881**

The letter of proposed removal at issue in this case was reduced to a letter of warning at Step 2. Therefore, the letter of proposed removal shall be removed from the grievant's official personnel file.

**M-00548 Settlement Agreement**

**May 12, 1981, N8C-1M-C 3719**

A supervisor's discussion with an employee is not considered discipline and is not grievable, and "no notation or other information pertaining to such discussion shall be included in an employee's personnel folder." Although Article 16 permits a supervisor to make a personal notation of the date and subject matter of such discussions for his own personal record(s), those notations are not to be made part of a central record system nor should they be passed from one supervisor to another. A supervisor making personal notations of discussions which he has had with employees within the meaning of Article XVI must do so in a manner reasonably calculated to maintain the privacy of such discussions and he is not to leave such notations where they can be seen by other employees.

**M-00856 Step 4**

**May 27, 1988, H4N-5C-C 14779**

Local management may not refuse to forward an employee's personnel folder to another installation in order to prevent or delay the consideration of the employee's request for transfer.

**M-00104 Step 4**

**August 18, 1976, NCE-2263**

A steward should be allowed to review an employee's Official Personnel Folder during his regular working hours depending upon relevancy in accordance with the applicable provisions of Article XVII, Section 3.

**M-00944 Step 4**

**August 17, 1989, H7N-4J-C-13361**

The issue in this grievance is whether the grievant was entitled access to his psychological records pursuant to 353 of the Administrative Support Manual (ASM).

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agree that this dispute is subject to the Grievance and Arbitration procedure and resolvable by an arbitrator.

**M-01101 Pre-arb**

**November 12, 1992, H0N-3W-D 1157**

The issue in these cases is whether management was required to provide access to an employee's Employee Assistance Program (EAP) records and Official Personnel Folder (OPF) without the consent of the employee.

During our discussion, we mutually agreed to make available any discipline records found in the OPF of that employee and allow the union's representatives to review these records.

**M-00103 Step 4**

**November 17, 1978, NCS-12616**

There is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal records. However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder.

**M-01368 APWU Step 4**

**August 17, 1988, H7C-NA-C 21**

All records of totally overturned disciplinary actions will be removed from the supervisor's personnel records as well as from the employee's official personnel folder.

If a disciplinary action has been modified, the original action may be modified by pen and ink changes so as to obscure the original disciplinary action in the employee's official personnel folder and supervisor's personnel records, or the original action may be deleted from the records and the discipline record reissued as modified.

In the past element listings in disciplinary actions, only the final action resulting from a modified disciplinary action will be included, except when modification is the result of a "last chance" settlement, or if discipline is to be reduced to a lesser penalty after an intervening period of time and/or certain conditions are met.

## Postal Operations Manual (POM)

645.1 Pivoting Definition Pivoting is a method of utilizing the undertime of one or several carriers to perform duties on a temporary vacant route or to cover absences.

Nonpreferential mail may be curtailed within delivery time standards on the vacant route and/or on the route of the carriers being pivoted.

645.2 Pivoting Usage Pivoting is not limited to periods when mail volume is light and when absences are high, but also can be utilized throughout the year for maintaining balanced carrier workloads. *(Note: this language was formerly found in POM Section 617.2)*

### **M-01704 USPS Letter**

**July 30, 2003**

"This is in response to your correspondence dated April 29 (2003) regarding the reinstatement of Section 617.2 Employee Undertime Utilization-Pivoting in the Postal Operations Manual (POM). As discussed, the language was inadvertently deleted. The reinstatement of the language is not intended to impact its historical use or application."

**Note:** In the early 2000's management took the pivoting language out of the POM and then reinstated that language with the above letter from Manager of Labor Relations Policy and Programs dated July 30, 2003. The language now appears in POM Section 645. The importance of this letter is that it confirms that the reinstatement of the language does not impact its historical use, application or any established past practice.

### **M-01292 Prearbitration Settlement**

**July 28, 1997, F94N-4F-C 97005324**

The parties agreed that application of section 617.2 Pivoting, of the Postal Operations Manual (POM) does not change the provisions of Article 41, Section 1.C.4 of the National Agreement. Routers must be kept on their bid assignment and not moved off the duties in the bid description unless there is an undertime situation, or in "unanticipated circumstances."

### **M-00244 Step 4**

**July 8, 1982, H8N-5D-C 21854**

The issue in this grievance involves application of the overtime desired list vis-a-vis the pivoting of routes. The parties at the national level agree that a route is that which is identified by Article XLI, Section 1.B.4.(h) of the 1978 National Agreement.

### **M-00776 Step 4**

**March 28, 1977, NCE 4790**

When no letter carriers from the Overtime Desired List are available, management has the option of mandating overtime by juniority, of using part-time flexible employees, of asking for volunteers, or pivoting work on vacant routes.

### **M-00073 Step 4**

**December 9, 1983, H1N-4F-C 20559**

Management may pivot the route of the "hold-down" on a day-to-day basis without incurring any liability.

See Also [Weingarten Rights](#)

**M-01092 USPS v NLRB, No. 91-1373**  
**D.C. Cir, June 30, 1992**

Decision by the U.S. Court of Appeals for the D.C. Circuit upholding an NLRB decision concerning Weingarten rights (M-01093). The Board held that Postal Inspectors violated the Weingarten doctrine by refusing a request by a steward to consult with an employee prior to the employee's interrogation by the Inspectors.

**M-01504 Pre-arb**  
**November 6, 2003, E94N-4E-C-98045164**

The decision to conduct a controlled delivery is a coordinated determination made by appropriate Inspection Service authority. Postal inspectors are the only personnel authorized to perform a controlled delivery of mail, and inspectors are the only authorized law enforcement officials allowed to use USPS uniforms. Inspectors will not use carriers for controlled deliveries or investigative activities. Obtaining information from employees, which the employees have or could have gathered in the normal course of their duties without causing or increasing the potential for harm to them, is permitted.

**M-00586 Letter**  
**March 19, 1979**

The Chief Inspector's view as to the proper role of union representatives in Inspection Service interrogations.

**M-00585 Memo**  
**August 31, 1973**

Not-for-publication memo regarding the Inspection Service, initialed by J.H.Rademacher, and providing that Inspectors will not issue letters of charges, but will give Miranda warnings to those taken into custody.

## Interviewing Inspectors

**M-00225 Letter**  
**March 10, 1981, N8-N-0224**

The Postal Service agrees that a steward who is processing and investigating a grievance shall not be unreasonably denied the opportunity to interview Postal Inspectors on appropriate occasion, e.g., with respect to any events actually observed by said Inspectors and upon which a disciplinary action was based. See also [M-00864](#)

**M-01327 Step 4**  
**May 26, 1998, J94N-4J-C 98033595**

There is no disagreement between the parties at the National level that the Union may interview Postal inspectors if the interviews would be relevant and necessary for processing a grievance or in determining if a grievance exists. We further agreed that whether or not the steward's request was unreasonably denied is a matter of local fact circumstances that should be determined by a regular arbitrator.

## Inspector's notes, video tapes

**M-01308 Pre-arbitration Settlement**  
**July 14, 1997, E90N-1E-C 93048688**

The issue in this grievance is whether management violated the National Agreement by failing to turn over requested postal inspection service notes and video tapes during the investigation of a grievance.

During our discussion, it was mutually agreed that the following constitutes full and final settlement of this grievance:

The USPS understands its obligation to release properly requested information to the union that is relevant and necessary for collective bargaining and/or contract administration.

**C-10115 Regional Arbitrator Levak**  
**October 28, 1987, W4N 5N D 40950 et al, Interim Award.**

Management violated the contract when it refused: 1) the union's request that two postal inspectors appear as witnesses at the Step 2 meeting concerning a removal grievance, and 2) the union's request to interview the postal inspectors. See [C-07610](#), below, for final award.

**C-07610 Regional Arbitrator Levak**  
**November 3, 1987, W4N 5N D 40950 et al.**

First, National Agreement Article 16 requires that removal be for just cause. The Arbitrator construes and interprets just cause to include the due process requirement that a removed grievant have the right, through the Union, to effectively examine and cross examine her accuser; that notes taken by a Service manager or by a Postal Inspector relative to a removal are crucial to such an effective examination; and, that the denial of those notes therefore denies a grievant her rights under Article 16.

Second, where the Service utilizes Postal Inspectors to conduct an investigation in a removal case, it cannot be allowed to simply assert the defense that it relied only upon the formal Investigative Memorandum. The term "statement of facts relied upon," as used in the National Agreement, cannot be construed so narrowly. A Postal Inspector, in a discipline case, acts as the agent of the Service, and the Union is entitled to examine and explore all the facts within the knowledge of the Inspector, not just those favorable to the Service. In short, a Postal Inspector is to be treated as any other witness, and the Service's position is therefore contrary to the National agreement.

Third, it must be stressed that in the instant case, the only evidence relied upon is that obtained by the Postal Inspectors; the Service itself conducted no independent investigation, and had no independent evidence of its own to submit. Had such independent evidence been offered, the

Arbitrator would not have sustained the Union's motion, but instead would have stricken the Postal Inspector's Investigative Memorandum and disallowed the Postal Inspector's testimony, allowing the Service to attempt to prove its case through other evidence.

Fourth, the Arbitrator's decision is supported by general case authority. See, e.g., Elkouri & Elkouri, *How Arbitration Works*, "Right of Cross-Examination," BNA 4th Ed., at p. 316, where it is noted that an arbitrator will not accept an offer of evidence if it is conditioned upon nondisclosure to the other party, and that like reasoning applies to employer reliance on allegedly confidential records not available as proof. See also, 5 C.F.R. 1201.64, relating to the production of witness statements in Merit System Protection Board proceedings. In general, the failure to produce such statements upon request, and prior to cross-examination, results in the striking of the direct testimony. The Arbitrator cites these examples only for illustrative purposes, not as binding authority. His decision is rooted in his interpretation of the just cause clause and the National Agreement.

## Office of Inspector General (OIG)

### **M-01628 USPS Letter**

**March 22, 2005**

Please be advised that pursuant to the enclosed memorandum, certain types of work place investigations of employee misconduct are being transitioned to the Office of Inspector General from the Inspection Service. This transition will not restrict, eliminate, or otherwise adversely affect any rights, privileges, or benefits of either employees of the Postal Service, or labor organizations representing employees of the Postal Service.

### **C-28218 Regional Arbitrator Talmadge**

**April 30, 2009, B06N-4B-D 08387028**

The OIG's sending the grievant's doctor a letter instructing him to refrain from disclosure for one year the matters discussed and the Union's inability to question the doctor created a significant hurdle for the preparation of the grievant's case.

See also [Bidding](#)

**M-01563 Pre-arbitration Settlement  
February 2, 2006**

Article 7.3.B includes no provisions for reversion of full-time letter carrier duty assignments. Rather, consideration of reversion of reserve letter carrier assignments is initiated pursuant to the applicable provisions of Article 41.1.A.1 of the National Agreement.

**M-00869 Pre-arb  
January 12, 1989, H4N-5C-C 29967**

The duty assignment of a discharged employee shall not be posted for permanent bid until and unless the employee is actually removed from the rolls.

**M-00629 Step 4  
September 20, 1977, NCS 7524**

The duty assignment was vacant and consequently it was not appropriate to post all positions for bid. A full-time carrier's job must be abolished before paragraph "O" of Article 41, Section 3 is invoked.

**M-01157 Step 4  
January 14, 1994, HON-4R-C-9748**

We mutually agreed, that in accordance with Article 41 Section 1.A.1, a vacant or newly established duty assignment not under consideration for reversion shall be posted within five working days of the day it becomes vacant. The Employer should provide written notice to the Union, at the local level, of the assignments that are being considered for reversion and the results of such consideration.

**M-00904 Step 4  
August 25, 1988, H4N-1P-C 32698**

A newly established reserve regular duty assignment must be posted for bid according to Article 41.1.A.1 of the National Agreement.

**M-01389 Step 4  
October 25, 1999, B94N-4B-C 99118443**

The issue in the instant grievances involves a local district policy to consider all vacant routes for reversion pursuant to the provisions of Article 41.1.A.1. The parties agreed that a "blanket" policy to consider all vacant routes for reversion prior to posting is inconsistent with the provisions of Article 41.1.A.1. Routes considered for reversion are to be considered on a route by route basis. Accordingly, it was agreed that the Connecticut Vacant Route Policy of December 8, 1998, as well as the March 23, 1999 revised policy, are to be rescinded.

**M-00927 Step 4  
May 30, 1989, H1N-2B-C 9069**

When a route should be posted for bids after the incumbent carrier has successfully bid on another assignment is determined by local past practice.

**M-00933 Step 4  
September 13, 1988, H4N-5T-C 42287**

The phrase "additional duties as assigned" in a job posting violates the instructions in Article 41.1.B.4. See also [M-00956](#)

**M-00987 Step 4  
January 11, 1991, H7N-3A-C 24233**

The issue in this grievance is whether clerk craft employees that were excessed to the needs of the installation in the Dallas post Office and who volunteered for reassignment to letter carrier positions violated Article 12 of the National Agreement.

This grievance is sustained. The remedy requested by the union in the Step 2 appeal will be honored ("Promote the 14 Senior Part-time flexible letter carriers to regular positions and compensate them accordingly.")

Note: In this case management withheld letter carrier bid assignments and posted them for bids by clerk craft employees. (See file)

**M-01701 Joint Questions and Answers - Transitional Employees March 26, 2009 (Question # 35)**

Transitional employees may be assigned to cover residual or temporary vacancies not filled through the posting and bidding provisions of Article 41.1.A, the opting provisions of Article 41.2.B, and the provisions of Article 25 for temporarily filling higher level vacancies.

**Article 41.3.0  
Abolishment of assignment**

**C-15248 National Arbitrator Snow  
B90N-4B-C 92021294, March 22, 1996**

When routes are posted under the provisions of Article 41, Section 3.O it must be done "in accordance with the posting procedures in this Article". This reference is to Article 41, Section 1.B.2 which provides that such postings shall be installation wide unless the local agreement or established past practice provides otherwise.

**M-00061 Step 4  
May 26, 1983, H1N-3A-C 16392**

Normally the changing of routes on a swing does not require the routes to be reposted for bid. See also [M-00694](#)

**M-00694 Step 4  
February 6, 1987, H1N-3A-C 30176**

If a local Memorandum of Understanding contains the Article 41.3.O language and changes in T-6 strings are so great that the assignments are abolished, they should be reposted in accordance with Article 41.3.O. If a local Memorandum of Understanding does not contain 41.3.O language, reposting is not required. Changing one route in a T-6 string is not a cause for reposting regardless of

local Memorandum of Understanding provisions. See also M-00061

**M-00629 Step 4**  
**September 20, 1977, NCS 7524**

The duty assignment was vacant and consequently it was not appropriate to post all positions for bid. A full-time carrier's job must be abolished before paragraph "O" of Article 41, Section 3 is invoked.

**C-26512 Regional Arbitrator Klein**  
**May 1, 2006, C01N-4C-C 06029484**

... there may be "logically combinable portions" of other positions which may be utilized to bring a route up to a full eight hour assignment.

In the instant case, the Postal Service did not even consider applying the provisions of Section 141, 242, 243 or 271 of the M-39 prior to reverting the two positions/routes in question

**M-01185 Step 4**  
**March 10, 1994, H0N-3N-C 12419**

The issue in this grievance concerns the application of Article 41.3.0 of the National Agreement. During our discussion we agreed that:

1. Article 41.3.0 states that "For the purpose of applying that provision, a delivery unit shall be a postal station, branch or zip code area."
2. Article 30, Section B, item 18 of the National Agreement provides for "the identification of assignments comprising a section, when it is proposed to reassign within a installation employees excess to the needs of a section."
3. A "section" defined in a Local Memorandum of Understanding for the purposes of Article 30, Section B Item 18 is not necessarily a "delivery unit" for purposes of Article 41.3.0.

In the instant case, it appears that management restricted the assignments being posted under Article 41.3.0 to the assignments in the "section" which had been defined under item 18 of five carriers he/she relieves." Unless those were the only assignments in the delivery unit, this appears inappropriate.

**C-24768 National Arbitrator Briggs**  
**October 31, 2003, J94N-4J-C 98009292**

A route change of greater than 50% does not constitute an "abolishment" under Article 41.3.0 of the National Agreement.

**C-02006 Regional Arbitrator Dworkin**  
**February 11, 1983, C8N-4B-C 34114**

Routes can be so extensively changed that they should be considered abolished within the meaning of Article 41 Section 3.0.

**M-00986 Step 4**  
**July 26, 1990, H4N-3A-C 62482**

T-6 positions should be included in postings under Article 41.3.0.

**C-10271 Regional Arbitrator P.M. Williams**  
**September 11, 1990**

The abolishment of a router assignment should have triggered the provisions of Article 41, Section 3.0. But See C-10899.

**C-09966 Regional Arbitrator Parkinson**  
**April 23, 1990**

Management did not "abolish" a router assignment when it changed the starting time by 5 hours and changed some of the duties.

## Nonscheduled days

**C-00322 Regional Arbitrator Roumell**  
**September 27, 1984, C1C-4C-C 26726**

Management violated the contract when it posted an assignment with nonconsecutive nonscheduled days.

**C-09422 Regional Arbitrator P.M. Williams**  
**October 5, 1989, S7N-3A-C 1859**

Management did not violate the local agreement or past practice when it changed the non-scheduled days of two routes from fixed to rotating.

**C-10022 Regional Arbitrator Zumas**  
**May 16, 1990, N7N-1E-C 24324**

Management did not violate the contract when it changed the non-scheduled days of certain routes from fixed to rotating.

**C-11182 Regional Arbitrator Mackenzie**  
**January 3, 1989, N7N-1L-C 4201**

Management violated the contract when it posted an assignment with nonconsecutive nonscheduled days.

**C-10638 Regional Arbitrator P.M. Williams**  
**February 20, 1991**

Management did not violate the contract when it changed the nonscheduled days of a route from Saturday/Sunday to Sunday/Monday.

## Article 12.1.A 1. Probationary Period

The probationary period for a new employee shall be ninety (90) calendar days. The Employer shall have the right to separate from its employ any probationary employee at any time during the probationary period and these probationary employees shall not be permitted access to the grievance procedure in relation thereto. If the Employer intends to separate an employee during the probationary period for scheme failure, the employee shall be given at least seven (7) days advance notice of such intent to separate the employee. If the employee qualifies on the scheme within the notice period, the employee will not be separated for prior scheme failure.

### Memorandum of Understanding. Re: Article 12.1.

Probationary Period City carrier assistants who successfully complete at least two successive 360 day terms after the date of this agreement will not serve a probationary period when hired for a career appointment, provided such career appointment directly follows a city carrier assistant appointment.

**Probationary Employees.** Career employees serving their probationary period are members of the bargaining unit and have access to the grievance procedure on all matters pertaining to their employment except separation.

The Postal Service has a right to separate probationary employees at any time during their probationary period without establishing "just cause." Employees separated during the probationary period are contractually barred from filing a grievance concerning the separation. This includes challenges to their separation on the grounds of alleged noncompliance with the procedures in Section 365.32 of the ELM. However, a dispute as to whether or not the Postal Service's action separating the employee occurred during the probationary period is arbitrable because that is a precondition to the applicability of Article 12.1.A (National Arbitrator Shyam Das, Q98C-4Q-C 99251456, September 10, 2001, [C-22547](#)).

EL-312 Section 775.1.C provides that "[e]mployees who were serving their probationary period at the time of entry into active duty and who met the probationary time period while serving on active duty are considered as having met the probationary time."

### M-01841 Memorandum of Understanding August 13, 2014

#### Re: Article 12.1 - Probationary Period - Bidding

The parties agree to the following regarding bidding during a ninety calendar day probationary period:

Full-time career city letter carriers who are serving a probationary period pursuant to Article 12.1 of the National Agreement and applicable memoranda of understanding are eligible to bid for vacant duty assignments in accor-

dance with Article 41 .1 of the National Agreement.

Seniority for full-time career city letter carriers during their probationary period will be computed for the purpose of bidding pursuant to this agreement. This computation of such seniority does not create any additional obligation or entitlement for application of seniority not otherwise provided for in the National Agreement.

This agreement is effective from the date of signature. However, either party may terminate this agreement by providing 30 days written notice to the other party. This agreement is reached without prejudice to the position of either party in this or any other matter and may only be cited to enforce its terms.

### M-00542 Step 4

#### October 1, 1984, H1N-5G-C 23085

Under section III.C.51.a of a Management Instruction EL-830-83-11, all driver candidates must pass the end-of-training test (TD-287C and TD-287D). The word candidates is intended to apply to newly hired employees only.

### M-01008 MSPB Decision, November 19, 1987

Under 5 CFR Part 353 (MSPB), probationary employees who recover within one year of the commencement of compensation have an unconditional right to be restored to their former or equivalent positions. See also [M-01009, C-16189](#).

### M-00595 Step 4, April 10, 1980, N8-W-0278

Management may not refuse to allow opting as provided in Article 41, Section 2.B.3 and 2.B.4 in order to reserve the assignment for the training and performance evaluation of probationary employee.

### C-00284 Regional Arbitrator Schedler July 6, 1982, S1C-3U-D 4132

A probationary employee has access to the grievance procedure concerning all matters except discharge.

### C-22547 National Arbitrator Das Q98N-4Q-C 99251456, September 10, 2001

Article 12.1.A denies a probationary employee access to the grievance procedure to challenge his or her separation on the grounds of alleged noncompliance with the procedures in Section 365.32 of the ELM.

A dispute as to whether the Postal Service's action separating the employee occurred during his or her probationary period is arbitrable because that is a precondition to the applicability of Article 12.1.A.

## Supporting Cases

### Separation of "probationary" employees

#### **C-22547 National Arbitrator Das** **Q98N-4Q-C 99251456, September 10, 2001**

Article 12.1.A denies a probationary employee access to the grievance procedure to challenge his or her separation on the grounds of alleged noncompliance with the procedures in Section 365.32 of the ELM.

A dispute as to whether the Postal Service's action separating the employee occurred during his or her probationary period is arbitrable because that is a precondition to the applicability of Article 12.1.A.

#### **C-11193 Regional Arbitrator Zack** **December 27, 1992, N1T-1J-D 37462**

Grievance is timely although filed five months after employee was given Separation/ Disqualification on 92nd day of employment; employee was told he had no appeal rights and union filed grievance within 14 days of learning of the separation.

#### **C-07200 Regional Arbitrator Diltz** **June 8, 1987**

The requirement that the grievant be given a notice of separation is far different than the separation be issued or that the Service transmit to the grievant a notice of separation. The requirement that the grievant be given the notice means, in the common usage of the word given, that the Postal Service make known to the grievant or lodge in his hands the notice. The actions of the Postal Service failed to comply with this requirement. Constructive service is accomplished only when the Service makes known to the grievant or lodges in his hands the required notice. (Emphasis in original)

#### **C-20999 Regional Arbitrator Vaughn** **March 24, 2000**

The Employer's suggestion that a conclusion requiring written notice exalts form over substance is without merit. Article 12 requires that the probationary employee be "separated from service" during the employee's probationary period. A USPS rule, incorporated into the Agreement by Article 19, which requires that the notice given the probationary employee be in writing describes the method of separation and avoids misunderstandings and protects the Parties.

#### **C-25401 Regional Arbitrator Cohen** **August 16, 2004**

Whether the Postal Service told the Grievant in person on April 29, 2004, that she was terminated, is irrelevant. Postal Service regulations require that the notice be written.

#### **C-10280 Regional Arbitrator Porter** **September 24, 1990**

The arbitrator upholds the Letter Carrier position in this strange case. This position is taken for the following reasons:

1. The ELM provisions quoted above are meant to implement the provisions of the labor agreement in Article 12 §1. As noted by Arbitrator Dilts (above), mailing a notice to the address of the grievant may not be sufficient. The ELM requires that the notice be given to the employee. At least, given should mean an addressee signature of the receipt document.
2. Even if Mr. Jenkins received the separation notice, there would be a strong case for reversing the management action. Management permitted the employee in question to work not only further into the probationary period but beyond it. Mr. Jenkins was paid during this time. In fact, Mr. Jenkins testified that he did not miss a payroll period during this entire time.
3. Management is bound by its own mistakes. The grievant worked beyond his probationary period and received average or better than average ratings. If Mr. Jenkins is to be removed, that removal must be through the usual removal steps for employees, who have completed their probationary period.

Mr. Jenkins shall receive back pay and benefits from the date of his removal from the payroll in February of 1990.

#### **C-10021 Regional Arbitrator Ables** **May 17, 1990, E7N-2K-C 22828**

Although styled as a class action, a grievance which requested as remedy the restoration to duty of a separated probationary employee is not arbitrable.

**12.1.B.** The parties recognize that the failure of the Employer to discover a falsification by an employee in the employment application prior to the expiration of the probationary period shall not bar the use of such falsification as a reason for discharge.

**Falsification of Employment Applications.** This section provides that even if the Postal Service does not discover during the probationary period that an employee has falsified an employment application, the falsification may still be used as a reason for discharge. However, this section does not change the provisions of Article 16.1 requiring that non-probationary employees may only be disciplined for "just cause."

**12.1.C.** When an employee completes the probationary period, seniority will be computed in accordance with this Agreement as of the initial day of full-time or part-time employment.

Probationary employees hired directly after a CCA appointment have limited “seniority” rights. For example, opting eligibility for probationary employees is addressed in the answer to question 65 of the Questions and Answers 2011 USPS/NALC National Agreement.

Additionally, when their seniority is established after the completion of the probationary period, time spent in a probationary status is included and their seniority is computed as of the initial day of appointment as a career employee.

**M-00594 Step 4**

**November 25, 1980, H8N-2W-C 7259**

Probationary employees are without seniority rights, although retroactively computed, until satisfactory completion of ninety (90) days of employment. Therefore probationary employees are not entitled to exercise preference rights for a hold-down duty assignment pursuant to Article 41, Section 2.B.4.

**12.1.D.** When an employee who is separated from the Postal Service for any reason is rehired, the employee shall serve a new probationary period. If the separation was due to disability, the employee’s seniority shall be established in accordance with Section 2, if applicable.

This provision applies only to career employees that have been separated and rehired by the Postal Service.

# QUALIFICATIONS

**C-03015 National Arbitrator Fasser**  
**December 9, 1977, NBS 2737**

A city letter carrier who is the senior bidder is the "senior qualified bidder" where he possessed all of the qualifications for the job despite the fact that the record showed certain disciplinary actions taken against him.

**M-00151 Step 4**  
**January 13, 1981, H8N-5D-C 12936**

By virtue of the fact that the grievant is a letter carrier, in and of itself, makes him qualified to perform the duties on a city delivery route.

**M-00214 Step 4**  
**June 28, 1974, NBN 1572**

Information in the file reflects that a carrier not on the overtime assignment list was called in for an overtime assignment in lieu of the grievant whose name was on the list. Management contended that the grievant was bypassed, in this instance, because he did not possess the necessary skills to work the route referred to in the grievance.

It is our position that a regular full time carrier is considered to possess the necessary skills to work routes other than his own.

**M-00491 Step 4**  
**June 29, 1972, NW 555**

It is improper to deny a letter carrier's bid based on her attendance record.

**M-00311 Step 4**  
**October 31, 1985, H4C-1A-C 3263**

Employees will be required to submit only that information which is called for on PS Form 1717 when indicating a desire to be considered for duty assignments which are filled on a senior qualified basis.

**M-00279 Step 4**  
**January 31, 1977, NCS 4362**

An employee need only be "qualified" to carry a route. The T-6 carrier will not be moved off his string solely because he is "better qualified" to carry a particular route.

**M-00196 Step 4**  
**May 24, 1974, NBN 1325**

A full-time regular letter carrier is a "qualified" craft employee. The overtime provisions in Article VIII do not provide for the assignment of the "best qualified" employee available. See also [M-00291](#).

**C-00284 Regional Arbitrator Schedler**  
**July 6, 1982, S1C-3U-D 4132**

USPS physician: "I know of no postal policy that addresses a bona fide occupational disqualification based on height or weight."

**C-10006 Regional Arbitrator Skelton**  
**May 2, 1990, S7N-3W-C 88041**

Management did not violate the contract when it refused grievant's bid for a route on the basis that grievant was not qualified because of a twenty-five pound lifting restriction.

## **M-00786 Settlement Agreement**

**March 22, 1983**

The following applies to offices which permitted the use of radio headsets prior to November 25, 1982:

The use of radio headsets is permissible only for employees who perform duties while seated and/or stationary and only where use of a headset will not interfere with performance of duties or constitute a safety hazard. Employees will not be permitted to wear or use radio headsets under other conditions, including but not limited to: while walking or driving; near moving machinery or equipment; while involved in oral business communications; while in contact with, or in view of the public; or where the headset interferes with personal protective equipment. See also [M-00412](#), [M-00514](#)

## **M-00517 Step 4**

**July 5, 1984, H1N-4K-C 13691**

Whether or not such radios or tape cassettes should be permitted is determined by applying Article 14 and past practice at the local office to the fact circumstances. See also [M-00538](#).

## **M-00512 Step 4**

**June 6, 1984, H1N-3D-C 24747**

The Postal Service's current national policy concerning personal portable radio or tape cassette headphones was published in Postal Bulletin 21397, dated March 31, 1983. Any radio use not covered by the Bulletin is subject to local determination based on safety, past practice, operating feasibility, etc.

## **M-00499 Step 4**

**April 18, 1984, H1N-3U-C 25856**

Postal policy concerning personal portable radio or tape cassette headphones, published in Postal Bulletin 21379, November 25, 1982, and the settlement letter between the parties, dated March 21, 1983, did not apply to other types of radio equipment which may have been permitted. Whether or not a past practice existed involving the use of personal radios at the carrier cases is purely a factual dispute and is suitable for regional determination.

## **M-00482 Step 4**

**June 24, 1982, H8N-3T-C 36426**

The question raised in this grievance involves whether local management was discriminatory by denying the employee the use of his earphone radio while casing mail. Whether this matter was properly handled can only be determined by applying the fact circumstances involved against the past practice in the local installation.

## **M-00903 Step 4**

**February 1, 1989, H1N-3D-C 38508**

Any use of personal portable radios (in postal vehicles) that is not covered by the postal policy published in Postal Bulletin 21397, March 31, 1983, is subject to local deter-

mination based on such considerations as safety, past practice and operation feasibility.

## **C-09408 Regional Arbitrator Searce**

Management improperly changed a past practice of permitting radios to be used in vehicles.

# REASSIGNMENTS

See also **Limited Duty Transfers Excessing Withholding**

**C-00936 National Arbitrator Aaron  
January 24, 1983, H1C-5D-C 2128**

Pursuant to the provisions of 546.141 of the ELM, A full-time rural carrier who has incurred an on-the-job injury must be offered a full-time regular position in another craft that minimizes adverse or disruptive impact on the employee.

**C-05114 National Arbitrator Aaron  
October 22, 1979, ACE 20433**

The Postal Service did not violate the 1975-78 collective bargaining agreement the weekend of Fourth of July, 1977, the Labor Day, 1977, when it closed the operation of the Chester Post Office and gave the clerk craft employees scheduled to work on those given Sundays the alternatives of working in Philadelphia, taking annual leave, or taking leave without pay.

**C-07233 National Arbitrator Bernstein  
August 7, 1987, H1N-1J-C 23247**

The Postal Service may not permanently transfer an employee who sustained an injury on duty and who is performing limited duty to another craft on an involuntary basis.

**M-00081 Step 4  
December 6, 1982, H8N-4J-C 33933**

The issue in this case is whether management violated the National Agreement by reassigning the employee to another craft due to his inability to work safely.

It was mutually agreed that: An employee may volunteer for reassignment to another craft. However, the Postal Service may not unilaterally make such a reassignment.

**M-01685 USPS Letter  
June 4, 2008**

Response to NALC correspondence:

Bargaining unit employees requesting voluntary reassignment may use eReassign or they may submit written requests to Human Resources Local Services. Such written/manual requests will be entered in and processed through Reassign. Employees should request Human Resources contact-information through local management.

**M-01686 USPS Letter  
May 24, 2008**

Response to NALC correspondence:

Pursuant to Article 12.6 of the National Agreement and the July 21, 1987 MOU Re: Transfers, installation heads will consider requests for transfers submitted by employees

from other installations. The eReassign process does not change this contractual requirement.

If an employee submits eReassign requests for a transfer to more than one installation in a district and a request for one of those installations is considered but not granted, this does not close or delete requests for other installations. Rather, the other transfer requests will receive consideration, as appropriate, pursuant to Article 12.6 and the MOU Re: Transfers.

**C-11252 Regional Arbitrator Purcell  
October 5, 1991**

Management violated the contract when it refused to permit a letter transferred to the clerk craft for limited duty to return to the letter carrier craft to perform router work.

**M-01103 Step 4  
September 22, 1992, H7N-5R-C-30346**

The issue in these grievances is whether management violated the Agreement when the grievant was permanently reassigned work in another craft.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases.

Further, it is agreed that ELM, Part 546.14 is applicable in such cases. Accordingly, these cases are returned to Step 3 for further processing, including arbitration if necessary to determine whether the ELM provisions were appropriately applied

**M-00976 USPS Letter  
June 27, 1990**

The union representatives requested that the PS Form 2444, Postal Service Relocation Agreement, be changed to specifically exclude employees exercising their retreat rights. They also requested that the 12-month commitment not be additive.

After considering all responses, we have decided not to make the 12-month commitment additive. However, we do not feel that the changing of the Form 2444 as requested by the unions is necessary. It is understood and accepted that the national agreement takes precedence over the relocation commitment. If a bargaining unit employee was involuntarily relocated and, within the 12-month commitment period, exercises his/her retreat rights to return to the original duty station, the 12-month commitment would be waived by the Postal Service.

**M-00068 Step 4  
September 19, 1973, NE-5032**

Article XII of the National Agreement (Article XIII of POD 53, dated March 9, 1968) does not explicitly provide for the arbitrary permanent reassignment of ill or injured employees across craft lines against their wishes. Accordingly, the reassignment of the grievant in this case will be

canceled and he will be restored to the rolls of the letter carrier craft, without loss of seniority.

## **C-10309 Regional Arbitrator Levin August 20, 1990**

Management did not violate the contract when it did not allow the grievant to remain in the clerk craft after her improper placement there, which violated Article 37, and returned her to the carrier craft.

## **M-01578 Postal Service Correspondence May 24, 2006**

Pursuant to Article 12.6 of the National Agreement and the July 21, 1987 MOU Re: Transfers, installation heads will reconsider requests for transfers submitted by employees from other installations. The eReassign process does not change this contractual requirement.

If an employee submits eReassign requests for a transfer to more than one installation in a district and a request for one of those installations is considered but not granted, this does not close or delete requests for other installations. Rather, the other transfer requests will receive consideration, as appropriate, pursuant to Article 12.6 and the MOU Re: Transfers.

## **Supervisors Returning to Bargaining Unit**

### **C-10147 National Arbitrator Snow August 13, 1990, H7N-4Q-C 3766**

Arbitrator Snow held that when a former supervisor is re-assigned to the letter carrier craft, his full-time or part-time status is to be determined by reference to the seniority provisions of the Agreement. Accordingly:

- 1) If a letter carrier becomes a supervisor and returns to the letter carrier craft in the same office within two years -- thus retaining his seniority -- he may be assigned to a full-time position.
- 2) If a letter carrier becomes a supervisor and returns to the letter carrier craft after two years have passed, he loses seniority and thus may only be assigned to a part-time flexible position.
- 3) If a letter carrier becomes a supervisor and returns to the letter carrier craft in a different office, he will have accumulated no seniority and thus may only be reassigned to a part-time flexible position.

### **M-00805 Pre-arb March 28, 1986, H1N-1E-C-35862**

Management violated the National Agreement by not converting the grievant, part-time flexible, to full-time status prior to the voluntary reassignment of a supervisor from another post office to the vacant craft position. In this sit-

uation, the supervisor had been away from a craft position for more than two years. Therefore, the parties agree that the Postmaster General's letter of April 6, 1979, concerning voluntary reassignments and transfers applies, wherein it states:

Full-time non-bargaining-unit employees will be reassigned into full-time positions unless the reassignment is to a vacant bargaining-unit position.

All employees reassigned to positions in the bargaining-unit will have their seniority established in accordance with applicable collective-bargaining agreements.

The parties also agree to the following remedy:

Applying this criteria, the grievant will be placed in the bid position sought under this grievance and the incumbent will become an unassigned regular.

For the period beginning when the grievant would have been placed in the bid position, he will be compensated for the difference between his paid hours and forty hours in any week in which he did not receive pay for forty hours. See also [M-00806](#).

Note: The grievant in this case was the only PTF employee in the installation. (See File)

The controlling authority in cases concerning religious accommodation is U.S. Supreme Court's June 16, 1977 decision in *Trans World Airlines, Inc. v. Hardison* (M-01791). The Court held the TWA could not unilaterally breach its collective bargaining agreement with the union in order to accommodate Hardison's religious beliefs. Following the court's decision, the Postal Service issued its policy statement M-00588. The clearest explanation of how requests for religious accommodation should be handled in the Postal Service is found in Arbitrator Snow's regional decision in C-05018.

## **M-00588 USP Policy Statement November 25, 1981**

A fundamental part of the Postal Service Equal Employment Opportunity policy is that discrimination based on religion is prohibited. Further, the Postal Service is committed to making reasonable accommodations of employees' and applicants' religious needs with respect to regular schedules, scheduling of tests, training, interviewing, etc., on employees' and applicants' Sabbath or religious holidays. In this regard, managers must be particularly conscious of days on which employees, because of their religious beliefs, may be prohibited from working or required to attend religious services. Methods of accommodating which **are consistent with any applicable collective bargaining agreements** and our operating requirements must be attempted. (Emphasis Added).

## **C-04085 National Arbitrator Aaron January 25, 1984, NCE 11359**

Management may not assign an employee to a fixed schedule with Saturdays off for religious reasons, where the local memo provides for rotating days off.

## **C-03226 National Arbitrator Garrett January 8, 1979, NCS 7933**

It should be clear that this decision rests on the precise facts in hand. In particular, it is notable that Postmaster Simmons specifically cautioned Grievant Forehand in 1974 that there was no way that he could grant him a "permanent exception" to the requirement to work on Saturday. This advice correctly reflects that a proper application of the "equity" test in VIII-5-E entails consideration of each individual request for an exception on the basis of the facts which exist at the time each request is made. No flat and continuing exemption from Saturday work, for religions or other reasons, would seem permissible-

## **C-05018 Regional Arbitrator Snow July 15, 1985, W1N-5D-D 30932**

The arbitrator found that in the circumstances of this case the Postal Service violated the national agreement when it refused to accommodate the grievant's leave request made in order to respond to his religious needs. See also C-27999

## **C-27999 Regional Arbitrator Harris December 28, 2008**

The Grievant claims the right to be absent from work on religious holidays other than the Sabbath (Saturdays). The Service should try to accommodate these irregular requests, but it cannot do so at the expense of other employees. If the Service cannot accommodate such a request, the Grievant must attend work.

## **M-01086 Prearbitration Settlement May 5, 1992, H7N-1N-C 23241**

The issue in this grievance is whether management violated the National Agreement by posting and awarding a letter carrier position with Saturday as the regular day off in an otherwise rotating schedule.

During the discussion, it was mutually agreed that the following constitutes full agreement of this agreement:

1. The parties agree that reasonable accommodation of an individual's religious beliefs does not include acts violative of the National Agreement and/or provisions of a local memorandum of understanding.

## **M-00476 Pre-arb October 22, 1986, H1N-2U-C 17199**

In full and final settlement of this grievance, the part-time flexible employee should not have been passed over in order to accommodate his religious practices. The part-time flexible will be converted to the next full-time position of the same designation and PS salary level. This settlement does not express the position of the parties as to how full-time positions may be filled through means other than conversions of part-time flexible employees.

## **M-00178 Step 4 July 21, 1977, NCC 7451**

All requests for leave on Saturday should be treated on an equal basis as has been the past practice at this facility.

All too often NALC grievance handlers or arbitration advocates succeed proving that management violated the contract, yet still fail to obtain a substantial remedy. This can happen because union representatives advocates forget that remedies are not automatic once a violation is established. Rather, in contract cases the union carries the additional burden of demonstrating that the remedy requested is appropriate and necessary. This section offers strategies for supporting and obtaining meaningful remedies.

