JCAM 2000

With September, 2001 Updates

USPS-NALC Joint Contract Administration Manual

September, 2000
With September, 2001 Updates

&

NALC Supplement to the Joint Contract Administration Manual

June, 1998

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National Association of Letter Carriers, AFL-CIO
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This NALC electronic document contains two documents: (1) the USPS-NALC Joint Contract Administration Manual (JCAM) published in September, 2000, with updates published in September, 2001, and (2) the NALC Supplement to the JCAM, first published in June, 1998. These two documents have been joined so that NALC representatives may use them together, as intended.

The JCAM 2000 *with September 2001 updates* should be used instead of the previous JCAM. For a guide to the changes made by the September 2001 updates, see the Transmittal Letter on page 3. Please review the introductions to both documents for more information.

JCAM 2000

With September, 2001 Updates

USPS-NALC

Joint Contract Administration Manual

United States Postal Service
574 L'Enfant Plaza, SW
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National Association of Letter Carriers, AFL-CIO
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September 2000

TRANSMITTAL LETTER SEPTEMBER 2001

Explanation: The attached jointly prepared material updates the September 2000 edition of the *Joint Contract Administration Manual* (JCAM). It incorporates all significant national level arbitration awards, grievance settlements and agreements through September 2001. All material being replaced is obsolete and should be discarded. The discarded material should not be used or relied upon for any purpose.

Instructions: File this transmittal letter in the front of your copy of the JCAM so that it will always be possible to verify that the changes have been made and the most current material is being referenced. To update your manual replace the old material with the new material as follows:

Article 5: Remove all of the old Article 5 material dated September **2000** and replace it with the new material dated September **2001** (pages 5-1 through 5-4)

Article 7: Remove all of the old Article 7 material dated September **2000** and replace it with the new material dated September **2001** (pages 7-1 through 7-14)

Article 8: Remove all of the old Article 8 material dated September **2000** and replace it with the new material dated September **2001** (pages 8-1 through 8-27)

Article 10: Replace pages 10-14 through 10-22, dated September **2000**, with the new pages 10-14 through 10-24 dated September **2001**. The old pages 10-1 through 10-13, dated September **2000**, have not been replaced and should be retained.

Article 12: Replace pages 12-1 and 12-19 only with the new material dated September **2001**. The other pages, dated September **2000**, have not been replaced and should be retained.

Article 27: Remove all of the old Article 27 material dated September **2000** and replace it with the new material dated September **2001**.

Article 28: Replace page 28-3 with the new material dated September **2001**. The other pages, dated September **2000**, have not been replaced and should be retained.

Article 41: Remove all of the old Article 41 material dated September **2000** and replace it with the new material dated September **2001** (pages 41-1 through 41-48)

USPS NALC

Joint Contract Administration Manual

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4110

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO
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September 2000

Introduction

This jointly prepared USPS/NALC *Joint Contract Administration Manual* (JCAM) replaces the previous edition of June 1998 which should no longer be used for any purpose. Publication of the JCAM was undertaken in good faith in order to educate the local parties and facilitate the resolution of disputes concerning issues on which the national parties are in agreement.

While the parties at the national level still dispute the proper application of some portions of the Collective Bargaining Agreement, there are significant areas of agreement. The JCAM represents the parties' effort to inform labor and management in the field of these areas of agreement and encourage consistency and compliance with the issues treated. The narrative explanation of the Collective Bargaining Agreement contained in the JCAM should be considered dispositive of the joint understanding of the parties at the national level.

The actual language contained in the Collective Bargaining Agreement is shaded in blue.

Preface

The JCAM is self-explanatory and speaks for itself. It is not intended to, nor does it, increase or decrease the rights, responsibilities, or benefits of the parties under the Collective Bargaining Agreement. It neither adds to, nor modifies in any respect, the current Collective Bargaining Agreement.

The JCAM is to be used by the local parties to facilitate resolution of disputes and may be introduced in the expedited and regular arbitration forums as dispositive of those issues covered by the manual. 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.

The parties at the national level plan to add to and modify the JCAM on an on-going basis. The parties at the local level should exercise caution to insure that they are working from the most current issue of the JCAM and apply any revisions or modifications prospectively from the date of revision.