Experienced grievance handlers, both management and union, know that that the best strategy is to ask what an arbitrator would probably decide if the case goes to arbitration. Since over 500 arbitrators have handled NALC cases at one time or another, there are exceptions to any generalization about arbitrators. Nevertheless, the key to formulating remedy arguments is to understand how arbitrators perceive their role.

Most rights arbitrators view their function—as they should— as enforcing the terms of the National Agreement, a contract between the parties. They generally do not believe it is their function to police the relationship between the parties. Consequently, they view the proper function of remedies as “making the grievant whole,” that is, restoring any rights or entitlements that were lost because of a contract violation.

For example, if a transitional employee is worked instead of a part-time flexible in violation of Article 7.1.B.3, most arbitrators would accept that the appropriate remedy is to pay the part-time flexible for the hours he or she would have worked but for the violation. However, in many contract grievances the remedy issue is not so simple. For example, if a full-time letter carrier is denied a [special route inspection](#) that should have been given under the provisions of M-39 Section 271.g, almost all arbitrators will order that a special inspection be conducted forthwith. Where arbitrators differ is over whether any further remedy is due. After all, some have reasoned, the grievant was paid for any overtime hours that were worked as a result of the route being overburdened and there is nothing in the contract that requires anything more. In such cases, it is the NALC advocate’s responsibility to convince the arbitrator that an additional monetary remedy is required.

## The Arbitrator’s Remedial Authority

There is a legal maxim, “Without remedies there are no rights.” National Arbitrator Mittenenthal elegantly restated this in [C-03234](#): “The grievance procedure is a system not only for adjudicating rights but for redressing wrongs.” Nevertheless, some arbitrators have been persuaded by Postal Service arguments that since Article 15.4.A.6 provides that “all decisions of arbitrators shall be limited to the terms and provisions of this Agreement,” they must

look to the contract for the authority to formulate a remedy for any specific violation. Needless to say, there are no contractually specified remedies for most violations.

Citing the applicable U.S. Supreme Court decision, National Arbitrator Mittenenthal wrote in the June 9, 1986 award [C-06238](#) as follows:

*One of the inherent powers of an arbitrator is to construct a remedy for a breach of a collective bargaining agreement. The U.S. Supreme Court recognized this reality in the Enterprise Wheel case:*

*“...When an arbitrator is commissioned to interpret and apply the collective bargaining agreement he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.” *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 80 S. Ct. 1358, 1361 (1960). ([M-01787](#))*

As National Arbitrator Gamser observed in [C-03200](#):

*“... to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator.”*

\*\*\*

This excerpt from National Arbitrator Gamser’s award continues as follows:

*“... No lengthy citations or discussion of the nature of the dispute resolution process which these parties have mutually agreed to is necessary to support such a conclusion.”*

## Additional Compensatory Remedies Are Not “Punitive”

Most arbitrators, including many of our best, view their roles as limited to deciding and remedying the cases before them and not as policing the future relationship of the parties. It is almost always a mistake to seek a “punitive remedy” or to “punish” management for violating the contract. Many arbitrators view these concepts as more suited to tort or criminal proceedings in a court of law than to labor arbitration. See for example Regional Arbitrator Snow’s decision [C-20275](#).

This does not mean the union should restrict its remedy requests to the make-whole minimum—payment for demonstrated lost pay or benefits. NALC has been very successful in obtaining remedies in arbitration that more fully compensate grievants and the union for contract violations. However, this does mean that NALC arbitration advocates need to provide arbitrators with carefully thought-out arguments in support of remedy requests.

## Show the Harm

In order to be persuaded to grant a meaningful remedy, even in cases where the contract was unquestionably violated, many arbitrators need to be further persuaded that there was an actual harm that needs to be "made whole."

A good example concerns grievances about overtime bypass claims; cases in which a full-time employee not on the Overtime Desired List is required to work overtime instead of giving it to an available employee on the list. Most arbitrators are easily persuaded that the employee who should have worked the overtime was "harm(ed)," he lost money and should be paid, as a remedy, for the overtime hours he would have worked but for the contract violation.

Where they differ is over whether a remedy is due the non-OTDL carrier who was forced to work the overtime. Many have been persuaded by Postal Service arguments that, although there was technically a violation, the carrier was not harmed since he was fully compensated for the extra work at the contractual overtime rate.

The secret in such cases is to show that there was real harm beyond the mere fact that the contract was violated. For example, an arbitrator granted the grievant compensatory time-off in such a case because he was persuaded that there was a real harm. The grievant had testified about how distressed he was when the unexpected overtime forced him to miss a baseball game he had promised his son he would attend.

## Arguing for Additional Compensatory Remedies

The union makes a strong case for additional compensatory remedies if it can demonstrate that the violations were deliberate, repeated or egregious. Both the JCAM and national level arbitration awards provide support for additional compensatory remedies in such situations.

The JCAM's discussion of remedies for violating the opting provisions of Article 41.2.B (JCAM page 41-15) is particularly helpful because, as arbitrators should be reminded, it expresses the joint, agreed-upon position of both NALC and the Postal Service. The JCAM states:

Where the record is clear that a PTF or city carrier assistant was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.

In those circumstances in which a PTF or city carrier assistant worked 40 hours per week during the opting period (or 48 hours in the case of a six day opt), an instructional "cease and desist" resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

In circumstances where the [Article 41.2.B.4] violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party **to emphasize the commitment of the parties to contract compliance.** In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy. (Emphasis added.)

In other words, the JCAM specifically suggests and authorizes "compensatory" remedies beyond mere payment for lost hours and benefits in appropriate circumstances. It should be emphasized that this is a general principle that can, and should, be applied to other kinds of contract violations.

Similarly, National Arbitrator Howard Gamser in [C-03200](#) discussed remedies for failure to distribute overtime equitably among full-time letter carriers on the overtime list. He held that in ordinary cases the appropriate make-whole remedy was simply to provide an equalizing make-up opportunity in the next immediate quarter. However, he went on to say that the Postal Service must pay employees deprived of "equitable opportunities" for the overtime hours they did not work if management's failure to comply with its contractual obligations under Article 8.5.C.2 shows

*... a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter. C-03200, Arbitrator Gamser.*

## Persuasive Precedent

Arbitrators differ in background, training and attitudes. As

a generalization, however, most of them are either lawyers or have learned to think as lawyers do. This means arbitrators seek to be guided by precedent. They are more likely to grant the union's remedy if it can be shown that other arbitrators have granted similar remedy requests in similar circumstances. By showing arbitrators that there is precedent for a requested remedy, union advocates can increase an arbitrator's comfort and confidence levels. This underscores the need to conduct careful research to find support for remedy requests.

## Avoid Excessive Remedy Requests

Just as arbitrators look unfavorably to requests for punitive remedies, they do not like excessive or unreasonable remedy requests. Most arbitrators believe that excessive remedy requests can make settlement earlier in the grievance procedure impossible and will hold the union partially to blame. For example, Regional Arbitrator Gary Axon wrote as follows in [C-21475](#):

*The Union in this case must share part of the fault for the inability of the parties to settle the Becerra grievance. In the initial written grievance and throughout the grievance procedure, the Union claimed \$100 per day for Becerra until management corrected the errors and readjusted his route to eight hours. At the arbitration hearing, the Union modified its demand to \$10 per day. In the judgment of this Arbitrator, \$100 per day for the violation at issue in the case at bar would be excessive and punitive. Nothing in the record of this case comes close to demanding a payment of \$100 per day to Becerra. until management corrected its errors, and properly adjusted Grievant ' s route.*

\* \* \*

*There is precedent for the \$10 per day remedy for failure to properly adjust a letter carrier route. Management has 52 days to implement route adjustments under the M-39. Because of the Union ' s unreasonable initial demand for a monetary award of \$100 per day during the entire period Grievant's route was out of adjustment, the Arbitrator will limit the days the remedy is to be applied. Therefore, the Arbitrator will set a time frame covered by this Award to one hundred twenty (120) calendar days.*

## Research Strategies

NALC has a wide range of resources available for advocates researching remedy issues. The most important of these are the following:

**The NALC Materials Reference System (MRS)** This publication contains additional material concerning remedies for specific violations under the appropriate sections. For example, [Special Route Inspections](#), [Hold-Down Assign-](#)

[ments](#) and [Holiday Scheduling](#).

The NALC Activist has published many articles concerning specific contract violations and highlighting significant arbitration awards addressing remedy issues. This publication has links to back issues. There is also a [cumulative index](#) so that articles can be located easily.

**CAU Publications.** The Contract Administration Unit periodically publishes papers on a wide variety of contract related issues. For example, the recent CAU publication concerning the "Overtime, Staffing and Simultaneous Scheduling" contains a discussion of remedy issues in such cases and cites many useful national and regional arbitration awards. All these publications are available on the NALC website.

**The NALC Arbitration Search Program** has robust search capabilities and copies of over 30,000 national and regional arbitration awards. Because it contains so much material, it is often not the place to begin research. In most cases the publications discussed above should be reviewed first. However, it is an indispensable tool for all grievance handlers.

**Supporting cases.** To find cases supporting remedy requests, simply search under the applicable subject. In situations where the program finds a large number of cases, it is often useful to narrow the search to "key cases." In selecting cases, remember that quality is more important than quantity. Try to find cases that most closely match the facts and arguments in the case you are handling. Remember also that cases where the arbitrator explains the reasons for granting a remedy can be especially persuasive.

## Case Examples – Remedial Authority of Arbitrators, in General

### **C-03234 National Arbitrator Richard Mittenthal July 7, 1980**

The crucial issue, in other words, is whether there has been a contract violation. If a violation of Memorandum has occurred, as NALC claims, the arbitrator must then formulate an appropriate remedy. The authority to do so is implicit in the terms of the National Agreement. Indeed, the remedy for an alleged violation is a facet of every grievance. The parties specifically stated in the grievance procedure that NALC must designate the "remedy sought" in its appeal to Step 2 and in the discussions at Step 2. As the grievance passes through later steps to arbitration, the "remedy sought" remains an essential ingredient of the dispute. Hence, when the arbitrator considers the grievance and finds merit in the NALC claim, he is free to deal with the remedy question. That must have been contemplated by the parties. **The grievance procedure is a system not only for adjudicating rights but also for**

redressing wrongs. (emphasis added).

**C-06238 National Arbitrator Mittenthal  
June 9, 1986, H4N-NA-C 21 (4th Issue)**

One of the inherent powers of an arbitrator is to construct a remedy for a breach of a collective bargaining agreement. The U.S. Supreme Court recognized this reality in the Enterprise Wheel case:

*"...When an arbitrator is commissioned to interpret and apply the collective bargaining agreement he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency." United steelworkers of America v. Enterprise Wheel & Car Corp., 80 S. Ct. 1358, 1361 (1960).*

As Arbitrator Gamser observed in Case No. NC-S-5426,(C-03200) "...to provided for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator."

**C-03200 National Arbitrator Gamser  
April 3, 1979.**

However, to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such a remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator. No lengthy citations or discussion of the nature of the dispute resolution process which these parties have agreed to is necessary to support such a conclusion.

**C-04519 National Arbitrator Aaron  
December 19, 1984:**

Insistence that the absence of specific language in the National Agreement or the ELM requiring or permitting the granting of interest absolutely deprives an arbitrator of the authority to award interest in any case is unwarranted. Arbitrators are often called upon to interpret ambiguous language, the meaning of which is disputed by the parties. To do this, they require some leeway in the exercise of their discretion, especially in formulating appropriate types of relief for employees who have been unfairly punished.

**C-03039 Regional Arbitrator Eaton  
February 10, 1983.**

Even so, it flies in the face of equitable considerations, as well as good faith enforcement of contractual requirements, to deny a remedy where a violation has occurred. As the common law maxim has long had it, "**There is no right without a remedy.**" Nor is the party who has violated the Contract -- Local or National-- given much incen-

tive to observe it in the future if the violation is allowed to occur without penalty. (Emphasis added)

**C-04543 Regional Arbitrator Eaton  
December 6, 1984.**

Since at least the Steelworker Trilogy decision, it has been recognized by the highest authority that arbitrators charged with enforcement of collective bargaining agreements are necessarily vested with the right of fashioning reasonable and appropriate remedies where violations are found. This is a dispute which clearly requires a remedy for a repeated violation of the posting requirement at the North Hollywood Post Office.

**C-01414 Regional Arbitrator Goldstein  
June 29, 1981.**

Absent clear evidence on the record that the parties did not anticipate some way to make whole the individual employee harmed by a clear breach, I agree with the logic and reasoning presented by the Union in support of its claim for premium pay for the contract violation which clearly effected substantially this grievant's individual rights. The two precedent awards cited to me by the Union certainly support the sensible posture that an arbitrator under this contract has the authority to order a remedy which will make this grievant whole for the harm done him. In the instant matter, unlike the Gamser award noted above, no equalization formula or restructuring of future opportunities can be had. Instead, like the holiday scheduling breach facing Arbitrator Fasser, no possible future remedy can make up for time worked out of craft, away from the normal work location, and outside normal tour hours, when such assignment clearly breaches the collective bargain between the parties. Moreover, an insufficient remedy of this grievance would be an instruction to the parties - and particularly the employer - not to breach the agreement in the future. Thus, the only reasonably appropriate remedy available in light of the above fully explicated facts is the premium pay requested by the Union herein.

**C-10690 Regional Arbitrator Eaton  
August 13, 1990**

Where management failed to timely post a holiday schedule, an arbitrator has authority to grant a remedy "which is neither specifically authorized nor prohibited by the National Agreement."

**C-09889 Regional Arbitrator Stoltenberg  
March 5, 1990**

A remedy request of "make the carrier whole" should be read to include a demand for back pay.

**C-01641 Regional Arbitrator Bowles  
April 23, 1981**

It is elementary in arbitral jurisprudence that the Arbitrator cannot change the contract; he is a creature of the parties, a private person selected by them, whose powers are lim-

ited and defined by the parties. He cannot add a new obligation, nor can he diminish an obligation. He takes the contract as it is.

On the other hand, much has been decided as to the power of the Arbitrator to provide remedies. The employer here does not argue that the Arbitrator is without power or jurisdiction to decide a dispute of this kind, or this specific dispute. The argument is that he cannot provide the remedy requested by the Union.

In *Steelworkers v. Enterprise Wheel and Car Corp.* (1960) (M-01787), the U.S. Supreme Court ruled:

*"When an Arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of specific remedies which should be awarded to meet a particular contingency."*

Other cases standing for broad remedies include: *Selb Manufacturing Co. v. Machinists*, 305 Fed 2nd 177, 8th Ct. (1962), *Machinists v. Cameron Ironworks, Inc.*, 292 Fed 2nd 112 (5th Ct.), where it was held that "great latitude must be allowed in fashioning the appropriate remedy constituted in the Arbitrator's decision". These cases involve, for the most part, back pay awards, what did the parties intend? How did they show that intention, particularly in the specific language used? Many Arbitrators would rule that the appointment by the parties carries with it an implicit power to specify the appropriate remedy. See *Practice and Procedure in Labor Arbitration*, Owen Fairweather, BNA, 1973, Page 277, and *How Arbitration Works*, Elkouri 6 Elkouri, Pages 19-28, as well as Thirteenth Annual Meeting, National Academy of Arbitrators, 41 (1960), Discussion on Remedies in Arbitration, Labor Arbitration Perspectives and Problems Proceedings of the Seventh Annual Meeting, National Academy of Arbitrators, Page 201.

In his presentation at the 17th Annual Meeting of the National Association of Arbitrators (1964), published by the Bureau of National Affairs, Page 177, commenting on the Fleming statement Sidney A. Wolff said:

*"Recent court decisions, particularly since the Supreme Court trilogy, sustain this principle, and hold that to deny the Arbitrator power to fashion an appropriate remedy for breach of the collective agreement, we must find clearly restrictive language negating the Arbitrator's power to fashion a remedy."*

## Supporting Cases

### Remedial authority of arbitrators, in general.

- C-03200** National Arbitrator Gamser, April 3, 1979
- C-03234** National Arbitrator Mittenthal, July 7, 1980
- C-06238** National Arbitrator Mittenthal, June 9, 1986
- C-04519** National Arbitrator Aaron, December 19, 1984
- C-01641** Regional Arbitrator Bowles, April 23, 1981
- C-03039** Regional Arbitrator Eaton, February 10, 1983
- C-04543** Regional Arbitrator Eaton, December 6, 1984
- C-09889** Regional Arbitrator Stoltenberg March 5, 1990
- C-10690** Regional Arbitrator Eaton, August 13, 1990
- C-01414** Regional Arbitrator Goldstein, June 29, 1981
- C-06238** Natational Arbitrator Mittenthal, June 9, 1986
- C-20275** Regional Arbitrator Snow, Sept 11, 1987

## RESERVE REGULARS

Section 1. Posting A. In the Letter Carrier Craft, vacant craft duty assignments shall be posted as follows:

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All city letter carrier craft full-time duty assignments other than letter routes, Carrier Technician assignments, parcel post routes, collection routes, combination routes, official mail messenger service, special carrier assignments and night routers, shall be known as full-time Reserve Letter Carrier duty assignments. The term "unassigned regular" is used in those instances where a fulltime letter carrier does not hold a duty assignment.

**M-00421 Step 4**  
**May 15, 1981, H8N-3W-C 25865**

Reserve letter carriers are assigned to a unit other than their own when there is not an eight (8) hour assignment available at their bid unit. Instances may arise where the assignment is for more than one day at a time. However, if an eight (8) hour assignment becomes available at their bid unit no later than the previous workday, every effort is made to return the reserve letter carrier to his unit to fill the assignment. If the vacancy becomes available on a same day situation, management does not return the reserve letter carrier to his unit since he has already reported to another unit.

**M-00422 Step 4**  
**January 20, 1983, H1N-5D-C 5945**

Reserve letter carriers should work their bid duty assignment at the principal assignment area when there are eight (8) hour assignments available.

**M-00207 Step 4**  
**April 28, 1981, H8N-3W-C 25867**

Reserve letter carriers are assigned to a unit other than their own when there is not an eight (8) hour assignment available at their bid unit.

**M-00669 Step 4**  
**February 24, 1987, H1N-5G-C 22641**

Full-time reserve and unassigned regular letter carriers occupying a hold-down position pursuant to the provisions of Article 41.2.B.3 have the right to bid for a full-time duty assignment. If such letter carrier is the successful bidder, he shall be placed into the duty assignment pursuant to the provisions of Article 41.1.C.3. The resultant vacant hold-down will be filled pursuant to the provisions of Article 41.2.B.3-5, provided the anticipated duration of the resultant vacancy is of five (5) days or more.

**M-00082 Step 4**  
**October 31, 1985, H4N-3U-C 3319**

Whether or not "Reserve Letter Carrier" assignments should be posted for bid can only be determined by application of established past practice to the fact circumstances involved.

**M-00904 Step 4**  
**August 25, 1988, H4N-1P-C 32698**

A newly established reserve regular duty assignment must be posted for bid according to Article 41.1.A.1 of the National Agreement

**M-00097 Pre-arb**  
**September 6, 1985, H1N-5D-C 6601**

Management may assign a reserve carrier to a temporary assignment of 5 days or more rather than honor the request of a part-time flexible provided it can be demonstrated that honoring the opt would result in insufficient work for the full-time regular.

**M-00423 Step 4**  
**March 8, 1983, H1N-3Q-C 14118**

Full-time reserve letter carriers may opt for craft duty assignments in accordance with Article 41, Section 2.B.3., this includes available full-time reserve craft duty assignments.

**M-00353 Step 4**  
**May 24, 1985, H1N-5G-C 24094**

A reserve carrier who does not opt for a "hold-down" shall nonetheless assume the schedule of the "hold-down" if management elects to assign the reserve carrier to the route or assignment anyway.

This settlement only addresses the schedule a reserve letter carrier works. It does not effect a reserve letter carrier's entitlement to out-of-schedule pay. See [M-00940](#).

**C-09910 Regional Arbitrator Scearce**  
**March 10, 1990**

Management did not violate the contract when it created a reserve regular position to perform router work on an unrestricted number of unidentified routes.

**C-05186 Regional Arbitrator Snow**  
**September 30, 1985, W1N-5D-C 4592**

Where reserve regular letter carriers have been assigned to specific stations as a matter of past practice, management may not change to a city-wide area bench system of assignment.

# RESIGNATIONS

Sometimes management does have just cause to remove a letter carrier. Even when it becomes clear after a careful investigation that there is no possibility of saving a letter carrier's job, the union can still provide useful assistance and advice.

Letter carriers in such situations always have the option of resigning and leaving their postal careers with a clean record. As difficult as this decision may be, it at least allows letter carriers to leave and move on without the added burden of a record of separation from the Postal Service.

The regulations concerning resignations in Issue 17 of the *Employee and Labor Relations Manual (ELM)* provide the following:

## **365.2** Separations—Voluntary **365.21** Resignation

**365.211** *Definition of Resignation.* Resignation is a separation at the employee's discretion. Resignations must be accepted and are binding once submitted. However, employees may be permitted to withdraw their resignation request provided the request to withdraw is made before close of business on the effective date of the resignation.

**365.212** *To Avoid Separation for Cause.* If an employee submits a resignation after having been notified, either orally or in writing, that an adverse action has been proposed for removal, change to lower grade, or suspensions for reasons furnished him or her, the resignation **must be accepted**. A resignation **must also be accepted** if an employee receives a written notice of decision to separate the employee for reasons given in a notice of decision.

(Emphasis added)

A voluntary resignation can be to an employee's advantage because of the Privacy Act regulations found in Handbook AS 353 Guide to Privacy, the Freedom of Information Act, and Records Management. Section 5.2.b.2 of the AS 353 flatly prohibits the Postal Service from telling a prospective employer anything other than the simple fact that the employee resigned. It provides the following:

**5.2.b.2.** *Release of Employee Records for Credit or Job References.* Public information about a current or former employee may be given to prospective employers, or to credit bureaus, banks, federal credit unions, and other commercial firms from which an employee is seeking credit. For former employees, prospective employers may also be given the date and reason for an employee's separation from the Postal Service, but the reason for separation **must be limited to one of the following terms: retired, resigned, or separated.**

Other terms or variations of these terms (e.g., retired—disability) **may not be used**. If a credit firm or prospective employer requests more information, it must submit a release form signed by the individual. (emphasis added).

## **M-00192 Step 4**

### **August 1, 1985, H1N-5K-C 28025**

The date the employee designates as the effective date of their request to be voluntarily separated from the Postal Service, is the effective date of their resignation for administrative purposes.

## **C-10856 Regional Arbitrator Fogel**

### **May 14, 1991, W7N-5C-C 25778**

The resignation of the grievant was not effective, where the grievant was unstable when she wrote resignation note and asked for her job back the next day.

## **C-10874 Regional Arbitrator Barker**

### **May 28, 1991, W7N-5L-C 23727**

The resignation of the grievant was not effective, where the grievant told the supervisor to "take his job and shove it..." and later said he "quit," but refused to sign resignation form.

## **C-26993 Regional Arbitrator Wolitz**

### **March 2, 2007, GO1N-4G-D-06233682**

Mr. McShan decided to take matters into his own hands. He did not use the clear disciplinary procedure. Rather, he invented his own procedure. He decided, after shocking them by a completely unexpected call to the office and interview by an OIG agent who flashed a badge, to make them resign, under the guise that he was doing them a favor... He simply accused them of stealing, threatened termination or worse, and terrified them into signing right then and there a resignation form which was irrevocable unless overturned within 24 hours... He took advantage of blindsided, unsophisticated, trapped employees. This would be how he would solve his problem. If they resigned, he would not have to decide what disciplinary action to take and then defend it. He would not have to defend his failure to take more serious action to his bosses. He would be free of his problem and of them...The arbitrator finds that Mr. McShan's actions were a gross violation of Articles 16, 5, 15 and 19 of the National Agreement. These actions therefore cannot be allowed to stand. They are hereby reversed, rendered null and void.

## **M-01575 Interpretive Step Settlement**

**August 2, 2006**

Pursuant to the current provisions of ELM Sections 569.123 and 589.123, management will provide individual retirement counseling in the manner these ELM provisions were implemented prior to the circumstances resulting in this dispute. Previously established local methods of providing individual retirement counseling that were discontinued during the pendency of the instant dispute will be restored. This settlement does not prejudice either party's rights pursuant to Article 19 of the National Agreement.

## **M-01829 Prearbitration Settlement**

**December 20, 2013**

The issue in this case is whether the Postal Service is required to provide individual retirement counseling prior to a Voluntary Early Retirement (VER) decision irrevocability date when counseling is requested by a VER-eligible city letter carrier.

After reviewing this matter, we agree to resolve this grievance based on the following:

1. The parties agree that when the Postal Service offers a VER, it will abide by the provisions of the Employee and Labor Relations Manual concerning retirement counseling and the settlement in national case number Q01 N-4Q-C 07150373.
2. Human Resources Shared Service Center (HRSSC) will ensure that there are sufficient appointments available for employees applying for the VER provided eligible employees follow the application procedures and timelines for requesting such appointments.
3. In the unanticipated circumstance that VER counseling appointments requested pursuant to paragraph 2 are not available for all eligible employees prior to the irrevocable date, the national parties will expeditiously engage in discussions to address this issue. In the event agreement is not reached, the union may initiate a national-level dispute over this matter pursuant to the provisions of Article 15 of the National Agreement. Such grievance will be handled on an expedited basis including, if necessary, national-level arbitration scheduling.
4. If the parties are unable to reach agreement through the process provided for in paragraph 3, any employee who requests an appointment pursuant to paragraph 2 and does not receive an appointment prior to the irrevocable date may withdraw his/her VER application by submitting written notice to HRSSC in writing no later than ten calendar days following the irrevocable date. The terms of this paragraph are without prejudice to the position of either party should the union initiate a national-level grievance pursuant to paragraph 3.

This agreement is without prejudice to the position of ei-

ther party in the event that the Postal Service seeks to implement an incentive-based VER. Additionally, this settlement does not prohibit the Postal Service from making revisions to handbooks and manuals consistent with the terms of the collective bargaining agreement or bar the union from disputing such changes through the grievance/arbitration process.

## **M-01796 Interpretive Step Settlement**

**October 4, 2012**

The issue is whether a vacant duty assignment for a full-time route may be reverted without current route inspection data. After reviewing this matter, the parties agree to the following:

The parties recognize the employer's right to revert vacant duty assignments pursuant to Article 41 .1.A.1 of the National Agreement. However, under current regulations, determining whether an established city delivery route is full time (as defined by Handbooks M-39, section 242.122 and M-41, section 911 .2) will be made using one of the following procedures:

- A six day mail count and inspection in accordance with the provisions of Handbook M-39
- A route adjustment pursuant to Section 141 of Handbook M-39 (provided the data used is reasonably current and from the regular carrier assigned to the route)
- Evaluation through a national jointly agreed upon route evaluation process
- Evaluation through an authorized locally developed joint route evaluation process

The parties further agree that cases held pending resolution of this case will be addressed by the appropriate parties where the cases are being held. The parties will give consideration to the above agreement and any action taken by the joint route adjustment teams subsequent to the reversion.

This agreement in no way alters the current maximization provisions contained in Article 7.3 of the National Agreement.

## **M-01563 Pre-arbitration Settlement**

**February 2, 2006**

Article 7.3.B includes no provisions for reversion of full-time letter carrier duty assignments. Rather, consideration of reversion of reserve letter carrier assignments is initiated pursuant to the applicable provisions of Article 41.1.A.1 of the National Agreement.

## **M-01046 APWU Step 4**

**October 17, 1988, H4C-NA-C-100**

The issue in this grievance is whether the Memorandum of Understanding on Maximization requires the conversion of an assignment to full-time when a part-time flexible employee meets all the criteria for conversion, while working in a full-time assignment temporarily left vacant by a full-time employee who is on leave.

The parties agree that the language of the Memorandum

of Understanding, which applies only to those offices of 125 or more man years of employment requires the conversion of the senior part-time flexible to full-time status. The return of the full-time employee from extended absence may, dependent upon the local fact circumstances, require the reversion of the full-time flexible position pursuant to Article 12 of the National Agreement.

## **M-01157 Step 4**

**January 14, 1994, HON-4R-C-9748**

We mutually agreed, that in accordance with Article 41 Section 1.A.1, a vacant or newly established duty assignment not under consideration for reversion shall be posted within five working days of the day it becomes vacant. The Employer should provide written notice to the Union, at the local level, of the assignments that are being considered for reversion and the results of such consideration.

## **M-01389 Step 4**

**October 25, 1999, B94N-4B-C 99118443**

The issue in the instant grievances involves a local district policy to consider all vacant routes for reversion pursuant to the provisions of Article 41.1.A.1. The parties agreed that a "blanket" policy to consider all vacant routes for reversion prior to posting is inconsistent with the provisions of Article 41.1.A.1. Routes considered for reversion are to be considered on a route by route basis. Accordingly, it was agreed that the Connecticut Vacant Route Policy of December 8, 1998, as well as the March 23, 1999 revised policy, are to be rescinded.

## **C-26257 Regional Arbitrator Wolitz**

**November 12, 2005**

The Union has shown that management violated Article 41 by not notifying the NALC that a VOMA position was being considered for reversion. The Postal Service is hereby directed to post the VOMA position for bid immediately.

## **M-01777 Memorandum of Understanding**

**April 4, 2012**

RE: Multiple Days of Inspection

A dispute remains between the parties regarding multiple days of inspection of less than six days during a six-day route count and inspection pursuant to Chapter 2 of Handbook M-39. In an effort to minimize grievance activity on this issue in the field while it is discussed at the national level, the parties have agreed to the following:

Local management will, if it determines it necessary when scheduling an inspection to inspect on more than one day, inspect on no more than three days during the week of count and inspection. If local management elects to inspect on two or three days during the week of count and inspection, local management will be responsible for completion of the 1838-C one of the days. The letter carrier will count the mail and complete the 1838-C on the other days of inspection. When local management elects to inspect on two or three days, the PS Form 3999 closest to the selected street time on the PS Form 1840 will be used to transfer territory.

The terms of this memorandum are applicable from the date of the memorandum through May 26, 2013, unless mutually extended by the parties.

## **M-01652 Memorandum**

**September 11, 2007**

Re: Alternate Route Evaluation Process

The National Association of Letter Carriers, AFL-CIO (NALC) and United States Postal Service recognize the importance of maintaining routes in proper adjustment throughout the year. The existing route evaluation process is often a source of disputes between the parties. In an effort to minimize such disputes and to make the route evaluation and adjustment process more efficient and less intrusive, the parties agree to establish a National Task Force to jointly explore alternative methods of evaluating, adjusting and maintaining routes.

The topics to be addressed by the National Task Force will also include the evaluation and adjustment of routes through the minor route adjustment process pursuant to Section 141 of Handbook M-39.

The Task Force will be established with the signing of this Memorandum, and will include four members from the NALC, and four members of the Postal Service. The Task Force will report to the NALC National President and the Postal Service Vice President, Labor Relations. A final report outlining findings and recommendations will be issued by the Task Force no later than six months from the date of this Memorandum. The term of the Task Force may be extended by mutual agreement of the parties.

## **M-01684 Management Letter**

**March 24, 2006**

**MANAGERS, DELIVERY PROGRAMS SUPPORT (AREA)**

SUBJECT: Transferring Allied Times in Carrier Optimal Routing Route Adjustments

The Carrier Optimal Routing (COR) program is an important component of the delivery strategy for city carrier route adjustments during the spring, 2006 adjustment season. Delivery and Labor Relations have been meeting with the National Association of Letter Carriers concerning the use of COR for city carrier route adjustments.

An issue of concern is the transfer of street allied time. Currently, in the manual route adjustment process, management determines the appropriate allied time for transferred territory from the PS Form 3999. It is important that COR users continue to follow this policy. A software change is under development in COR that will identify and report allied time by the associated sector/segment and address range. This report will be available to COR users so that it can easily be reviewed to determine if the allied time associated with territory that has been transferred is appropriate and should be transferred. The route adjuster can then transfer the appropriate allied time to the route that has received the transferred territory.

During the software development stage for this Allied Times Report, it is important that the COR field users manually review the PS Form 3999 for each route to identify any allied time that is associated with the route. A decision can then be made regarding the appropriate allied times to transfer using the same process that is currently utilized for manual adjustments.

## **M-01661 Pre-arb**

**July 30, 2007**

The Carrier Optimal Routing (COR) process is a management tool to assist with the adjustment of letter carrier routes pursuant to Chapter 2 of Handbook M-39. No components of the COR program or application of the COR process vAW be inconsistent with the route inspection, evaluation, or adjustment process found in Chapter 2 of the M-39 Handbook.

Should the Postal Service develop COR for use in the minor route adjustment process, related components of the COR program or application of the COR process will be consistent with the specific minor route adjustment formula in Section 141.19 of Handbook M-39. Local parties that have established, by mutual agreement, an alternate route adjustment method may also use applications of COR consistent with their alternate route adjustment process.

**M-01571 Memorandum of Understanding  
May 6, 2006**

Memorandum of Understanding regarding multiple days of inspection of less than six days during a six day count and inspection in accordance with Chapter 2 of the M-39.

(See extensions, [M-01613](#), [M-01683](#))

**M-01613 Memorandum of Understanding  
May 3, 2007**

Extension of Memorandum of Understanding regarding multiple days of inspection ([M-01571](#) above) through May 26, 2008.

**M-01683 Memorandum of Understanding  
April 29, 2008**

Renewal of Memorandum of Understanding regarding multiple days of inspection ([M-01571](#), [M-01613](#) above) through May 8, 2010.

**M-01543 Memorandum  
June 30, 2005**

Local management will, if it determines it necessary when scheduling an inspection to inspect on more than one day, inspect on no more than three days during the week of count and inspection. If local management elects to inspect on two or three days during the week of count and inspection, local management will be responsible for completion of the 1838-C one of the days. The letter carrier will count the mail and complete the 1838-C on the other days of inspection. When local management elects to inspect on two or three days, PS Form 3999 closest to the selected street time on the PS Form 1840 will be used to transfer territory.

**C-23767 National Arbitrator Briggs  
October 29, 2002, B94N-4B-C 97105300**

The Postal Service may not properly inspect city carrier routes on all six days of the count and inspection week. See also [M-01503](#), [M-01505](#),

**M-01503 Memorandum of Understanding  
November 4, 2003**

Memorandum resolving issues left open by arbitrator Briggs' award in [C-23767](#), above.

**M-00258 Pre-arb  
December 16, 1982, H8N-NA-C 46**

The matters at issue in this grievance involved certain changes made in Handbook M-39, with particular concern about the change to provide for the curtailment of mail during the week of mail count and inspection.

During our discussions, it was mutually agreed to settle the matters at issue in this grievance by reverting to the pre-1981 requirement of not curtailing mail during the week of count and inspection. It was further agreed that the NALC would withdraw case H8N-NA-C-46 from the pending arbitration list.

Enclosed herewith is an advance copy of a Postal Bulletin notice which amends Sections 221.134 and 221.136 of Handbook M-39, appropriately reflecting the terms of the agreed to settlement.

**M-01215 Prearbitration Settlement  
July 20, 1994, H0N-NA-C 19021**

Prearbitration Settlement concerning March 8, 1994 M-39 and M-41 changes regarding the implementation of delivery point sequencing.

**M-01076 Step 4  
June 26, 1992, H0N-3F-C 320**

The issue in this grievance is whether management violated the National Agreement by adjusting routes based on inspections performed using five-shelf cases.

During our discussion, we mutually agreed that, since the M-39 provides only for standard six-shelf letter cases, route inspections and adjustments should not have been performed on non-standard cases.

We further agreed to remand the question of remedy, if any, to step 3 for further processing.

**M-01024 Postal Bulletin 21791  
July 13, 1991**

Postal Bulletin Notice of revisions to M-39 Section 220 made in order to permit the use of hand-held computers for data collection.

**M-01284 Prearbitration Settlement  
April 17, 1992, H94N-4Q-C 97026594**

The issues in this grievance is whether management is required to define "reasonably current" in Part 141.19 of the M-39 Handbook as "18 months" for all adjustment purposes.

During our discussion, it was mutually agreed that the following constitutes full settlement of this grievance:

1. The parties acknowledge that, as an alternative to the methodology provided in the unilateral process, managers may, at their option, use the route inspection and adjustment procedure in Chapter 2 of the M-39 Handbook to capture initial DPS savings. After using the M-39 inspection and adjustment procedures to adjust routes, the unit is considered to be out of the unilateral process and the M-39 procedures, including Part 141.19 Minor Adjustments, will apply thereafter.
2. Finally, it is agreed that Part 141.19, Minor Adjustments, including the reference to "reasonably current" remains unchanged.

## Starting Times

### **M-00330 USPS Letter November 16, 1972**

Early reporting during count week should be scheduled as stated in Part 215.6b of the M-39 Handbook. Although there is, of course, a cost related to the additional time used for mail counts, this cost is relatively modest when weighed against the benefits gained from a fair and thorough route evaluation.

### **M-01088 Step 4 August 19, 1975, NB-N-4625**

The record shows that the letter carriers at this office were denied an earlier starting time during the count and inspection week referenced in the grievance. It is our position, that preceding the count week, carriers' schedules shall be posted requiring an earlier starting time to count the mail.

Accordingly, the grievance is sustained to the extent that local officials shall be instructed that in the future they shall schedule carriers to an earlier starting time during the count week.

## Leave During

### **M-01105 Pre-arb November 24, 1992, H0N-1F-C-2731**

The issue in this case is whether management violated the National Agreement by excluding from the leave chart those carriers whose routes are scheduled for count and inspection during the week selected.

During our discussions, we mutually agreed that:

- 1) All advance commitments for granting annual leave must be honored except in serious emergency situations.
- 2) Management may block out vacation time in order to perform route inspections, provided that the dates in question are blocked out prior to vacation selection.
- 3) When management blocks out vacation time, an equivalent number of additional slots must immediately be made available for vacation selection. Unless the local union agrees otherwise, the slots will be added to the number of slots required by the Local Memorandum during the 30 day period immediately before or after the dates of the inspection.
- 4) This grievance is remanded to Step 3 for the determination of remedy.

### **M-01017 USPS Letter January 29, 1982**

This refers to our meeting of January 12, during which we

discussed the various provisions set forth in the revised M-39 Handbook. With regard to our discussion on committed annual leave vs. canceling annual leave for route inspection purposes, this will clarify that the provision set forth in Article 10, Section 4, D, is controlling. It is not the intent of the Postal Service to cancel annual leave approved during the vacation planning process in order to comport with subsequently scheduled route inspection periods.

### **M-00334 Step 4 April 5, 1973, NW 3155**

The Postmaster will cease and desist from canceling the employee's bid vacation period during the choice period due to count and inspection week.

## Overtime During

### **M-01106 Pre-arb November 24, 1992, H7N-1N-C 34068**

The issue in these cases is whether management violated the National Agreement by requiring a carrier who was not on the overtime desired list to work overtime during the week of count and inspection.

During our discussions, we mutually agreed to the following:

- 1) The overtime provisions of Article 8 and the associated Memorandums of Understanding remain in full force and effect during the week of count and inspection except that henceforth:
  - a) On the day during the week of inspection when the carrier is accompanied by a route examiner, management may require a carrier not on the overtime desired list or work assignment list to work overtime on his/her own route in order to allow for completion of the inspection.
  - b) On the other days during the week of inspection when the carrier counts mail, management may require a carrier not on the overtime desired list or work assignment list to work overtime on his/her own route for the amount of time used to count the mail.
- 2) The grievance is remanded to Step 3 for the determination of remedy.

### **M-01217 Pre-arb April 5, 1995, HON-3W-C 6949**

The issue in these cases is whether management violated the National Agreement by requiring a carrier who was not on the Overtime Desired List to work overtime the day of a "one-day count".

During our discussions, we mutually agreed to the following: The overtime provisions of Article 8 and the associ-

ated Memorandums of Understanding remain in full force and effect except that on the day of a "one day count", if the carrier is being accompanied on the street, management may require a carrier not on the Overtime Desired List to work overtime on his/her own route in order to allow for completion of the count.

## Route Examiners

**M-00133 Pre-arb**  
**April 6, 1979, NCC 7851**

Route examiners will not instruct carriers to change their mode of delivery on the day of route inspection. Carriers must perform their duties and travel their route in precisely the same manner on inspection day as they do throughout the year.