ARTICLE 1 UNION RECOGNITION

Preamble

PREAMBLE

This Agreement (referred to as the **1998** National Agreement) is entered into by and between the United States Postal Service (hereinafter referred to as the "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as the "Union"), pursuant to an Arbitration Award issued **Septemter 19, 1999**. In accordance with terms of this Award, the Agreement is effective as of the date of the Award unless otherwise provided.

Interest arbitration. This National Agreement resulted from a binding national interest arbitration procedure which followed an impasse in 1998 negotiations between NALC and USPS. The arbitration procedure is mandated by the Postal Reorganization Act of 1970 (PRA); under federal law, postal workers are barred from striking (striking against the Postal Service is a federal crime) and the PRA provides interest arbitration as a substitute procedure for resolving impasses and reaching a binding contract settlement. The 1998-2001 National Agreement was resolved by a tri-partite (three-party) arbitration panel consisting of neutral Arbitrator George Fleischli, plus one representative each from NALC and USPS management. The Fleischi Award was issued Septemter 19, 1999.

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 Postal Reorganization Act of 1970 (PRA) transformed the Post Office Department into an independent establishment of the government of the United States, "The United States Postal Service." The PRA also gave postal employees the right to bargain collectively over their wages, hours and working conditions. The law states that the Postal Service "shall accord exclusive recognition to a labor organization when the organization has been selected by a majority of the employees in an appropriate unit as their representative." This PRA mandate followed the concept of "exclusive recognition" that had long served as the basis for collective bargaining in the private sector. The doctrine holds that only one labor organization can represent "all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment..." (Labor-Management Relations Act, Section 9(a).)

NALC is the exclusive bargaining agent representing city delivery carriers. Although NALC membership is not limited to members of the city letter carrier craft, NALC is the exclusive representative of all city letter carriers—the *only* organization entitled to represent letter carriers in their collective bargaining relationship with the U.S. Postal Service. Despite the doctrine of exclusive representation, Article 17. 2.E provides that a steward may be designated to represent a craft other than the steward's own—if the unions involved approve and notify the Postal Service in writing.

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, Section 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.

Other unions exclusively representing large, national groups of USPS craft employees are:

APWU—American Postal Workers Union (AFL-CIO): clerks, maintenance employees and motor vehicle employees;

NPMHU—National Postal Mail Handlers Union, Division of Laborers' International Union (AFL-CIO): mail handlers; and

NRLCA—National Rural Letter Carriers' Association: rural letter carriers.

NALC and unions representing these other postal crafts all negotiated together and executed joint National Agreements with the U.S. Postal Service covering the periods 1971-73 and 1973-75. The NRLCA, a non-AFL-CIO organization, bargained separately for its 1975-78 Agreement. In 1978, 1981, 1984, 1987 and 1990 NALC and APWU (the "Joint Bargaining Committee") negotiated jointly while the unions representing mail handlers and rural carriers negotiated separate agreements. In 1994 and 1998 NALC negotiated and arbitrated its National Agreements separately from APWU. Presently each of the four major postal unions has a separate National Agreement with the Postal Service.

1.2 Section 2. Exclusions

The employee group set forth in Section 1 above does not include, and this Agreement does not apply to:

1. Managerial and supervisory personnel;
2. Professional employees;
3. Employees engaged in personnel work in other than a purely non-confidential clerical capacity;

4. Security guards as defined in Public Law 91-375, 1201(2);
5. All Postal Inspection Service employees;
6. Employees in the supplemental work force as defined in Article 7;
7. Rural letter carriers;
8. Mail handlers;
9. Maintenance Employees;
10. Special Delivery Messengers;
11. Motor Vehicle Employees; or
12. Postal Clerks.

Managerial and supervisory personnel are excluded from the bargaining unit by the terms of this Section as well as by the provisions of the Postal Reorganization Act. See 39 U.S.C. 1202(2). However, letter carriers serving in a temporary supervisory position (204-b) are still considered to be craft employees and continue to accrue uninterrupted seniority in the letter carrier craft (See Article 41, Section 1.A.2). See Fasser, NB-S-6859, June 39, 1977 (C-03288), Aaron, H1N-4J-C-8187, March 22, 1985 (C-4925), and Mittenthal A8-W-939, January 27, 1982 (C-00580).

Members of the supplemental workforce, which is defined in Article 7, Section 1.B as being comprised of casuals, are excluded from the bargaining unit.

1.3 Section 3. Facility Exclusions

This Agreement does not apply to employees who work in other employer facilities which are not engaged in customer services and mail processing, previously understood and expressed by the parties to mean mail processing and delivery, including but not limited to Headquarters, Area offices, **Information Service Centers**, Postal Service Training and Development Institute, Oklahoma Postal Training Operations, Postal Academies, Postal Academy Training Institute, Stamped Envelope Agency, Supply Centers, Mail Equipment Shops, or **Mail Tranport Equipment Centers.**

1.4 Section 4. Definition

Subject to the foregoing exclusions, this Agreement shall be applicable to all employees in the regular work force of the U.S. Postal Service as defined in Article 7, at all present and subsequently acquired installations, facilities and operations of the Employer, wherever located.

This Section provides that, subject to the exclusions listed in Sections 2 and 3, all members of the regular workforce as defined in Article 7, Section 1.A are members of the bargaining unit. Article 7, Section 1 defines the regular work force as being comprised of full-time employees, part-time regulars and part-time flexibles. In addition, transitional

employees are members of the bargaining unit as provided for in Article 7, Section 1.C.

1.5 Section 5. New Positions

A. Each newly created position shall be assigned by the Employer to the national craft unit most appropriate for such position within thirty (30) days after its creation. Before such assignment of each new position the Employer shall consult with the Union for the purpose of assigning the new position to the national craft unit most appropriate for such position. The following criteria shall be used in making this determination:

1. existing work assignment practices;
2. manpower costs,
3. avoidance of duplication of effort and "make work" assignments;
4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis;
5. the integral nature of all duties which comprise a normal duty assignment;
6. the contractual and legal obligations and requirements of the parties.

B. The Union shall be notified promptly by the Employer regarding assignments made under this provision. Should the Union dispute the assignment of the new position within thirty (30) days from the date the Union has received notification of the assignment of the position, the dispute shall be subject to the provisions of the grievance and arbitration procedure provided for herein.

This Section requires that before assigning a new position to the most appropriate national craft bargaining unit, the Postal Service must consult with the NALC. Additionally, it contains standards that must be used in making assignments of new positions to the appropriate unit, and provides that the NALC will be promptly notified of the decision as to which bargaining unit a new position has been assigned. Any dispute as to that assignment is grievable at the National level within 30 days from the date the Union receives notification of the assignment.

1.6.A 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.

Branches that wish to determine whether a post office has 100 or more bargaining unit employees should contact the 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, Section 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, Section 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".

1.6.B

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 Transitional Employees.)

This Section 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, Section 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 of course every day", but rather "to meet established service standards". Furthermore, the pre-arbitration settlement H7N-2M-C-443, May 17, 1986, (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.

ARTICLE 2 NON-DISCRIMINATION AND CIVIL RIGHTS

2.1 Section 1. Statement of Principle

The Employer and the Union agree that there shall be no discrimination by the Employer or the Union against employees because of race, color, creed, religion, national origin, sex, age, or marital status.

In addition, consistent with the other provisions of this Agreement, there shall be no unlawful discrimination against handicapped employees, as prohibited by the Rehabilitation Act.

2.2 Section 2. Committees

There are established at the national and area levels Joint Committees on Human Rights. The committees will be composed of a representative of the Union and responsible management officials. The committees may develop affirmative action proposals on all matters affecting minority groups. The committees will also be advised of the plan for site selection for facilities planned for national postal mail networks and major metropolitan areas, and review availability of adequate housing and public transportation. The committees shall meet as required at mutually agreeable times.

2.3 Section 3. Grievances

Grievances arising under this Article may be filed at Step 2 of the grievance procedure within fourteen (14) days of when the employee or the Union has first learned or may reasonably have been expected to have learned of the alleged discrimination, unless filed directly at the national level, in which case the provisions of this Agreement for initiating grievances at that level shall apply.

(The preceding Article, Article 2, shall apply to Transitional Employees.)

This article gives letter carriers the contractual right to object to and remedy alleged discrimination by filing a grievance. Grievances alleging discrimination may be filed directly at Step 2 of the grievance procedure. However, if a grievance concerning discrimination is filed at Step 1 instead, it is not procedurally defective.