**M-00181 Step 4**  
**October 22, 1981, H8N-5B-C 19237**

Section 231.5 and Part 232, Methods Handbook, Series M-39 are explicit as to the conduct of route examiners and must be followed. Section 242.344, M-39 provides guidance for necessary action when warranted.

## Union Role

**M-00026 Step 4**  
**February 10, 1977, NCS 4760**

There is no provision for active union participation in count and inspections. However, if the union cites a specific problem in a specific instance, local management may give consideration to union verification of an alleged incorrect count, missed mail, etc.

**M-00006 Step 4**  
**November 23, 1977, NC-W-9132**

Management's decision not to allow Stewards to be present during discussions individual carriers and their supervisors relative to route inspections was not contrary to provisions of the National Agreement.

**M-00025 Step 4**  
**December 15, 1977, NCC 10028**

There is no obligation under the provision of Article XXIII of the National Agreement to allow union representatives to enter postal installation for the purpose of acting as observers during the week of count and inspection.

## Dry Run

**M-00740 Step 4**  
**August 31, 1977, NCS 6378**

Union to be officially notified of dates of route examinations. Dry run to be conducted as provided by instructions in Section 217 of the M-39 Handbook.

**M-00745 National Joint City Delivery Meeting**  
**December 11-12, 1979**

Operational changes, affecting an entire unit should be effected no later than the dry run, should remain in effect through the week of count and inspection and thereafter until conditions require further modifications. It is not intended to stop withdrawal of mail or use an accountable mail cart during the week of count and inspection, and then discontinue such practices immediately thereafter.

**C-10574 Regional Arbitrator Scearce**  
**January 30, 1991**

Management violated various provisions of the M-39 when it did not provide a dry-run or let the carriers count mail and fill out Forms 1838; monetary remedy awarded.

## Breaks, Route Exam Credit

**M-00242 Step 4**  
**September 13, 1976, NCE 2097**

Management should not deduct reasonable comforts/rest stops from the total street time during route inspections if deduction of the time is contrary to pass local practice.

**M-00230 Step 4**  
**March 17, 1982, H8N-4B-C 32585**

Letter carriers are entitled to two 10-minute break periods. If less than this is incorporated into the routes, appropriate action should be initiated to ascertain that this break time is reflected in the route adjustments. Management does not have the contractual right to deny the utilization of these breaks.

**M-00745 National Joint City Delivery Meeting**  
**December 11-12, 1979**

When both breaks are selected on the street in accordance with M-39 Section 242.34a, one or both of these breaks may in some instances properly be designated as in the post office. When this happens, however, the break or breaks will be recorded as street time and must occur during the period from clocking out of the office and clocking back in from the street.

## Form 1838

**M-01543 Memorandum**  
**June 30, 2005**

Local management will, if it determines it necessary when scheduling an inspection to inspect on more than one day, inspect on no more than three days during the week of count and inspection. If local management elects to inspect on two or three days during the week of count and inspection, local management will be responsible for completion of the 1838-C one of the days. The letter carrier will count the mail and complete the 1838-C on the other days of inspection. When local management elects to inspect on two or three days, PS Form 3999 closest to the se-

lected street time on the PS Form 1840 will be used to transfer territory.

**M-00638 Step 4**  
**March 30, 1977, NCW 3630**

Existing Delivery Services instructions call for the completion of Form 1838 in duplicate. Therefore, in the future local officials are to ensure that the 1838 forms are completed in duplicate utilizing carbon paper.

**C-10574 Regional Arbitrator Scearce**  
**January 30, 1991**

Counting of mail and filling out of the 1838 by a route examiner rather than the letter carrier should be the exception rather than the rule; management violated the contract by having the route examiner count the mail and fill out the 1838 on all of the days of a special route examination.

**M-01181 Step 4**  
**June 9, 1994, H0N-5T-C 1387**

When conducting a one-day mail count, the appropriate form to record the carrier's performance is on PS Form 1838-C. The PS Form 1838-C does not specifically measure the carrier's performance by pieces per minute.

## Form 1838-C—lines 1 & 2—counting mail

See also [Counting Mail](#), below.

**C-03221 National Arbitrator Mittenthal**  
**June 4, 1979, NCW 8752**

The appropriate time standard for a Montgomery Ward coupon booklet is eight pieces per minute. See also C-09463

**M-00961 Step 4**  
**March 15, 1990, H7N-5T-C 15747**

The issue in this grievance is whether sequenced mail should be counted as letters on PS Form 1838. Address cards cased into letter separations should be recorded on line 1 of Form 1838

**M-00187 Letter**  
**November 25, 1975**

Magazines such as TV Guide, Readers Digest and similar items are considered as magazines for mail count purposes and, in accordance with Part 922.4 Methods Handbook, M-41, are not to be included in the letter size count.

**M-00745 National Joint City Delivery Meeting**  
**December 11-12, 1979**

Generally, if mail supposedly sequenced for delivery by the mailer is received at the delivery unit out of sequence, it would be recorded on Form 1838 and 1838C in Columns 1 or 2 as appropriate.

**M-00603 National Joint City Delivery Meeting**  
**December 4, 1975, Item C**

The items are considered catalogs. Both of the items have 24 or more pages, 22 of which are printed and provide a complete enumeration of items arranged systematically with descriptive details. Therefore, the items should be recorded under Item 2 (mail of all other sizes) on Form 1838.

**M-00323 Memorandum of Understanding**  
**August 1, 1975**

Letters are to be defined as that mail which will fit vertically without bending or folding between the two closest shelves on the carrier's case.

**M-00774 Step 4**  
**October 31, 1978, NCS 12191**

Whether the carriers are told to case "thin flats" into the flats case or into the letter case is not totally significant. What is critical is that they receive the proper credit of eight pieces per minute for those pieces of mail designated as "flats" which are routed into the letter case.

**M-00064 Step 4**  
**June 30, 1983, H1N-1Q-C 12090**

Management may direct that certain types of mail, for which flat credit is given, will be cased in the letter mail separations.

**M-01328 Step 4**  
**May 26, 1998, A94N-4A-C 97088876**

During our discussions of this case, the parties agreed that there is no dispute between the national parties with respect to the definition of letter-size mail for purposes of conducting mail counts and route inspections, as clearly agreed to between the parties in Chapter 1, Case Configuration Letter Size Mail, Building our Future by Working Together, as well as Section 922.4111 of Handbook M-41 and Section 121.12 of Handbook M-39.

## Form 1838-C—Line 14 Accountables

**M-01012 Step 4**  
**October 1, 1991, H7N-3C-C 34862**

We mutually agreed that letter carriers are required to sign for stamps-by-mail. Additionally, appropriate credit will be reflected on line 14 of PS Form 1838 during route examinations.

**M-01411 Step 4**  
**May 17, 2000, H94N-4H-C-992212361**

The issue in this case concerns the recording of time credit during route count and inspection on Form 1838, when carriers retrieved bar code scanners.

The parties agreed that the carriers were properly given credit for the scanners on Form 1838 on line 14. If in-

structed by local management to retrieve scanners as a separate process, time credit is recorded on line 21. Scanners are not accountable items. However, for the purposes of completing an 1838, if the carriers are instructed by management to retrieve scanners as part of the normal process of obtaining accountable items, time credit is recorded on line 14.

## Form 1838-C—Line 15 Withdrawing mail

### **M-00892 USPS Letter** **January 3, 1989**

Assistant Postmaster General Mahon's letter pertaining to our position on the issue of spreading mail to carriers in no manner is designed to abate the provisions of Section 116.6 of the M-39 Handbook, entitled "Carrier Withdrawal of Letters and Flats", which addresses the fact that carriers may be authorized to make up to two withdrawals from the distribution cases prior to leaving the office, plus a final clean up sweep as they leave the office.

### **C-03245 National Arbitrator Aaron** **June 24, 1980 N8-W-0039**

Where Carrier Handbook M-39 did not mention specifically "Trays" with regard to withdrawal of mail and the M-41 Manual did so specifically, the two must be read together and the Postal Service may not deny credit in the route evaluation process to letter carriers for time actually spent in the office withdrawing mail from trays at or near their desks and preparing that mail for casing.

### **M-01288 Step 4** **May 21, 1997, D94N-4D-C 96034273**

The issue in this grievance is whether the time spent cutting and removing bands/straps and certain procedures concerning the handling of unaddressed pieces in "shared mailings" should be included on Lines 15 and 21, respectively, of Form 1838.

The parties mutually agreed to remand this case to Step 3 for application of National Case No. N8-W-0039, Benjamin Aaron, dated June 24, 1980. Additionally, the parties agreed that the time allowance for determining the number of pieces of unaddressed flats of a "shared mailing" and placing them at the back of the bundle should be recorded on line 21, Form 1838.

## Form 1838-C—Line 20 Personal needs

### **M-00399 Step 4** **December 7, 1979, NC-S-18945**

Wash-up time has been associated with the personal needs time allowed on line 20 of the 1838; therefore, it is our determination that line 21 credit was not warranted.

## Form 1838-C—Line 21 Recurring office work

### **M-01566 Step 4** **May 12, 1994**

If it is expected that the use of PS Form 3996 will be of a recurring nature after the adjustments resulting from the route inspection are implemented, then the appropriate time should be entered on Line 21 when completing PS Form 1838-C. However, if the use of PS Form 3996 is not expected to be of a recurring nature after the adjustments are implemented, then the time filling out of PS Form 3996 should be entered in Line 22. The determination for whether or not the time filling out of PS Form 3996 is recurring or non-recurring must be made locally on a route-by-route basis.

### **M-00726 Step 4** **October 14, 1981, H8N-3P-C 31294**

A Union steward's activities (grievance handling), when necessary and if occurring weekly or more often, may be appropriate for inclusion by the letter carrier on line 21 of Form 1838-C.

### **C-09381 Regional Arbitrator P. Williams** **September 30, 1989, S7N-3V-C 11464**

Management violated the contract when it did not give the NALC steward 45 minutes credit on Line 21 for steward duty.

### **M-00731 Step 4** **December 8, 1978, NCS 12601**

There is no provision for allowing a time credit for reversing a letter to remind the carrier that there is also a parcel for delivery.

### **M-00399 Step 4** **December 7, 1979, NCS 18945**

Wash-up time has been associated with the personal needs time allowed on line 20 of the 1838; therefore, it is our determination that line 21 credit was not warranted.

### **M-00605 Settlement Agreement** **August 26, 1980**

The parties mutually agree that the following listed work activities may be appropriate for inclusion by the letter carrier for actual time credit on line 21 of the Form 1838-C when such activities are determined to be recurring and necessary in the performance of the carrier's office routines:

1. Performing window caller service.
2. Weekly safety talks and other appropriate unit discussions.
3. Travel to and from the throwback case or to other designated locations to return mark-up mail and mis-throws.

4. Replenishing the forms pouch.
5. Wash-up time, in excess of personal time provided for on line 20, if such additional or longer wash-up time is provided for during office time in a Local Memorandum of Understanding negotiated pursuant to Article XXX or, if pursuant to local past practice, additional or longer wash-up time had been granted and included on line 21.
6. Official communications including, but not limited to, general delivery; CMU Clerk inquiries; and responding to inquiries from supervisors.
7. Facing or separating collection mail upon return to office.
8. Verifying hold mail.
9. Union steward activities (grievance handling), when necessary and if occurring weekly or more often.

The following guidelines will be applied in implementing this settlement.

- a. The appropriateness for granting credit for the listed items on line 21 of Form 1838-C is dependent on a determination that the incident is (1) recurring; (2) necessary to the successful completion of the activity; and (3) not otherwise properly included as part of another established time credit on lines 1 through 20.
- b. Additional work activities determined to be recurring and necessary in the performance of letter carrier office routines also may be appropriate for inclusion for actual time credit on line 21. This may include a recognition of activities peculiar to local circumstances. For example, if carriers are required to travel from one floor to another when going from the time clock to the case in the morning, credit for such time may be granted on line 21. It may also include reading the official U.S. Postal Service bulletin board in those offices where carriers are specifically instructed to refer to the bulletin board on a recurring basis in order to be informed as to frequently changing information for which they are responsible. Another example would be when it is required on a recurring basis to obtain mail sacks or other necessary supplies to successfully complete the activity.
- c. Entries for time spent referring to Forms 3982 are not ordinarily appropriate items for inclusion on line 21 of the Form 1838-C. However, in exceptional situations where, due to unusual local conditions, the number and frequency of removals makes it necessary for a letter carrier to make recurring references to the Form 3982, a line 21 entry may be appropriate.

#### **M-00971 Step 4**

**July 23, 1990, H7N-5T-C 7855**

If it is determined that the use of forms 1571 is of a recurring nature, then appropriate time should be entered on Line 21. If the use of these forms is not of a recurring nature, then the time should be entered on line 22 during the mail count and inspection. The determination of recurring or non-recurring must be made locally.

#### **M-00736 Step 4**

**February 15, 1978, NCC 8505**

The method for handling CMU mail and throwbacks need not be included on line 21 as a separate function when performed in conjunction with another activity such as loading time. The carrier will receive full credit for the time required to perform these combined activities.

#### **M-00739 Step 4**

**June 15, 1977, NCC 5495**

Time entry on line 21 for canceling stamps is disallowed. The canceling of stamps is a minor function with a negligible amount of time involved. Consequently, it would not adversely effect the carrier's overall office time. If for some reason a significant volume is received on a regular basis, the matter should be brought to local management's attention for other corrective action.

#### **M-00631 Step 4**

**December 16, 1977, NCS 9256**

Time credit for canceling stamps, reading the postal bulletin, and washing hands are not appropriate entries for line 21 of Form 1838. Those items are not daily recurring functions for which appropriate credits are already allowed in the standard

#### **M-01288 Step 4**

**May 21, 1997, D94N-4D-C 96034273**

The issue in this grievance is whether the time spent cutting and removing bands/straps and certain procedures concerning the handling of unaddressed pieces in "shared mailings" should be included on Lines 15 and 21, respectively, of Form 1838.

The parties mutually agreed to remand this case to Step 3 for application of National Case No. N8-W-0039, Benjamin Aaron, dated June 24, 1980. Additionally, the parties agreed that the time allowance for determining the number of pieces of unaddressed flats of a "shared mailing" and placing them at the back of the bundle should be recorded on line 21, Form 1838.

#### **M-01411 Step 4**

**May 17, 2000, H94N-4H-C-992212361**

The issue in this case concerns the recording of time credit during route count and inspection on Form 1838, when carriers retrieved bar code scanners.

The parties agreed that the carriers were properly given credit for the scanners on Form 1838 on line 14. If instructed by

local management to retrieve scanners as a separate process, time credit is recorded on line 21. Scanners are not accountable items. However, for the purposes of completing an 1838, if the carriers are instructed by management to retrieve scanners as part of the normal process of obtaining accountable items, time credit is recorded on line 14.

## Waiting for Mail, Non-recurring Work

### **M-00243 Step 4**

**December 1, 1975, NBN 5989**

If the occasion arises where a carrier would review the Forms 3982 during the week of count and inspection, the time utilized for this review would be entered on line 22 of the Form 1838. But See [M-00605](#), Item c.

### **C-03229 National Arbitrator Garrett**

**ND-NAT-0001, August 27, 1979**

The base minimum time allowance must be given for lines 14, 15, 19, and 21 when completing Form 1838. However, the base minimum time allowances are only used to determine the standard office time and not the average actual office time.

## Form 1840

### **M-01543 Memorandum**

**June 30, 2005**

Local management will, if it determines it necessary when scheduling an inspection to inspect on more than one day, inspect on no more than three days during the week of count and inspection. If local management elects to inspect on two or three days during the week of count and inspection, local management will be responsible for completion of the 1838-C one of the days. The letter carrier will count the mail and complete the 1838-C on the other days of inspection. When local management elects to inspect on two or three days, PS Form 3999 closest to the selected street time on the PS Form 1840 will be used to transfer territory.

### **M-00981 USPS Letter**

**November 12, 1980**

Transmittal letter for December 12, 1980 Postal Bulletin notice clarifying that "Representative times no longer apply to lines 14, 15, 19 and 21."

### **M-01403 Step 4**

**February 03, 2000 G94N-4G-C 97121978**

The issue in this grievance is whether management may eliminate detached address mail (Marriage mail) from the PS form 1840 in evaluating routes during a 6-day mail count and route inspection.

During our discussions we mutually agreed that such adjustments must be made in accordance with the provisions of Handbook M-39, subchapter 24.

We agreed that there presently are no provisions permitting certain days of the route examination to be excluded from the 6-day average, as outlined on the 1840, based on locally developed criteria.

### **M-00321 Step 4**

**July 16, 1975, NBW 3871**

No justification is shown for the representative times in question. Simply stating "too much" or relying on what other carriers do is not reasonable or equitable to justify representative time.

### **M-00745 National Joint City Delivery Meeting**

**December 11-12, 1979**

Rubber stamps are not to be used for making comments on Forms 1840. Comments relating to individual performances must reflect the recognition that each comment, although dealing with the same basic subject, will no doubt vary by some degree from a similar comment about another employee performing the same function.

## Form 1840-B: Time Card Analysis

### **M-00403 Step 4**

**May 4, 1977, NCW 5333**

The (Forms 1840-B) should be taken during normal mail volume periods between the first week of September and May, 31, excluding December.(M-39:242.31).

### **M-00745 National Joint City Delivery Meeting**

**December 11-12, 1979**

The National policy is that office time is fixed as provided in Section 242.31a, M-39. This time is derived from information contained in Columns A or B of Form 1840. It is also policy that Form 1840B information must be considered in accordance with Section 242.322, M-39 Handbook, and appropriate action be taken if this analysis indicates a regulating of performance by an employee during the week of Count and Inspection.

### **M-00395 Step 4**

**January 17, 1980, N8-E-0142**

The following represents our mutual understanding of the cited portion of Section 242.32b3 of the M-39 Handbook: In the event a selected week cannot be considered because the carrier was not serving the route on at least one of the days of that week, the next available week should be considered. As a matter of clarification, the next available week may fall outside the month and should be considered in the seven week random time card analysis with the exception of the months of June, July, August and December. Upon request, the local union may request and shall receive access to the appropriate records to determine which route or routes did not have seven weeks for time card analysis purposes for the aforementioned reason. After the route or routes are identified to local management, appropriate steps will be taken to assure that the route or routes are evaluated correctly.

## **M-00745 National Joint City Delivery Meeting December 11-12, 1979**

When weeks have been randomly selected, in accordance with 242.32, M-39, for the first seven week period of the timecard analysis, the fact that a holiday falls within one or several of the selected weeks is not justification for excluding such week or weeks from consideration.

When Forms 1840-B are being completed, all time used in relation to a route on a day when the regularly assigned carrier works the route, including overtime and/or auxiliary assistance, is to be shown as part of the timecard analysis.

## **M-01339 Pre-arbitration Settlement August 21, 1998, G90N-4C-C 9601 4836**

The issue in this grievance is whether management violated the M-39 Handbook by utilizing the 1840-B to determine a route's average street time when the analysis period contained days when an authorized DPS work method was not used, but during the week of mail count and route inspection, one of the approved DPS work methods was used.

After discussing this matter, we agreed that no handbook violation occurred. However, the parties agree that the following will apply prospectively as an interim step until this issue is revisited from September through November 1998:

1. If there are not sufficient weeks in accordance with the M-39, Section 242.323 where the regular carrier was utilizing either of the approved DPS work methods during the normal 1840-B analysis period (7 eligible months preceding), then the analysis period will be comprised of the immediate six weeks prior to, and the two weeks after, the count and route inspection.
2. If such weeks do not exist where the regular carrier served the route using an approved DPS work method, the maximum number of weeks available prior to the mail count and route inspection, and up to four weeks after the count week, will be used for the random timecard analysis of street time.
3. The start of the 52 day period for implementation of route adjustments will begin the day after the final qualifying week for the 1840-B analysis period.

## **Form 3999: Street Time**

### **M-01539 Prearbitration Settlement May 2, 2005, Q98N-4Q-C 02003047**

The parties agree that when determining whether deducted 'street time waiting for transportation' should be included in the evaluated street time of a route, management will consider whether the waiting time is anticipated to be of a recurrent nature.

**M-01543** Memorandum June 30, 2005 Local management will, if it determines it necessary when scheduling an inspection to inspect on more than one day, inspect on no more than three days during the week of count and inspection. If local management elects to inspect on two or three days during the week of count and inspection, local management will be responsible for completion of the 1838-C one of the days. The letter carrier will count the mail and complete the 1838-C on the other days of inspection. When local management elects to inspect on two or three days, PS Form 3999 closest to the selected street time on the PS Form 1840 will be used to transfer territory.

The terms of this memorandum are applicable from the date of the memorandum through May 26, 2006, unless mutually extended by the parties.

### **M-00745 National Joint City Delivery Meeting December 11-12, 1979**

There are only two options from which a base street time can be selected, and they are as shown in Section 242.32a, M-39 Handbook.

### **M-00600 National Joint City Delivery Meeting November 16, 17, 1983, Page 7**

Minor adjustments should not be based solely on form 3999 information, but should also include review and analysis of other current information such as, DUVRS, Form 3996, 1571, etc. concerning the route being considered for adjustment.

## **Counting Mail**

See also [Form 1838-C—Lines 1 & 2](#)

### **M-00814 Step 4 July 8, 1987, H4N-5T-C 42333**

Normally, a spot verification of the mail volume is adequate to determine that the mail count is accurate. However, the parties agree that based on the intent of Section 221.131 of the M-39 Handbook, the carrier may, upon request, verify the entire mail count.

### **M-00254 Step 4 October 23, 1975, NBS 6234**

The route examiner will count and record the mail on the day(s) of the inspection. However, the carrier will count and record the mail all other days during the count week except on the day(s) of inspection.

### **M-00026 Step 4 February 10, 1977, NCS 4760**

There is no provision for active union participation in count and inspections. However, if the union cites a specific problem in a specific instance, local management may give consideration to union verification of an alleged incorrect count, missed mail, etc.

## **M-00536 Step 4**

**February 11, 1985, H1N-3T-C 36385**

Based on the intent of Section 221.131 of the M-39 Handbook, the carrier may, upon request, verify the entire mail count.

## **M-01216 Pre-arb**

**April 11, 1995, H7N-3Q-C 38909/39493**

The issue in these cases is whether management violated the National Agreement by not allowing carriers to count the mail counted by the supervisor during a "one day count".

During our discussions, we mutually agreed to the following: On the day of a "one day count" when management performs the mail count the carrier serving the route, upon request, may verify the count.

## **M-01112 Memorandum**

**September 17, 1992**

For the purpose of conducting mail counts and route inspections on traditional casing equipment, letter size is defined as mail that can be cased into the letter separations of a standard six-shelf case without folding or bending (approximately six inches in height). Letter size does not include newspapers, rolls, small parcels, flats, magazines, or catalogs under two pounds, even though these items may be cased into the letter separations of a standard case without folding or bending.

When mail counts and route inspections are conducted in a unit where letter mail is cased into four-and/or five shelf case configurations that have been established as a result of any joint agreement, the existing definition of letter sized mail will not change; the 18 and 8 standard remains applicable. Under these conditions, local management will meet with the local union prior to the dry run training to determine an efficient means to verify mail of questionable size during the week of count and inspection, e.g. a measuring strip on each case or use of a template as a reference point.

The acceptance by the parties of this approach to letter size definition and case configuration is without prejudice to the parties' rights under Article 34 of the National Agreement, and shall not be cited by either party in the grievance or arbitration procedure or any other forum which does not pertain to the implementation of this agreement.

## **Route Adjustments**

### **C-12098 National Arbitrator Mittenthal**

**July 10, 1992, H7N-iT-C 39547**

#### **"Hempstead" Award**

"For a route adjustment to be warranted, it must be triggered by some present condition."

### **C-03207 National Arbitrator Aaron**

**NC-C 11675, August 1, 1979**

The issue in this national level case was whether management violated the National Agreement and applicable M-39 provisions when it reduced a carrier's office time to less than standard office time on the grounds that the carrier had been regulating his performance. In sustaining NALC's grievance arbitrator Aaron wrote as follows:

"Conclusions that an employee is regulating his performance are in their nature subjective; there are so many variables that may affect performance that it is almost impossible to determine quantitatively how much delay, if any, is due to the deliberate attempt by a worker to slow down. The evidence adduced by the Postal Service to support its conclusion that [the carrier] was, in effect, soldiering on the job during the week of the special count and inspection, is insufficient to sustain its burden of proof.

Even if it had sustained that burden, however, it seems clear that the only course available to it was to discuss the problem with [the carrier], as provided in section 242.211 of the M-39 Manual, and to reduce the allowable office time to the average standard allowable time, as provided in Section 242.213. What the Postal Service actually did was unilaterally to change a current work or time standard without advance notice to the Union, in violation of Article 34 of the National Agreement."

### **M-00792 Pre-arb**

**December 11, 1987, H4N-4E-C 4252**

When a route requires permanent adjustment to place the route on as nearly an 8-hour basis as possible, permanent relief will be afforded. The amount of daily relief will be identified by management in advance and such relief will be permanent relief and documented on Forms 1840 or a minor adjustment work sheet for the assignments being adjusted.

The afforded permanent relief may be provided by reducing carrier office and/or street time using any of the methods provided for in part 243.21b of the M-39 Handbook, Transmittal Letter 11, November 15, 1985.

Permanent relief will not be provided by giving auxiliary assistance or by requiring the regular carrier to work overtime.

The parties acknowledge management's right to provide the cited relief in the most efficient and economical manner.

Note: M-39 Section 243.21 states:

Permanent relief may be provided by reducing carrier office or street time. Consider items such as additional segmentations, use of routers, hand-offs, relocating vehicle parking, withdrawal of mail by clerks or mailhandlers, pro-

viding a cart system for accountable items, etc. Where actual transfer of territory is necessary, see 243.23. If a handoff is the method selected for providing relief on the street, the time value associated with the delivery of the hand-off must be deducted from the route getting relief and transferred to the gaining route.

**M-00398 Step 4**  
**June 21, 1977, NCC 5942**

The information of record presented in this case clearly establishes that the grievant's route was evaluated on the basis of the performance of another employee who was carrying the route at the time. It is also evidenced that the employee on whom the evaluation was based was substantially younger than the grievant. Additionally, available information presented subsequent to our Step 4 meeting indicates that the grievant is using assistance both in the office and on the street, overtime, and curtailing mail on almost a daily basis. On the basis of the information presented, we concur that the grievant's route is not properly adjusted. To this extent, we find the grievance is sustained.

**M-00610 USPS Letter**  
**March 12, 1980**

Postal Service position on the meaning of M-39, Section 242.31(b) which governs those circumstances under which mail volume data for the week of count inspection may be adjusted.

**M-00571 USPS Memorandum**  
**April 30, 1976**

Any procedure which automatically establishes the lightest mail volume day (or any other specific day) as the basis for route adjustments is incorrect and must be changed to conform with the provision of the M-39 Handbook. See also [M-01369](#).

**M-00396 Step 4**  
**July 21, 1977, NCE 4792**

On the basis of the amount of curtailed mail and the amount of assistance utilized on the grievant's route since the count and inspection, it is apparent that the route is overburdened as currently constituted.

**C-24144 Regional Arbitrator Harris**  
**March 31, 2003, B98N-4B-C 00133387**

The arbitrator held that management violated the National Agreement when it failed to properly consult with letter carriers after completion of route inspections. The arbitrator awarded the affected letter carriers a lump sum payment of \$1000 as a remedy.

**C-24167 Regional Arbitrator Eisenmenger**  
**April 2, 2003, H98N-4H-C 00053109**

Management in prior settlement agreement, acknowledged that they would adjust a routes to as close to eight hours as possible, and that if disputes continued that all relevant information would be provided to the union. The

arbitrator found that management failed to adhere to the settlement agreement and failed to provided agreed upon documentation. The arbitrator awarded as a remedy that all overtime worked on the route, and any overtime worked by others who carried portions of the disputed assignment be paid at penalty overtime rate.

**C-10134 Regional Arbitrator Skelton**  
**July 23, 1990, S7N-3S-C 88049**

Grievance protesting failure to timely adjust routes is "continuing"; management's failure is remedied by payment.

**C-10403 Regional Arbitrator Skelton**  
**September 24, 1990**

Management did not violate the contract when it adjusted grievant's route by providing office and street assistance.

**C-10392 Regional Arbitrator Foster**  
**October 23, 1990**

Management did not violate the contract when it refused to adjust the route of grievant, based on its conclusion that grievant engaged in time-wasting practices.

**C-09459 Regional Arbitrator Skelton**

Management is not required to adjust routes based on a four-day "interim" route examination.

## Route Adjustments—Minor M-39 Section 141

**M-01505 Memorandum of Understanding**  
**November 25, 2003**

Re: Interim Agreement – Minor Route Adjustment Process

Re: Interim Agreement – Route Inspection Task Force and Multiple Days of Inspection

This memorandum replaces the March 28, 2003, Memorandum of Understanding Re: Minor Route Adjustment Process [[M-01482](#)] and extends the March 28, 2003, Memorandum of Understanding Re: Route Inspection Task Force and Multiple Days of Inspection [[M-01481](#)].

The parties recognize that the continuing change in mail volume is prompting increased use of the minor route adjustment process under Section 141 of Handbook M-39. In order to minimize disputes, the parties mutually agree to the following during the term of this memorandum:

The local parties may, by mutual agreement, establish or continue an alternate minor route adjustment method that meets local needs.

Absent a mutual agreement at the local level regarding alternate minor route adjustment methods, the parties agree that the following instructions will be used when making minor route adjustments to full-time routes:

## A. Determining the Evaluated Time:

1. The new evaluated time is to be determined using the following method:

a. Select a one month period within the past twelve months, which is representative of the delivery unit's workload by analyzing mail volume, i.e. cased volume, automation volume, accountable mail, parcels, etc, excluding December, June, July and August. The documentation used to determine the representative period will be provided to the NALC Branch President or their designee, when requested.

b. Use the forms and records listed in Section 141.18 of Handbook M-39 and/or electronic records that provide equivalent information from the selected period to determine the evaluated time for individual routes. For the purposes of this Memorandum, electronic records that provide equivalent information is defined as electronic data which is recorded in one or more of the forms or records listed in Section 141.18. Information from electronic records that is not found in the forms and records listed in Section 141.18 is not considered equivalent information.

2. If the route was adjusted or the carrier was awarded/assigned to the route after the selected period, a representative period after the adjustment or award/assignment will be used for that route.

3. When evaluating the route, consideration must be given to any significant increase or decrease in delivery points after the selected period.

## B. Determining Territorial Adjustments:

1. When the previous count and inspection data is reasonably current and the same carrier is serving the route, territorial adjustments can only be made using the formula in Section 141.19 of Handbook M-39.

2. If the previous count and inspection data is reasonably current but the same carrier is not serving the route being considered for adjustment, territorial adjustments can only be made using the standard office time and the standard line allowances from the previous PS Form 1840 to determine the office time per possible delivery factor in Section 141.19.a, and a current PS Form 3999 for the regular carrier to determine the street time per possible delivery factor in Section 141.19.b.

3. If no reasonably current count and inspection data exists, territorial adjustments can only be made using the current evaluated office time (derived from item A above) and the appropriate standard line allowances to determine the office time per possible delivery factor in Section 141.19.a, and a current PS Form 3999 for the regular car-

rier to determine the street time per possible delivery factor in Section 141.19.b.

## General Requirements and Principles

1. Whether inspection data is "reasonably current" must be determined on a route-by-route basis.

2. When transferring territory use a PS Form 3999 that fairly represents the evaluated street time (e.g. do not use a PS Form 3999 from a Saturday on a business route when 35% of the businesses were closed, or a PS Form 3999 from a date during July on a college route when few students are living within the territory)

3. Adjustments to routes should be made as outlined in 243.2 of Handbook M-39.

4. It is agreed that if a city carrier, during adjustment consultation, disputes the route's evaluation, the carrier will be allowed to review and, if requested, provided a copy of the documentation used as a basis of the evaluation. If, after reviewing the documentation, the city carrier maintains the documentation and/or evaluation is inconsistent, incomplete or otherwise inaccurate, management will investigate the city carrier's concerns, make any warranted corrections, and discuss the results with the carrier prior to implementing the adjustment.

5. Within 60 days of the adjustment, the route will be analyzed and, if necessary, adjusted pursuant to Section 243.6 to insure that the adjustment has resulted in a route evaluation as near to eight hours daily as possible.

6. Any questions concerning the application of this memorandum are to be forwarded to the parties' national level representatives through their respective NALC National Business Agent or Area Manager, Labor Relations.

7. This agreement applies solely to the minor route adjustment process and does not impact or relate to special route inspections pursuant to Section 271 of Handbook M-39 or formal count and inspections pursuant to Chapter 2 of Handbook M-39.

The terms of this memorandum are applicable from the date of this memorandum through May 31, 2004 and the Memorandum of Understanding Re: Route Inspection Task Force and Multiple Days of Inspection is extended through May 31, 2004 unless mutually extended by the parties. This agreement is made without precedent or prejudice to either party's position outside the effective dates of this memorandum regarding the minor route adjustment process and the inspection of routes on multiple days during count and inspection week, and may not be cited by either party in any forum, except for the enforcement of its terms.

See also [M-01479](#) - April 2, 2003 Joint Transmittal Letter concerning the three related memoranda of understanding [M-01480](#), [M-01481](#) and [M-01482](#).

See also [M-01480](#) - March 28, 2003 Memorandum of Understanding concerning six day counts and inspections.

See also [M-01481](#) - March 28, 2003 Memorandum of Understanding concerning interim agreement on a Route Inspection Task Force and multiple days of inspection. Superseded by [M-01505](#).

See also [M-01482](#) - March 28, 2003 Memorandum of Understanding concerning interim agreement concerning the Minor Route Adjustment Process. Superseded by [M-01505](#).

See also [M-01494](#) - August 29, 2003 Memorandum extending the above memorandums through September 30, 2003.

#### **M-01448 Step 4 September 27, 2001, H98N-4H-C 00198388**

The issue in this case is whether management has the right to make minor route adjustments pursuant to subchapter 141 of the M-39 Handbook using data collected during a “three (3) day mail count and inspection.”

After reviewing this grievance, we mutually agreed that no interpretive issue is fairly presented in these cases. Accordingly, we agreed to remand this grievance to the Dispute Resolution Team through the National Business Agent’s Office for further processing in accordance with the following understanding:

There is no provision in the M-39 Handbook that provides for making route adjustments based on data collected during a “3-day count and inspection.”

Management has the right to make minor adjustments pursuant to subchapter 141 of the M-39 Handbook to maintain the routes as close to 8 hours daily work as possible using reasonably current route inspection data as a result of a six day count pursuant to Chapter 2 of the M-39.

#### **M-01690 MOU August 1, 2008**

Memorandum Of Agreement that minor route adjustments may only be implemented pursuant to Section 141 of Handbook M-39; that the evaluation of a route can only be done consistent with Section 141.18 of the M-39; and that the adjustment of a route can ONLY be done consistent with the formula in Section 141.19 of the M-39.

#### **M-01695 MOU Re: Interim Alternate Route Adjustment Process (IRAP), August 22, 2008**

This memo addresses the mutual need to maintain routes in proper adjustment throughout the year, and a method of

route adjustment in the current mail volume environment. This current memo has been extended through March 2009.

## **Route Adjustments, 52 day limit M-39 Section 211.3**

#### **M-01072 Prearb, June 23, 1992 H7N-3A-C 39011**

The issue in this grievance is whether management was required by the National Agreement to provide the union with a detailed written statement describing valid operational circumstances which caused route adjustments not to be completed within 52 days of the inspections.

During the discussion, it was mutually agreed that the following constitutes full settlement of this grievance:

- 1) If the results of any route inspection indicate that the route is to be adjusted, such adjustment must be placed in effect within 52 calendar days of the completion of the mail count in accordance with Section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a Division General Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union within seven days of the grant of the exception.
- 2) Only following carrier-initiated inspections, under 271.g of the M-39 Handbook, may the granting of an exception be appealed directly to Step 3 of the grievance procedure. Grievances concerning other exceptions may be filed at Step 2 of the grievance procedure.
- 3) In regard to number 2 above, management agrees to waive procedural arguments concerning whether a grievance was properly appealed directly to Step 3 for those grievances that are in the grievance/arbitration procedure as of the signing of this agreement, which involve exceptions to the 52 calendar day requirement for adjustments.
- 4) For those grievances which are currently in the grievance/arbitration procedure (other than those filed under 271.g) which concern the failure to meet the criteria in number 1 above, local management shall provide the necessary statement within 30 days of the signing of this agreement. Should the local union consider the statement inadequate, it may file a new grievance at Step 2.
- 5) We further agreed to remand this case as well as any other Step 4 case containing this issue, to Step 3 for further processing in accordance with the above understanding.

#### **M-01073 USPS Letter June 29, 1992**

USPS Headquarters letter to Regional Directors transmit-

ting and explaining the prearbitration decision H7N-3A-C 39011 (M-01072).

**C-14767 Regional Arbitrator Render  
September 9, 1995 E90N-4E-C 94037643**

The Service violated Section 211.3 of the M-39 Handbook and a national settlement in H7N 3A C 39011 [M-01072] by failing to complete route adjustments within 52 calendar days of the mail count. Valid operational circumstances substantiated by a written detailed statement were not shown to have caused the failure to complete the adjustment within 52 calendar days.

**M-00943 Step 4  
October 25, 1989, H7N-1E-C-22285**

The issue in this grievance is whether the Memorandum of Understanding concerning Special Count and Inspection Process of City Delivery Routes was violated in that the required adjustments were not implemented within fifty-two (52) calendar days following completion of the Special Count initiated by management.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The referenced Memorandum must be read in conjunction with Chapter 2 of the M-39. As such, barring any valid operational circumstances, the adjustments must be completed within 52 calendar days, as prescribed by the MOU and Section 211.3 of the M-39.

**C-10890 Regional Arbitrator Howard  
May 29, 1990, E7N-2A-C 20095**

Where management did not adjust routes within 52 days, the arbitrator ordered as remedy payment at penalty rate for time worked over eight and one-half hours in a day.

## Hand-offs

**M-00126 Step 4  
May 2, 1985, H1N-5D-C 26466**

Parties at this level agree that the handing off of delivery territory is a means of providing temporary relief to an overburdened route. See also M-00182, M-00271, M-00349.

**M-00587 Step 4  
November 9, 1981, H8N-3P-C 16890**

When a hand-off is used as an adjustment, the hand-off is considered to be part of the route through which it is delivered for purposes of the OTDL.

**M-00757 Step 4  
May 22, 1987, H4N-4B-C 26960**

Whether management properly adjusted the route by the use of a hand-off can only be determined by application of Section 243.21 of Methods Handbook M-39 to the fact circumstances involved.

## Standards

**C-03237 National Arbitrator Garrett  
June 4, 1975, NB-NAT-3233**

The unilateral new definition of letter size mail by the Postal Service, which was part of the old 18 and 8 standard for letter carriers casing, was in violation of Articles 19 and 5.

**C-03221 National Arbitrator Mittenthal  
June 4, 1979, NCW 8752**

The appropriate time standard for a Montgomery Ward coupon booklet is eight pieces per minute. See also C-09463

**M-00209 Pre-arb  
February 6, 1974, NC 2057**

It is recognized that changes in work and time standards will be initiated only at the national level.

**M-00386 Step 4  
July 11, 1977, NC-NAT-6811**

Management may not charge or impose discipline upon a carrier merely for failing to meet the 18 and 8 casing standards. Any such charge is insufficient. Under the Memorandum of Understanding of September 3, 1976, the only proper charge for disciplining a carrier is "unsatisfactory effort." See also M-00323

The September 3, 1976 memorandum referenced in this settlement has been incorporated into the M-39 Handbook as Section 242.332. M-39 Section 242.332 states:

No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet standards.

**M-00379 Step 4  
April 13, 1976, NCC 0776**

The union's request that the number of paces per minute be used as an observation and not as a specific criterion or standard of performance by the grievant is sustained.

**M-00304 Pre-arb  
October 22, 1985, H1N-1N-D 31781**

There is no set pace at which a carrier must walk and no street standard for walking. See also M-00305 and M-00360

**M-01181 Step 4  
June 9, 1994, H0N-5T-C 1387**

When conducting a one-day mail count, the appropriate form to record the carrier's performance is on PS Form 1838-C. The PS Form 1838-C does not specifically measure the carrier's performance by pieces per minute.