Additionally, in accordance with federal law and regulations, employees and applicants for employment with the Postal Service have legal recourse to remedy alleged work place discrimination. A letter carrier can begin this process by contacting an Equal Employment Opportunity (EEO) Counselor. The matter can then be pursued by filing a formal complaint, having a hearing, appealing to the U. S. Equal Employment Commission (EEOC) and to federal court.

This article also gives letter carriers the contractual right to object to and remedy alleged violations of the Rehabilitation Act through the grievance procedure. The USPS guidelines concerning reasonable accommodation are contained in Handbook EL-307, *Guidelines on Reasonable Accommodation*.

The Memorandum of Understanding reprinted below was incorporated into the 1998 National Agreement. It establishes specific obligations concerning the Postal Service's duty to reasonably accommodate deaf and hard of hearing employees and applicants under the Rehabilitation Act.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Deaf and Hard of Hearing

REASONABLE ACCOMMODATION FOR THE DEAF AND HARD OF HEARING

MANAGEMENT'S RESPONSIBILITY

Management has an obligation to reasonably accommodate Deaf and Hard of Hearing employees and applicants who request assistance in communicating with or understanding others in work related situations, such as:

a. During investigatory interviews which may lead to discipline, discussions with a supervisor on job performance or conduct, or presentation of a grievance.

b. During some aspects of training including formal classroom instruction.

c. During portions of EAP programs and EEO counselings.

d. In critical elements of the selection process such as during testing and interviews.

e. During employee orientations, safety talks, CFC and savings bond drive kick-off meetings.

f. During the filing or meetings concerning an employee's OWCP claim.

Reasonable accommodation must be approached on a highly individualized, case by case basis. The individual's input must be considered prior to making a decision regarding accommodation.

IMPLEMENTATION

This obligation is met by selecting an appropriate resource from the variety of resources available. In selecting a resource, the following, among others, should be considered, as appropriate:

— The ability of the deaf or hard of hearing employee to understand various methods of communication and the ability of others to understand the deaf or hard of hearing employee.

— The importance of the situation as it relates to work requirements, job rights, and benefits.

— The availability and cost of the alternative resources under consideration.

— Whether the situation requires confidentiality.

Available resources which should be considered include:

a. Installation heads are authorized to pay for certified interpreters. Every effort will be made to provide certified interpreters when deemed necessary by an application of the principles set forth herein.

b. In some states, the Division of Vocational Rehabilitation (DVR) provides interpreters at no charge. When a decision is made that an interpreter is the appropriate accommodation and a DVR interpreter is not available, other methods of securing an interpreter should be used.

c. Volunteer interpreters or individuals skilled in signing may be obtained from the work force or from the community. The skill level of such persons should be considered.

d. In some situations, written communications may be appropriate. The deaf or hard of hearing employee's ability to understand written communications should be considered.

e. Supervisors, training specialists, EAP, and EEO counselors may be trained in sign language.

f. Deaf or hard of hearing applicants should normally be scheduled for a specific examination time when an interpreter will be available.

g. State or Federal relay services may provide a way for a deaf or hard of hearing employee to conduct postal business by telephone with other employees and customers.

Management will provide the following assistance for deaf and/or hard of hearing employees:

a. All films or videotapes designed for the training or instruction of regular work force employees developed on or after October 1, 1987, shall be opened or closed captioned. To the extent practicable, existing films or videotapes developed nationally that will continue to be used by deaf or hard of hearing employees with some frequency, will be opened or closed captioned.

b. Special telecommunications devices for the deaf will be installed in all postal installations employing deaf employees in the regular work force. Special telecommunications devices or telephone volume control devices will be installed for hard of hearing employees whenever a hard of hearing employee requests and needs such a reasonable accommodation in order to communicate by phone. These devices will be available to deaf and/or hard of hearing employees for official business and in the case of personal emergencies. As appropriate, Management will provide training to staff on the use of these special telecommunications devices.

c. A visual alarm will be installed on all moving powered industrial equipment in all postal installations employing deaf employees in the regular work force or in any installation where such a reasonable accommodation is requested and necessary for a hard of hearing employee.

d. Visual fire alarm will be installed in all new postal installations (installations for which the U.S. Postal Service, as of June 12, 1991, had not awarded a contract for the design of the building) where the Postal Service installs audible fire alarms. The parties will discuss and seek to agree at the local level about the installation in such other facilities as may be appropriate.

JOINT LABOR-MANAGEMENT MEETINGS

Discussion of problem areas with regard to the use of certified sign interpreters,

enhancement of job opportunities for the deaf and hard of hearing, type of special telecommunications devices or volume control devices to be installed, installation of visual alarms or other systems such as tactile devices at other than new postal installations, and the availability of new technologies which may help deaf and hard of hearing employees perform a variety of tasks are appropriate matters for consideration at Joint Labor-Management meetings. Discussion of such matters at Labor-Management meetings is not a prerequisite to the filing or processing of a grievance.

* * *

ARTICLE 3 MANAGEMENT RIGHTS

See NALC Material

3.A The Employer shall have the exclusive right, subject o 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 Transitional Employees.)

USPS' "exclusive rights" under this article 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 basic power to "manage" the United States 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, Management'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.

See NALC Material

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, Section B, Item 3 gives NALC branches the right to negotiate, after completion of each National Agreement, a Local Memorandum of Understanding (LMU) which 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".

ARTICLE 4 TECHNOLOGICAL AND MECHANIZATION CHANGES

Both parties recognize the need for improvement of mail service.

4.1 Section 1. Advance Notice

The Union will be informed as far in advance of implementation as practicable of technological or mechanization changes which affect jobs including new or changed jobs in the area of wages, hours or working conditions. When major new mechanization or equipment is to be purchased and installed, the Union at the national level will be informed as far in advance as practicable, but no less than 90 days in advance.

The provisions of Article 4, Sections 1 and 2 are administered and enforced by the parties at the national level. These provisions are not properly the subject of local grievances. However, local branches should immediately bring to their national business agent's attention any matters they believe are covered by these provisions.

The Union at the National level will be informed as far in advance as practicable, but no less than ninety (90) days in advance, when major new mechanization or equipment is to be purchased and installed which will affects jobs.

4.2 Section 2. Labor-Management Committee

There shall be established at the national level a Joint-Labor Management Technological or Mechanization Changes Committee composed of an equal number of representatives of management and Union representatives. Notice to said Committee shall satisfy the notice of the preceding paragraph. Upon receiving notice, said Committee shall attempt to resolve any questions as to the impact of the proposed change upon affected employees and if such questions are not resolved within a reasonable time after such change or changes are operational, the unresolved questions may be submitted by the Union to arbitration under the grievance-arbitration procedure. Any arbitration arising under this Article will be given priority in scheduling.

There shall be at the National level a joint Labor-Management Technological and Mechanization Changes Committee composed of an equal number of representatives of management and of the Union. Any unresolved dispute resulting from proposed changes upon affected employees may be submitted by the Union to arbitration. Any arbitration arising under this Article will be given priority in scheduling.

4.3 Section 3. New Jobs

Any new job or jobs created by technological or mechanization

changes shall be offered to present employees capable of being trained to perform the new or changed job and the Employer will provide such training. During training, the employee will maintain his/her rate. It is understood that the training herein referred to is on the job and not to exceed sixty (60) days. Certain specialized technical jobs may require additional and off-site training.

An employee whose job is eliminated, if any, and who cannot be placed in a job of equal grade shall receive rate protection until such time as that employee fails to bid or apply for a position in the employee's former wage level.

The obligation hereinabove set forth shall not be construed to, in any way, abridge the right of the Employer to make such changes.

This section requires management to offer any new jobs created by technological or mechanization changes to present employees capable of being trained to perform the new or changed job. National Arbitrator Snow held in H7N-NA-C-96, May, 1993 (C-13007) that the Postal Service had an obligation to offer newly created Remote Video Encoding Jobs to current employees. On-the-job training for any new job created by technological or mechanization changes shall not exceed sixty (60) days. During training, the employees will maintain their pay rate.

Rate Protection: This section provides that if an employee's job is eliminated due to mechanization or technological change, and if the employee cannot be placed in a job of equal grade, the employee shall receive a rate protection until such time as he/she fails to bid or apply for a position in his former wage level. The **saved grade** provided for in this section is governed by the provisions of Section 421.53 of the *Employee and Labor Relations Manual (ELM)*.