## One Day Counts

### **M-00017 Step 4**

**November 1, 1977, NCW 7959**

When a regular special office count is conducted, it will be accomplished in accordance with the applicable provisions of Handbook M-39.

### **M-01216 Pre-arb**

**April 11, 1995, H7N-3Q-C 38909**

The issue in these cases is whether management violated the National Agreement by not allowing carriers to count the mail counted by the supervisor during a "one day count".

During our discussions, we mutually agreed to the following: On the day of a "one day count" when management performs the mail count the carrier serving the route, upon request, may verify the count.

### **M-01217 Pre-arb**

**April 5, 1995, HON-3W-C 6949**

The issue in these cases is whether management violated the National Agreement by requiring a carrier who was not on the Overtime Desired List to work overtime the day of a "one-day count".

During our discussions, we mutually agreed to the following: The overtime provisions of Article 8 and the associated Memorandums of Understanding remain in full force and effect except that on the day of a "one day count", if the carrier is being accompanied on the street, management may require a carrier not on the Overtime Desired List to work overtime on his/her own route in order to allow for completion of the count.

### **M-00111 Step 4**

**November 13, 1978, NCC 12007**

A one (1) day count of mail should be utilized for the purposes intended by the M-39 Handbook and local officials are to ensure that one (1) day counts are not used for the purpose of harassment.

### **M-00005 Step 4**

**January 17, 1977, E3-MD-C 1131**

Data from the (one day) counts were not, nor will they be, used as a basis for disciplinary action.

### **M-00829 Step 4**

**April 15, 1986, H1N-5B-C 29131**

Under Article 16, no employee may be disciplined except for just cause. In this instance, the parties agree that a one day count and inspection may not be used as the sole basis to establish a standard against which a carrier's performance may be measured for disciplinary purposes.

### **M-00385 Step 4**

**September 14, 1976, NCC 2322**

The proper stipulated manner for determining the efficiency of an employee and whether or not the employee is, in fact, meeting standards, is to conduct a one-day count as provided in Handbooks M-39 and M-41.

### **M-01181 Step 4**

**June 9, 1994, HON-5T-C 1387**

When conducting a one-day mail count, the appropriate form to record the carrier's performance is on PS Form 1838-C. The PS Form 1838-C does not specifically measure the carrier's performance by pieces per minute.

## Unit and Route Reviews

### **M-00931 Step 4**

**May 10, 1989, H7N-2B-C-15773**

In conducting unit and route reviews, the most current information should be used.

### **M-00992 USPS Internal Memorandum**

**March 12, 1990**

Adjustments through the use of the Unit and Route Review Process are not permitted except for minor adjustments with appropriate documentation as required by the M-39 Handbook (Section 141). These procedures are to be accurately followed

## Carrier Optimal Routing (COR)

### **C-28081 Regional Arbitrator Cenci**

**February 26, 2009, B06N-4B-C 08194517**

Route inspections and adjustments must be completed in a manner consistent with the COR MOU and the M-39 handbook.

### **M-01766 A Guide for Using COR**

This guide was created to take the mystery out of the workings of Carrier Optimal Routing (COR) when it is used to generate route adjustments. NALC representatives are encouraged to read this guide in advance of any proposed COR adjustments.

### **C-28360 Regional Arbitrator Linda DiLeone Klein August 5, 2009, C06N-4C-C 08306440**

In other words, it appears to the Arbitrator that the procedure and principles set forth in the M-39 are to be strictly followed and then COR will be used to "assist with the adjustment process".

## Modified Interim Alternate Route Adjustment Process (MIARAP)

### **M-01702 Modified Interim Alternate Route Adjustment Process—2009 (MIARAP), April 7, 2009**

In effort to maintain routes in proper adjustment throughout the year, the parties have created the MIARAP, in accordance with the Memorandum of Understanding Re: Alternate Route Adjustment Process. The evaluation of routes will be a joint process designed to insure Data Integrity, Street Evaluation, Carrier Feedback and Consultation in the adjustment process.

### **M-01703 Memorandum of Agreement—MIARAP, April 30, 2009**

This jointly developed, joint training document agreed upon by the NALC and the Postal Service, which details the parties' mutual understanding of the provisions of the Memorandum of Agreement, Re: Modified Interim Alternate Route Adjustment Process – 2009 ([M-01702](#))

## ROUTE INSPECTIONS, SPECIAL CARRIER INITIATED

The M-39 Handbook, which is incorporated into the National Agreement by Article 19, requires that a special route inspection be given whenever a carrier requests one and the qualifying criteria have been met. M-39 Section 271 states in relevant part:

271g. If over any six consecutive week periods (when work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of three days or more in each week during this period, the regular carrier assigned to such a route shall, upon request, receive a special mail count and inspection within four weeks of the request. The month of December must be excluded from consideration when determining a six consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November, and continues into January, then January is considered to be a consecutive period even though December is omitted. A new consecutive week period is not begun.

271h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail count and inspections.

The guarantees provided by Section 271.g of the M-39 Handbook were further strengthened by a Memorandum of Understanding on special counts and inspections incorporated into the 1987 and subsequent National Agreements. The Memorandum states:

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that it is in the best interests of the Postal Service for letter carrier routes to be in proper adjustment.

Therefore, where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed **within four weeks** of the request, and shall not be delayed. If the results of the inspection indicate that the route is to be adjusted, such adjustment must be placed in effect **within 52 calendar days** of the completion of the mail count in accordance with Section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a Division General Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union **within seven days** of the grant of the exception. The union shall then have the right to appeal the granting of the exception directly to Step 3 of the grievance procedure within 14 days. (Emphasis added)

The JCAM explains this memorandum as follows on page 41-22:

Exceptions may be granted by the District Manager when warranted by valid operational circumstances. In such

cases management must provide the local union a detailed written statement substantiating the circumstance(s). The parties have not defined what constitutes "valid operational circumstances." Challenges to the basis for granting extensions should be considered on a case by case basis on individual merits. The union may appeal the granting of an extension to Step B within fourteen days of notification of the extension. (Emphasis added)

National Arbitrator Britton held in [C-11099](#) Management must complete special route examinations within four weeks of the request whenever these criteria have been met even if the inspection must be conducted during the months of June, July and August.

Almost without exception, Arbitrators have held that special inspections are mandatory when the union can prove that the criteria in M-39 Section 271 have been met. This is true even in cases where the regular carrier has been absent for part of the six-week period. The provisions of Section 271 refer to the **route** and not the carrier on the route, despite the fact that the purpose of any such inspection is to adjust the route to the individual carrier (See [M-01262](#), [M-01263](#), [M-00688](#)). Moreover, once a carrier requests a special route inspection and demonstrates that it is warranted, the Postal Service cannot circumvent requirement to conduct the inspection by unilaterally providing relief, or making an adjustment. (See [C-08727](#))

The special route inspections provided for in M-39 Section 271 must be conducted in exactly the same manner as regular counts and inspections. They differ from regular route inspections only in that they may be conducted in June, July or August. It is, however, not always in the best interest of letter carriers to request them during the low volume summer months.

Failure to make standards or the inability to finish a route in the allotted time is not, in itself, just cause for discipline. However, letter carriers who have requested and qualify for a special route inspection are afforded an additional protection. Regional Arbitrator Levak held in [C-05952](#) that once a route qualifies for a special inspection and the regular carrier has requested one, any discipline for expansion of street time "is inappropriate unless and until such time as an inspection is conducted."

Special route inspections are not unit and route reviews. The right to a special route inspection is unaffected by the fact that the office involved may be undergoing, or be scheduled for, a unit and route review.

Special route examinations are not a meaningless exercise. The M-39 Handbook requires not only that special inspections be conducted when the qualifying criteria have been met, but also that special inspections result in permanent adjustments to eight hours. M-39 Section 242.122 states:

242.122 The proper adjustment of carrier routes means an equitable and feasible division of the work among all of the carrier routes assigned to the office. All regular routes should consist of as nearly eight hours daily work as possible.

Arbitrators have held that it is not sufficient for the Postal Service merely to follow the procedures specified in the M-39 when examining and adjusting routes. Rather, the final result must be an eight hour route. In [C-07630](#) Regional Arbitrator Dilts wrote as follows:

The inspections are not before the arbitrator as part of the present issue. What is before this Arbitrator is the matter of adjustments. In examining the record it is clear that the subject routes are not eight hour routes. This does not mean that the procedures for adjustment were somehow violated. The methods by which adjustments are made and the results of those adjustments on letter carrier work loads may be viewed as separable issues under the language of the M-39.

## Carefully document violations

As in all contract cases, the union has the burden of proof to establish that there was a contract violation. In special route examination grievances this means that the union must be able prove that there was "30 minutes of overtime or auxiliary assistance on each of three days or more in each week" of the six week qualifying period. This is not always straight-forward.

Proving that overtime was used can ordinarily be done using time records. However, proving that auxiliary assistance was required can be more problematic. Often supervisors fail to accurately record which routes received auxiliary assistance and how much. Fortunately, Article 41, Section 3.G of the National Agreement provides a solution. It states:

The Employer will advise a carrier who has properly submitted a Carrier Auxiliary Control Form 3996 of the disposition of the request promptly after review of the circumstances at the time. Upon request, a duplicate copy of the completed Form 3996 and Form 1571, Report of Undelivered Mail, etc., will be provided the carriers.

Carriers requesting auxiliary assistance should always exercise their right to request and receive a copy of all Forms 3996 submitted. See [Form 3996](#). They should be checked for accuracy. It is also suggested that letter carriers who believe they may qualify for a special route examination keep a daily log recording their overtime, any auxiliary assistance they receive and any other relevant information.

## Remedies for violations

Arbitrators differ in background, training and attitudes. As a generalization, however, most of them are either lawyers or have learned to think as lawyers do. This means arbitrators seek to be guided by precedent. They are more likely to grant the union's remedy if it can be shown that other arbitrators have granted similar remedy requests in similar circumstances. By showing arbitrators that there is precedent for a requested remedy, union advocates can increase an arbitrator's comfort and confidence levels. This underscores the need to conduct careful research to find support for remedy requests

Arbitrators have generally granted monetary remedies in cases where the Postal Service violated the contract by refusing to conduct special route inspections when they were required to do so by the terms of M-39 Section 271.g. They have reasoned that, since the grievants were required to work overtime they should not have worked, no possible future remedy could return that time. Since merely instructing the Postal Service not to violate the agreement in the future would not, in their view, be sufficient to make the grievants whole, monetary remedies are generally ordered. Arbitrator Pribble, in [C-05545](#), explained this as follows:

*Without clear evidence in this record that the Parties anticipated some way to make whole the three Grievants, who have been harmed by clear and repeated breaches of the Agreement, some monetary award is needed for the Grievants. Unlike the Gamser award, no restructuring of future opportunities or equalization formula applies here. In this case the three Grievants have been required to work overtime they should not have worked. No possible future remedy can return this time to them. Moreover, it would be an insufficient remedy here merely to instruct the MSC not to breach the Agreement in the future. This remedy will make the Grievants as whole as possible at this time. The Employer is ordered to pay [the grievants] one extra hour's pay at their regular rates of pay for each and every day that each Grievant has worked overtime until the results of their special route inspections are implemented. (C-05545)*

There is more agreement among arbitrators that some monetary or time-off remedy is due in such cases, than there is upon the exact form any such remedies should take. For example, in contrast to Arbitrator Pribble's award cited above, Arbitrator Grossman, in [C-06720](#), ordered the Postal Service to pay "one hour's pay at his regular rate of pay for each and every hour that he was required to work in excess of eight and one-half hours." Other Arbitrators have ordered, or memorialized consent awards agreeing to, monetary payments in fixed dollar amounts as remedies.

This makes sense. As experienced representatives know, every case is different and will be decided and remedied based on the specific facts. If the grievant was ordinarily required to work overtime on a route rather than receiving auxiliary assistance, remedies such as those given in [C-08727](#) or [C-09327](#) are sufficient. If, on the other hand, the grievants often received auxiliary assistance, the remedies provided in [C-07606](#), [C-10474](#) or [C-15022](#) may be better. See Supporting Arbitration Awards, below.

The Contract Administration Unit also recommends that remedy requests include the additional catch-all phrase "or that the grievant be otherwise made whole." This is because sometimes the union is able to convince an arbitrator that the terms of the contract have been breached, only to have the arbitrator find that the particular remedy requested is inappropriate to remedy the specific violation

## Avoid Excessive Remedy Requests

All remedy requests should be reasonably formulated to provide a "make whole" remedy. Excessive or unreasonable remedy requests should be avoided. For example in [C-21475](#) Regional Arbitrator Axon reduced the remedy he otherwise would have awarded because he believed that the remedy requested by the union made settlement impossible in the earlier steps of the grievance procedure. He wrote:

*The Union in this case must share part of the fault for the inability of the parties to settle the Becerra grievance. In the initial written grievance and throughout the grievance procedure, the Union claimed \$100 per day for Becerra until management corrected the errors and readjusted his route to eight hours. At the arbitration hearing, the Union modified its demand to \$10 per day. In the judgment of this Arbitrator, \$100 per day for the violation at issue in the case at bar would be excessive and punitive. Nothing in the record of this case comes close to demanding a payment of \$100 per day to Becerra until management corrected its errors and properly adjusted Grievant's route.*

## Supporting Material

### **M-01476, Pre-arb January 22, 2003, I94N-4I-C-98000468**

The issue in this grievance is whether a local district policy is in violation of Handbook M-39, Section 271.g when it states that the six-week analysis period starts with the most recent Friday prior to the date of the special inspection request and works backward for six consecutive weeks.

While it is anticipated by the parties that a request for a Special Route Inspection pursuant to 271.g of Handbook M-39 will be based on reasonably current data, the local

district policy as described above is unreasonably restrictive and will be rescinded.

This agreement is without prejudice to management's right to argue that a request for special inspection under 271.g was unreasonably delayed, or the union's right to contend that such argument is without merit.

### **M-01486, Step 4 April 29, 2003, E98N-4E-C-02007370**

The issue in this case is whether the time limit for initiating an Informal Step A dispute over the denial of a request for a special route inspection made under Section 271.g of Handbook M-39 begins at the end of the six week qualifying period.

After reviewing this matter, we mutually agree that no national interpretive issue is presented in this case. The parties agree that the time limit for initiating an Informal Step A dispute over the denial of a request for a special route inspection does not begin at the end of the six week qualifying period unless it is the date the request is denied.

### **M-00211 Pre-arb, March 22, 1974, NE 418**

The Postal Service reaffirms that when special inspections are made pursuant to Part 227 (sic) of the M-39 Handbook, they shall be conducted in the same manner as the annual count and inspection.

### **M-00632 Step 4, January 19, 1978, NCW 7959**

When a regular special office count is conducted, it will be accomplished in accordance with the applicable provisions of Handbook M-39.

### **M-00728 Step 4 September 28, 1977, NCW 5287**

Special inspections shall be conducted in the same manner as the annual count and inspection.

### **M-00660 Step 4 July 31, 1978, NCE 10846**

A supervisor should normally reserve any comments about the grievant's performance during a special route inspection until the inspection is later discussed with the carrier.

### **M-00690 Step 4 November 3, 1983, H1N-5G-C 14443**

A letter carrier who is limited to eight hours of duty may still qualify for a special route inspection if no other limitation exists which could distort a proper evaluation.

## ROUTE INSPECTIONS, SPECIAL CARRIER INITIATED

### **M-00609 Step 4, August 27, 1980, N8 W 0343**

In the instant case, the grievant, who is the regular carrier on the route in question, requested a special count and inspection of his route because the provisions of Section 271 of the M-39 had been met. His request was refused because he only served on his route eight (8) days out of the thirty-eight (38) day period.

The Union contends that the provisions of the M-39, Section 271 refers to the route and not the regular carrier assigned to the route and that the grievant's request should be honored even though he was not serving his route during the entire period in question. This position is consistent with that of the Postal Service.

### **M-00219 USPS Policy Letter, April 14, 1982**

In the Memorandum of Understanding of July 21, 1981, between the USPS and NALC, we agreed that our joint objective is to reduce the number of carrier route that will be scheduled for annual mail counts and route inspections. The Memorandum does not limit or preclude inspections required under the provisions of Section 271g, Handbook M-39. If a route meets the criteria in Section 271g, M-39, and the regular carrier assigned to the route requests a special mail count and inspection, management must conduct the count and inspection within 4-weeks of the request. Unsatisfactory conditions such as "poor case labels", "poor work methods", or "no route examiners available" should not be used as an excuse not to conduct the inspection within the 4-week time frame.

### **M-00695 Step 4**

#### **October 14, 1982 H1N-5H-C 6171**

Section 221.121 of Methods Handbook, Series M-39, provides for carrier verification of count when the manager counts the mail during a mail count and inspection. The intent of this language is also applicable to special office mail counts as provided for in Section 141.2 of the same handbook. There simply are no provisions for mail count verification of linear measurements.

### **M-00688 Step 4**

#### **July 2, 1982, H8N-4B-C 21531**

A route may qualify for a special count and inspection pursuant to the provisions of M-39, Section 271, even though the regular carrier was not serving the route during the entire six-consecutive-week period due to illness.

### **M-01262 Step 4**

#### **July 19, 1983, H1N-5D-C-12264**

Pursuant to 271, M-39 Handbook, the regular carrier may request a special mail count if, during any six consecutive weeks, the route shows over 30 minutes overtime or auxiliary assistance on each of the three days or more in each week during the period. The special mail count should be granted where the carrier's work performance is otherwise satisfactory. The absence of the regular carrier during a portion of the period is not currently a controlling factor.

Note: In this case, the grievant had only carried the route for 30% of the qualifying period. During the rest of the time it had been carried by a PTF carrier. See file.

### **M-01263 Step 4**

#### **August 10, 1984, H1N-5C-C-22733**

The parties agree that the M-39 Handbook provision (Part 271.g) refers to the route and not the regular carrier assigned to the route. Further, we agreed the only question in this case is whether the part-time flexible carrier's work performance was satisfactory during the six consecutive week period. Therefore, this case is suitable for regional determination.

Note: In this case, the grievant was new on the route. The route had been vacant during the qualifying period and had been carried by PTF carriers and the T-6. See file.

## Arbitration Case Citations

Arbitration awards supporting the Union's position in such cases, including the authority of arbitrators to grant monetary or time off remedies:

### **C-07232 Regional Arbitrator Grossman**

#### **August 6, 1987, N4N-1K-C 32218**

(Consent Award) The parties agree that routes must be adjusted to as close to eight hours as possible. Therefore, in any future case where section 271(g) of the M-39 handbook is violated by Management; or the routes are not adjusted to eight hours, a monetary remedy is necessary to make the grievant(s) whole. In the instant dispute, the monetary remedy will be a cash payment of \$250.00 each to each of the eight grievants. See also [C-07229](#)

### **C-05952 Regional Arbitrator Levak**

#### **December 19, 1985, W4N-5B-D 3530**

Where an employee meets the standard of M-39, Section 271.g, and requests a special route inspection, discipline for excessive office or street time, is inappropriate unless and until such an inspection is conducted.

### **C-09970 Regional Arbitrator Lange**

#### **April 4, 1990**

Management wrongly denied grievant's request for a special examination on the ground that he had not served the route long enough to become proficient; monetary remedy ordered.

### **C-10474 Regional Arbitrator Johnston**

#### **October 17, 1990**

Where management wrongfully refused to give special route examination, remedy is to pay aggrieved carrier at the overtime rate for all hours of auxiliary assistance.

**C-10516 Regional Arbitrator R. G. Williams  
December 28, 1990**

Management violated the contract when it denied grievances requesting special route examinations with the statement, "Although the grievance is denied for the reason stated above, the grievant's route will be checked within 4 weeks," but then refused to conduct the route check.

**C-10635 Regional Arbitrator Roukis  
February 20, 1991**

Management violated the contract when it refused grievant's request for a special route exam because a unit and route review was scheduled.

## Additional Supporting Arbitration Awards

**C-05545 Regional Arbitrator Pribble, 01/24/1986**  
One extra hour's pay for every day grievants worked overtime.

**C-05952 Regional Arbitrator Levak, 12/19/1985**  
Discipline for performance inappropriate until inspection is conducted.

**C-06720 Regional Arbitrator Grossman, 12/16/1986**  
Penalty pay at regular hourly rate for all days worked over 8½ hours.

**C-07232 Regional Arbitrator Grossman, 08/06/1987**  
Cash payment of \$250.00 each to each grievant

**C-07630 Regional Arbitrator Dilts, 09/01/1987**  
Penalty pay for all overtime worked by non-OTDL grievants.

**C-07569 Regional Arbitrator Grossman, 10/27/1987**  
Grievants compensated for violations by cash payments \$500.00 each.

**C-07606 Regional Arbitrator Grossman, 11/27/1987**  
Each grievant received a cash payment of \$1,000.

**C-07613 Regional Arbitrator Dennis, 11/14/1987**  
Each Grievant paid \$500.

**C-08614 Regional Arbitrator Render, 12/03/1988**  
Grievants awarded admin leave equal to the amount of overtime worked.

**C-08727 Regional Arbitrator Levak, 03/10/1989**  
1 hour's extra pay at regular rate for each and every day of overtime worked.

**C-08792 Regional Arbitrator Lange, 03/21/1989**  
Administrative Leave in an amount equal to 50% of all overtime hours worked

**C-09327 Regional Arbitrator Lange, 08/23/1989**  
One additional straight time hour of pay for each overtime hour worked

**C-09970 Regional Arbitrator Lange, 04/04/90**  
Short time on route is not an excuse. Monetary remedy

**C-10071 Regional Arb. Stoltenberg, 06/21/19**  
Two hours and nine minutes pay for each day that he was scheduled to work

**C-10474 Regional Arbitrator Johnston, 10/07/1991**  
Straight overtime pay for every hour of auxiliary assistance given.

**C-10635 Regional Arbitrator Roukis, 02/20/1991**  
One hour extra pay at regular rate for all days overtime worked.

**C-10167 Regional Arbitrator R.G. Williams, 08/06/1991**  
1 hour per work day at 1½ time rate for each day.

**C-11099 National Arbitrator Britton, 08/12/91.**  
No exception for June, July or August.

**C-15022 Regional Arbitrator Jacobs, 12/17/1995**  
Two hours pay at the overtime rate for each day worked.

**C-17985 Regional Arbitrator Shea, 02/16/98**

**C-21475 Regional Arbitrator Axon, 12/09/00**  
Excessive remedy request results in reduced award

**C-23794 Regional Arbitrator Levak, 10/29/02**  
"The Postal Service shall pay the Grievant \$10.00 a day, six days a week."

## **M-00949 Step 4**

**October 6, 1989, H7N-2B-C-20490**

When a route is adjusted by providing router assistance, the work assigned to the router is not part of the route for overtime purposes. See also [C-08011](#).

## **M-00601 National Joint City Delivery Meeting**

**Nov 17, 1983, page 1**

Form 3982 is permissible for use by routers the same as for any city carrier occupying a regular assignment.

## **M-00995 Step 4**

**October 24, 1990, H7N-5M-C 14783**

The issue in this grievance is whether management violated the National Agreement when it used a locally developed form requiring routers to record footage cased on each route.

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in this case. We also agreed that the issuance of local forms is governed by Section 324.12 of the Administrative Support Manual (ASM). The locally developed form (5M-001, Router Assignment Form) was properly promulgated in accordance with existing regulations and this grievance is settled as follows:

The form cited in this grievance is being used as a management tool for date collection and the assignment and matching of router work load and work hours and may not be used as a basis for discipline. Further, this form is not to be used to develop work and/or time standards or to determine whether they have been met.

Accordingly, management may continue to use the Router Assignment Form 5M-001.

## **C-09581 Regional Arbitrator Condon**

Management violated the contract when it called in a non-OTDL router two hours early to perform duties not part of his regular assignment.

## **Duties**

### **M-00885 National Joint City Delivery Meeting**

**October 4, 1988**

Routers must be kept on their bid assignment and not moved off the routes in the bid description unless there is an undertime situation, or in "unanticipated circumstances."

Router positions should be maximized to full-time, 8-hour positions to the extent practicable.

The Notice of Vacancy in Assignment(s) posting must include the position title and the statement "City Carrier, KP-11, PS-05," the specific routes in the bid position, and the

amount of time for preparing mail for delivery on each route. For example: If the permanent adjustment is for one hour on Route 1, the posting will state, "Route 1, one hour." If street duties are applicable, list the specific letter route street assignments and amount of time. If another appropriate assignment such as a collection run is part of the assignment, list the time for the activity, nonscheduled days, hours of duty and work location.

Appropriate morning and afternoon office breaks will be scheduled by management.

### **M-00839 Pre-arb**

**November 24, 1987, H1N-NA-C 89**

All router assignments posted prior to the July 21, 1987, Memorandum of Understanding (MOU) between the NALC and the U.S. Postal Service are also subject to the MOU on router assignments. Management shall list specific groups of routes and where applicable specific street duties for each router assignment whenever that information was not previously listed.

## **Removal from assignment**

### **M-01292 Prearbitration Settlement**

**July 28, 1997, F94N-4F-C 97005324**

The parties agreed that application of section 617.2 Pivoting, of the Postal Operations Manual (POM) does not change the provisions of Article 41, Section I.C.4 of the National Agreement. Routers must be kept on their bid assignment and not moved off the duties in the bid description unless there is an undertime situation, or in "unanticipated circumstances."

### **M-00885 National Joint City Delivery Meeting**

**October 4, 1988**

Routers must be kept on their bid assignment and not moved off the routes in the bid description unless there is an undertime situation, or in "unanticipated circumstances."

### **C-08309 Regional Arbitrator Britton**

**April 25, 1988, S4N-3W-C 23922**

The Service violated Article 41.1.C.4 by requiring that a successful bidder on a router position perform street duties not part of the assignment prior to the casing of available BBM mail.

### **C-09580 Regional Arbitrator Condon**

Management violated the contract when it moved a router off his assignment for an hour and fifteen minutes.

### **C-09582 Regional Arbitrator Condon**

Management violated the contract when it removed a router from his bid assignment for more than three hours and had him perform street duties. See also [C-09583](#)

## **M-01014 Step 4**

**October 10, 1991, H7N-2K-C 42670**

Step 4 decision reaffirming that in accordance with Article 41.1.C.4, routers may only be used outside of their bid assignment only in "unanticipated circumstances".

## **C-10873 Regional Arbitrator Levin**

**May 22, 1991, N7N-1P-C 25356**

Management violated the contract by removing routers from their bid assignments and requiring them to work on the street. As remedy, the routers should be paid \$50.00 for each day worked off their assignment.

## **C-10493 Regional Arbitrator Marx**

**December 19, 1990**

Management properly worked routers off their assignment when necessary to provide the routers with work during their regular tours, but on some occasions improperly worked routers off their assignments, resulting in the need of the regular carriers whose routes they served to work overtime; monetary remedy ordered.

## **Failure to fill assignment**

### **C-10550 Regional Arbitrator P.M. Williams**

**January 12, 1991**

Management did not violate the contract when it failed to fill the router vacancy caused by the router being temporarily promoted to 204B.

### **C-09768 Regional Arbitrator Germano**

**February 17, 1990**

Management violated the contract when it failed to provide router assistance to qualified routes. See also [C-09911](#)

## **Maximization**

### **M-00885 National Joint City Delivery Meeting**

**October 4, 1988**

Router positions should be maximized to full-time, 8-hour positions to the extent practicable.

### **M-00915 Step 4**

**April 13 1989, H4N-5C-C 36660**

The issue in this grievance is whether local management has improperly established part-time regular router positions in contravention to the provisions of the [July 21, 1987] Router Memorandum of Understanding. Item 3, of the September 21, 1988, Router Assignment Instructions [[M-00885](#)] states that "Router positions should be maximized to full-time, 8-hour positions to the extent practicable." As described in this instant matter, the utilization of the part-time routers is inconsistent with the intent of the aforesaid memorandum. See also [M-00916](#).

### **C-09910 Regional Arbitrator Scearce**

**March 10, 1990**

Management did not violate the contract when it created a reserve regular position to perform router work on an unrestricted number of unidentified routes.

## **Abolishment**

### **C-10271 Regional Arbitrator P.M. Williams**

**September 11, 1990**

The abolishment of a router assignment should have triggered the provisions of Article 41, Section 3.O. But See [C-10899](#).

Cross craft assignments are not permitted between the City and Rural Carrier crafts. See [Cross Craft Assignments](#). See also [Emergencies](#), [Jurisdiction](#).

## National Level Awards

In the August 1, 1994 Vienna/Oakton Virginia case [C-13791](#), Arbitrators Mittenthal and Zumas, held that the Postal Service did not violate the national agreement by assigning the disputed delivery in a developed area to the Rural Carrier Craft. They wrote as follows:

*"[T]he jurisdiction of a "craft" is to be determined by the "established practice in each given Post office in assigning work." From the standpoint of jurisdiction, the customary way of doing things becomes the contractually correct way of doing things. Work always performed by rural carriers in a given area is presumptively within NRLCA's jurisdiction just as work always performed by city carriers in a given area is presumptively within NALC's jurisdiction. This heavy reliance on "practice" was a means of insuring the stability of each craft bargaining unit."*

### **C-08730 National Arbitrator Britton March 16, 1989, H4N-4J-C 18504**

The NRLCA is allowed to intervene in the arbitration of an NALC grievance concerning the assignment of delivery territory to rural delivery.

### **C-03232 National Arbitrator Garrett August 30, 1974**

These [Postal Service] arguments, however skillful an exercise in semantics, overlook the consistent treatment of the City and Rural Carriers as separate "crafts" for purposes of collective bargaining. While their work in many instances may be virtually identical, this in no way can detract from the dominant fact that these two groups have been deemed to be separate "crafts" for many years, both in law and in practice.. Article VII, Section 2A, cannot be interpreted properly except in light of this firmly established meaning of the words "craft" and "crafts" as used therein. **This meaning does not lie in any abstract definition of either "craft." It can only be found in established practice in each given Post Office in assigning work to one or the other of the craft bargaining units...** If this interpretation somewhat limits the flexibility of Management to transfer work from City to Rural Carriers (and thus to change the type of service provided in given areas), it nonetheless is inescapable when Article VII, Section 2A is read in the context in which it was written.. Moreover, the basic policy thus reflected in this provision may well be essential to the maintenance of sound relationships between the Postal Service and the various Unions involved, as well as among the Unions themselves.

### **C-18997 National Arbitrator Nolan W4N-5H-C 40995, December 23, 1998**

The Postal Service violated the NALC agreement by unilaterally converting a sizeable number of deliveries from city to rural service.

### **C-22742 National Arbitrator Nolan S1N-3P-C 41285, December 3, 2001**

The proper remedy for a wrongful conversion of city deliveries to rural is reconversion of those deliveries and the award of new deliveries established within the line of travel for the challenged deliveries, to be implemented within 60 days. Within 90 days, the Postal Service shall develop and implement a new delivery plan for provision of service beyond the challenged deliveries, applying its standard criteria as if it had not made the erroneous conversion. Either union may file a new grievance if it believes the Postal Service's new plan violates controlling authority.

## Settlement Agreements

### **M-01484 NALC/NRLCA/USPS Settlement, May 9, 2003**

Settlement resolving the issues remanded by Arbitrator Nolan in national case [C-22742](#), above.

### **M-01606 Memorandum of Understanding March 23, 2007**

Renewal of MOU ([M-01568](#)) regarding the processing of future city/rural disputes.

### **M-01568 Memorandum of Understanding March 8, 2006**

Memorandum of Understanding between the USPS, NALC and NRLCA regarding the processing of future city/rural disputes.

### **M-01519 City/Rural Process Agreement May 4, 2004**

The process and guidelines developed by The National Joint City/Rural Task Force to review all outstanding city/rural issues in the grievance procedure.

### **M-01520 Guideline Principles to Address City/Rural Issues May 4, 2004**

1) Claims that rural delivery should be converted to city delivery because it has characteristics of city carrier work. 2) Claims that establish rural delivery was improperly converted to city delivery. 3) Claims that established city delivery territory was improperly converted to rural delivery. 4) Other jurisdictional boundary claims including assignment of new deliveries.

### **M-01483 Memorandum of Understanding NALC, NRLCA, USPS, May 9, 2003**

Memorandum establishing a national level task force of two members each from the NALC, the NRLCA, and the

Postal Service to establish guidelines and a process to facilitate settlement of outstanding city/rural jurisdictional grievances.

## Supporting Material

### **M-00320 Letter, June 9, 1975 (Charters)**

No significant amount of work that has traditionally been performed by city letter carriers may be transferred to rural carriers (absent a material change in the nature of the work) except through the provisions of Article VII, Section 2.A.

### **M-00921 Step 4**

#### **August 19, 1980, N8-S-0373**

The question of transferring work from city delivery service to rural delivery service was addressed by USPS and the NALC management in 1975 when the parties met to discuss Arbitration Award No. N-C-4120 on the same subject issued by Arbitrator S. Garrett. The meeting resulted in a memo dated June 9, 1975, [M-00320] by the Postal Service which spelled out general principles to be applied by postal management when determining whether to transfer stops from a city route to a rural route.

Although the principles were based on an interpretation of Article VII-2A of the 1975 Agreement, in our view, the same logic is applicable because Article VII, Section 2-A was not changed in the current National Agreement.

### **M-00636 USPS Memorandum (Dorsey letter) September 15, 1978. Later Incorporated into Postal Operations Manual Section 611.321**

As a general rule, conversions from rural to city delivery shall be considered only to:

1. Provide relief for overburdened rural routes when all other alternatives are impractical.
2. Establish clear cut boundaries between rural and city delivery territory and eliminate overlapping and commingling of service.
3. Provide adequate service to highly industrial areas or apartment house complexes on rural routes.
4. Provide service to areas where city delivery service will be more cost effective. Regional review is required when cost is the basis for conversion.

Areas considered for conversion must meet all the basic requirements for an extension of city delivery and must be contiguous to existing city delivery service. However, the fact that a given area is fully developed and adjacent to city delivery does not, of itself, constitute sufficient justification for conversion. See also [M-00613](#), [M-00627](#), [M-00320](#), [M-00122](#).

## Grievance/Arbitration Procedure

### **M-01433 Step 4**

**February 20, 2001, F94N-4F-C 97024971**

The Step 4 issue in these grievances is whether any grievance, which has as its subject safety or health issues, may be placed at the head of the appropriate arbitration docket at the request of the union.

The parties agree that Article 14.2 of the National Agreement controls. It states in part:

'Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.'

The fact that the union alleges that the grievance has as its subject a safety or health issue does not in and of itself have any bearing on the merits of such allegations. Accordingly, placement of a case at the head of the docket does not preclude the Postal Service from arguing the existence of the alleged "safety" issue or that the case should not have been given priority. The Postal Service will not refuse to schedule a case in accordance with Article 14.2 based solely upon the belief that no safety issue is present.

### **C-16371 National Arbitrator Snow**

**July 20, 1994, H0C-3W-C 4833**

National Level Arbitration is not an appropriate forum for resolving a grievance addressing the adequacy of a local hazardous materials training program.

## Form 1767

### **M-01285 Prearbitration Settlement**

**May 12, 1997, E90N-4E-C 93045300**

The issue in this grievance is whether PS form 1767, Report of Hazard, Unsafe Condition or Practice, may be completed in an overtime status. During our discussion, it was mutually agreed that the following constitutes full and final settlement of this grievance:

The parties agree that PS Forms 1767 are normally completed during the course of an employee's work day, and that there may be occasions where the completion of PS form 1767 may be accomplished on overtime, depending on the local circumstances. Therefore, the parties agree there is nothing which prevents local management from approving overtime for the completion of PS Form 1767 in such

## Safety Committees, Meetings, Talks

### **M-01647 Memorandum**

**September 11, 2007**

Re: District Safety Committees Pilot Program

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that it is in their mutual interest to have an effective health and safety program. To that end, the parties agree to further test district safety committees in each area during the term of the 2006 National Agreement....

### **C-06949 National Arbitrator Bernstein**

**April 8, 1987, H1N-3D-C 40171**

A rural carrier who was designated as NALC's representative to the safety committee was not entitled to compensation for time spent at safety meetings when those meetings were held outside of the rural carrier's normal working hours.

### **M-00954 Step 4**

**November 30, 1989, H7N-5R-C 13353**

The issue in this grievance is whether management violated the agreement when it established a Safety Captain Program. The Safety Captain, as described in this grievance, will not be used as a substitute for the Local Safety Committee as established under Article 14 Section 4.

### **C-10611 Regional Arbitrator Benn**

**June 30, 1990**

Management acted improperly when it limited employees to one question as a group at weekly safety meetings.

### **M-00408 Step 4**

**May 13, 1983, H1N-1E-C 665**

There is no contractual provision for the grievant or his steward to attend an internal management meeting, whether called an accident review board or any other name. However, such a committee should not make recommendations for discipline of individual employees.

### **C-23279 Regional Arbitrator Lurie**

**April 22, 2002**

The Arbitrator finds that a contractually-binding past practice had arisen pursuant to which the NALC member of the Safety and Health Committee was afforded one hour of official time with which to prepare an agenda for the quarterly Committee meeting. The practice implemented a condition of employment about which the Agreement was silent and, as such, under the JCAM, it was necessary for Management to engage in good faith bargaining with the Union over the impact of rescission on the bargaining unit. The grievance is sustained. The violation has been a continuing one. The Postal Service is directed to pay the NALC Committee member one hour at the straight-time rate for each Committee meeting for which he submitted

an agenda, beginning with the October 1997 meeting.

## **M-01570 Memorandum of Understanding May 4, 2006**

NALC/USPS Memorandum of Understanding regarding the National Accident Reduction Task Force.

## **C-29507 Regional Arbitrator Jacobs June 24**

The grievance is sustained. The management of the Ann Arbor post office is ordered to cease and desist from violating the requirement to give a safety talk weekly, and to pay to the local Union an amount equal to 2 hours overtime pay for each of the four representative letter carriers.

## **Ergonomics**

### **M-01773 Joint USPS/NALC Letter April 24, 2008**

SUBJECT: Tools for Injury Reduction ('Good Ideas')—US. Postal Service/National Association of Letter Carriers National Joint Safety Task Force

Consistent with its ongoing commitment to improve safety, the National Joint Labor-Management Safety Committee evaluated several tools designed to reduce injuries associated with lifting, loading, and handling mail. Pilot testing and the Customer Service Ergonomic Risk Reduction Process indicated that three of the evaluated tools may help reduce injuries and Muscular- Skeletal Disorders (repetitive motion injuries related to lifting, reaching, and handling cumbersome or heavier objects).

A description of the approved tools is attached. Local managers who want to use these items should engage their National Association of Letter Carriers—National Business Agent; the Area and District Manager, Safety; and (where in use) the District Safety Committee.

Additional information including testimonials from carriers involved in testing can be found on the Safety and Environmental Resources web page at:  
<http://safetytoolkit.usps.gov/resources.aspx>.

The “good ideas” tools are:

- Utility/Mail Hooks—plastic rods with a hook to extend the reach of the carrier in loading/unloading mail into and from Long Life Vehicles and Flexible Fuel Vehicles
- Hamper Inserts—inserts used with 1046P hampers to raise the level of trays/tubs of mail loaded into the hamper, to reduce the lift height in loading and unloading the mail

- Mail Elevation Units—milk crates” used to elevate the height of trays and tubs of mail distributed to carrier cases, reducing bending and the lift height (but care must be taken to avoid increased twisting while lifting). Sort bins attached to carrier cases are also alternatives for raising flats off the floor. (Flats Sequencing System sites should coordinate plans for future equipment based on anticipated flat volume to be handled at the case.)

We appreciate your consideration of these tools, and your continued support in safety improvement.

## **OSHA**

### **M-00737 Executive Order 12196, Carter February 26, 1980**

This Executive Order provides for unannounced inspections of agency work places in specified situations (including a request of the occupational safety and health committees such as those established in accordance with Article 14, Section 4).

### **C-00176 Regional Arbitrator McAllister April 2, 1985, C1C-4C-C 15409**

By reference in Article 14, Section 3.D the contract incorporates Section 19 of OSHA.

## **Smoking**

The Postal Service smoking regulations are found in ELM Section 880.