See also Article 9, Section 7 which contains a general provision requiring the Postal Service to continue all the salary rate retention provisions contained in ELM Section 421.5. This includes not only the Article 4.3 **saved grade** provisions described in *ELM* Section 421.53 , but also two other types of "rate protection": the **protected rate** provisions in *ELM* Section 421.51 and the **saved rate** provisions in *ELM* Section 421.52.

ARTICLE 5 PROHIBITION OF UNILATERAL ACTION

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 Transitional 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.

Past Practice

The following explanation represents the national parties' general agreement on the subject of past practice. The explanation is not exhaustive, and is intended to provide the local parties general guidance on the subject. The local parties must insure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made.

Article 5 may also limit the employer's ability to take a unilateral action were a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

Defining Past Practice

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

- First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.
- Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.
- Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a know course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.
- One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.
- Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.

Functions of Past Practice

In the same paper, Arbitrator Mittenthal notes that there are 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 of LMOU provisions concerning the issue.

Changing Past Practices

The manner by which a past practice can be changed depends on its purpose and how it arose. Past practices that implement or clarify existing contract language are treated differently than those concerning the "silent contract:"

Changing Past Practices that Implement or Clarify Contract Language: If a binding past practice clarifies or implements a contract provision, it becomes, in effect, an unwritten part of that provision. Generally, it can only be changed by changing the underlying contract language, or through bargaining.

Changing Past Practices that Implement Separate Conditions of Employment: If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice. Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change.

Management changes in such "silent" contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes or, 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous bargaining units.

A change in local union leadership or the arrival of a new Postmaster or supervisor is not, in itself, sufficient justification to change or terminate a binding past practice, as noted in the previous paragraph.

ARTICLE 6 NO LAYOFFS OR REDUCTION IN FORCE

(1) Each employee who is employed in the regular work force as of the date of the Award of Arbitrator James J. Healy, September 15, 1978, shall be protected henceforth against any involuntary layoff or force reduction.

It is the intent of this provision to provide security to each such employee during his or her work lifetime.

Members of the regular work force, as defined in Article 7 of the Agreement, include full-time regulars, part-time employees assigned to regular schedules and part-time employees assigned to flexible schedules.

(2) Employees who become members of the regular work force after the date of this Award, September 15, 1978, shall be provided the same protection afforded under (1) above on completion of six years of continuous service and having worked in at least 20 pay periods during each of the six years.

(3) With respect to employees hired into the regular work force after the date of this Award and who have not acquired the protection provided under (2) above, the Employer shall have the right to effect layoffs for lack of work or for other legitimate reasons. This right may be exercised in lieu of reassigning employees under the provisions of Article 12, except as such right may be modified by agreement. Should the exercise of the Employer's right to lay off employees require the application of the provisions of Chapter 35 of Title 5, United States Code, employees covered by that Chapter with less than three years of continuous civilian federal service will be treated as "career conditional" employees.

The Employer's right as established in this Section shall be effective July 20, 1979.

The following terms as to the employees' and Employer's rights and the rules and procedures to be followed in the implementation of Article 6 are a part of the September 15, 1978 Final Resolution and shall be final and binding upon the parties:

A. Coverage

6.A.1 **1. Employees protected against any involuntary layoff or force reduction.**

Those employees who occupy full-time, part-time regular or part-time flexible positions in the regular work force (as defined in Article 7) on September 15, 1978, are protected against layoff and reduction in force during any period of employment in the regular work force with the United States Postal Service or successor organization in his or her lifetime. Such employees are referred to as "protected employees."

Other employees achieve protected status under the provisions of A.3 below.

6.A.2 **2. Employees subject to involuntary layoff or force reduction.**

Except as provided in A.1 and A.3, all employees who enter the regular work force, whether by hire, transfer, demotion, reassignment, reinstatement, and reemployment on or after September 16, 1978, are subject to layoff or force reduction and are referred to as "non-protected employees."

6.A.3 **3. Non-protected employees achieving protected status.**

(a) A non-protected employee achieves protected status upon completion of six years of continuous service in their regular work force. The service requirement is computed from the first day of the pay period in which the employee enters the regular work force. To receive credit for the year, the employee must work at least one hour or receive a call-in guarantee in lieu of work in at least 20 of the 26 pay periods during that anniversary year.

Absence from actual duty for any of the following reasons will be considered as "work" solely for the purposes of this requirement:

(1) To the extent required by law, court leave, time spent in military service covered by Chapter 43 of Title 38, or time spent on continuation of pay, leave without pay or on OWCP rolls because of compensable injury on duty.

(2) Time spent on paid annual leave or sick leave, as provided for in Article 10 of the Agreement.

(3) Leave without pay for performing Union business as provided for in Article 24 of the Agreement.

All other unpaid leave and periods of suspension or time spent in layoff or RIF status will not be considered work. Failure to meet the 20 pay period requirement in any given anniversary year means the employee must begin a new six year continuous service period to achieve protected status.

(b) Temporary details outside of the regular work force in which the employee's position of record remains in the regular work force count toward fulfilling the 20 pay periods of work requirement per year.

(c) If a non-protected employee leaves the regular work force for a position outside the Postal Service and remains there more than 30 calendar days, upon return the employee begins a new service period for purposes of attaining six years continuous service.

(d) If a non-protected employee leaves the regular work force and returns within two years from a position within the Postal Service the employee will receive credit for previously completed full anniversary years, for purposes of attaining the six years continuous service.

6.B.1 **B. Preconditions for Implementation of Layoff and Reduction in Force.**

1. The affected Union(s) shall be notified at the Regional level no less than 90 days in advance of any layoff or reduction in force

that an excess of employees exists or will exist at an installation and that a layoff and reduction in force may be necessary. The Employer will explain to the Union(s) the basis for its conclusion that legitimate business reasons require the excessing and possible separation of employees.

6.B.2 2. No employee shall be reassigned under this Article or laid off or reduced in force unless and until that employee has been notified at least 60 days in advance that he or she may be affected by one or the other of these actions.

6.B.3 3. The maximum number of excess employees within an installation shall be determined by seniority unit within each category of employees (full-time, part-time regular, part-time flexible). This number determined by the Employer will be given to the Union(s) at the time of the 90-day notice.

6.B.4 4. Before implementation of reassignment under this Article or, if necessary, layoff and reduction in force of excess employees within the installation, the Employer will, to the fullest extent possible, separate all casuals within the craft and minimize the amount of overtime work and part-time flexible hours in the positions or group of positions covered by the seniority unit as defined in this Agreement or as agreed to by the parties. In addition, the Employer shall solicit volunteers from among employees in the same craft within the installation to terminate their employment with the Employer.

Employees who elect to terminate their employment will receive a lump sum severance payment in the amount provided by Part 435 of the Employee and Labor Relations Manual, will receive benefit coverage to the extent provided by such Manual, and, if eligible, will be given the early retirement benefits provided by Section 8336(d)(2) of Title 5, United States Code and the regulations implementing that statute.

6.B.5 5. No less than 20 days prior to effecting a layoff, the Employer will post a list of all vacancies in other seniority units and crafts at the same or lower level which exist within the installation and within the commuting area of the losing installation. Employees in an affected seniority unit may, within 10 days after the posting, request a reassignment under this Article to a posted vacancy. Qualified employees will be assigned to such vacancies on the basis of seniority. If a senior non-preference eligible employee within the seniority unit indicates no interest in available reassignment, then such employee becomes exposed to layoff. A preference eligible employee within the seniority unit shall be required to accept such a reassignment to a vacancy in the same level at the installation, or, if none exists at the installation, to a vacancy in the same level at an installation within the commuting area of the losing installation.

If the reassignment is to a different craft, the employee's seniority in the new craft shall be established in accordance with the applicable seniority provisions of the new craft.

C. Layoff and Reduction in Force

6.C.1 1. **Definition.** The term "layoff' as used herein refers to the separa-

tion of non-protected. non-preference eligible employees in the regular work force because of lack of work or other legitimate, non-disciplinary reasons. The term "reduction in force" as used herein refers to the separation or reduction in the grade of a non-protected veterans' preference eligible in the regular work force because of lack of work or other legitimate non-disciplinary reasons.