### **880 Smoking**

**881** Definition Smoking is defined as having a lighted cigar, cigarette, pipe, or other smoking material.

**882.1** Buildings Smoking is strictly prohibited in all buildings or office space (including service lobbies) owned or leased by the U.S. Postal Service. There will be no indoor smoking permitted by any occupant of such space. Local managers, with input from employee representatives, may decide whether or not to permit smoking in designated outdoor locations on Postal Service property.

**882.2** Vehicles Smoking is prohibited in any General Services Administration interagency fleet management system vehicles.

### **M-01218 Pre-arb July 13, 1995, Q90N-4Q-C 93039784**

The issue in this grievance is whether management violated Article 19 of the National Agreement in the issuance of the 1993 revision of Section 880 of the Employee and Labor Relations Manual regarding smoking.

We mutually agree that consistent with the provisions of Section 880 of the Employee and Labor Relations Manual, smoking is prohibited in all postal facilities. However, safety and health committee union representatives shall participate in the selection of designated smoking areas on postal property outside of postal facilities, where designation of such smoking areas is feasible. In those installations that do not have a safety and health committee, the union president shall participate in the selection of designated smoking areas. Employee convenience, safety, health, housekeeping, and public access will be considered in the identification of designated smoking areas.

## **M-00950 Step 4**

**October 6, 1989, H7N-5T-C-12867**

The purpose of the revised smoking policy is to prevent non-smokers from having to breathe secondary smoke for reasons of health. If a smoker is in a vehicle alone, then smoking would be permitted since no one else is affected. If, however, the vehicle is carrying more than one person, then there should be no smoking in that vehicle unless everyone in the vehicle is a smoker.

Carriers are not permitted to smoke while delivering or collecting mail, as per 884 of the Employee & Labor Relations Manual. The local policy in question will accordingly be modified to properly reflect this change. See also [M-01370](#).

## **Safe Driver Awards**

### **M-00515 Step 4**

**June 8, 1984, H1N-5D-C 20610**

Inasmuch as the determination with regard to whether a Safe Driver Award is given, rests on an evaluation of an employee's required duties as a driver; an unfavorable determination with respect to his performance as a driver is grievable on the merits under the provisions of Article 15. See also [C-03274](#)

## **Cell Phones**

### **C-25161 Regional Arbitrator Soll**

**April 23, 2004**

NALC has proven by a preponderance of the evidence:

1. That by prohibiting Birmingham Letter Carriers the right to carry with them a personal cell phone while on their delivery routes, the current Birmingham Cell Phone Policy constitutes, and/or has caused or contributed to, or brought about, or enhanced, whether potentially or otherwise, an "unsafe condition" or unsafe working condition as such terms are stated, applied and referred to within Articles 14.1 and 14.2. of the National Agreement. And, thus,

2. The grieved Birmingham Cell Phone Policy is in violation and/or violative of the language, intent, safety goals and requirements of the National Agreement's Article 14,

Safety and Health, in general, and particularly 14.1. and 14.2. which mandate that USPS "provide safe working conditions," and correct "unsafe conditions."

## **Unsafe Orders, Conditions**

### **C-24968 Regional Arbitrator Hutt**

**January 15, 2004**

Grievant made every attempt to provide medical documentation in a timely fashion. Management had no reason to believe it would not be forthcoming, but rather than wait another few days, Grievant was ordered to follow the M-41 as instructed by her Supervisor... Based on the testimony, I find no options were provided Grievant other than performing as instructed. Grievant knew if she followed the instruction she would injure herself There was no evidence to substantiate that waiting for the documentation, after Grievant's use of this process for 15 years, would cause a hardship on the Service. The parties to this conflict were stubborn to the detriment of Grievant, who viewed leaving work her sole option to prevent injury. Accordingly, the Service violated Article 14.

AWARD Management violated Article 14 of the National Agreement when the Grievant was ordered to perform work that was unsafe for her prior injuries. Grievant is entitled to have the sick leave she used on March 27, 2003, restored to her.

### **C-26276 Regional Arbitrator Armendariz**

**November 28, 2005**

It is this Arbitrator's Opinion that grievant's work location within the 4-way stop intersection is a safety hazard. This is supported by the testimony of the Union's witnesses, the customer complaints filed and the letter received from the Miami-Dade County Traffic Engineering Department, in which, they found these cluster boxes to be a safety hazard, as it is causing a visual obstruction and a hazardous condition for motorists driving westbound and southbound.

Under these given circumstances, it is this Arbitrator's Opinion that the Postal Service has violated Article 14 and 19 and its Handbooks. Accordingly, the following Award is ORDERED. This grievance is SUSTAINED. The Local Hialeah Postal Management is, hereby, ORDERED to immediately correct these safety hazards; by removing the CBUs from their present location, and by changing the mode of delivery to curbside delivery 5 ensuring the safety concerns of the grievant, the customers and safe passage to motorists and pedestrians.

### **C-25692 Regional Arbitrator Ames**

**January 19, 2005**

The Napa Post Office did violate Articles 14 and 15 of the Agreement by failing to timely comply with a Step B decision to perform asbestos repair work. The appropriate

remedy is a monetary award to Branch 627 as reimbursement for its direct cost in maintaining this arbitration. The Napa Post Office shall cease and desist from future violations of Step B decisions. The Union's grievance is sustained.

## Safety Issues

### **M-00483 Step 4** **September 26, 1980, N8-W-0378**

Normally, letter carriers deliver mail during daylight hours; however, there is no contractual provision which would preclude management from assigning carriers to deliver mail in other than daylight hours.

### **C-10514 Regional Arbitrator Witney** **January 7, 1991**

Management did not violate the contract when it required carriers to deliver mail after dark.

### **M-00361 Step 4** **April 26, 1983, H1N-5C-C 8277**

Whether the lighting provided conforms with established standards and if the light measurement test were properly conducted can only be determined by application of Section 233.32 of the MS-49 Handbook and the manufacturer's operating instructions of the light meter to the specific fact circumstances involved.

### **M-00160 Letter** **August 7, 1986**

The Office of Delivery and Retail Operations indicates that the position of the Postal Service is that where a lawn has been chemically treated and a sign has been posted to that effect, the letter carrier serving that delivery would not be required to cross that lawn during the period the potential hazard remained in effect.

### **M-01477 Pre-arb** **March 4, 2003, Q98N-4Q-C-00099268**

The parties agree that placing inverted plastic trays in the bottom of the 104-P hamper as an insert is one way, among others, to address any local bending and lifting concerns.

This agreement fully and completely resolves the issue of whether there is a bending/lifting hazard or violation of the National Agreement when city carriers use a 1046-P plastic hamper and, accordingly, will be applied to all disputes on this issue, including all grievances currently pending at any level of the grievance-arbitration procedure.

### **M-00559 Step 4** **December 8, 1978, NCW 11338**

Management is instructed to cease the collecting and redistributing of the containers of dog repellent at the ending and beginning of each work day.

### **C-10537 Regional Arbitrator Searce** **January 8, 1991**

Management did not violate Article 14 by permitting the removal of material containing asbestos from the roof of a postal facility during the working hours of letter carriers.

## Accidents, Discipline

See also [Accidents: In General](#)  
[Accidents: Vehicle](#)

### **M-01345 Step 4** **January 3, 1997, Q94N-4Q-C 96091698**

It is the parties' mutual understanding that the intent of the STOP Safety Program is to focus on educating and training employees on safe work habits and to observe and identify unsafe practices and deficiencies, as well as to correct those unsafe practices and deficiencies. Its focus is not to promote discipline. Administrative action with respect to safety violations must be consistent with Articles 14 and 29.

### **M-01289 Step 4** **June 18, 1997, D94N-4D-C 97027016**

The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement. Discipline imposed for cited safety rule violations must meet the "just cause" provisions of Article 16 of the National Agreement. Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29.

## See Also

[Guarantees](#)  
[Out-of Schedule Pay](#)  
[Hold Down Assignments](#)

### Article 8, Section 2. Work Schedules

A. The employee's service week shall be a calendar week beginning at 12:01 a.m. Saturday and ending at 12 mid-night the following Friday.

B. The employee's service day is the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar days, the service day is the calendar day on which such work schedule begins.

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article. As far as practicable the five days shall be consecutive days within the service week.

### **C-00939 National Arbitrator Gamser** **September 10, 1982, H1C-5F-C 1004**

Unassigned regulars who had their schedules changed in the absence of a bid or assignment to a residual vacancy were entitled to out-of-schedule overtime under Article 8, Section 4.B.

### **M-00188 Step 4** **October 10, 1975, NB-C-6033**

It is not required that temporary changes in schedule be posted by Wednesday proceeding the week in which the change takes place. However, temporary changes in starting times which require employees to work outside of their basic work week schedule necessitates the payment of overtime for all hours worked outside of the basic schedule.

### **M-00049 Step 4** **March 20, 1985, H1N-1J-C 28970**

Management may effect schedule changes under the M-39 Handbook. Such change in schedule does not constitute a route adjustment.

### **M-00817 Pre-arb** **March 9, 1988, H4N-5K-C 10972**

When an employee has partially overcome a disability and is available for assignment to limited duty, management may change the employee's regular work schedule in accordance with part 546.14 of the ELM, but only on a prospective basis. Management may not change the employee's regular work schedule retroactively. The requirement set out in part 434.61 of the ELM and elsewhere, that employees be given notice of a temporary schedule change by Wednesday of the preceding service week does not apply to schedule changes for limited duty as-

signments pursuant to Part 546.14 of the ELM.

### **M-01490 Pre-arb** **June 17, 2003, E94N-4E-C-99119612**

The issue is whether a duty assignment can have more than one starting time during the service week.

A duty assignment may include a permanent schedule which consists of different starting times on certain days of the service week. However, the decision to do so may not be arbitrary. Currently, Methods Handbooks M-39, Section 122 deals with the scheduling of city letter carriers.

The starting time(s) of a Carrier Technician assignment is the same as the component routes which comprise the Carrier Technician assignment.

### **M-00353 Step 4** **May 24, 1985, H1N-5G-C 24094**

A reserve carrier who does not opt for a "hold-down" shall nonetheless assume the schedule of the "hold-down" if management elects to assign the reserve carrier to the route or assignment anyway.

Note: This settlement establishes the schedule a reserve letter carrier should work if assigned to a hold-down by management. It does not waive the carrier's entitlement to out-of-schedule pay. See [M-00940](#)

### **C-10625 Regional Arbitrator Leventhal** **February 15, 1991**

A schedule change was temporary rather than, as claimed by management, permanent.

### **C-10916 Regional Arbitrator Stoltenberg** **July 1, 1991, E7N-2U-C 19788**

A schedule change for two months was "permanent."

### **C-09529 Regional Arbitrator Sobel** **October 4, 1989, S4N-3V-C 59607**

A three-hour change in starting time which was rescinded after three weeks was a "permanent" change.

### **C-09429 Regional Arbitrator Liebowitz** **October 14, 1989, N7N-1W-C 24782**

Management did not violate the contract when it refused to extend the tour of the grievant, who was 15 minutes late for work.

### **C-00125 Regional Arbitrator Moberly** **April 12, 1985, S1C-3W-C 25063**

Management violated the contract when it did not pay out-of-schedule overtime to employees whose schedules were temporarily changed.

## Scheduled Days Off

### **C-12924 Regional Arbitrator Lurie**

**April 1, 1993, S0N-3C-C 15012**

The Postal Service violated Article 8, Section 2.C and the Local Memorandum of Understanding by changing the grievant's schedule from consecutive to non-consecutive days off.

## Voluntary Schedule Changes

See also [Out-of Schedule Pay](#)

Voluntary schedule changes for personal convenience are covered by ELM Section 434.6. Note that the ELM requires that voluntary schedule changes must be agreed to by the shop steward. Employees requesting a voluntary schedule change must complete a Form 3189.

### **ELM 434.622**

Exceptions Eligible employees are not entitled to out-of-schedule premium under the following conditions:

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i. When a request for a schedule change is made by the employee for personal reasons and is agreed to by the employee's supervisor and shop steward or other collective bargaining representative.

### **C-00161 National Arbitrator Gamser**

**July 27, 1975, AB-C-341**

The Postal Service may not recruit so-called volunteers who are willing to change their schedules to avoid the payment of out of schedule overtime when filling temporary higher level positions. This does not preclude the Employer from accommodating change of schedule requests received from individual employees and for the convenience of such employees when condoned and agreed to by the Union.

### **M-00698 Step 4**

**May 31, 1977, NC-W-6161**

Local, management is advised that in the future they will not allow schedule changes for the employee's personal convenience without the concurrence of the local union.

Note: The requirement that the union agree to temporary changes of schedule for personal convenience is contained in ELM Section 434.615 (b) and F-21 Section 232.23

### **C-27808 Regional Arbitrator Braverman**

**September 30, 2008, C01N-4C-C 06138320**

The Employer may deny change of schedule requests only after considering operational needs specific to the request and weighing them against the needs of the employee making the request. The basis for denial of the request

must be specifically stated.

### **M-01079 Prearb**

**May 25, 1992, H7N-3W-C 36013**

The issue in this grievance is whether an employee holding an approved Form 3189, Request for Temporary Schedule Change for Personal Convenience, may be required to work post-tour overtime.

During our discussion, we mutually agreed that the intent of filing a Form 3189 which requests an earlier leaving time is to obtain approval for the employee to leave at that earlier time. Consequently, it is inappropriate for management to approve such a form and then require the employee to work post-tour overtime in other than an emergency situation.

We further agreed that when a Form 3189 requesting an earlier leaving time is approved, the requesting employee will be passed over for any overtime worked on that day as being unavailable. Thus, no grievances may be filed if employees with an approved Form 3189 are passed over. Likewise, no grievances will be filed on behalf of employees required to work overtime as a result of passing over an employee with an approved Form 3189.

### **M-01049 APWU Step 4**

**September 14, 1983, H1C-4G-C-1630**

The parties at this level agree that once the union and management agree to a temporary schedule change for a bargaining-unit employee, the employee shall work the temporary schedule unless both the union and management agree to modify or terminate the schedule change.

### **M-01049 APWU Step 4**

**September 14, 1983, H1C-4G-C-1630**

The parties at this level agree that once the union and management agree to a temporary schedule change for a bargaining-unit employee, the employee shall work the temporary schedule unless both the union and management agree to modify or terminate the schedule change.

### **M-01064 APWU Step 4**

**May 13, 1985, H1C-5G-C-30220**

An employee may sign, in his/her capacity as a union steward, agreement for his/her own request for a temporary schedule change (using PS Form 3189) prior to presentation to the supervisor involved for approval.

### **C-09918 Regional Arbitrator Sobel**

**March 8, 1990**

Management violated the contract when it refused a carrier's request to change his days off to conform to the days of court service.

## **M-00777 Segmentation Settlement Agreement March 9, 1987**

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, in joint discussion and consultation, have agreed on a set of principles governing the implementation of the segmentation concept as provided in the M-39 Handbook.

These principles will ensure the efficiencies and effective implementation of the segmentation concept and ensure the fair and appropriate utilization of letter carriers in the performance of the work involved in segmentation.

1. Segmentation of mail can efficiently be processed on automated or mechanized equipment. Such processing will be done by the craft designated to operate that equipment.
2. A manual, tertiary or delivery preparation operation is the manual sortation or preparation of mail that occurs after an incoming secondary operation and does not require memorization of distribution scheme items. A manual tertiary or delivery operation will be done by city delivery letter carriers provided the mail is for city delivery routes or post office box sections served by these routes and provided there is space available at the delivery unit. If space is not available, and sortation is done at a General Mail Facility, a mail processing center, or any other postal installation or facility within the installation, letter carriers will perform the manual tertiary sortation at such facilities. An incoming secondary operation normally requires memorization of distribution scheme items and is one which results in mail being sorted to carrier routes, firms, box section, nixies, postage dues, and other separations necessary for the efficient processing of mail.
3. Routers can be used to perform the manual tertiary sortation of mail segmentation whenever that is operationally feasible. Tertiary sortation duties may also be combined with other forms of letter carriers' work to create full-time assignments.
4. Even though no arbitrary limitation is placed on the number of pieces in a segmentation, a limitation will, in effect, be imposed by whatever number of pieces is operationally effective and efficient for each operation in an installation.

Standard manual distribution cases that are used in delivery units should be fully utilized for sorting mail to carrier routes, box sections, postage dues, etc. Segmentations should contain sufficient volumes that can be sorted and pulled down efficiently. For example, a single delivery point or ZIP + 4 segment (blockface, apartment building, etc.) that averages two or three pieces a day should not normally take up space on the incoming, manual secondary case. Exceptions could be holdouts such as nixies, postage dues, etc., that require special treatment regardless of volume.

Segmentations are not necessarily static; therefore, manual secondary cases should be reviewed periodically to ensure that all cells are properly utilized in the most effective and efficient manner possible, consistent with operational or service needs.

5. Each installation will determine the type of equipment to be used in a tertiary sortation. Performance on that equipment will be done in accordance with the principle of a fair day's work for a fair day's pay which will normally be reflected in the general performance expectations for that equipment.
6. The parties understand that the tertiary sortation referenced here is the result of the implementation of the segmentation concept, which is presently described in the changes to the M-39 Handbook as presented to the National Association of Letter Carriers, AFL-CIO, on August 15, 1985. Any tertiary sortation established prior to June 16, 1983, will remain in effect unless changed by the installation. Changes made after June 16, 1983, but prior to implementation of this understanding, which are in conflict with this document, will be changed to conform.
7. The Employee Involvement process will be utilized to develop recommendations for use by the installations affected by this Agreement.

## **M-00908 Step 4 March 23, 1989, H7N-3N-C 8757**

The fact that the work [segmentation] is being charged to labor distribution code 43 is an administrative characterization of function which does not change the fact that the work being performed is carrier work.

## **M-01078 Step 4 June 9, 1992, H7N-3R-C 38961**

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. In the Segmentation Settlement Agreement, of March 9, 1987, the following was agreed to:

"2. A manual tertiary or delivery operation will be done by **city delivery letter carriers** provided the mail is for city delivery routes or post office box section served by these routes and provided there is space available at the delivery unit." (emphasis added).

## **C-10129 Regional Arbitrator Byars July 23, 1990**

Management properly assigned a segmentation operation, which included mail destined for rural routes, to the clerk craft.

The seniority provisions for the letter carrier craft are found in Article 41, Section 2 of the National Agreement and are explained in the JCAM. CCAs do not have "seniority" but do have "relative standing." See City Carrier Assistants (CCA), [Relative Standing](#), above.

**C-00791 National Arbitrator Garrett  
October 1, 1973, A-NAT-2833**

A local proposal for "day to day seniority" is in conflict with the 1971 National Agreement.

**C-03225 National Arbitrator Mittenthal  
March 8, 1982 H8N-4B-C 16721**

Article 41, Section 2.A.1. of the 1978 National Agreement does not require the Postal Service to honor seniority in filling a day-to-day assignment of carriers.

**C-03807 National Arbitrator Mittenthal  
July 22, 1983, H1N-5D-C 2120**

A past practice of assigning PTFS carriers to available work by seniority is inconsistent and in conflict with the National Agreement.

**C-11528 National Arbitrator Snow  
December 19, 1991, H7N-4Q-C 10845**

Senior employees excessed into the Letter Carrier Craft under terms of Article 12.5.C.5.a must begin a "new period" of seniority pursuant to the provisions of Article 41.2.G of the parties National Agreement. Article 41.2.G prevails and employees reassigned from other crafts must begin a new period of seniority in the Letter Carrier Craft.

**C-13396 National Arbitrator Snow  
October 11, 1993, H0C-3N-C 418**

"The arbitrator concludes that the employer violated the parties' collective bargaining agreement when it reassigned a full-time [letter carrier] employee who was partially recovered from an on-the-job injury to full-time regular status in the Clerk Craft. Unless in an individual case, the Employer can demonstrate that such assignments are necessary, notwithstanding the conversion preference expressed in the parties' agreement, the Employer shall cease and desist from reassigning partially recovered employees to full-time status when those reassignments impair the seniority of part-time flexible employees."

**M-01082 APWU Memorandum  
April 16, 1992**

The United States Postal Service and the American Postal Workers Union, AFL-CIO (Parties), mutually agree that Arbitrator Carlton Snow's award in Case Number H7N-4Q-C-10845 [C-11528] shall be applied in a prospective fashion effective with the date of the award.

Accordingly, employees who are excessed into APWU represented crafts (Clerk, Maintenance, Motor Vehicle, and Special Delivery Messenger) after December 19, 1991, under the provisions of Article 12.5.C.5, shall begin a new

period of seniority.

**M-01605 Interpretive Step Settlement  
March 12, 2007**

Article 41.2.D.2 of the National Agreement provides that city letter carriers who enter the military shall not have their seniority broken or interrupted because of military service. This provision applies to city letter carriers restored in the same craft in the same installation after return from military service and to city letter carriers involuntary returned after military service to the same craft in an installation other than the one they left. Such involuntary reassignment may only occur when a city letter carrier vacancy in the applicable regular work force category and type (e.g. full-time regular or part-time flexible, as appropriate) is not available in the home installation at the time of return. Whether such vacancy is available must be determined based on the individual facts of each case. Nothing in Article 41.2.D.2 supplants or diminishes any rights that an employee has under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

**M-01179 NALC Letter  
February 11, 1994**

Under the provisions of Article 41, Section 2.D.4, letter carriers restored following military service will not have their seniority interrupted even if involuntarily restored to an installation other than the one they left.

**M-01168 Prearb  
August 31, 1993, H7N-3Q-C 29862**

The issue in these cases concerns the appropriate seniority for employees voluntarily returning to the Letter Carrier Craft from best qualified positions at other installations.

During our discussion, we mutually agreed that the provisions of Article 41.2.G.3 are applicable to this situation.

**M-00549 Pre-arb  
October 3, 1986, H4N 5F C 1620**

Article 41.1.A.7 does not specify placement of unassigned regulars by juniority or by seniority. Where a question of established past practice exists it will be determined in regional arbitration.

**M-00594 Step 4  
November 25, 1980, H8N 2W C 7259**

Probationary employees are without seniority rights, although retroactively computed, until satisfactory completion of ninety (90) days of employment.

**M-00630 Step 4  
July 15, 1977, NC N 5462**

The grievant was excessed outside his installation and filed a request to be returned. He later voluntarily transferred to another office. Management held that this negated his retreat rights. He later returned to his original office and was given seniority one day junior. This was

later changed to the date of his return. The decision returns all his seniority.

**M-00681 Step 4**  
**May 4, 1977, NC-E-5617**

Although an unclassified letter carrier does not have the right to select which route he wishes to work on any given day, the employer is not precluded from assigning unassigned regular employees to various routes by seniority.

**M-00112 Step 4**  
**October 31, 1978, NC-S-12379**

There are no requirements that overtime be scheduled according to seniority in the letter carrier craft.

**M-01469 Prearbitration Settlement**  
**August 29, 2002, E90N-4E-C-95058006**

This agreement supersedes and replaces our April 23, 2001, prearbitration agreement for the above-captioned case [M-01439].

The parties agree that the "leave computation date," currently box 14 of PS Form 50, is used to determine "total federal service" for the purposes of applying Article 41.2.B.7.(f).

**M-00057 Step 4**  
**July 6, 1983, H1N-5B-C 11224**

As long as the grievant remains in his current VOMA position, local management will use his seniority that he carried with him as a member of the carrier craft. Except as specifically provided otherwise, the grievant shall retain his carrier seniority when seniority is used as a determining factor.

## Supervisors

**C-10147 National Arbitrator Snow**  
**August 13, 1990, H7N-4U-C 3766**

Arbitrator Snow held that when a former supervisor is reassigned to the letter carrier craft, his full-time or part-time status is to be determined by reference to the seniority provisions of the Agreement. Accordingly:

- 1) If a letter carrier becomes a supervisor and returns to the letter carrier craft in the same office within two years -- thus retaining his seniority -- he may be assigned to a full-time position.
- 2) If a letter carrier becomes a supervisor and returns to the letter carrier craft after two years have passed, he loses seniority and thus may only be assigned to a part-time flexible position.
- 3) If a letter carrier becomes a supervisor and returns to the letter carrier craft in a different office, he will have accumulated no seniority and thus may only be reassigned

to a part-time flexible position.

**M-00805 Pre-arb**  
**March 28, 1986, H1N-1E-C-35862**

Management violated the National Agreement by not converting the grievant, part-time flexible, to full-time status prior to the voluntary reassignment of a supervisor from another post office to the vacant craft position. In this situation, the supervisor had been away from a craft position for more than two years. Therefore, the parties agree that the Postmaster General's letter of April 6, 1979, concerning voluntary reassignments and transfers applies, wherein it states:

Full-time non-bargaining-unit employees will be reassigned into full-time positions unless the reassignment is to a vacant bargaining-unit position.

All employees reassigned to positions in the bargaining-unit will have their seniority established in accordance with applicable collective-bargaining agreements.

The parties also agree to the following remedy:

Applying this criteria, the grievant will be placed in the bid position sought under this grievance and the incumbent will become an unassigned regular.

For the period beginning when the grievant would have been placed in the bid position, he will be compensated for the difference between his paid hours and forty hours in any week in which he did not receive pay for forty hours. See also M-00806.

**C-03227 National Arbitrator Mittenthal**  
**April 23, 1981 N8-NA-0383**

Under the 1978 National Agreement temporary supervisors continue to accrue seniority during time which they serve as temporary supervisors (204B).

**NALC Position Paper.** The seniority of supervisors who have transferred to another installation is governed by Article 41.2.A.2 which states:

**41.2.A.2** Seniority is computed from date of appointment in the letter carrier craft and continues to accrue so long as service is uninterrupted in the letter carrier craft in the same installation except as otherwise specifically provided.

Thus, if a former letter carrier in a supervisory status transfers to another installation, all seniority is lost. The seniority cannot be regained even if the employee subsequently returns to the installation where he/she served as a letter carrier. The loss of seniority of seniority is permanent regardless of whether the employee spent more or less than two years as a supervisor.

The seniority of letter carriers who leave the bargaining

unit and then return to the carrier craft in the same installation is governed by Article 41.2.F and Article 12.2.B.2.

**41.2.F** Effective July 21, 1978, when an employee, either voluntarily or involuntarily returns to the letter carrier craft at the same installation, seniority shall be established after reassignment as the seniority the employee had when leaving the letter carrier craft without seniority credit for service outside the craft.

**12.2.B** An Employee who left the bargaining unit on or after July 21, 1973 and returns to the same craft;

1. will begin a new period of seniority if the employee returns from a position outside the Postal Service; or

2. will begin a new period of seniority if the employee returns from a non-bargaining unit position within the Postal Service, unless the employee returns within 2 years from the date the employee left the unit.

Read together, these two provisions describe three possible situations.

1) If the carrier left the unit prior to July 21, 1973, then Article 41, Section 2.F would apply and the carrier would pick up whatever seniority he or she had at the time of departure from the unit, but would not receive credit for time spent out of the unit.

2) If the carrier left the unit on or after July 21, 1973 and returned within 2 years, then Article 41, 2.F again applies and the carrier would receive credit for the seniority he or she had prior to leaving the unit.

3) A carrier who left the unit on or after July 21, 1973 and returns later than 2 years following the date of departure, begins a new period of seniority (Article 41.2.F does not apply; rather Article 12.2.B.2 takes care of the entire matter.)

The full or part time status of former letter carriers returning to this craft was the subject of an award by National Arbitrator Carleton Snow (C-10147). Arbitrator Snow held that when a former supervisor is reassigned to the letter carrier craft his full-time or part-time status is to be determined by reference to the above referenced seniority provisions of the Agreement. Accordingly:

1) If a letter carrier becomes a supervisor and returns to the letter carrier craft in the same office within two years -- thus retaining his seniority -- he may be assigned to a full-time position.

2) If a letter carrier becomes a supervisor and returns to the letter carrier craft after two years have passed, he loses seniority and thus may only be assigned to a part-time flexible position.

3) If a letter carrier becomes a supervisor and returns to the letter carrier craft in a different office, he will have accumulated no seniority and thus may only be reassigned to a part-time flexible position.

## Tie Breaker Provisions

The JCAM provides the following:

The seniority tie breaker provisions of Article 41.2.B.7 come into play only if the "relative standing on the appointment register" rule of Article 41.2.B.6 fails to resolve a tie in seniority. In that case the tie is resolved by applying the tie-breaking steps of Article 41.2.B.7(a)-(f). Each step is applied in sequence until the tie is broken; i.e., if (a) does not resolve the tie then (b) is applied, and so forth. The "leave computation date," currently box 15 of PS Form 50, is used to determine "total federal service" for the purpose of applying Article 41.2.B.7(f) (see Step 4 E90N-4E-C 95058006, August 29, 2002, M-01469).

### M-01469 Re: E90N-4E-C 95058006 Class Action Tucson, AZ, August 29, 2001

This agreement supersedes and replaces our April 23, 2001, prearbitration agreement for the above captioned case.

The parties agree that the "leave computation date". currently box 14 of PS Form 50, is used to determine "total federal service" for the purposes of applying Article 41.2.B.7.(f).

Please sign and return the enclosed copy of this decision as acknowledgment of your agreement to supersede and replace our April 23, 2001, prearbitration agreement with this decision.

## Article 17.1 Stewards

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

**Contractual Authorization for Stewards.** Although shop stewards are union representatives and NALC officials chosen according to NALC rules, stewards are also given important rights and responsibilities by the National Labor Relations Act and by the National Agreement. The contract authorizes stewards to represent carriers in the investigation, presentation and adjustment of grievances, and requires the employer to cooperate with stewards in various ways as they accomplish their grievance handling jobs. The specific steward rights and responsibilities set forth in Article 17.3 and 17.4 are supplemented in other parts of the National Agreement, including:

- Article 6.C.4 (superseniority in layoff or reduction in force)
- Article 15 (grievance handling)
- Article 27 (employee claims)
- Article 31.3 (right to information)
- Article 41.3.H (right to use telephones)

## Article 17.2.A Appointment of Stewards

The Union will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union.

Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s). The number of stewards certified shall not exceed, but may be less than, the number provided by the formula hereinafter set forth.

Employees in the same craft per tour or station

Up to 49	1 steward
50 to 99	2 stewards
100 to 199	3 stewards
200 to 499	5 stewards
500 or more	5 stewards plus additional steward for each 100 Employees

## Steward Certification

Article 17.2.B At an installation, the Union may designate in writing to the Employer one Union officer actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a

grievance. The activities of such Union officer shall be in lieu of a steward designated under the formula in Section 2.A and shall be in accordance with Section 3. Payment, when applicable, shall be in accordance with Section 4.

17.2.C To provide steward service to installations with twenty or less craft employees where the Union has not certified a steward, a Union representative certified to the Employer in writing and compensated by the Union may perform the duties of a steward.

17.2.D At the option of the Union, representatives not on the Employer's payroll shall be entitled to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the area level and providing such representatives act in lieu of stewards designated under the provisions of 2.A or 2.B above.

**Steward Certification.** Article 17.2.A obligates the NALC to certify each steward and alternate to the employer in writing. Once certified, the steward represents employees in a specific work location. The steward from Station A, for example, must investigate any grievance occurring at his or her location, even the grievance of a carrier who is detailed temporarily from Station B and whose grievance arose at Station A. This is true even if the Station A steward must travel to interview the grievant in Station B, as provided in Article 17.3 (Step 4 NC-C- 8435, October 6, 1977, [M-00455](#)).

**Acting as Steward.** Article 17.2 establishes four alternate ways individuals may be certified as stewards as circumstances warrant.

- Article 17.2.B The union may designate in writing one union officer actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance. The individual designated will act in lieu of a steward designated under the formula in Section 2.A and is paid in accordance with Section 4, below. For the purposes of this section, full-time union officials are considered to be "actively employed." (Prearbitration Settlement H94N-4H-C 96084996, October 2, 1997, [M-01267](#))

### M-01833 Joint Questions and Answers

March 6, 2014

**Question 37: Can a CCA serve as a union steward?**

Yes.

### M-00455 Step 4

October 6, 1977, NC-C-8435

An employee is represented by the steward for the specific work location where he happens to be working when the

cause of the grievance arose.

#### **M-01342 Step 4**

**April 21, 1998, J94N-4J-C 98038114**

The interpretive issue in this grievance is whether management violated the National Agreement when the grievant was not provided the union steward certified to represent employees in his specific work location, during an Inspection Service interview.

When requested, a steward certified to represent employees in the specific work location where the employee normally works, should be provided, if available.

#### **M-00083 Step 4**

**November 8, 1984, H1C-3F-C 35597**

The number of stewards certified shall not exceed, but may be less than the number provided by the formula set forth in Article 17, Section 2, which is based on the total number of employees in the same craft per tour or station.

#### **M-00217 Pre-arb**

**July 27, 1981, H8N-5K-C 14205**

The National Association of Letter Carriers need not designate a precise group of letter carriers over which each steward shall have jurisdiction to represent letter carriers and process grievances on their particular tour and within their particular station or branch.

#### **M-00763 Step 4**

**April 15, 1987, H1N-3U-C 28786**

The right to hold steward elections, on the clock, may be established by past practice.

#### **M-00327 Step 4**

**July 7, 1972, N-E-874**

There is no provision in Article 15 or Article 17, which denies the right of a steward to process his own grievance in Step 1 or Step 2.a.

#### **M-00392 Step 4**

**May 14, 1981, H8N-4K-C 15581**

If a steward is the individual who is the aggrieved, he is entitled to steward representation just as any other employee. However, when a steward files a class action grievance on behalf of the Union, he is the representative.

#### **M-00649 Step 4**

**January 30, 1973, NC-2114**

A full time union official has the right to act as a steward.

#### **M-00646 Step 4**

**March 15, 1978, NC-N-9623**

The grievant was offered the services of an available steward, which he declined. Accordingly, there is no violation of the National Agreement.

## Alternate Stewards

#### **M-00503 Step 4**

**May 24, 1984, H1N-1J-C 5026**

Once an alternate steward has initiated a grievance, the alternate steward may continue processing that grievance, as determined by the union. However, only one steward will be given time for processing the grievance.

#### **M-00811 Step 4**

**May 9, 1986, H4N-2M 3551**

The Union will provide a list of stewards and sequentially listed alternates in accordance with Article 17 of the National Agreement. There will be no "shopping" for stewards. If a steward or alternate is not available, the Postal Service may grant the grievant an extension of time for the grievance.

#### **M-00461 Step 4**

**December 21, 1977, NC-S-4915**

All stewards need not be absent before an alternate is allowed to represent employees. See also [M-00014](#)

#### **C-10004 APWU National Arbitrator Snow**

**January 8, 1990, H4C-3W-C 28547**

Management did not violate the contract when it provided the grievant with an alternate steward rather than the grievant's steward of choice when the regular steward was in overtime status.

## Chief Stewards

#### **M-00460 Step 4**

**November 7, 1980, N8-S-0470**

The designation of Chief Steward does not provide for added representation beyond the particular designated work location

#### **M-00952 Step 4**

**October 13, 1976, NC-W-3083**

The Union is not precluded from having the Branch President, acting as Chief Steward, present a grievance at Step 2 in lieu of the steward.

#### **M-00462 Step 4**

**October 21, 1977, NC-S-7847**

The employee who is a steward has the same right to Union representation as other employees. However, management is not required to supply the President of the local Union as the Chief Steward's Union representative. The employee who is a chief steward should be represented by the steward in his section.

#### **C-00245 Regional Arbitrator Epstein**

**April 27, 1982, C8C-4H-C 17962**

A union president also wearing the hat of "chief steward," is a steward within the meaning of Article 17 and entitled

to super-seniority; out-of-schedule overtime is provided as remedy.

## Protected Activity

### **M-01066 U.S. Court of Appeals, District of Columbia, Cook Paint and Varnish v. NLRB**

A steward may not be required to divulge to the employer information given by a grievant in connection with the steward's handling of a grievance.

### **C-01191 Regional Arbitrator Goldstein July 6, 1982, C1N-4B-D 3937**

If Grievant was in fact acting as a Steward on January 7, 1982, his personal abusiveness to [his supervisor] falls precisely into the zone for which the special immunity status was created; a closed grievance meeting or closed discussion to discuss Union matters. It is in this context and this context alone, that the parties meet as equals. The Steward is entitled to the same deference and latitude as his or her supervisor. It is in this situation, away from the audience of other employees, where a steward may display a loss of temper or use profanity and still be protected from discipline.

### **C-11177 Regional Arbitrator Levak January 6, 1986**

Steward who called supervisor a "liar" and a "shithead" and who said to supervisors "fuck you all," did so privately and thus was engaged in protected activity and enjoyed immunity from discipline.

## Superseniority

Article 17 Section 3 of the National Agreement provides the following:

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office.

Article 6.C.4 of the National Agreement provides the following:

**Union representation.** Chief stewards and union stewards whose responsibilities bear a direct relationship to the effective and efficient representation of bargaining unit employees shall be placed at the top of the seniority unit roster in the order of their relative craft seniority for the purposes of layoff, reduction in force, and recall.

### **C-08504 National Arbitrator Britton November 28, 1988, H4N-5C-C 17075**

Management violated Article 17, Section 3 by temporarily

assigning a steward who was a full-time reserve carrier to another station. The arbitrator held that the prohibition on transfers provided for in Article 17.3 applies to temporary as well as permanent reassignments and that the prohibition applies even if there are no vacant job assignments.

### **M-00077 Step 4**

#### **October 25, 1983, H1N-2B-C 7422**

Under Article 17, Section 3, of the National Agreement, a certified steward "may not be involuntarily transferred to...another branch...unless...". Management may, however, take whatever action is appropriate and necessary, e.g., excessing of the junior full-time carrier, in order to provide the grievant with an assignment at the main office. See also [M-00520](#), [M-00541](#).

### **C-00245 Regional Arbitrator Epstein**

#### **April 27, 1982, C8C-4H-C 17962**

A union president also wearing the hat of "chief steward," is a steward within the meaning of Article 17 and entitled to super-seniority; out-of-schedule overtime is provided as remedy.

### **M-01267 Prearbitration Settlement**

#### **October 2, 1997, H94N-4H-C 96084996**

The issue in these grievances is whether a full-time union official who is on the employer's rolls is "actively employed" for the purposes of Article 17.2.B.

During that discussion, it was agreed to resolve the interpretive issue with an understanding that full-time union officials on the employer's rolls are considered "actively employed" for the purposes of Article 17.2.B.

- The union may designate in writing, one union officer, who may also be a steward in a different section, actively employed at an installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance.
- Article 17.2.C In offices with twenty or less total craft employees which have no steward certified under Article 17.2.A, the union may certify a representative who is compensated by the union.
- Article 17.2.D The union may certify a representative not on the employer's payroll to perform the functions of a steward or chief steward. Such representatives must be certified in writing to the appropriate Area office and will act in lieu of stewards designated under the provisions of Article 17.2.A or Article 17.2.B.

Representatives certified by the union pursuant to Article 17.2.D may be anyone who is not on the employer's official time. This would include, for example, employees from another installation (Prearbitration Settlement, H8N-2B-C

12054, May 26, 1982, [M-00233](#)) and former employees (Step 4, H4C-1M-C 2986, April 29, 1987, [M-00798](#)).

**M-00233 Pre-arb  
May 20, 1982, H8N-2B-C 12054**

A Union member actively employed in a post office may be designated as a Union representative to process a grievance at another post office. Such employee must be certified in writing, to the Employer at the regional level. An employee so certified will not be on the Employer's official time and will be compensated by the Union. An employee so certified will act in lieu of the steward designated under Article 17, Section 2.A. and 2.B. at the facility where the grievance was initiated.

**M-00798 Step 4  
April 23, 1987, H4C-1M-C 2986**

A former employee, who is a certified union steward will be allowed to enter a postal facility to perform the functions of a steward or chief steward in accordance with the provisions of Article 17.2D

**M-01833 March 6, 2014  
Joint Questions and Answers—Other Provisions  
Question No. 37: Can a CCA serve as a union steward?**

Yes.

**Article 17.2.E** A steward may be designated to represent more than one craft, or to act as a steward in a craft other than his/her own, whenever the Union or Unions involved so agree, and notify the Employer in writing. Any steward designations across craft lines must be in accordance with the formula set forth in Section 2.A above.

(The preceding Section, Article 17.2, shall apply to Transitional Employees.)

**Warning.** It is important that all stewards be properly certified in writing in accordance with the provisions of Article 7, Section 2, above. Regional arbitrators have ruled that grievances were not arbitrable because they were filed by a steward not properly certified in writing. See, for example, [C-10798](#), Regional Arbitrator Foster, April 23, 1991, [C-27757](#), Regional Arbitrator Klein, July 22, 2008, and [C-09464](#), Regional Arbitrator Condon, October 23, 1989. This means that the arbitrators simply dismissed the cases without even considering the merits.

In a particularly outrageous case, an arbitrator ruled that a removal case was procedurally defective because a properly certified steward had requested information relating to the case one day before the certification. ([C-28661](#) Regional Arbitrator Halter, January 11, 2010).

In contrast, Regional Arbitrator Harris held in [C-24264](#) that a grievance was arbitrable even though there were problems with the steward certification He found that there was

a well established past practice of accepting grievances filed by the steward.

**If you have any questions** concerning certification procedures, contact your national business agent for assistance.

The Union's right to information is the subject of Article 31, Section 3 which provides the following:

**Article 31, Section 3.** Information The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations.

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

(The preceding Article, Article 31, shall apply to City Carrier Assistant Employees.)

The JCAM explains Article 31 as follows:

**Information. Article 31.3** provides that the Postal Service will make available to the union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of the Agreement, including information necessary to determine whether to file or to continue the processing of a grievance. It also recognizes the union's legal right to employer information under the National Labor Relations Act. Examples of the types of information covered by this provision include:

- attendance records

#### **M-00215 Step 4**

**October 14, 1981, H9C-5K-C 17499**

The Postal Service agrees that relevant information within the meaning of Article 31, including requests for attendance information, will be provided to the Union.

- payroll records
- documents in an employee's official personnel file
- medical records

#### **M-01155 Step 4**

**January 14, 1994, H7N-2C 44938**

We mutually agreed that the release of medical records to the union without an employee's authorization is provided

for in the Administrative Support Manual, Appendix (USPS 120.190), EL-806, and by Articles 17 and 31 of the National Agreement.

#### **M-00881 Step 4**

**November 16, 1988, H7N-1P-C 2187**

The release of medical records to the Union is provided for in the Administrative Support Manual, Appendix (p. 42) (USPS 120.090). Accordingly, this grievance is sustained and the records in dispute will be provided to the union. See also [M-01208](#)

#### **C-06652 Regional Arbitrator Rotenberg**

**November 16, 1986, C4N-4B-C 15886**

The Union is entitled to medical records necessary to investigate or process a grievance even in cases where the employee involved does not authorize the release of the information. The Privacy Act does not bar the release of such information when it is necessary for collective bargaining purposes.

#### **C-13674 Regional Arbitrator Maher**

**May 18, 1994, A90N -4A-C 94006287**

The Arbitrator holds when the USPS seeks to take disciplinary action against an employee and relies upon medical records as evidence and the basis for its initial determination, the right to privacy vis a vis medical records not being released is no longer within the protected confines of physician and patient. That veil had been pierced by management's initiation of discipline of which the bona fides would be decided in an adversarial proceeding necessitating union representation of the Grievant. Therein lies the intent and explicit and explicit requirements of Articles 17 and 31 which provides that the Employer shall furnish to the union information requested in the processing of a grievance.

#### **C-27777 Regional Arbitrator Klein**

**September 9, 2008, C01N-4C-C 0863831**

The Postal Service violated the National Agreement when it failed to provide the grievant with copies of the documents which were presented to his physician as part of its inquiry into information regarding the grievant's medical condition, and his ability to return to full or limited duty. Further, management was required to provide the grievant with a copy of his

- internal USPS instructions and memorandums

#### **M-00674 Step 4**

**November 15, 1977, NCS-8956**

Management in this instance apparently cited a Civil Service Commission ruling in defense of its own actions. If management was in possession of such a "ruling" it should have been provided to the steward upon reasonable request. If not, the situation or reason should have been fully explained to the requesting union official.

## **M-00307 Pre-arb**

**December 18, 1985, H4C-5F-C 1641**

The union is entitled to copies of a D-2 document, a locally developed (discipline) form. The union's request to review the documents, files, and other records, including the D-2 form, that are necessary for processing a grievance or determining if a grievance exists shall not be unreasonably denied.

- disciplinary records, including supervisor's disciplinary records

## **C-10986 National Arbitrator Snow**

**July 29, 1991, H7N-5C-C 12397**

"[T]he Employer violated the parties' National Agreement when the Employer denied a Union request for information respecting the possible discipline of two supervisors..."

## **C-11716 National Arbitrator Snow Supplemental Award March 9, 1992,**

The union is entitled to information concerning the disciplinary records of supervisors when it is necessary for the processing of a grievance.

## **M-01160 Prearb**

**December 16, 1993, H7N-1E-C 23870**

The issue in these grievances is whether management violated the National Agreement by denying the union's request for supervisor disciplinary records

During the discussions, it was mutually agreed that the release of information regarding supervisors was provided for in Arbitrator Snow's award in H7N-5C-C 12397 (C-10986) and in an NLRB settlement signed by the parties on August 3, 1993. (*copy of NLRB Settlement in file*)

- route inspection records
- patron complaints
- handbooks and manuals
- photographs
- reports and studies
- seniority lists
- overtime desired and work assignment lists

## **M-00325 Step 4, April 19, 1972, NS-153**

The steward may resubmit his request for overtime information setting forth the names of those carriers whose overtime record he wishes to see and the time period which he wishes to review.

- bidding records
- wage and salary records

- training manuals

- Postal Inspection Service Investigative Memoranda (IM)

To obtain employer information the union need only give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract. The union must have a reason for seeking the information—it cannot conduct a “fishing expedition” into Postal Service records.

Settlements and arbitration awards have addressed the union's entitlement to information in certain specific areas. For example, the union has a right to any and all information which the employer has relied upon to support its position in a grievance. (Step 4, H1C-3U-C 6106, November 5, 1982, M-00316). Note that the union also has an obligation to provide the Postal Service with information it relies upon in a grievance. See Article 15 above. The union is also entitled to medical records necessary to investigate or process a grievance, even without an employee's authorization, as provided for in the Administrative Support Manual (ASM) Appendix (USPS 120.090) and by Articles 17 and 31 of the National Agreement. Step 4, D78N-4D-C 91000498, January 14, 1994, (M-01155) Step 4, H7N-1P-C 2187, November 16, 1988, (M-00881).

## **M-00316 Step 4**

**November 5, 1982, H1C-3U-C 6106**

Any and all information which the parties rely on to support their positions in a grievance is to be exchanged between the parties' representatives at the lowest possible step. This will include the PS 2608 when management's representative at Step 2 or above of the grievance procedure utilizes the form to support their decision. Also, this will include the PS 2609 when utilized by management's representative at Step 3 or above. See also M-00315. M-00822

If requests for copies are part of the information request, then USPS must provide the copies. (Step 4, H7N-5K-C 23406, May 21, 1992, (M-01094). A national pre-arbitration settlement established that if the union provides the Postal Service with a list of officers and stewards, the Postal Service must indicate which (if any) applied for a supervisory position within the previous two years. (National Prearbitration Settlement, H4C-3W-C 27068, February 13, 1990, M-01150) When the union is provided with information, for example medical records, it is subject to the same rules of confidentiality as the Postal Service.

## **M-01094 Step 4**

**May 21, 1992, H7N-5K-C 23406**

The issue in this grievance is whether the National Agreement requires management to provide the union with copies of information relevant to the filing of a grievance.

During our discussion, we agreed that upon request of the union, the Employer will furnish information necessary to determine whether to file or continue processing of a grievance, provided the employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. If obtaining such information includes providing copies, those copies will be provided.

**M-01150 APWU Prearb  
February 13, 1990, H4C-3W-C 27068**

The issue in this grievance is whether or not management must supply the local union with a list of all employees who applied for non-bargaining unit positions.

It was agreed that, if the local union provided a list of officers and stewards, the Postal Service will indicate which (if any) applied for a supervisory position within the past two years.

The JCAM further provides under Article 17, Section 4 that:

**Steward Rights—Activities Included.** A steward may conduct a broad range of activities related to the investigation and adjustment of grievances and of problems that may become grievances. These activities include the right to review relevant documents, files and records, as well as interviewing a potential grievant, supervisors and witnesses. Specific settlements and arbitration decisions have established that a steward has the right to do (among other things) the following:

- Interview witnesses, including postal patrons who are off postal premises. C-03219, National Arbitrator Aaron, November 10, 1980); M-01001, Step 4, March 4, 1983; M-00164, Step 4, May 15, 1981.

**C-03219 National Arbitrator Aaron  
November 10, 1980, N8-NA-0219**

The Postal Service may not deny requests for investigation pursuant to Article XVII(3) of the 1978-1981 National Agreement by Shop Stewards requesting to leave the work area to investigate grievances or to investigate specific problems to determine whether to file a grievance and for access to documents, files, and other records necessary for processing the grievance or determining if a grievance exists ; and for the right to interview grievants, supervisors and postal patron witnesses during working hours in connection with situations in which a letter carrier has made an initial determination in his judgment and in the exercise of his discretion that a particular customer would object to his lawn being crossed and where a supervisor has over-riden that determination and issued an order that such lawn be crossed.

**M-01001 Step 4  
March 4, 1983, H1N-3U-13115**

In accordance with Article 17 of the 1981 National Agreement, a steward's request to leave his/her work area to in-

vestigate a grievance shall not be unreasonably denied. Subsequent to determining that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock to interview such witness~ even if the interview is conducted away from the postal facility. However,. each request to interview witnesses off postal premises must be reasonable and viewed on a case-by-case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale. See also M-00164.

- Interview supervisors; Step 4, H7N-3Q-C 31599, May 20, 1991 (M-00988);

**M-00454 Step 4  
November 18, 1977, NCS-8463**

Supervisors will respond to reasonable and germane questions during the investigation of a grievance.

- Interview postal inspectors; Management Letter, March 10, 1981 (M-00225);

**M-00225 Step 4  
March 10, 1981 N8-N 0224**

The Postal Service agrees that a steward who is processing and investigating a grievance shall not be unreasonably denied the opportunity to interview Postal Inspectors on appropriate occasion e.g., with respect to any event actually observed by said inspectors and upon which a disciplinary action, was based.

- Review relevant documents; Step 4, H4N-3W-C 27743, May 1, 1987 (M-00837);

**M-00837 Step 4  
May 1, 1987, H4N-3W-C 27743**

Article 17, Section 3,. provides in pertinent part,"(t)he steward....may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists...during working hours. Such requests shall not be unreasonably denied." Further, Article 17, Section 4, provides for Employer authorized payment to "...one Union steward... for time actually spent in grievance handling, including investigation... " The parties at this level agree that this includes time for review of documents such as [those] in question.

- Review an employee's Official Personnel Folder when relevant; Step 4, NC-E 2263, August 18, 1976 (M-00104);

**M-00104 Step 4, August 18, 1976, NCE-2263**

A steward should be allowed to review an employee's Official Personnel Folder during his regular working hours de-

pending upon relevancy in accordance with the applicable provisions of Article XVII, Section 3.

**M-01101 Pre-arb  
November 12, 1992, H0N-3W-D 1157**

The issue in these cases is whether management was required to provide access to an employees Employee Assistance Program (EAP) records and Official Personnel Folder (OPF) without the consent of the employee.

During our discussion, we mutually agreed to make available any discipline records found in the OPF of that employee and allow the union's representatives to review these records.

Steward requests to review and obtain documents should state how the request is relevant to the handling of a grievance or potential grievance. Management should respond to questions and to requests for documents in a cooperative and timely manner. When a relevant request is made, management should provide for review and/or produce the requested documentation as soon as is reasonably possible.

A steward has a right to obtain supervisors' personal notes of discussions held with individual employees in accordance with Article 16.2 if the notes have been made part of the employee's Official Personnel Folder or if they are necessary to processing a grievance or determining whether a grievance exists. (See Mittenthal H8N-3W-C 20711, February 16, 1982, [C-03230](#); Step 4, NC-S 10618, October 8, 1978, [M-00106](#); Step 4, G90N-4G-C 93050025, February 23, 1994, [M-01190](#))

## National Level Awards, Settlement

**C-09544 National Arbitrator Mittenthal  
November 8, 1989, H7N-NA-C 34**

Management must provide NALC with membership information concerning sex, date of birth, etc.

**C-10363 National Arbitrator Mittenthal  
November 16, 1990, H4T-2A-C 36687**

The arbitrator ruled that the Postal Service violated APWU's rights under Article 17, Section 3 and Article 31 by refusing to provide copies of USPS/Mail Handler E.I. work-team minutes.

**C-03230 National Arbitrator Mittenthal  
February 16, 1982, H8N-3W C20711**

The Supervisor's refusal to provide a letter carrier steward with a supervisor's personal notes of discussions the supervisor had with an employee concerning his sick leave was not unreasonable where there was no dispute as to the number of such discussions or their content. Article XVII, Section 3 of the 1978 National Agreement does not under these circumstances require the supervisor to pro-

vide the steward with his personal notes of the discussions.

**M-01638 Interpretive Step Settlement  
September 24, 2007, Q01N-4Q-C 07012033**

Settlement resolving grievance alleging that revisions to Handbook AS-805, Information Security, published in Postal Bulletin 22190 on September 28, 2006, violated the National Agreement.

The parties agreed to amend Section 1-3.2, Organizations and Personnel by adding:

These policies do not change the rights or responsibilities of either management or the unions pursuant to Article 17 or 31 of the various collective bargaining agreements or the National Labor Relations Act, as amended. These revisions do not bar the unions from using their own portable devices and media for processing information that is relevant for collective bargaining and/or grievance processing, including information provided by management pursuant to Articles 17 or 31 of the collective bargaining agreement or the National Labor Relations Act. There is no change to policy concerning restricted access to the Postal Service intranet.

**M-01050 APWU Step 4  
September 16, 1980, W8C-5E-C-93444**

It is further agreed that under the Privacy Act an employee or third party designated by him/her may not be denied access to any information filed or cross indexed under the employee's name except as specified in Part 313.61 of the E&LR Manual.

**M-00670 Step 4  
March 7, 1977, NCN-3584**

If information requested by the union is relevant to a pending Step 4 grievance the requesting union representative should be allowed access to that information.

**M-00626 Step 4, March 28, 1977, NCS 4432**

Under the terms and conditions of the National Agreement, the Union is entitled to review all relevant and material information associated with a grievance being pursued by the Union, which included information developed as a result of investigating a particular incident directly associated with the grievance.

**M-00560 Step 4, April 29 1980, N8S 0255**

Management may provide as steward with information requested for review at his or her work location rather than releasing the steward for the purpose of travel to a central facility to review the requested information.

**M-01471 Prearbitration Settlement  
September 26, 2002, E90N-4E-C-94026388**

It is agreed that pursuant to Article 17, Section 3, the steward, chief steward or other Union representative may

request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists. Such request shall not be unreasonably denied.

Accordingly, the Union may request and shall obtain access to documents, files and other records necessary for processing a grievance concerning the July 20, 1993 Memorandum of Understanding regarding Transitional Employee Employment Opportunities (updated in the 2001-2006 National Agreement at pp. 218-219). Such documents may include hiring worksheets if relevant to the grievance.

## Cost

### **M-00086 Step 4**

**November 30, 1984, H1C-4A-C 31135**

It is the position of the Postal Service that, as provided in ASM, section 352.621, no charge for search time is made if no more than one quarter hour of clerical search time is required. It is also our position that as provided in ASM, Section 352.622, when a search must be performed by professional or managerial personnel there is a fee for each quarter hour.

### **M-00826 Step 4**

**May 22, 1987 H4N-5R-C 30270**

Charges to the Union by management for copying and processing information are controlled by Section 352.6 of the Administrative Support Manual.

### **M-01141 APWU Step 4**

**June 26, 1992, H7C-3B-C 37176**

The charges imposed by the Employer for information furnished pursuant to Article 31 of the National Agreement will not be greater than charges imposed by the Postal Service for release of information under the Freedom of Information Act.

Union requests made pursuant to Article 31 of the National Agreement are covered by Parts 352.634, All Other Requesters, and 352.64, Aggregating Requests, of the Administrative Support Manual, Issue 8, August 1991.

### **M-01698 Pre-Arbitration Agreement**

**December 5, 2008**

Regarding revisions to Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management, Section 4-6.5, How to Assess Fees.

## Regional Arbitration Awards

### **C-26617 Regional Arbitrator Hutt**

**June 27, 2006, F01N-4F-C 05161737**

...the documentation demonstrates a history of information delays and/or denials have been problematic at the Huntington Post Office for several years.....as the various cease and desist orders and settlements have only been minimally effective in changing the atmosphere and conduct concerning information requests, it is appropriate to compensate the Local Union for the economic hardship in having to repeatedly pursue this issue which has persisted for a sustained period of time. Thus, a monetary remedy is awarded.

## Oral Requests

### **C-10310 Regional Arbitrator Searce**

**September 27, 1990**

Management violated the contract by imposing a local policy which required that all requests for information be written.

### **C-00183 Regional Arbitrator Caraway**

**June 27, 1984, S1C-3Q-C 31919**

"There is no requirement in Article 31, Section 2, that the Union's request for information be in writing. This is wholly unnecessary and imposes an undue burden upon the Union representative."

## Supporting Regional Arbitration Awards

C-00090, Arbitrator Willingham, December 11, 1972

C-00308, Arbitrator Dash, May 17, 1974

C-04273, Arbitrator Williams, May 2, 1984

C-05751, Arbitrator Searce, February 12, 1986

C-06658, Arbitrator LeWinter, November 21, 1986

C-07610, Arbitrator Levak, November 3, 1987

C-08779, Arbitrator Barker, April 3, 1989

C-08919, Arbitrator Britton, April 10, 1989

C-14131, Arbitrator Eaton, January 2, 1995

C-18017, Arbitrator Bajork, February 20, 1998

C-23831, Arbitrator Ames, October 25, 2002

C-24273, Arbitrator Poole, May 10, 2003

C-26138, Arbitrator Helburn, August 29, 2005

C-26204, Arbitrator Axon, October 4, 2005

Article 17 of the National Agreement establishes the right of NALC stewards to be paid to investigate and process grievances on-the-clock. The pertinent sections of Article 17, Sections 3 and 4 of the National Agreement provide the following:

### Article 17 Section 3. Rights of Stewards

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office.

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

### Article 17 Section 4. Payment of Stewards

The Employer will authorize payment only under the following conditions:

- Grievances Informal and Formal Step A: The aggrieved and one Union steward (only as permitted under the formula in Section 2.A) for time actually spent in grievance handling, including investigation and meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for the time required to attend a Formal Step A meeting

- Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application. Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's (only as provided for under the formula in Section 2.A) regular work day.

The Postal Service will compensate the Union's primary Step B representatives at their appropriate rate of pay on a no loss, no gain basis. Activated back up Step B representatives will be compensated on the same basis for time actually spent as Step B representatives.

The JCAM explains these provisions as follows:

**Steward Rights.** Article 17.3 & 17.4 establish several steward rights:

- The right to investigate and adjust grievances and problems that may become grievances;
- The right to paid time to conduct those activities;
- The right to obtain management information;
- Superseniority concerning being involuntarily transferred;

[See Stewards Certification, Rights](#)

- An employee's right to steward representation during an Inspection Service interrogation.

**Steward Rights Activities Included.** A steward may conduct a broad range of activities on the clock related to the investigation and adjustment of grievances and of problems that may become grievances. These activities include the right to review relevant documents, files and records, as well as interviewing a potential grievant, supervisors and witnesses. Specific settlements and arbitration decisions have established that a steward has the right to do (among other things) the following:

- Complete grievance forms and write appeals on the clock (see below).
- Interview witnesses, including postal patrons who are off postal premises; National Arbitrator Aaron N8N-A-0219 November 10, 1980 (C-03219); Step 4, H1N-3U-C 13115, March 4, 1983 (M-01001); Step 4, H8N-4J-C 22660, May 15, 1981 (M-00164);

### C-03219 National Arbitrator Aaron November 10, 1980, N8-NA-0219

Shop Stewards have the right under Article XVII(3) of the 1978 National Agreement to investigate grievances as provided therein, including the right to interview postal patron witnesses during working hours in connection with situa-

tions in which a letter carrier has made an initial determination that a particular customer would object to his lawn being crossed and where a supervisor has overridden that determination and issued an order that such lawn be crossed.

#### **M-00177 Step 4**

**August 6, 1981, H8N-4J-C 25212**

If the carrier made an initial determination that a particular postal customer did not wish his/her lawn to be crossed and the supervisor overrode that determination, management may not deny requests for investigation pursuant to Article XVII, Section 3 of the National Agreement by a shop steward.

#### **M-01001 Step 4**

**March 4, 1983, H1N-3U-C 13115**

In accordance with Article 17 of the 1981 National Agreement, a steward's request to leave his/her work area to investigate a grievance shall not be unreasonably denied. Subsequent to determining that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock to interview such witness, even if the interview is conducted away from the postal facility. However, each request to interview witnesses off postal premises must be reasonable and viewed on a case-by-case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale.

#### **M-00164 Step 4**

**May 15, 1981, H8N-4F-C 22660**

In the instant case, management rejected the carrier's judgment in this regard, we must conclude that a violation of Article 17, Section 3 has occurred. Accordingly, in full resolution of this grievance, the Union steward will be allowed official time to interview those specific patrons of the addresses cited in this grievance.

#### **M-00761 Step 4**

**July 3, 1978, NC-W-9980-W-1465-77N**

Where a customer's complaint is directly used to affect the wages, hours and working conditions of an employee, the steward shall be allowed to conduct an interview if the customer agrees.

#### **M-00185 Step 4**

**November 18, 1974, NB-N-2419**

In cases where a customer's complaint, is directly responsible for discipline, the steward shall be given a reasonable amount of time on-the-clock to interview the customer, if the customer agrees. See also [M-00198](#)

**M-00668 August 19, 1976, NC-E-2264**

The provisions of the National Agreement do not necessar-

ily exclude a steward going to a grievant's house during the investigation of the grievance.

#### **M-01358 Step 4**

**July 22, 1982, H8N-3W-C-26850**

The parties at the National level agree that a steward's request to leave his work area to investigate a grievance shall not be unreasonably denied in accordance with Article XVII, Section 3 of the National Agreement.

#### **M-00890 Pre-arb**

**January 12, 1989, H8N-3W-C 21294**

A steward's request to leave his/her work area to investigate a grievance shall not be unreasonably denied. A steward may be allowed a reasonable amount of time on-the-clock to interview such witness, even if the interview is conducted away from the postal facility. See also [M-00796](#), [M-00054](#)

- Interview supervisors; Step 4, H7N-3Q-C 31599, May 20, 1991 ([M-00988](#));

#### **M-00988 Step 4**

**May 20, 1991, H7N-3Q-C 31599**

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The subject matter of interviews with supervisors has been previously settled in Case NC-S-8463 [[M-00012](#)] ("It is anticipated that supervisors will respond to reasonable and germane questions during the investigation of a grievance.") There is no negotiated requirement that questions be submitted in writing in advance, by either party.

#### **M-00012 Step 4, October 25, 1977, NC-S-8463**

It is anticipated that supervisors will respond to reasonable and germane questions during the investigation of a grievance.

#### **M-01182 Step 4**

**May 12, 1994, H90N-4H-C 94019908**

There is no contractual prohibition to the supervisor being accompanied when he/she is being interviewed by the

- Interview postal inspectors; Management Letter, March 10, 1981 ([M-00225](#));

#### **M-00225 Letter, March 10, 1981, N8-N-0224**

The Postal Service agrees that a steward who is processing and investigating a grievance shall not be unreasonably denied the opportunity to interview Postal Inspectors on appropriate occasion, e.g., with respect to any events actually observed by said Inspectors and upon which a disciplinary action was based. See also [M-00864](#)

- Review relevant documents; Step 4, H4N-3W-C 27743, May 1, 1987 ([M-00837](#));

## **M-00837 Step 4**

**May 1, 1987, H4N-3W-C 27743**

Article 17, Section 4, provides for Employer authorized payment to "... one Union steward... for time actually spent in grievance handling, including investigation...."

The parties at this level agree that this includes time for review of documents.

- Review an employee's Official Personnel Folder when relevant; Step 4, NC-E 2263, August 18, 1976 (M-00104);

## **M-00104 Step 4, August 18, 1976, NCE-2263**

A steward should be allowed to review an employee's Official Personnel Folder during his regular working hours depending upon relevancy in accordance with the applicable provisions of Article XVII, Section 3.

- Write the union statement of corrections and additions to the Formal Step A decision; Step 4, A8-S-0309, December 7, 1979 (M-01145).

## **M-01145 Step 4**

**December 7, 1979, A8-S-0309**

We mutually agree that a steward is allowed a reasonable amount of time on-the-clock to write the Union statement of corrections and additions to the Step 2 decision. This is considered part of the Step 2 process. The Union statement should relate to incomplete or inaccurate facts or contentions set forth in the Step 2 decision.

- Interview Office of Inspector General [OIG] Agents.

A steward has the right to conduct all such activities on the clock.

**Right to Steward Time on the Clock.** Although a steward must ask for supervisory permission to leave his or her work area or enter another one to pursue a grievance or potential grievance, management cannot "unreasonably deny" requests for paid grievance handling time.

Management may not determine in advance how much time a steward reasonably needs to investigate a grievance. National Arbitrator Garrett, MB-NAT-562/MB-NAT-936, January 19, 1977 (C-00427). Rather, the determination of how much time is considered reasonable is dependent on the issue involved and the amount of information needed for investigation purposes. (Step 4, NC-S-2655, October 20, 1976, M-00671).

## **C-00427 National Arbitrator Garrett January 19, 1977, MB-NAT-562**

Article 17 Section 3 does not authorize the Service to determine in advance the amount of time a Steward reasonably needs to investigate a grievance.

## **M-00671 Step 4**

**October 20, 1976, NCS-2655**

The determination regarding how much time is considered reasonable is dependent upon the issue involved and the amount of data required for investigation proposes.

## **M-00565 Step 4, August 11, 1980, N8-S 0365**

Where compelling circumstances exist management may require a steward to conduct a discussion by telephone rather than having a face to face interview. In the instant case the fact that the steward would have to travel ten miles was not sufficient to warrant denial of a face to face interview.

## **M-00137 Step 4, February 8, 1977, NC-W-3199**

The supervisor is not restricted from asking the reason for the request and the employee should state the general nature of the problem. The employee is not required to discuss the complaint in detail if he first desires to have representation.

## **M-00332 Step 4, April 5, 1973, NS-2777**

It is the responsibility of the Union and the responsibility of Management to arrive at a mutual decision as to when the steward would be allowed, subject to business conditions, an opportunity to investigate and adjust grievances.

## **M-00671 Step 4**

**October 20, 1976, NCS-2655**

The determination regarding how much time is considered reasonable is dependent upon the issue involved and the amount of data required for investigation proposes.

## **M-00606 Step 4 August 29, 1975, NBS-5391**

When a steward makes a specific problem known to management and requests permission to conduct an investigation in order to determine whether to file a grievance, a reasonable amount of time for this purpose shall not be unreasonably denied.

Steward time to discuss a grievance may not be denied solely because a steward is in overtime status (Prearbitration Settlement, W4N-5C-C 41287, September 13, 1988, M-00857). It is the responsibility of the union and management to decide mutually when the steward will be allowed, subject to business conditions, an opportunity to investigate and adjust grievances. (Step 4, N-S-2777, April 5, 1973, M-00332)

## **M-00046 Step 4**

**September 20, 1977, ACS-10181**

Management will not delay a steward's time to discuss a grievance based solely on the fact that the employee is in an overtime status. See also M-00047

## **M-00857 Pre-arb**

**September 13, 1988, W4N-5C-C 41287**

We agreed that where a letter carrier who is also a steward

is working overtime and a representation situation arises, a steward's request to perform the function of a steward will not be denied solely because the steward is in an overtime status. See also [M-01143](#), [M-01144](#).

If management delays a steward from investigating a grievance, it should inform the steward of the reasons for the delay and when time will be available. Likewise, the steward has an obligation to request additional time and give the reasons why it is needed. (Step 4, NC-C 16045, November 22, 1978, [M-00127](#))

**M-00127 Step 4**  
**November 22, 1978, NCC-16045**

If management must delay a steward from investigating or continuing to investigate a grievance, management should inform the steward involved of the reasons for the delay and should also inform the steward of when time should be available. Likewise, the steward has an obligation to request additional time and to state reasons why this additional time is needed. See also [M-00125](#).

An employee must be given reasonable time to consult with his or her steward, and such reasonable time may not be measured by a predetermined factor. (Step 4, H1C-3W-C 44345, May 9, 1985, [M-00303](#))

**M-00458 Regional Letter (Charters)**  
**March 10, 1977**

In most cases, the grievant and steward should be able to discuss the grievance without delay but 95 percent of the time with no more than a two-hour delay. While circumstances will sometimes necessitate a delay of more than two hours, normally the delay should not extend beyond the tour of duty in which the request is made. This determination will be based on the availability of the parties involved and service conditions.

**M-00303 Step 4**  
**May 9, 1985, H1C-3W-C 44345**

Employees should be permitted, under normal circumstances, to have a reasonable amount of time to consult with their steward. Reasonable time cannot be measured by a predetermined factor.

Although Article 17.4 provides that the grievant and a steward shall be paid for time actually spent in grievance handling and meetings with management, there are no contractual provisions requiring the payment of travel time or expenses in connection with attendance at a Formal Step A meeting. (Step 4, N8-S-0330, June 18, 1980, [M-00716](#)) Nor does the National Agreement require the payment of a steward who accompanies an employee to a medical facility for a fitness-for-duty examination. (Step 4 Settlement, NC-N-12792, December 13, 1978, [M-00647](#))

**M-01075 Step 4**  
**June 30, 1992, H7N-5E-C 23995**

After reviewing this matter we mutually agreed that no national interpretive issue is fairly presented in this case. If an individual is a steward under the formula in Article 17.2.A and 17.2.E, then compensation is appropriate as provided in 17.4.

**M-00716 Step 4, June 18, 1980, N8-S-0330**

Union stewards are paid for the time actually spent at Step 2 meetings with the employer provided such meetings are held during their regular work day; however, there are no contractual provisions which would require the payment of travel time or expenses.

**M-00647 Step 4**  
**December 13, 1978, NC-N-12792**

The National Agreement does not provide for the payment of a union steward who accompanies an employee to a medical facility for a fitness-for-duty examination.

**Denial of Steward Time** The JCAM provides the following explanation of remedies for stewards improperly denied time.

The appropriate remedy in a case where management has unreasonably denied a steward time on the clock is an order or agreement to cease and desist, plus payment to the steward for the time spent processing the grievance off-the-clock which should have been paid time.

**C-02875 National Arbitrator Aaron**  
**November 10, 1980, H8N-5K-14893**

The union did not waive claims for compensation where the question of compensation for stewards, who because of management's refusal to recognize them were forced to process grievances "off-the-clock", was never raised in negotiation of the pre-arbitration settlement or mutually understood by the parties to include that issue.

The merits of grievance concerning the denial of steward time are a separate matter from the merits of the grievance that a steward is denied time to investigate. Consequently, in cases where management improperly denies steward time, the steward should do two things.

First, the denial of steward time should be raised as another issue in the original grievance. It is important for the union representatives handling the grievance at higher steps to be aware of the issue.

Second, a separate grievance should be filed seeking a cease and desist order and payment to the steward at the appropriate rate (usually overtime) for the time spent processing the grievance off-the clock.

Of course, grievances concerning the denial of steward time are contractual disputes where the union has the burden of proof. To help meet this burden, the Contract Administration Unit recommends that any grievances concerning this issue document the steward's attempts to obtain the necessary time and management's responses. It is also recommended that the grievance file contain detailed time records showing exactly when the steward worked off-the-clock and exactly what was being done.

## National Level Awards, Settlements

### **M-00539 Step 4**

**February 20, 1985, H1N-3U-C 36133**

Article 17 was not intended to provide the grievant with the unfettered right to accompany the steward while the steward is handling the grievance.

### **M-00878 Step 4**

**November 14, 1988, H4N-3R-C 43838**

It is not required that investigation of a grievance be completed before a grievance may be appealed to another step of the grievance procedure.

### **M-00453 Step 4**

**April 22, 1977, NC-S-5482**

The judicious use of a camera to establish or refute a grievance may facilitate resolution of some problems. However, if the union desires to take photographs on the work room floor, permission must first be obtained from local management, and a supervisor must be present. If management deems it necessary to take evidential photographs, it would also be prudent to have a steward or union official present.

### **M-00107 Step 4**

**November 29, 1978, NC-W-12728**

The Postmaster will assume responsibility of the prior actions of supervisors who later transfer out to another facility. Further, if it is necessary for the Union to interview a supervisor or any other employee who is directly involved in a grievance, management recognizes its obligations to make every reasonable effort to make these employees available to the Union.

### **C-00381 National Arbitrator Mittenthal**

**December 10, 1979, ABE-021**

A steward is entitled to be paid for the time spent writing appeals to Step 3.

### **M-00910 Step 4**

**April 6, 1989, H4N-3Q-C 62592**

If the need for overtime arise on a shop steward's route as a result of investigation and/or processing of grievances, and the shop steward has signed for work assignment overtime, the resulting overtime is considered part of the carrier's work assignment for the purpose of administering

the overtime desired list.

## Supporting Regional Arbitration Awards

### **C-10835 Regional Arbitrator Hardin**

**November 2, 1990**

"When management refuses to release a steward because it judges that he has already been given enough time to do the job, management intrudes into an area where the judgment of the Union is entitled to great weight, and management's judgment to less weight."

### **C-11174 Regional Arbitrator Levak**

**May 23, 1986, W1C-5G-C 21856**

Where management failed to accord grievant access to her steward, remedy is payment for time spent in off-the-clock consultation.

### **C-00278 Regional Arbitrator Bowles**

**August 16, 1984, C1C-4T-C1377**

Management unreasonably terminated investigation of maximization grievance after 21 hours.

### **C-00025 Regional Arbitrator McConnell**

**June 28, 1983, E1C-2M-C 2465**

Management did not act improperly by changing a past practice of releasing stewards to hold grievance discussions within one hour.

### **C-00204 Regional Arbitrator McAllister**

**July 5, 1984, C1C-4J-C 22995**

Management improperly withheld steward release for 6 hours.

## Subcontracting

### **M-01651 Memorandum**

**September 11, 2007**

Re: Article 32 Committee

The Joint Committee established pursuant to Article 32.2 shall be tasked with reviewing existing policies and practices concerning the contracting out of mail delivery. The Committee shall seek to develop a meaningful evolutionary approach to the issue of subcontracting; taking into account the legitimate interests of the parties and relevant public policy considerations.

The Committee shall have reasonable access to all relevant data maintained by the Postal Service, and may seek and obtain data and information from other relevant sources.

The parties agree that if the National Rural Letter Carriers' Association seeks to participate in the work of the Committee, it will be permitted to do so.

The Committee shall complete its study within six months of ratification of the 2006 National Agreement, unless the parties mutually agree to extend this deadline. Pending final resolution of the work of the Committee, all grievances pertaining to subcontracting which are pending at the national level shall be held in abeyance.

If the work of the Committee does not result in a mutually agreeable approach to subcontracting, the Union may submit any of its pending national level grievances pertaining to subcontracting to rights arbitration in accordance with the existing provisions of the National Agreement.

In addition, beginning with the ratification of the 2006 National Agreement, there will be a six-month moratorium on any new subcontracting of delivery in offices in which city letter carriers are currently employed. This moratorium does not include any ingrowth or new growth on current rural routes. Contracts in existence as of the date of the execution of this MOU may be maintained or renewed in offices that are not exclusively city delivery.

### **C-26913 Regional Arbitrator Simmelkjaer**

**February 16, 2007, B01N-4B-C 06094135**

Given the finding that a past practice existed, a violation of Article 5 is discernible since the decision to subcontract the work was made unilaterally without bargaining in good faith with the Union prior to the change.

... It is significant that, even if Article 32.1(A) were applicable, the Employee's obligation "to give due consideration to the public interest, cost, efficiency, availability of equipment and qualifications of employees" as not fully documented in this case.

## Award

1) The Service violated Article 5 of the National Agreement when it stopped using Letter Carriers to pick up Express Mail and instead hired a Highway Contractor to perform the service.

2) As a remedy, the Carrier Craft at Great Barrington, MA shall be reimbursed two (2) hours per week at the PTF's prevailing wage on March 17, 2006 until the present

3) Henceforth, the Express Mail run shall be returned to the Carrier Craft.

### **M-01652 Memorandum**

**September 11, 2007**

Effective upon ratification of the 2006 National Agreement there will be a modification to the subcontracting of city deliveries. This modification includes restrictions on contracting out the following:

- City delivery work at the 3,071 city delivery offices (offices with only city delivery), including new growth and ingrowth within those offices
- Any existing city delivery In offices other than those referenced above
- Any assignments awarded as city delivery by settlement or arbitration of any pending or future grievance

The above restrictions shall be in effect for the duration of the 2006 National Agreement, unless extended by mutual agreement.

### **M-01660 Letter of Agreement**

**Undated**

This will confirm our discussions regarding the Memorandum of Understanding (MOU). Re: Subcontracting included in the tentative agreement. This MOU includes restrictions on contracting out city delivery work at the 3,071 city delivery offices (offices with only city delivery).

The Postal Service has provided the Union with a list of the 3,071 city delivery offices referenced above. However, the parties have not had the opportunity to mutually verify the list for accuracy.

Accordingly, the parties agree that they will work together to verify the list's accuracy and will make adjustments to the list, if necessary. The parties recognize that the review could result in offices being added to or subtracted from the list. The parties will undertake this review and prepare a final list as soon as practicable after ratification of the tentative agreement.

**M-01653 Memorandum  
September 11, 2007**

... [W]hile the parties' practice has been to keep in place the terms and conditions of the expired contract until a successor agreement is reached voluntarily or by interest arbitration, the Postal Service reserves its rights with regard to not continuing the MOU upon expiration of the National Agreement. Likewise, the NALC reserves its rights with regard to such Issue. Further, in the event that the parties do not achieve an agreement for modification or extension of the next collective bargaining agreement, and the continuation of the MOU on subcontracting is an issue to be resolved in interest arbitration, there shall be no resumption that those restrictions are to be carried forward based upon the fact that the provisions of the MOU on subcontracting have been in effect.

The subcontracting modifications provided in the MOU on subcontracting are without prejudice to the positions of the parties with respect to any interpretive issue. Accordingly, the MOU shall not be admissible in any future rights arbitration, except to enforce its terms.

**M-01489 Pre-arb  
June 9, 2003, Q94N-4Q-C-98063238**

Without prejudice to either party' position on the specific facts of this case, is agreed that it is the Postal Service' responsibility to notify and keep the NALC informed at the national level, pursuant to Article 34 of the National Agreement, during the making, at the national level or by a field unit, "of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards."

## SUPERVISORS' NOTES, RECORDS

The regulations concerning supervisor's notes and records were previously found in ELN Section 314. In 2002 they were moved to Handbook AS-353, Section 3-4.1.g which provides the following:

*(g) Uncirculated Supervisors' Notes.* Information about individuals in the form of uncirculated personal notes kept by Postal Service personnel, such as employees, supervisors, counselors, or investigators, which are not circulated to other persons. If notes are circulated, they become official records in a system of records and must be shown on request to the employee to whom they pertain. Official evaluations, appraisals, or estimates of potential must be made available to the employee to whom they pertain.

Pre-2002 settlements that refer to ELM Section 314 are generally still applicable.

### **C-03230 National Arbitrator Mittenthal February 16, 1982, H8N-3W-C 20711**

A supervisor properly refused to disclose personal notes of discussions to a steward, where the Union could not demonstrate that access to the notes was necessary.

### **M-00106 Step 4 October 6, 1978, NC-S-10618**

The supervisor's personal notes are not available for review by the union steward. When these personal notes are kept in a file they are kept only for the individual supervisor's own review and are not official records. But see also [C-03230](#).

### **M-01190 Step 4 Feb 23 1994, G90N-4G-C 93050025**

1. Under Article 16 of the National Agreement a supervisor's discussion with an employee is not considered discipline and is not grievable and "no notation or other information pertaining to such discussion shall be included in an employee's personnel folder.

2. The Postal Service acknowledges that the spirit and intent of Article 16 is to provide a mechanism for a supervisor to discuss perceived work deficiencies with an employee without such discussion taking on the formality or significance of disciplinary action. Accordingly, although Article 16 permits a supervisor to make a personal notation of the date and subject matter of such discussions for his own personal record(s), those notations are not to be made part of a central record system nor should they be passed from one supervisor to another.

3. The Postal Service acknowledges that a supervisor making personal notations of discussions which he has had with employees within the meaning of Article 16 must do so in a manner reasonably calculated to maintain the privacy of such discussions and he is not to leave such notations where they can be seen by other employees. See also [M-00548](#)

### **M-00314 Step 4 August 23, 1985, H4C-5K-C 290**

Supervisors will not exchange written notes regarding discussions. A supervisor of a former employee may orally exchange information, relative to discussions, with the employee's current supervisor.

### **M-00788 Step 4 APWU January 1983, H8C-5G-C 14337**

It is an accepted practice when a work unit supervisor is requesting, from an appropriate office such as a local Labor Relations Division, an instrument of discipline to indicate discussion(s) conducted with the specific employee. This will ensure that discipline will be consistent, corrective and progressive.

### **M-00566 Step 4 November 13, 1980, H8N-3W-C 14031**

A letter of warning, which has been previously settled at Step 2, of the Grievance Procedures under the provisions of Article XV, Section 2, Step 2(c) of the National Agreement, should also be removed from the Supervisor's Personnel (sic) Records.

### **M-00942 Step 4 June 13, 1989, H7N-5R-C 5943**

The issue in this grievance is whether management violated the National Agreement by its use of a "Checklist of Unsatisfactory Casing Procedures" We agree that while the checklist is an appropriate means by which a supervisor may acquire a set of personal notes on the individual performance of his subordinates, a carrier may not be required to sign the checklist.

### **M-00103 Step 4 November 17, 1978, NCS-12616**

There is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal records. However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder.

### **M-00996 Step 4 February 15, 1991, H7C-5F-C 6017**

The issue in this grievance concerns the proper length of time for supervisors to retain personal notes concerning employees.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that supervisors' personal notes as defined in 314.52c of the Employee and Labor Relations Manual are to be destroyed when the supervisor/employee relationship ceases. See also [M-01070](#).

Over the years the Postal Service has developed numerous programs to measure mail and project letter carrier office and street time. These programs have included the Delivery Unit Volume Recording System (DUVRS), the Piece Count Recording System (PCRS), Projected Office Street Time program (POST), and the current Delivery Operations Information System (DOIS).

All of the nationally developed programs are authorized management tools. Unfortunately, all of them have frequently been used in ways that violate the National Agreement. The materials below include settlements from now-abandoned programs such as DUVRS. They remain important because they establish principles that remain in full force and effect today.

There have also been numerous home-brewed local programs such as the Greater Indiana District "Office Efficiency Tool" referenced in [M-01769](#), below. Almost without exception, these locally developed programs have violated the National Agreement. If branch officers become aware of such programs in their office, they should contact their national business agent to inform them and seek guidance and advice.

## Delivery Operations Information System (DOIS)

The prearbitration settlement [M-01769](#) is one of a long line of similar settlements. Its particular significance is that it makes clear that the principles it confirms apply not only to any management office or street time projection system/tool currently in use but also to any similar projection tools that may be developed in the future. It states:

### **M-01769 Prearbitration Settlement September 16, 2011**

The issue in this grievance is whether the office efficiency tool used to project office and street time in the Greater Indiana District violates the National Agreement.

The subject office efficiency tool is a management tool for estimating a carrier's daily workload. The office efficiency tool used in the Greater Indiana District **or any similar time projection system/tool(s)** will not be used as the sole determinant for establishing office or street time projections. Accordingly, the resulting projections will not constitute the sole basis for corrective action. This agreement does not change the principle that, pursuant to Section 242.332 of Handbook M-39, 'No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet office standards.' Furthermore, as stated in the agreement for case H1N-1N-D 31781, 'there is no set pace at which a earner must walk and no street standard for walking.'

Projections are not the sole determinant of a carrier's leaving or return time, or daily workload. The use of any management created system or tool that calculates a workload projection does not change the letter carrier's reporting requirements outlined in section 131.4 of Handbook M-41, the supervisor's scheduling responsibilities outlined in section 122 of Handbook M-39, or the letter carrier's and supervisor's responsibilities contained in Section 28 of Handbook M-41. (Emphasis added.)

### **M-01664 Interpretive Step Settlement July 7, 2007, Q01N-4Q-C 05022610**

The Delivery Operations Information System (DOIS) is a management tool for estimating a carrier's daily workload. The use of DOIS does not change the letter carrier's reporting requirements outlined in section 131.4 of Handbook M-41, the supervisor's scheduling responsibilities outlined in section 122 of Handbook M-39, or the letter carrier's and supervisor's responsibilities contained in Section 28 of Handbook M-41, DOIS projections are not the sole determinant of a carriers leaving or return time, or daily workload. As such, the projections cannot be used as the for corrective action. A five minute time credit for lines 8-13 will be added or when route inspection data is available for lines 8-13 the actual average information will be used for daily workload projections.

Management is responsible for accurately recording volume and other data in DOIS and ensuring that the time data is consistent with TACS records. Other than obvious data entry errors, route based information may only be changed through a full-count and inspection or minor route adjustment. Additionally, the parties have previously agreed that functions in DOIS which relate to the route inspection and adjustment process must be in compliance with the city letter carrier route adjustment process in Subchapter 141 and Chapter 2 of the M-39 Handbook. Exceptions are offices that have jointly established an alternate route adjustment method. DOIS base information in such offices shall, as appropriate, comply with the alternate route adjustment method.

The terms of this settlement became effective September 11, 2007 with ratification of the 2006-2011 National Agreement.

### **M-01624 USPS Internal Memorandum November 14, 2005**

All districts should follow the basic guidelines for data integrity. It is the district's responsibility to ensure that delivery units are accurately recording volume and other information in Delivery Operations Information System (DOIS). The responding area managers are to verify compliance.

Other than obvious data entry errors, route-based information may only be changed through a full count and inspection.

tion or minor adjustment as defined in Handbook M-39, Chapter 2, Mail Counts and Routel Inspections, and Section 141, Minor Adjustments. Exceptions are offices with agreements pursuant to the August 4, 2004, Memorandum of Understanding regarding route adjustments.

In addition, DOIS does not replace a supervisor's ability or responsibility to make decisions. Supervisors are to continue evaluating requests for assistance (PS Form 3996), and assess any unusual circumstances or conditions that have occurred. The DOIS projected leave time **cannot be the sole basis for disapproving auxiliary assistance requests** or approving more time than requested. (Emphasis added).

### **M-01444 Pre-arb**

**July 30, 2001, Q94N-4Q-C 99022154**

The issue in these grievances is whether or not the Piece Count Recording System (PCRS), Projected Office Street Time (POST), or the Delivery Operations Information System (DOIS) violate the National Agreement.

After reviewing this matter, we mutually agreed to settle these grievances as follows:

Daily piece counts (PCRS) recorded in accordance with the above-referenced systems (POST or DOIS) will not constitute the sole basis for discipline. However, daily counts recorded in accordance with these procedures may be used by the parties in conjunction with other management records and procedures to support or refute any performance-related discipline. This does not change the principle that, pursuant to Section 242.332 of the M-39, "No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet office standards." Furthermore, the pre-arbitration settlement H1N-1N-D 31781, dated October 22, 1985, provides that **"there is no set pace at which a carrier must walk and no street standard for walking."**

This settlement is made without prejudice to the parties' rights under Article 19 or Article 34 of the National Agreement.

It is additionally understood that the current city letter carrier route adjustment process is outlined in Subchapter 141 and Chapter 2 of the M-39 Handbook. All those functionalities in DOIS, which relate to the route inspection and adjustment process, must be in compliance with these two parts of the M-39 as long as they are in effect.

It is understood that no function performed by POST or DOIS, now or in the future, may violate the National Agreement. (Emphasis added)

## Managed Service Points (MSP)

Often management tries to use the projected intervals between scan points as a form of street time projection. This is inconsistent with the settlement **M-01769**, above, because that settlement covers street projections. In such cases, the Union should consider citing violations of both **M-01769** and the national-level settlement on MSP scans (**M-01458**).

### **M-01458 Step 4 Settlement, March 13, 2002**

The Managed Service Points (MSP) initiative is a national program intended to facilitate management's ability to assess and monitor city delivery route structure and consistency of delivery service. The following reflects the parties' understanding of MSP:

The parties agree that management will determine the number of scans on a city delivery route. Time credit will continue to be given during route count and inspections and will be credited in total street time, MSP does not set performance standards, either in the office or on the street. With current technology, MSP records of scan times are not to be used as timecard data for pay purposes. MSP data may not constitute the sole basis for disciplinary action. However, it may be used by the parties in conjunction with other records to support or refute disciplinary action issued pursuant to Article 18 of the National Agreement.

City letter carriers have the option of using a personal Identification number (PIN) other than the last four digits of their social security number.

Section 432.33 of the Employee and Labor Relations Manual (ELM) remains in full force and effect when MSP is implemented. It provides that Except in emergency situations, or where service conditions preclude compliance, no employee may be required to work more than 6 continuous hours without a meal or rest period of at least ½ hours

Lunch locations for both the incumbent and carrier technician on a city delivery route continue to be determined in compliance with Section 126.5.b(2) of the M-39. PS Form I 564A Delivery Instructions" lists the place and time that city letter carriers are authorized to leave the route for lunch. However, the parties recognize that, consistent with local instructions and operational conditions, city letter carriers may be authorized to leave at a different time and/or place. Notwithstanding this, the parties agree that city letter carriers will scan MSP scan points as they reach them during the course their assigned duties.

## **DUVRS Delivery Unit Volume Recording System**

### **M-00364 Step 4**

**May 1, 1985, H1N-5H-C 23752**

The Delivery Unit Volume Recording System is a management tool to estimate each carrier's daily work-load. DUVRS is not a precise measurement to determine whether standards are met. Accordingly, in city delivery units, daily volume estimation recorded in accordance with postal policy will not constitute the sole basis for disciplinary action for failure to meet minimum casing standards by an individual carrier. See also [M-00376](#), [M-00523](#), [M-00600](#), [M-01233](#), [M-01259](#), [M-00759](#), [M-01290](#)

### **M-00498 Step 4**

**March 28, 1984, H1N-5D-C 18726**

DUVRS provide the supervisor with an estimate of a letter carrier's normal daily work-load and may be one of the factors considered by a supervisor when discussing a letter carrier's work performance. This does not mean that such a discussion will be of the type referred to in Article 16, Section 2, 1981 National Agreement. It can be merely a work-related exchange between the supervisor and the carrier with the DUVRS evaluation as a focus. DUVRS evaluations should not be the basis for a discussion concerning the letter carrier's efficiency held pursuant to Article 16, Section 2., since the efficiency of a letter carrier can more appropriately be determined by a mail count pursuant to 141.2, M-39 Handbook. See also [M-00048](#), [M-00394](#)

### **M-00269 Step 4**

**October 13, 1982, H1N-3T-C 7480**

The Delivery Unit Volume Recording System is not the established criteria for the development of office time, as this development is governed by Methods Handbook, Series M-39. See also [M-00579](#), [M-00067](#), [M-00272](#), [M-00363](#), [M-00695](#)

### **M-00813 Step 4**

**September 17, 1987, H4N-5D-C 16822**

The National criteria for development of office time is explained in the M-39 Handbook and methods for recording volumes are contained in Management Instructions. Daily volume estimations recorded for individual routes in accordance with appropriate provisions will not constitute the basis for disciplinary action.

### **M-00363 Step 4**

**April 26, 1985, H1N-3W-C 32752**

Letter carriers will not be required to enter volume figures on PS Forms 3996 unless the reason for the request is related to volume. If the volume is required to be noted in linear measurement terms, it is not anticipated that letter carriers are to be expected to report anything more than their reasonable estimate of volume.

### **M-00522 Step 4**

**July 9, 1984, H1N-3D-C 30203**

We find nothing in current instructions to preclude craft employees from occasionally recording the DUVRS information. We find no requirement to pay higher level for performing this incidental activity. See also [M-00523](#)

### **C-04547 Regional Arbitrator LeWinter**

**November 28, 1984, S1N-3W-D 26096**

It is quite clear that the parties dealings show an intent that DUVRS is to be eliminated as a consideration in the determination of discipline. Not only is the linear method of measurement of mail load imprecise in and of itself, but the DUVRS tape does not take into consideration the mail in the grievant's case from the prior day casing nor does it show the type or quality of mail as to that which may require more handling than others."

## See also Mutual Exchanges

Article 12, Section 6 of the National Agreement merely provides the following.

### Article 12, Section 6. Transfers

A. Installation heads will consider requests for transfers submitted by employees from other installations.

B. Providing a written request for a voluntary transfer has been submitted, a written acknowledgement shall be given in a timely manner.

(Additional reassignment and probationary period provisions regarding City Carrier Assistant Employees are found in Appendix B.)

[see Memos, pages 188-193]

The actual rules governing transfer requests are contained in a detailed memorandum of understanding that is reprinted and fully explained in the Joint Contract Administration Manual (JCAM).

### M-01833 March 6, 2014

#### Joint Questions and Answers

**Question 28: After a CCA becomes a career employee does he/she serve a lock-in period for transfers as defined by the Memorandum of Understanding, Re: Transfers?**

Yes.

### M-00856 Step 4

#### May 27, 1988, H4N-5C-C 14779

Local management may not refuse to forward an employee's personnel folder to another installation in order to prevent or delay the consideration of the employee's request for transfer.

### M-01223 USPS Letter

#### August 27, 1993

From time to time, we receive letters from employees (primarily craft) stating that their requests to transfer from one facility to another have been turned down for what they believe are inappropriate reasons. Specifically, many assert that because of a low sick leave balance and for no other apparent reason that their request for transfer was denied.

While we understand that attendance is extremely important to all of our operations, the use of sick leave balance per se as a sole determining factor is inappropriate. This is especially true in those situations where sick leave was used for a one time serious illness and other than that attendance was more than satisfactory. Where an employee request a transfer, the responsible official at the gaining in-

stallation needs to look at the qualifications of the whole individual. By this we mean that we need to determine whether the individual possesses the necessary job experiences and other qualifications to fill the needs of the vacancy.

We would also strongly suggest that where there are one or two questions with regard to the viability of the employee for the position, i.e. such as a low sick leave balance, that it is incumbent upon responsible management to obtain additional information into that situation. For example, if a low sick leave balance is indeed a concern then inquiry should be made as to the pattern of use and determine at that point whether there is a possible attendance problem.

### M-01388 Pre-arbitration Settlement

#### November 1, 1999, Q94N-4Q-C 97122150

The issue in this grievance is whether the Central and South Florida Districts' policy on transfers violates the National Agreement, wherein, only employees with a minimum of five years service and from only within the District were given consideration.

After reviewing this matter, the parties mutually agreed to the following:

1. Local policies regarding transfers must not be in conflict or inconsistent with the Transfer MOU.
2. The subject local policies were rescinded in October 1997.
3. The affected employees were contacted as to the change in policy and given the opportunity of requesting transfer consideration.
4. This case will be remanded to the parties at Step 3 for further processing or to be scheduled for regular arbitration to determine what remedy, if any, is appropriate.

## Regional Arbitration Awards

### C-05826 Regional Arbitrator Jacobowski

#### March 7, 1986, C4N-4J-C 7100

"The grievant is entitled to the appropriate remedy to have the denial revoked, with his transfer request approved, and a directive to Dallas and Milwaukee to so comply and coordinate. I have no difficulty in fashioning and determining this remedy; it is appropriate to the circumstances and the proper means of rectifying the violation and the right of the grievant denied. The separate locations of Dallas and Milwaukee are not a deterrent; they are both branches of the single employer entity, the parties negotiated the common national agreement for all locations and branches."

## **C-10614 Regional Arbitrator Martin**

**June 28, 1990**

Where management improperly denied grievant's request to transfer to the Virgin Islands, management is ordered to pay grievant's moving expenses.

## **C-10123 Regional Arbitrator Barker**

**July 3, 1990**

Management's evaluation of grievant's attendance record was unfair; grievant should have been granted transfer.

## **C-06424 Regional Arbitrator Dobranski**

**August 25, 1986**

I note that both performance evaluations relied upon refer to the grievant's union affiliation. For example, postmaster Storms's evaluation indicates that the grievant is "very strong union", and Supervisor Malterud's evaluation refers to the grievant as "Very much union orientated." I found the presence of these comments very disturbing and their presence in the evaluations, and the possible use made of them makes even clearer the dangers of reliance on strictly subjective factors. These comments on the grievant's union affiliation suggests that they also may have been a factor in the decision to deny him transfer. The Postal Service had the opportunity to provide testimony as to why they were there and clear up any negative inference that might be derived from their presence but chose not to do so.

\*\*\*

There was no reasonable basis for the denial of the request and in fact the Postal Service decision to deny the request was an arbitrary and capricious one. In such circumstances, an arbitrator may fashion a remedy which makes the grievant whole for the contractual violation suffered. As requested by the Union, the remedy for the violation in this case is that the Postal Service should grant the transfer, effective March 8, 1985 or thereabouts, and make the grievant whole for all the rights and benefits which he would have received as of that date but for the Postal Service violation of the contract.

## **C-27960 Regional Arbitrator Braverman**

**January 2, 2009, C06N4CC08247600**

Under such circumstances, the Arbitrator is hard pressed to conclude that the evaluation is based on accurately documented work records. The evaluation itself is therefore faulty and cannot be accepted as a basis for denying the transfer. The evaluations do not comply with the dictates of the MOU requiring accurate documentation of unsatisfactory work records.

## **C-27568 Regional Arbitrator Tobin**

**April 3, 2008, C01N-4C-C 07306320**

Service must consider any mitigating circumstances surrounding any employee's safety and attendance records when acting on a requested transfer.

Travel regulations are found in ELM Section 436.

**C-04657 National Arbitrator Mittenthal  
February 15, 1985, H1N-NA-C 7**

The Postal Service is not required to pay Union witnesses for time spent traveling to and from arbitration hearings.

**M-01561 Prearbitration Settlement  
January 11, 2006**

In emergencies, such as last-minute official travel where there is no time for an employee to receive a check from the Accounting Service Center, the employee shall receive an emergency travel advance after signing a completed and approved PS Form 1011, Travel Advance Request and Itinerary Schedule, from the local post office.

**M-00347 Step 4  
May 6, 1985, H1N-5H-C 29490**

Management is not precluded from detailing regular carriers to other installations and that, in accordance with subsection 438.121 of the Employee and Labor Relations Manual, the grievants are not entitled to travel time compensation. However, per the M-9 Handbook, subsections 612 and 614b, the grievants are entitled to be compensated for the difference in mileage normally traveled and that traveled while on detail.

**M-00094 APWU Step 4  
November 14, 1984, H1C-5F-C 9268**

The proper compensation for undergoing a fitness-for-duty examination on a nonscheduled day is pay for time actually spent taking the examination, including travel time. See also [M-00616](#), [M-00617](#), [M-00356](#)

**M-00888 Pre-arb  
January 5, 1989, H4N-3W-C 17913**

Travel time is proper when management sends a PTF to another station. Part-time flexible employees should not be required to end their tour and then report to another station to continue working without being compensated, as provided for in Part 438.132 of the Employee and Labor Relations Manual.

**M-00772 Memo, Herbert A. Doyle  
January 12, 1987**

An employee who appears as a witness in a third-party action which has been assigned to the Postal Service, is in official duty status for the time spent in court and for the time spent traveling between the court and the work site. See also [M-00445](#)

**M-00368 Step 4  
November 28, 1984, H1N-1E-C 31854**

An employee returning to duty after an extended absence must submit evidence of his/her being able to perform assigned postal duties. If local policy dictates that the employee must be seen and cleared by the postal medical officer, the employee shall be reimbursed for travel ex-

penses incurred to attend the examination.

**C-10691 Regional Arbitrator Axon  
July 31, 1990**

Management did not violate the National Agreement by refusing to pay travel time to "loaners" for travel to associate offices within the local commuting area.

**C-10615 Regional Arbitrator Martin  
July 9, 1991**

Travel time is actual work time, regardless of where it falls in relation to the employee's normal schedule.

See also **Hold Down Assignments**

## 41.1.A. Posting

In the Letter Carrier Craft, vacant craft duty assignments shall be posted as follows:

1. A vacant or newly established duty assignment not under consideration for reversion shall be posted within fourteen calendar days from the day it becomes vacant or is established, unless a longer period of time is negotiated locally.

All city letter carrier craft full-time duty assignments other than letter routes, Carrier Technician assignments, parcel post routes, collection routes, combination routes, official mail messenger service, special carrier assignments and night routers, shall be known as full-time Reserve Letter Carrier duty assignments. The term "unassigned regular" is used in those instances where a fulltime letter carrier does not hold a duty assignment.

**Unassigned Regulars.** The definition of unassigned regular was changed in the 2001 National Agreement by removing that part of the prior definition that provided that they "are excess to the needs of the delivery unit." This change makes clear that any full-time regular letter carriers not holding a bid assignment are unassigned regulars. Whether or not they are excess to the needs of the delivery unit is irrelevant. This change was made to remove inconsistencies with other sections of the contract such as Article 41.1.A.2 and Article 12.

## **C-00939 National Arbitrator Gamser September 10, 1982, H1C-5F-C 1004**

Unassigned regulars who had their schedules changed in the absence of a bid or assignment to a residual vacancy were entitled to out-of-schedule overtime under Article 8, Section 4.B.

41.1.A.6. When a fixed schedule non-work day is permanently changed, the new non-work day shall be posted.

7. Unassigned full-time carriers and full-time flexible carriers may bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, assignment of the employee may be made to any vacant duty assignment for which there was no senior bidder in the same craft and installation. In the event there is more than one vacancy due to the lack of bids, these vacancies may be filled by assigning the unassigned full-time carriers and full-time flexible carriers, who may exercise their preference by use of their seniority. In the event that there are more unassigned full-time carriers and fulltime flexible

carriers than vacancies, these vacancies may be filled by assigning the unassigned employees by juniority.

In the event there are more unassigned full-time carriers and/or full-time flexible letter carriers than residual vacancies, the residual vacancies may be filled by assigning the unassigned employees by juniority (inverse seniority).

- Reserve Regulars are not unassigned regulars and this section does not apply to them.
- When there is no bid, the assignment of an unassigned regular or fulltime flexible letter carrier shall be by juniority (inverse seniority).
- When there is more than one vacancy and there are no bids, the unassigned carriers or full-time flexible carriers assigned to the vacancies may select their individual assignments by seniority.

## **M-00420 Pre-arb December 7, 1973, NN 1239**

Pursuant to Article XLI, Section 1-A.4 of the National Agreement the preference of an unassigned full-time carrier is to be considered in duty assignments where there is available more than one vacant duty assignment for which there was no senior bidder.

## **M-00681 Step 4 May 4, 1977, NCE 5617**

Although an unclassified letter carrier does not have the right to select which route he wishes to work on any given day, the employer is not precluded from assigning unassigned regular employees to various routes by seniority.

## **M-00090 Step 4 September 4, 1985, H1N-5G-C 26599**

Management is not obligated to seek volunteers prior to temporarily assigning unassigned regulars to other work locations.

## **C-09569 Regional Arbitrator R.G. Williams December 8, 1989, S7N-3W-C 22758**

Management may permanently, but not temporarily, assign an unassigned regular to work outside of his section.

## **C-04484 National Arbitrator Mittenthal November 2, 1984, H1N-3U-C 13930**

A carrier who successfully opts for an assignment is entitled to work the assignment for its duration, and management may not prematurely terminate the temporary assignment to move the carrier to a permanent assignment pursuant to Article 41, Section 1.A.7.

### **M-00669 Step 4**

**February 24, 1987, H1N-5G-C 22641**

Full-time reserve and unassigned regular letter carriers occupying a hold-down position pursuant to the provisions of Article 41.2.B.3 have the right to bid for a full-time duty assignment. If such letter carrier is the successful bidder, he shall be placed into the duty assignment pursuant to the provisions of Article 41.1.C.3. The resultant vacant hold-down will be filled pursuant to the provisions of Article 41.2.B.3-5, provided the anticipated duration of the resultant vacancy is of five (5) days or more.

### **M-01431 Step 4**

**September 25, 2000, H94N-4H-C 96007241**

The issue in this grievance is whether unassigned regulars may opt pursuant to Article 41.2.B.3 if their unassigned status is not the result of the elimination of their duty assignment.

The parties mutually agreed that the language of Article 41.2.B.3 and 41.2.B.4 intended three categories of employees: C part-time flexible carriers, full-time reserve carriers, and unassigned regulars, regardless of the reason for the unassigned status.

**M-01833** March 6, 2014

## Joint Questions and Answers—Other Provisions

**Question No. 7: When will the change to the annual uniform allowance be implemented for career city letter carriers?**

It is anticipated that the change will be effective in April 2013.

**M-01189** Step 4

**February 23 1994, H0N-2P-C 7096**

During our discussion, we mutually agreed that appropriate work clothes allowance for a Vehicle Operations Maintenance Assistant (VOMA) can be determined through application of section 932.13 (E) of the ELM. Postal Bulletin dated 9-19-91 (attached) gives specific reference to each craft and monetary allocation per year based on designation contained in the ELM.

**M-00055** Step 4

**September 20, 1985, H1N-3U-C 27386**

If walking shorts are properly fitted, the length of the shorts will be approximately 3" above the knee.

**M-00526** Step 4

**May 16, 1984, H1N-5H-C-3572**

Female letter carriers shall not be required to wear only navy blue knee socks with their skirts or culottes. Multi-colored socks, however, may be prohibited by local management.

**M-00519** Step 4

**August 1, 1984, H1N-3A-C-30742**

ELM Part 584.8, specifically authorizes the head of an installation to determine when seasonal changes of uniform will take place. Whether or not the language of this LMU is inconsistent with the postmaster's decision making authority relative to the seasonal wearing of ties can only be determined by review of the fact circumstances, to include the context of the discussions leading to the 1981 LMU language, past practice, etc.

**M-01454** Prearbitration Settlement

**January 24, 2002, H94N-4H-C-98091130**

ELM 436.1, Corrective Entitlement, provides for back pay calculations for unwarranted personnel actions, including not only compensation but also allowances. ELM 935.23 provides for a reduction of 10% for LWOP in excess of 89 calendar days. In the instant case, the removal action was reduced to a ninety-day suspension. Accordingly, the uniform allowance in effect during the 1994-1998 CBA (\$277) must be reduced by 10%.

## Maternity Uniforms

**M-00846** USPS Letter

**March 16, 1983**

Although part 582.11a of the Employee and Labor Relations Manual requires city letter carriers to wear the prescribed uniform while performing their duties, installation heads have been allowed to exercise some flexibility in cases of female city letter carriers in advanced stages of pregnancy.

Such cases are reviewed on an individual basis, and installation heads are encouraged to use discretion in seeking a sensible resolution. Obviously, the employee can purchase larger sized uniform items within her authorized uniform allowance. However, the wearing of personal non-uniform garments has also been allowed. Generally, these garments should be somewhat subdued and, preferably, dark blue or blue-gray.

**M-01454** Prearbitration Settlement

**January 24, 2002, H94N-4H-C-98091130**

ELM 436.1, Corrective Entitlement, provides for back pay calculations for unwarranted personnel actions, including not only compensation but also allowances. ELM 935.23 provides for a reduction of 10% for LWOP in excess of 89 calendar days. In the instant case, the removal action was reduced to a ninety-day suspension. Accordingly, the uniform allowance in effect during the 1994-1998 CBA (\$277) must be reduced by 10%.

## Shoes

**M-00505** Step 4

**May 21, 1984, H1N-3U-C-26505**

Whether or not in this case the number of shoe purchases was excessive and whether or not discretion was reasonably applied by the postmaster can only be determined by review of the fact circumstances existing at the local level. Such things as weather conditions, type of territory, condition of the carrier's current shoes, etc., are to be considered.

**M-00429** Bulletin

**June 24, 1982**

Jogging style shoes having all leather or poromeric uppers generally are acceptable and safe footwear in most areas of the workroom floor. Athletic shoes, jogging shoes (except as specified above) tennis shoes, or sneakers, constructed of canvas, nylon or similar type material, are not acceptable attire for the workroom floor.

## Neckties

**M-00430** Letter

**February 18, 1982**

Employees authorized to wear the neck/chest protector as part of the authorized cold weather uniform, will not be re-

quired to wear a necktie, when the neck/chest protector is being worn to protect them from cold weather. When inside the postal facility, the neck/chest protector will be replaced by the necktie which again becomes a required uniform item.

## **M-00862 Step 4**

**December 20, 1988, H1N-5L-C 11700**

If not in view of the public, a carrier is not required to wear a necktie, until they leave for street carrier duties. The necktie will be affixed during the carrier's five (5) minutes of authorized personal time.

## **City Carrier Assistants**

### **M-01833 Joint Questions and Answers**

**March 6, 2014**

**Question 47: When does a CCA become eligible for a uniform allowance?**

Upon completion of 90 work days or 120 calendar days of employment as a CCA, whichever comes first. CCAs who have previously satisfied the 90/120 day requirement as a transitional employee (with an appointment made after September 29, 2007), become eligible for a uniform allowance when they begin their first CCA appointment.

**Question 48: What defines the anniversary date for the purpose of annual uniform allowance eligibility for a CCA?**

The calendar date the CCA initially becomes eligible for a uniform allowance.

**Question 49: How is the uniform anniversary date determined for a CCA who is converted to career status?**

The employee retains the same anniversary date held as a CCA.

**Question 50: How is a uniform allowance provided to a CCA?**

When a CCA becomes eligible for a uniform allowance, funds must be approved through an eBuy submission by local management. After approval, a Letter of Authorization form must be completed and provided to the employee within 14 days of the eligibility date. The CCA takes the completed form to a USPS authorized vendor to purchase uniform items. The Letter of Authorization can be located on the Uniform Program website on the Blue Page under Labor Relations.

**Question 51: How are uniform items purchased?**

Uniform items can only be purchased from USPS licensed vendors. A list of all authorized Postal Service Uniform

vendors is located under the Labor Relations website: Uniform Program from the Blue Page and also on Liteblue under My HR, and look for the link for Uniform Program.

**Question 52: How does a licensed uniform vendor receive payment for uniform items purchased by a CCA?**

The licensed vendor creates an itemized invoice of the sale, provides a copy of the invoice to the CCA, and sends the original invoice for payment to the local manager identified on the Letter of Authorization. Upon receipt, the local manager certifies the invoice and pays the vendor using the office Smartpay card.

**Question 53: If a CCA does not use the full allowance before his/her appointment ends, does the allowance carry-over into the next appointment when the appointment begins before the next uniform anniversary date?**

Yes, however, the CCA cannot purchase uniform items during his/her five calendar day break between appointments. If the full annual uniform allowance is not used before the next anniversary date, the remaining balance for that year is forfeited.

**Question 54: Does the annual uniform anniversary date change when a CCA is separated for lack of work and then rehired as a CCA after his/her anniversary date has passed?**

Yes, in this situation a new anniversary date is established on the date of reappointment and the CCA is provided a full annual uniform allowance within 14 days of the new anniversary date.

**Question 55: What happens to the annual uniform allowance for a CCA that has an anniversary date, is separated for lack of work, and then rehired as a CCA before their next uniform anniversary date?**

A CCA that is separated under this circumstance retains his/her anniversary date. If there is no uniform allowance balance remaining at the point of separation, the matter will be considered closed. If the CCA had any part of the annual uniform allowance available at the point of separation, the remaining balance will be redetermined upon reappointment as follows: If the period of separation exceeded 89 calendar days, the remaining balance will be reduced by 10 percent of the annual uniform allowance for the first 90 calendar days and then by 10 percent for each full 30 calendar days thereafter. In no event will such retermination result in a negative balance for the employee.

**Question 56: Will CCAs receive the additional credit authorized under Article 26.2.B with their first uniform allowance following conversion to career status?**

Yes

**M-01822 USPS Instructions****May 22, 2013**

SUBJECT: City Carrier Assistants-Annual Uniform Allowance

In accordance with Article 26, Section 3 of the 2011 National Agreement between the U.S. Postal Service and National Association of Letter Carriers, city carrier assistants (CCAs) are provided with an annual uniform allowance. To qualify for a uniform allowance CCAs must either complete 90 work days or be employed for 120 calendar days, whichever comes first. CCAs who have previously satisfied the 90/120 day requirement as a transitional employee (with an appointment made after September 29, 2007) become eligible for a uniform allowance at the beginning of their first CCA appointment.

CCA uniform allotments will be disbursed annually in a lump sum. The specific allotment amounts are as follows:

Effective Nov 21 , 2012 = \$390

Effective Nov. 21 , 2013 = \$399

Effective Nov 21 , 2014 = \$409

Effective Nov. 21 , 2015 = \$420

Generally, the calendar date that a CCA initially becomes eligible for a uniform allowance is the annual anniversary date. Any uniform allowance amount remaining at the beginning of the next anniversary date is forfeited.

To provide the uniform allowance, local managers must furnish each CCA with a Letter of Authorization that includes an original signature. In order to purchase uniform items, the CCA must provide the original Letter of Authorization to an authorized postal uniform vendor and display his/her postal identification for verification of identity. Advance payment to a uniform vendor is not required; however, **local managers must ensure that prompt payment is made to the vendor for approved CCA uniform item purchases after receiving the itemized invoice and the original Letter of Authorization.**

Detailed instructions regarding the purchase and payment of CCA uniform items and the Letter of Authorization template are attached. This information is also available on the Blue Page under the Uniform Program Website.

CCAs who are separated and not reappointed must return all uniform items to the local manager.

## Right to enter Installations

**Article 23** Upon reasonable notice to the Employer, duly authorized representatives of the Union shall be permitted to enter postal installations for the purpose of performing and engaging in official union duties and business related to the Collective Bargaining Agreement. There shall be no interruption of the work of employees due to such visits and representatives shall adhere to the established security regulations.

(The preceding Article, Article 23, shall apply to City Carrier Assistant Employees.)

The JCAM provides the following explanation:

Article 23 establishes the right of NALC officials to enter postal installations for any official purpose related to collective bargaining or labor relations. Step 4 settlements regarding this provision have established that:

- The union needs to give management reasonable notice prior to entering a postal facility—a phone call to an appropriate management official is sufficient. Step 4, H1N-5C-C-1479, June 25, 1982 (M-00440);

### **M-00440 Step 4**

**June 25, 1982, H1N-5C-C 1479**

Upon reasonable notice to the Employer, duly authorized representatives of the Unions shall be permitted to enter postal installations for the purpose of performing and engaging in official union duties and business related to the Collective Bargaining Agreement. Normally, reasonable notice would not be required in writing. A telephone call to an appropriate management official would be sufficient. See also M-00628.

- There should be no unreasonable delays in granting a requesting union official access to a postal facility Step 4, NC-C 10535, April 12, 1978 (M-00032); and

### **M-00032 Step 4**

**March 28, 1978, NC-C-10535**

There should be no unreasonable delays in management granting a requesting union official access to a U.S. Postal Service facility.

- High mail volume on a particular day is not a legitimate reason to prevent union officials from entering a facility. Step 4, NC-S-8831, November 14, 1977 (M-00441).

### **M-00441 Step 4**

**November 14, 1977, NC-S-8831**

The fact that mail volume is high on a particular day is not a legitimate reason to prevent union officials from entering a facility.

### **M-00442 Letter**

**December 15, 1982**

National union officers should give reasonable notice to the employer at the national level when desiring to visit postal installations, and regional union officials should give reasonable notice at the regional level when desiring to visit postal installations.

### **M-00032 Step 4**

**March 28, 1978, NC-C-10535**

There should be no unreasonable delays in management granting a requesting union official access to a U. S. Postal Service facility.

## Leave for union business

### **ARTICLE 24 EMPLOYEES ON LEAVE WITH REGARD TO UNION BUSINESS**

#### **24.1 Section 1. Continuation of Benefits**

Any employee on leave without pay to devote full or part-time service to the Union shall be credited with step increases as if in a pay status. Retirement benefits will accrue on the basis of the employee's step so attained, provided the employee makes contributions to the retirement fund in accordance with current procedure. Annual and sick leave will be earned in accordance with existing procedures based on hours worked.

**Reason for leave NALC employment.** Article 24.1 addresses leave from postal employment taken because of a full- or part-time job with the NALC—typically with a local union or the national union. Article 24.1 guarantees that such NALC employees on leave from postal employment continue to accrue retirement credit (so long as payment is made) and earn credit toward step increases. As a general rule, a letter carrier who takes long-term leave without pay (LWOP) from postal employment does not continue to accrue retirement benefits or time toward periodic step increases.

### **M-00558 USPS Letter**

**June 17, 1983**

Regulations governing health benefits, life insurance, and retirement coverage for employees serving as full time union officials.

**Leave to attend union conventions** is governed by Article 24, Section 2. A complete explanation of this provision is found in the JCAM.

### **C-00750 National Arbitrator Garrett**

**December 14, 1979, AC-S-25727**

The Postmaster may not deny leave requests to attend Union meetings to one of the two employees in separate crafts, both of whom are Union officials on the ground their simultaneous leaves would hinder the function of the Postal Service.

### **M-00148 Step 4**

**May 5, 1977, NC-C-5694**

Where a valid union function is known to take place, such as in this instance, it has been the practice of the U. S. Postal Service to allow stewards or other union officials the option of taking annual leave or leave without pay to attend such a function.

### **M-01136 APWU Step 4**

**December 20, 1973, AB-NAT-34**

[W]here an employee intermittently requests and is granted approval to be absent from work for the purpose of conducting union business, it is not the intent of the Postal Service that such employee be required to use annual leave to cover the absence. If management determines that the employee's services can be spared and it approves the requested absence, then the employee has the option of using annual leave or leave without pay to cover the absence.

## Vehicle Modifications

### **M-01297 Step 4**

**October 7, 1997, F94N-4F-C 96044730**

We agreed that approval of vehicle modifications can only be accomplished at the national level.

### **M-01353 Pre-arbitration Settlement**

**March 8, 1994, H0N-NA-C-7**

Prearbitration settlement requiring the retrofitting of mirrors to Long Life Vehicles (LLV's).

### **M-01364 Step 4**

**October 22, 1998, D94N-4D-C 96025636**

Decision confirming that the installation of strobe lights on LLVs is an optional modification authorized by the May 16, 1994 Vehicle Modification Order 01-94 (copy in file).

## Vehicle Training

### **M-01255 Step 4**

**October 30, 1996, A94N-4A-C-96004649**

The parties at the national level agree that 1) familiarization training on Aerostar vans should be provided and, that 2) whether or not sufficient familiarization training was provided in a specific location is a fact suitable for regional resolution.

### **M-01348 Step 4**

**January 2, 1997, K94N-4K-C 96051645**

It was mutually agreed that there is no prohibition against locally instituted training programs not inconsistent or in conflict with national training programs. It is further agreed that they may not be inconsistent or in conflict with the provisions of Article 29, Limitation on Revocation of Driving Privileges, and its corresponding MOU.

Whether or not a locally instituted training program violates those provisions is a matter for Area arbitration. Accordingly, the parties agreed to remand this case back to the parties to Step 3 for application of the above understanding.

## Vehicle Operation

### **M-01298 Step 4**

**January 13, 1998, A94N-4A-C 97003065**

The instant case deals with a locally issued directive concerning open vehicle door and the use of seat belts.

During our discussion, we mutually agreed that the currently effective regulations were published in the Postal Bulletin 21486 dated November 11, 1984. However, through Article 19 discussions the parties have recently agreed to revise that policy as follows. The official policy will be included in the next publication of Handbook M-41, Section 812.

Seatbelts must be worn all times the vehicle is in motion. Exception for Long Life Vehicles: In instances when the shoulder belt prevents the driver from reaching to provide delivery or collection from curbside mailboxes, only the shoulder belt may be unfastened. The lap belt must remain fastened at all times the vehicle is in motion.

When traveling to and from the route, when moving between park and relay points, and when entering or crossing intersecting roadways, all vehicle doors must be closed. When operating a vehicle on delivery routes and traveling in intervals of 500 feet (1/10 mile) or less at speeds not exceeding 15 MPH between delivery stops, the door on the drivers side may be left open.

### **M-00341 Pre-arb**

**March 22, 1974, N-W-3928**

Employees performing curbside delivery, from right-hand drive vehicles, shall follow the procedures listed below:

1. Level streets or roads: Place the vehicle in neutral (N), place foot firmly on brake pedal while collecting mail or placing mail in mail box.
2. On hills: Place the vehicle in park (P), place foot firmly on brake pedal while collecting mail or placing mail in mail box.

Employees performing curbside delivery, from left-hand drive vehicles, shall follow the procedures listed below:

1. To serve each box, the left-hand drive vehicle will be brought to a complete stop.
2. The gear shift lever will be placed in park, the operator will serve the box and then continue to the next box.

Employees shall not finger mail while driving, or hold mail in their hands while the vehicle is in motion. See Also [M-00234](#).

### **M-00994 Step 4**

**August 12, 1985, H1N-2U-C 19335**

The issue raised in this grievance involved instructions not to place vehicles in neutral while making curbside deliveries from right-hand drive vehicles.

It is our position that advising carriers not to put the gear selector in the neutral position at each delivery point on a mounted route was improper. U.S. Postal Service policy in this regard provides that employees performing curbside delivery, from right hand drive vehicles, shall follow the procedures of (1) on level streets or roads, placing the vehicle in neutral (N), placing the foot firmly on the brake peddle while collecting mail or placing mail in the mail box; (2) on hills, placing the vehicle in park (P), placing the foot firmly on the brake peddle while collecting mail or placing mail in the mail box. We find that the grievance in this regard does have merit.

## **M-00972 Step 4**

**December 21, 1977, NC-W-9299**

Employees performing curbside delivery from right hand drive vehicles, shall follow the procedures listed below:

1. Level street or road: Place the vehicle in neutral (N) place foot firmly on brake peddle while collecting mail or placing mail in mailbox.
2. On hills: Place vehicle in park (P) place foot firmly on brake peddle while collecting mail or placing mail in mailbox.

## **M-00143 Step 4**

**February 3, 1977, NC-E-4978**

Letter carriers may be required to gas up their vehicles. However, we also agreed that letter carriers will not be required to check the oil or otherwise service their vehicles.

## **M-00071 Step 4**

**December 2, 1983, H1N-5K-C 15753**

The tire check during the carrier's vehicle inspection (Notice 76) is a visual check. Full-time regular carriers will not be required to use a tire gauge to check tire inflation.

## **M-00689 Step 4**

**December 2, 1983, H1N-5K-C 15753**

The tire check during the carrier's vehicle inspection (Notice 76) is a visual check. Full-time regular carriers will not be required to use a tire gauge to check tire inflation.

## **M-00722 Step 4**

**March 25, 1976, NB-C-6727**

We find that the employee should not have been riding on the rear fender well of a 1/4-ton jeep. To this extent, we find that the grievance is sustained. By copy of this letter, is instructed to seek alternate methods for training carriers in their duties and responsibilities when it is necessary for the trainee to be accompanied on the route by another carrier.

## **M-00161 Step 4**

**September 9, 1985, H1N-2B-C 18013**

We agreed that 1/4 and 1/2 ton vehicles owned by the Postal Service with a service tray positioned for normal use is considered unsafe for transportation of passengers in an auxiliary seat.

## **M-00633 Pre-arb**

**April 3, 1974, N C 539**

It is not the policy of the Postal Service to require carriers to wash the interior of vehicles.

## **M-00693 Step 4**

**November 14, 1977, NC-W-8815**

A supervisor on street supervision may open a locked postal vehicle to ascertain the sequence of delivery and prescribed line of travel. However, the supervisor should,

whenever possible, notify the employee that it was necessary to enter his vehicle.

## **M-00692 Step 4**

**June 24, 1977, NC-C-5630**

The postmaster is instructed to reimburse the employees involved in the amount of the fines they incurred as a result of the parking violation cited.

## **M-00593 Step 4**

**March 22, 1983, H1N-5G-C 7746**

Letter Carriers may be required to shut off their vehicle each time they leave it.

## **M-01123 Pre-arb**

**January 7, 1993, H7N-3D-C 23071**

We have mutually agreed that the presence of a removable passenger jump seat does not constitute a safety hazard. However, the seat will be removed from the vehicle after use if it is not going to be used again in the immediate future.

## **Seat Belts**

### **M-00968 USPS Letter**

**March 23, 1987**

The lap belt, shoulder belt and shoulder harness policy for the Long Life Vehicle is as follows:

The driver must wear the lap belt and shoulder belt at all times the vehicle is in motion. Exception: In instances when the shoulder belt prevents the driver from reaching to provide delivery or collection from curbside mailboxes, only the shoulder belt may be unfastened. The lap belt must remain fastened at all times the vehicle is in motion.

All passengers must be seated and wear a lap belt and shoulder harness at all times the vehicle is in motion. Only authorized passengers may be carried in the vehicle.

### **M-00076 Step 4**

**October 28, 1983, H1N-5D-C 14305**

Local management may request the carriers to comply with his more stringent seat belt policy; however, the postmaster may not require more than what is required in accordance with current national policy as set forth in Postal Bulletin 21389, dated February 3, 1983.

### **M-00547 Postal Bulletin**

**November 21, 1984.**

Seat belts must be worn at all times the vehicle is in motion. When traveling to and from the route, when moving between park and relay points and when entering or crossing intersecting roadways, all vehicle doors must be closed. When operating a vehicle on delivery routes and traveling in intervals of 500 feet (1/10 mile) or less at speeds not exceeding 15 MPH between delivery stops,

the door on the driver's side may be left open. See also  
[M-00532](#), [M-00284](#)

## Tachographs

### **M-00259 Step 4**

#### **June 24, 1982, H1N-5G-D 167**

No disciplinary actions will be taken based solely on information obtained from tachographs. However, the Postal Service is not precluded from possible use of vehicle recorder discs as evidence in disciplinary situations.

# VOMA POSITIONS

VOMA positions are multi-craft positions covered by the provisions of Article 41.1.D. Other JCAM sections discussing VOMA positions are Article 12.5.C.5, Article 12.5.C.7, Article 41.1.A.2 (see below) and Article 41.3.O (see below)

## Article 41.2.D

Other Positions City letter carriers shall continue to be entitled to bid or apply for all other positions in the U.S. Postal Service for which they have, in the past, been permitted to bid or apply, including the positions listed below and any new positions added to the list:

SP 2-188 Examination Specialist

SP 2-195 Vehicle Operations-Maintenance Assistant

Examination Specialist and Vehicle Operations-Maintenance Assistant (VOMA) positions are multi-craft assignments. Clerks, Maintenance, Level 5 and 6 Mail Handlers and Motor Vehicle employees are also eligible to bid for Examination Specialist positions. Clerks, Maintenance and Level 5 and 6 Motor Vehicle employees are also eligible to bid for VOMA positions.

Letter carriers in these positions continue in the carrier craft bargaining unit with seniority, bidding and representation rights. If selected, the employee remains in his/her craft and in the installation (USPS Letter, March 31, 2004, [M-01514](#)). However, a VOMA carrier is not eligible to place his or her name on an Overtime Desired List. (Step 4, H1N-4B-C 11747, April 5, 1983, [M-00051](#))

## M-01007 Step 4

### July 6, 1983, H1N-5B-C 11224

It was mutually agreed that any successful bidder of a VOMA position carries with him or her the seniority of the craft of which he or she is a member.

As long as the grievant remains in his current VOMA position, local management will use his seniority that he carried with him as a member of the carrier craft. Except as specifically provided otherwise, the grievant shall retain his carrier seniority when seniority is used as a determining factor.

## M-01299 Step 4

### January 12, 1998, Q94N-4Q-C 97067029

During our discussions, we mutually agreed that this case will be administratively closed at this level based on the following:

- 1) There is no change in duties and responsibility of the VOMA position
- 2) The VOMA position is still a multi-craft position

- 3) The successful bidder will be represented by the craft from which they came.

Article 41.1.A.2 The JCAM provides the following explanation under this provision;

While city letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant city letter carrier craft duty assignments while so detailed, they may bid on the multi-craft positions of VOMA or Examination Specialist while on detail (see National Arbitrator Aaron, H1N-4J-C 8187, March 19, 1985, [C-04925](#)).

## C-04925 National Arbitrator Aaron

### March 19, 1985, H1N-4J-C 8187

A 204b may bid for a vacant VOMA assignment.

Article 41.3.O The JCAM provides the following explanation under this provision;

**VOMA Positions Not Included.** Vehicle Operations Maintenance Assistant (VOMA) positions are multicraft positions. The abolishment of a VOMA position does not trigger the provisions of Article 41.3.0; nor are VOMA positions included when assignments are posted under Article 41.3.0.

## Qualifications, Bidding

## C-10577 Regional Arbitrator Martin

### January 28, 1991

Local management may not add to the nationally established list of qualifications for VOMA positions.

## M-00251 Step 4

### July 14, 1982, H1N-5D-C 2509

The VOMA position is a multi-craft position, with selection based on the senior qualified bidder. Accordingly, the employee with carrier craft seniority from May 26, 1962 is senior to the employee with clerk craft seniority from November 12, 1974.

## M-01514 Postal Service Letter

### March 31, 2004

Postal Service response stipulating that when management decides to domicile a Vehicle Operations Maintenance Assistant (VOMA) position outside the installation of the VMF, the position is filled by selection of the senior qualified employee assigned to the office domiciled from the eligible crafts. Once selected, the employee remains in his/her craft and office; the selected employee is not reassigned to the VMF.

## **M-00418 Step 4**

**September 21, 1982, H1N-1N-C 4505**

When a multi-craft position, such as VOMA, is occupied and the position is modified by either hours worked or non-scheduled days, the position is not to be reposted.

## **M-00419 Step 4**

**February 28, 1978, NC-E-9688**

The VOMA position is a multi-craft position and the posting duration will be 30 days from the date of the creation of a VOMA vacancy.

## **C-10910 Regional Arbitrator Talmadge**

**August 8, 1991, N7N-1E-C 32349**

Management acted improperly when it did not award the grievant a vacant VOMA position.

## **C-10577 Regional Arbitrator Martin**

**January 28, 2001**

The grievant therefore is found to have met the minimum qualification standards for the VOMA #2 position, and she was the most senior employee who was minimally qualified for that position. Since she was not selected, she was denied her contractual rights, and the Grievance is allowed.

## **Temporary Vacancies**

The applicability of Article 25 for filling temporarily vacant VOMA assignments is currently unsettled as a result of the September 19, 1999 national interest arbitration award upgraded letter carriers to Grade 6. Note that in order to avoid confusion with the different pay scales in other crafts, the pay grade terminology was changed. PS 5 letter carriers became CC 1 and PS 6 letter carriers became CC 2.

Contact your national business agent concerning any questions about the current application of the below cited settlements and awards.

## **M-00433 Step 4**

**July 8, 1982, H1N-4B-C 5702**

The grievance is settled in full in that temporarily vacant VOMA positions shall be filled in accordance with Article 25, Section 4 of the National Agreement. See also [M-00248](#).

## **M-01077 Step 4**

**June 19, 1992, H7N-2D-C 43689**

The issue in this grievance is whether a VOMA assignment which is temporarily vacant for five days or more must be filled in accordance with Article 41.2.B.3 and 4.

We agree that temporary vacant VOMA positions are filled in accordance with Article 25 Section 4 of the National Agreement. ("Detailing of employees to higher level bar-

gaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists..."). Since the VOMA position is a multi-craft position, as per Article 41.1.D., the employee may be, but not necessarily limited to, a letter carrier.

## **M-01163 Step 4**

**December 6, 1993, H90N-4H-C 93050571**

It is mutually agreed that 1) There is no contractual requirement to fill a temporarily vacant VOMA position; 2) If management makes the decision to fill a VOMA position which will be vacant for at least 5 working days within 7 calendar days, Article 25 Section 4 of the National Agreement provides the method by which the position is filled: "... the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected;" 3) Employees from those crafts eligible to make application for a VOMA position are eligible for consideration to such a detail regardless of the craft of the incumbent VOMA.

## **C-09416 Regional Arbitrator P.M. Williams**

**October 8, 1989, S7N-3V-C 15665**

Management violated the contract when it refused to place the grievant in a temporarily vacant VOMA position

## **Hours, Overtime**

### **M-00051 Step 4**

**April 5, 1983, H1N-4B-C 11747**

Maintenance Assistants are not eligible to place their names on the letter carrier craft "Overtime Desired" list. However, they may be assigned letter carrier's work in conjunction with their VOMA assignment if they were city carriers when they bid the VOMA assignment.

### **M-00346 Step 4**

**May 13, 1985, H1N-4B-C 21739**

The question in this grievance is whether management violated articles 7 and 8 of the National Agreement by assigning overtime in the carrier craft to the acting Vehicle Operations Maintenance Assistant (VOMA) whose regular position is also in the carrier craft. During our discussion it was mutually agreed that the VOMA may be assigned overtime in the carrier craft after the provisions of Article 8, Section 5, have been satisfied.

## **Vacations**

### **M-00746 Step 4**

**April 23, 1987, H4N-EU-C-19607**

While employees from several crafts (clerk, carrier, special delivery, and PS 5 & 6 motor vehicle) are eligible to bid on a vacant VOMA position, once an employee becomes the successful bidder, he/she is represented by, and is treated as a member of, that same craft. This also applies to

choice vacation bidding. In the future, the subject office will allow the VOMA to bid for choice vacation with the carrier craft.

#### **M-00838 Step 4**

**April 23, 1987, H4N-3U-C 19607**

A VOMA, who bid into the position from the Carrier Craft, should be allowed to bid for choice vacation with the Carrier Craft.

## **In General**

#### **C-26257 Regional Arbitrator Wolitz**

**November 12, 2005**

The Union has shown that management violated Article 41 by not notifying the NALC that a VOMA position was being considered for reversion. The Postal Service is hereby directed to post the VOMA position for bid immediately.

#### **M-00417 Step 4**

**September 21, 1982, H1N-1M-C 1863**

The Designation/Activity code changed to 11-0 for the VOMA position was to establish administrative financial accounting procedures. This change in no way affects the employees' conditions of employment or collective bargaining agreement protections in any manner whatsoever.

#### **M-00975 Pre-arb**

**March 31, 1982, H8C-3P-C-16794.**

The issue in this grievance involves the additional duties performed by a VOMA.

Although the employee in this position may be required to participate in mail processing functions (regardless of his craft), his primary duty should be to perform vehicle operations and maintenance functions.

#### **M-01048 APWU Step 4**

**March 5, 1982, H1C-5B-C-603**

We mutually agreed that there was no interpretive dispute between the parties at the National level as to the meaning and intent of Article 7 of the National Agreement as it relates to VOMA assignment.

Although the employee in this position may be required to participate in mail processing operations (regardless of his craft), his primary duty should be to perform vehicle operations and maintenance functions. Proper performance of the VOMA assignment should leave minimal time on a regular basis to perform other duties.

#### **M-01189 Step 4**

**February 23 1994, H0N-2P-C 7096**

During our discussion, we mutually agreed that appropriate work clothes allowance for a Vehicle Operations Maintenance Assistant (VOMA) can be determined through application of section 932.13 (E) of the ELM. Postal Bul-

letin dated 9-19-91 (attached) gives specific reference to each craft and monetary allocation per year based on designation contained in the ELM.

#### **C-09679 Regional Arbitrator Roukis**

**February 8, 1990**

Where less than eight hours of VOMA work was available, management did not violate the contract when it reverted a VOMA position and created a general clerk position including VOMA duties.

#### **C-09998 Regional Arbitrator Klein**

**May 7, 1990**

Management did not violate the contract when it abolished a VOMA position.

#### **C-10232 Regional Arbitrator Sobel**

**August 23, 1990**

Management violated the contract by leaving a VOMA assignment uncovered for one day.

**Article 8, Section 9.** Wash-Up Time Installation heads shall grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials. The amount of wash-up time granted each employee shall be subject to the grievance procedure.

(The preceding paragraph, Article 8.9, shall apply to City Carrier Assistant employees.)

**Wash-Up Time.** Article 8.9 establishes a general obligation, enforceable through the grievance procedure, for installation heads to grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials.

**Wash-Up Time—Local Implementation.** Article 30.B.1 authorizes the local parties to negotiate “additional or longer wash-up periods” as part of a Local Memorandum of Understanding (Article 30).

Articles 8.9 and 30.B.1 prohibit negotiation of LMOU provisions that provide wash-up time to all employees without consideration of whether they perform any dirty work or are exposed to toxic materials. Local parties remain free to define the employees who satisfy those conditions (National Arbitrator Nolan, B98N-4B-I-01029365 and 01029288, July 25, 2004, [C-25374](#)). This rule does not negate the provisions of Article 30.C or the Article 30 Memorandum, which address existing LMOU provisions.

**C-25374 National Arbitrator Nolan  
July 25, 2004**

Section 8.9 and 30.B.1 prohibit negotiation of LMOU provisions that provide wash-up time to all employees without consideration of whether they perform dirty work or are exposed to toxic materials. Local parties remain free to define the employees who satisfy those conditions.

**M-00063 Step 4  
January 12, 1983, H1N-3F-C 10826**

On days that carriers use self-service gas pumps to fuel their assigned vehicles, they will be allowed to wash their hands. However, no additional time allowances will be credited for such wash-up.

**M-00591 Settlement  
March 24, 1975**

Ten-minute wash-up time provided for carriers by the LMU shall remain in effect, and be credited for route examination purposes.

**M-00399 Step 4  
December 7, 1979, NC-S-18945**

Wash-up time has been associated with the personal needs time allowed on line 20 of the 1838; therefore, it is our determination that line 21 credit was not warranted.

**C-07098 Regional Arbitrator Jacobowski  
April 20, 1987, C4N-4A-I-99229**

A LMU provisions giving all carriers a wash-up period is not in conflict or inconsistent with the National Agreement.

**C-00369 National Arbitrator Garrett  
December 17, 1974**

In a local impasse decision, Garrett ruled that certain mail handler employees should be granted wash-up time before lunch and before tour end.

**M-00324 Step 4  
August 29, 1975, NB-W-3870**

The Local Memorandum of Understanding provides that Letter Carriers are to receive two (2) minutes wash-up time before street time and five (5) minutes clean up time during street time. These items are in addition to the personal needs time in the office provided on the Form 1838. Letter Carriers are entitled to receive credit for this time during count and inspection, whether or not they actually use this time.

**C-00166 Regional Arbitrator Cohen  
January 30, 1980, ACC 5566**

Management improperly terminated a past practice of permitting a five-minute wash-up period prior to lunch and at end of tour.

**M-00063 Step 4  
January 12, 1983, H1N-3F-C 10826**

On days that carriers use self-service gas pumps to fuel their assigned vehicles, they will be allowed to wash their hands. However, no additional time allowances will be credited for such wash-up.

**M-00591 Settlement  
March 24, 1975**

Ten-minute wash-up time provided for carriers by the LMU shall remain in effect, and be credited for route examination purposes.

**M-00399 Step 4  
December 7, 1979, NC-S-18945**

Wash-up time has been associated with the personal needs time allowed on line 20 of the 1838; therefore, it is our determination that line 21 credit was not warranted.

The “Weingarten” rule gives employees the right to representation during investigatory interviews. Arbitrators almost universally find that violations of Weingarten rights is an extremely serious matter. It not only tramples on an employee's individual rights, but undermines the union's ability to exercise its representation responsibilities. The JCAM provides the following explanation under Article 17.

## Weingarten Rights

Federal labor law, in what is known as the *Weingarten* rule, gives each employee the right to representation during any *investigatory interview which he or she reasonably believes may lead to discipline*. (*NLRB v. J. Weingarten, U.S. Supreme Court, 1975*) (M-01789)

The *Weingarten* rule does not apply to other types of meetings, such as:

- **Discussions.** Article 16.2 provides that “for minor offenses by an employee... discussions... shall be held in private between the employee and the supervisor. Such discussions are not discipline and are not grievable.” So an employee does not have *Weingarten* representation rights during an official discussion (National Arbitrator Aaron, H1T-1E-C 6521, July 6, 1983, C-03769).
- Employees do not have the right to union representation during fitness-for-duty physical examinations.

The *Weingarten* rule applies only when the meeting is an *investigatory interview*—when management is searching for facts and trying to determine the employee's guilt or decide whether or not to impose discipline. The rule does not apply when management calls in a carrier for the purpose of issuing disciplinary action—for example, handing the carrier a letter of warning.

An employee has *Weingarten* representation rights only where he or she *reasonably believes* that discipline could result from the investigatory interview. Whether or not an employee's belief is “reasonable” depends on the circumstances of each case. Some cases are obvious, such as when a supervisor asks an employee whether he discarded deliverable mail.

The steward cannot exercise *Weingarten* rights on the employee's behalf. And unlike “*Miranda* rights,” which involve criminal investigations, the employer is not required to inform the employee of the *Weingarten* right to representation.

Employees also have the right under *Weingarten* to a pre-interview consultation with a steward. Federal Courts have extended this right to pre-meeting consultations to cover Inspection Service interrogations. (*U.S. Postal Service v. NLRB, D.C. Cir. 1992, M-01092*).

In a *Weingarten* interview the employee has the right to a steward's *assistance*—not just a silent presence. The employer would violate the employee's *Weingarten* rights if it refused to allow the representative to speak or tried to restrict the steward to the role of a passive observer.

Although the ELM Section 665.3 requires all postal employees to cooperate with postal investigations, the carrier still has the right under *Weingarten* to have a steward present before answering questions in this situation. The carrier may respond that he or she will answer questions once a steward is provided.

It should be noted that Article 17, Section 3 also provides the following:

**Article 17.3** If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

This rule is generally less broad in scope than the *Weingarten* rule since it applies only to “interrogation by the Inspection Service,” whereas the *Weingarten* rule applies to investigatory interviews by any supervisor. Nevertheless, it should be cited in addition to the *Weingarten* rule whenever it is violated by management.

## C-03769 National Arbitrator Aaron July 6, 1983, H1T-1E-C 6521

The Postal Service did not violate the National Agreement by refusing an employee's request for a steward to be present at discussions between the employee and his supervisor regarding the employee's use of sick leave.

## M-01092 USPS v NLRB, No. 91-1373 D.C. Cir, June 30, 1992

Decision by the U.S. Court of Appeals for the D.C. Circuit upholding an NLRB decision concerning Weingarten rights (M-01093). The Board held that Postal Inspectors violated the Weingarten doctrine by refusing a request by a steward to consult with an employee prior to the employee's interrogation by the Inspectors.

## M-01668 NLRB Decision December 28, 2007, Case 25-CA-29340

National Labor Relations Board decision finding that a supervisor conducting an investigatory interview improperly prevented a steward from speaking when the steward sought to object to a “loaded” question asked of the letter carrier being interrogated.

## M-00546 NALC Legal Memorandum, November 30, 1981

Recent decisions of the National Labor Relations Board and the United States Court of Appeals for the Ninth Cir-

cuit established that: (1) when an employee being interviewed by an employer is confronted by a reasonable risk that discipline would be imposed, the employee has a right to the assistance of—not mere presence of—a union representative; and (2) that an employer violates the Act when it "refuses to permit the representative to speak, and relegates him to the role of a passive observer."

## **M-01667 USPS Letter October 24, 2007**

Final letter and Weingarten card mailed to all managers and supervisors. Card text:

### **USPS Weingarten Card**

USPS Supervisor Responsibilities Under Weingarten When Interviewing an Employee Where Discipline Might Result

**Under the Weingarten rule, you must allow each employee the following rights in conducting an investigatory interview:**

1. Each employee has a right to be represented by a union steward during an investigatory interview (but not during an Article 16 "discussion"). If, before or at any time during the interview, an employee requests a union steward or in any other way indicates that he or she wants representation, you must do one of three things: (1) you must provide a steward, or (2) you must end the interview, or (3) you must offer the employee the choice of continuing the interview without a steward, or of having no interview at all and therefore losing the benefit that the interview might have given to him or her. **When in doubt, it is better to provide a steward or contact Labor Relations immediately.**

2. The supervisor must tell the employee and steward the purpose and subject of the meeting before the meeting begins. Then, if either the steward or the employee requests, adequate time must be given to them to talk privately before (or during) the interview.

3. During the interview, you must permit the steward to participate. He or she may ask questions, clarify the employee's answers, comment about the questions, discuss favorable facts, suggest others who have information, and advise the employee. The steward is not allowed to disrupt the meeting or tell the employee not to answer the question. If that happens, postpone the remainder of the meeting and consult you manager or Labor Relations *immediately*.

4. You may begin the interview, if appropriate, by saying:

A. You are going to be asked a number of specific questions concerning (*specify the issue causing the interview*);

B. You are subject to disciplinary action if you refuse to answer or fail to respond truthfully to any questions;

Your steward may advise you and participate in the interview (*assuming the employee has requested a steward*).

## **M-00645 Step 4, July 19, 1977, NCS-4767**

Supervisors may have work related discussions with employees under their jurisdiction without a steward's presence. However, in this specific instance, the supervisor wanted a witness present. This unusual action justifiable caused concern by the employee and as a consequence his request to have a steward present was not unreasonable.

## **M-01096 Pre-arb**

### **September 16, 1992, H7N-5N-C 31554**

The parties at this level agree that under the Weingarten rule, the employer must provide a union representative to the employee during the course of its investigatory meeting where the employee requests such representation and the employee has a reasonable belief that discussions during the meeting might lead to discipline (against the employee himself).

Whether or not an employee reasonably believes that discipline will result from the investigatory interview is a factual dispute and is suitable for regional determination. See also [M-00436](#)

## **M-01140 APWU Step 4**

### **August 24, 1983, H1C-3W-C 21550**

Discussions held pursuant to Article 16, Section 2, shall be held in private between the employee and the supervisor, and constitute the corrective action for the minor offense involved. Discussions which involve fact-finding and which may lead to discipline entitle the employee to representation, if requested.

## **Miranda Warnings**

Almost everyone is familiar with "Miranda" warnings from watching television: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present before any questioning. If you cannot afford an attorney, one will be appointed to represent you before any questioning."

Miranda warnings should not be confused with Weingarten rights. They derive from the landmark U.S. Supreme Court decision in *Miranda v Arizona*, 384 U.S. 436 (1966) which concerned constitutional rights prior to an interrogation in criminal cases.

**It is critical for stewards to understand** and recognize the difference between a normal investigatory interview, even when conducted by postal inspectors, and investiga-

tions that cross the threshold into criminal investigations. Postal inspectors or other law enforcement officials cross the threshold into a criminal investigation when they read employees their Miranda rights. Once the warning is given, anything the individual says can be used in a court of law to show criminal activity. Inspectors also enter the realm of a criminal investigation when they request that the employees sign *PS Form 1067, Warning and Waiver of Rights*. But stewards should always advise carriers not to sign PS Form 1067 because by signing, they waive their Miranda rights. If an employee does sign a PS Form 1067, anything the employee says from that point forward can be used against the employee in a court of law.

Stewards also should remember that **they are not attorneys** and thus cannot offer legal advice to employees facing potential criminal charges. To do so, could place you and your branch in a legally vulnerable position. So stewards immediately inform the employee that he or she may wish to seek legal advice should there be any possibility that the Postal Service will bring criminal charges against the employee. You should also instruct the carrier not to answer any questions postal inspectors ask and that the interrogation should be suspended until the employee has had an opportunity to consult with an attorney.

## Dilemma Resolved

Since ELM Section 666.6 requires all postal employees to cooperate with postal investigations, the Postal Service may take disciplinary action against employees when employees fail to cooperate with normal investigatory interviews that have not crossed the threshold into criminal investigations.

This would appear to pose a dilemma. Should an employee answer questions even if the answers may result in criminal charges, or should the employee refuse to answer and risk the possibility of discipline for "failure to cooperate" in an investigation?

This potential dilemma was substantially resolved by the Federal courts in the *Kalkines* and *Garrity* decisions.

## Kalkines Warnings

A *Kalkines* warning is an advisement of rights usually administered by federal agents to federal employees and contractors in internal investigations. The *Kalkines* warning compels suspects to make statements or be fired, but also provides suspects with **criminal immunity** for their statements. It was promulgated by the U.S. Court of Federal Claims in *Kalkines v. United States 473 F2d 1391 (U.S. Court of Claims) (1973)*. In that case, a federal employee was fired for not cooperating with an internal investigation. The Court of Claims found that the employee had not been sufficiently advised of his immunity to criminal prose-

cution, nor sufficiently warned that he would be fired if he refused to cooperate.

A typical *Kalkines* warning, the exact wording may vary, reads as follows:

*"You are being questioned as part of an internal and/or administrative investigation. You will be asked a number of specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements."*

The *Kalkines* warning helps to ensure an employee's Constitutional rights, while also allowing federal agents effectively conduct internal and administrative investigations.

## Garrity Warnings

A *Garrity* warning is an advisement of rights usually administered by U.S. federal agents to federal employees and contractors in internal investigations. The *Garrity* warning advises suspects of their criminal and administrative liability for any statements they may make, but also advises suspects of their right to remain silent on any issues that tend to implicate them in a crime.

It was promulgated by the Supreme Court of the United States in *Garrity v. New Jersey (1967) (M-01792)*. In that case, a police officer was compelled to make a statement or be fired, and then criminally prosecuted for his statement. The Supreme Court found that the officer had been deprived of his Fifth Amendment right to silence.

A typical *Garrity* warning, the exact wording may vary, reads as follows:

*"You are being asked to provide information as part of an internal and/or administrative investigation. This is a voluntary interview and you do not have to answer questions if your answers would tend to implicate you in a crime. No disciplinary action will be taken against you solely for refusing to answer questions. However, the evidentiary value of your silence may be considered in administrative proceedings as part of the facts surrounding your case. Any statement you do choose to provide may be used as evidence in criminal and/or administrative proceedings."*

The *Garrity* warning helps to ensure suspects' constitutional rights, while allowing helping federal agents pre-

serve the evidentiary value of statements provided by suspects in concurrent administrative and criminal investigations.

If a letter carrier is given a *Garrity* warning, the carrier should be advised to consult with an attorney before answering any questions.

## Case Examples – *Weingarten* Rights

### **C-15476 Regional Arbitrator DiLauro** **June 12, 1998**

The reason rights have been established under the *Weingarten* case or under 5U.S.C. §7114 are to protect any employees from stating or agreeing to something in an investigatory interview which could incriminate them and result in disciplinary action against them. Therefore, once union representation is requested and granted, all questioning should cease until such representation arrives.

The Postal Service's reliance on statements allegedly made during the Postal Inspector's interview with the grievant is the "evidence" the Postal Service points to as proving the grievant was guilty. The fact that such "evidence" has been found to be tainted due to the Postal Inspector's questioning of the grievant when union representatives were not present makes the evidence producing the chain of circumstances pointing to guilt weak and inconclusive and no probability of fact may be inferred from the combined circumstances. Consequently, the grievance must be sustained

### **C-10291 Regional Arbitrator Barker** **September 26, 1990**

In the factual circumstances of this case, a valid request was made by the grievant to Sutton for representation by a steward during the course of the imminent investigatory meeting with the Postal Inspectors, which request was not granted... Accordingly, the grievant was denied fundamental procedural due process rights and the disciplinary action imposed was not for just cause.

### **C-09556 Regional Arbitrator Dolson** **November 30, 1989**

I conclude the interview of the grievant by management during the meeting on January 12, 1989 was investigatory and of the nature that it might reasonably result in discipline. The grievant requested Union representation during this interview and that request was denied by management. This request sufficed for the entire interview which included the questioning of the grievant regarding the vandalism incident, the inspection of the contents of her locker, and the questioning of her regarding the four pieces of mail discovered in her locker. Management, in denying the grievant's request for Union representation, violated her *Weingarten* rights, and therefore her removal was flawed.

Accordingly, I conclude that the Postal Service did not have just cause to remove the grievant. Recognizing, however, the gravity of the offense which the grievant committed, her reinstatement shall not include back pay.

### **C-20955 Regional Arbitrator Goldstein** **August 14, 2000**

Here was a case that cried out for Removal; except that both the grievant's rights to due process and Union's rights of representation were trampled, not just stepped upon. To begin with, the Employer's entire case rested upon the efforts of the Postal Inspector's Investigative Memoranda, yet, he was unavailable for testimony. In addition to the fact that all allegations regarding the altered document were hearsay; there were instances of "*Weingarten*" type abuse, as well. Aside from testimony of the Shop Steward and grievant, it was the testimony of the former Postmaster which convinced me that union representation in his office was far less than anticipated. The evidence was clear and convincing that the Union Steward was, in effect, prohibited from any form of representation during at least one disciplinary meeting before the then Post Master of grievant's facility.

In conclusion, Management did have reasonable basis to severely discipline this employee for her behavior generally, in regard to unsatisfactory conduct surrounding her request for injury related leave; including her action in delivering an altered document in support of that leave. The evidence in support of the charges was clear.

However, the handling of this matter was marked by serious procedural error; which like the grievant's judgment, cannot be condoned either. For that reason, the Removal must be converted to a long term suspension, without back pay.

### **C-24014 Regional Arbitrator Johnston** **January 31, 2003**

There was at the arbitration hearing a conflict between Postal Inspector Smith's version of what happened at these two meetings with Ms. McRae and Ms. McRae's version of what happened at those two meetings. However, a reading of paragraph 8 of the Investigative Memorandum shows that Ms. McRae was not permitted to have a Union representative present. She was accompanied by another Postal employee Rural Carrier Sue Alsop, but Ms. Alsop is not a Union official. Therefore, her due process rights, also known as the *Weingarten* rights, were improperly denied her by Postal Inspector Smith.

Having found that the Postal Service violated the Grievant's due process rights as set out above, it is incumbent on me due to this lack of procedural due process, that the disciplinary action taken by the Postal Service cannot be upheld. My AWARD will set out the action to be taken due to this failure of procedural due process.

Had the Postal Service not violated her due process rights to such an extent as to cause the reversal of their decision to discharge the Grievant, or in other words, had I reached the merits of this case, I would have sustained the Postal Service's action in terminating the employment of the Grievant.

## **C-24702 Regional Arbitrator Nixon October 2, 2003**

The Postal Service notes that the Service did not deny the right, but by an independent and separate entity, the United States Postal Inspectors. The United States Postal Inspectors are not under the jurisdiction of any authority of the United States Postal Service. As such, these inspectors were not "employers" as contemplated by the *Weingarten* requirements. Even if *Weingarten* required the United States Postal Service to permit Carrier Perkins to speak with his union representative, the United States Postal Inspectors were not.

The Arbitrator finds this distinction forced and inaccurate. While the Postal Inspectors are a separate entity, at the time of November 13, 2002 investigations, they were gathering information that could be potentially, and in fact was used in a discipline of the Grievant. They were standing in the shoes of the employer. As such, they must be willing to follow all safeguards that would apply to the employer. Those safeguards included permitting the Grievant to meet privately with the union representative. The Postal Inspectors were clearly acting in part for the United States Postal Service. The information gathered was used by the United States Postal Service and other agencies. Because they were standing in the shoes of the Agency, they must follow the procedures employed by the Agency. The Postal Inspectors failed to do so in a critical respect. For that reason, the discipline cannot stand.

AWARD Because of the actions of the Postal Inspectors in the conduction of the investigation, the claim of procedural due process has sufficient merit to be sustained. Accordingly, the Arbitrator will sustain the grievance

## **C-27659 Regional Arbitrator Roberts June 19, 2008**

The grievant's rights were violated when he was not allowed to consult with his representative prior to a pre-disciplinary interview. Removal action must be reversed and the grievant made whole.

## **C-27768 Regional Arbitrator Bahakel September 4, 2008**

The National Agreement between the parties reserves to an employee the right to a pre-interview consultation with a union steward and the right to have a union steward present at an investigative interview. Denying the Grievant these rights is clearly a violation of the contract between the parties as well as a violation of the Grievant's *Weingarten* rights. Management's actions prejudice the Griev-

ant by denying him the right to consult with a union steward as to his rights before being questioned by Management. Once a Grievant's request to confer with a steward about his rights is denied, and an investigative interview is improperly held, the moment has passed where the Grievant's rights can be restored simply by holding another interview in accordance with the proscribed procedures. Therefore, when Management has conducted an investigative interview after denying the Grievant his right to a union steward, it cannot "heal" or correct its actions by simply holding another interview with a union representative present.

## **C-28422 Regional Arbitrator Cenci September 3, 2009**

Denial of the grievant's *Weingarten* rights during the investigatory interview conducted by the OIG was not rendered harmless by a later PDI in which the grievant admitted to the conduct while represented by a steward. The investigation was fatally flawed when the grievant was not afforded his contractual rights during the investigatory interview conducted by the OIG. That meeting was the first time the grievant was questioned about his employment application and the denial of his rights at that stage could not be subsequently corrected

Management did not have just cause to issue the Notice of Removal dated April 16, 2009 because the investigation was fatally flawed by the denial of the grievant's *Weingarten* right to be represented by a Union steward at an investigatory interview that could lead to discipline. The grievant is to be reinstated and made whole for all losses he incurred as a result of the removal.

## **Supporting Cases—*Weingarten* Rights**

- C-09556** Regional Arbitrator Dolson, Nov. 30, 1989
- C-10291** Regional Arbitrator Barker, Sep. 26, 1990
- C-14117** Regional Arbitrator Shea, Nov. 30, 1994
- C-15476** Regional Arbitrator DiLauro, June 12, 1998
- C-20955** Regional Arbitrator Goldstein, Aug. 14, 2000
- C-24014** Regional Arbitrator Johnston, Jan. 31, 2003
- C-24702** Regional Arbitrator Nixon, Oct. 2, 2003
- C-27659** Regional Arbitrator Roberts, June 19, 2008
- C-27768** Regional Arbitrator Bahakel, Sept. 4, 2008
- C-28422** Regional Arbitrator Cenci, Sept. 3, 2009

**M-01459 CAU Publication  
April, 2002**

Policing Article 12 Withholding

Contract Administration Unit publication concerning the withholding provisions of Article 12, Section 5.

**C-05904 National Arbitrator Gamser  
December 7, 1979, NC-E-16340, Altoona, PA**

Article 12 Section 5.B.2 (Then appendix A) gives the Regional Postmasters General the authority to withhold positions in anticipation of the need to excess employees.

**C-10343 National Arbitrator Mittenthal  
October 26, 1990, H7N-3D-C 22267**

Management may fall below the 90/10 staffing requirement provided by Article 7.3.A when withholding positions under Article 12.5.B.2.

**M-01432 Prearbitration Settlement  
July 18, 2000, F90N-4F-C 93022407**

Full-time flexible assignments are incumbent only assignments and may not be withheld under the provisions of Article 12, Section 5.B.2 of the National Agreement.

**M-01475 Interpretive Step Settlement  
December 20, 2002, C98N-4C-C 02070691**

After reviewing this matter, we mutually agree that no national interpretive issue is presented in this case. Time worked on an occupied position pursuant to Article 41.2.B.4 of the National Agreement is subject to the maximization provisions of Article 7.3.C. If the office was under withholding at the time the triggering criteria was met, a full-time position should have been created pursuant to Article 7.3.C and the resulting residual vacancy should have been withheld pursuant to Article 12.5.B.2 of the National Agreement. We agree to remand this case to the Dispute Resolution Team, through the National Business Agent, for resolution in accordance with this guidance.

**M-01837 Prearbitration Settlement  
March 31, 2014**

The issue in this case is whether the maximization provisions of Article 7.3.C apply to time worked by a part-time flexible city letter carrier on an unoccupied duty assignment.

After reviewing this matter, the parties agree to the following:

Time worked on an "unoccupied position" pursuant to Article 41.2.8.4 of the National Agreement is subject to the maximization provisions of Article 7.3.C. However, if the office is under withholding at the time the triggering criteria is met, a full-time position will be created pursuant to Article 7.3.C and the resulting residual vacancy will be withheld pursuant to Article 12.5.8.2 of the National Agreement.

Additionally, we agree that the provisions of Article 7.3.C. will be applied to an uninterrupted temporary vacant duty assignment only once.

Any grievance currently held for this case will be discussed to determine whether any issues remain in dispute. Such cases will, as appropriate, either be closed or processed with this understanding in accordance with Article 15.Step B or Article 15.4.8.5.

**C-12210 Regional Arbitrator DiLauro  
E7N-2J-C 44821, July 18, 1992**

A withholding order notwithstanding, management violated the contract when it failed to maximize full-time letter carriers: Management gave "only vague estimations of when a reduction in force is to take place and none of these estimations were evidenced by any documentation."

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