6.C.2 2. **Order of layoff.** If an excess of employees exists at an installation after satisfaction of the preconditions set forth in (B) above, the Employer may lay off employees within their respective seniority units as defined in the Agreement.

6.C.3 3. **Seniority units for purposes of layoff.** Seniority units within the categories of full-time regular, part-time regular, and part-time flexible, will consist of all non-protected persons at a given level within an established craft at an installation unless the parties agree otherwise. It is the intent to provide the broadest possible unit consistent with the equities of senior non-protected employees and with the efficient operation of the installation.

6.C.4 4. **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.

6.C.5 5. **Reduction in force.** If an excess of employees exists at an installation after satisfaction of the preconditions set forth in (B) above and after the layoff procedure has been applied, the Employer may implement a reduction in force as defined above. Such reduction will be conducted in accordance with statutory and regulatory requirements that prevail at the time the force reduction is effected. Should applicable law and regulations require that other non-protected, non-preference eligible employees from other seniority units be laid off prior to reduction in force, such employees will be laid off in inverse order of their craft seniority in the seniority unit.

In determining competitive levels and competitive areas applicable in a force reduction, the Employer will submit its proposal to the Union(s) at least 30 days prior to the reduction. The Union(s) will be afforded a full opportunity to make suggested revisions in the proposal. However, the Employer, having the primary responsibility for compliance with the statute and regulations, reserves the right to make the final decision with respect to competitive levels and competitive areas. In making its decision with respect to competitive levels and competitive areas the Employer shall give no greater retention security to preference eligibles than to non-preference eligibles except as may be required by law.

D. Recall Rights

6.D.1 1. Employees who are laid off or reduced in force shall be placed on recall lists within their seniority units and shall be entitled to remain on such lists for two years. Such employees shall keep the Employer informed of their current address. Employees on

the lists shall be notified in order of craft seniority within the seniority unit of all vacant assignments in the same category and level from which they were laid off or reduced in force. Preference eligibles will be accorded no recall rights greater than non-preference eligibles except as required by law. Notice of vacant assignments shall be given by certified mail, return receipt requested, and a copy of such notice shall be furnished to the local union president. An employee so notified must acknowledge receipt of the notice and advise the Employer of his or her intentions within 5 days after receipt of the notice. If the employee accepts the position offered he or she must report for work within 2 weeks after receipt of notice. If the employee fails to reply to the notice within 5 days after the notice is received or delivery cannot be accomplished, the Employer shall offer the vacancy to the next employee on the list. If an employee declines the offer of a vacant assignment in his or her seniority unit or does not have a satisfactory reason for failure to reply to a notice, the employee shall be removed from the recall list.

6.D.2

2. An employee reassigned from a losing installation pursuant to B.5 above and who has retreat rights shall be entitled under this Article to exercise those retreat rights before a vacancy is offered to an employee on the recall list who is junior to the reassigned employee in craft seniority.

6.E E. Protective Benefits

1. **Severance pay.** Employees who are separated because of a layoff or reduction in force shall be entitled to severance pay in accordance with Part 435 of the Employee and Labor Relations Manual.

2. **Health and Life Insurance Coverage.** Employees who are separated because of a layoff or a reduction in force shall be entitled to the health insurance and life insurance coverage and to the conversion rights provided for in the Employee and Labor Relations Manual.

6.F F. Union Representation Rights

1. The interpretation and application of the provisions of this Award shall be grievable under Article 15. Any such grievance may be introduced at **Step 3** and shall be subject to priority arbitration.

2. The Employer shall provide to the affected Union(s) a quarterly report on all reassignments, layoff and reductions in force made under this Article.

3. Preference eligibles are not deprived of whatever rights of appeal such employees may have under applicable laws and regulations. However, if an employee exercises these appeal rights, the employee thereby waives access to any procedure under this agreement beyond Step 3 of the grievance-arbitration procedure.

6.G G. Intent

The Employer shall not lay off, reduce in force, or take any other action against a non-protected employee solely to prevent the attainment of that employee of protection status.

Background: Article 6 was created in its current form by Arbitrator Healy's interest arbitration awards that decided the terms of the 1978-1981 National Agreement. An initial award of September 14, 1978 established the basic right of USPS management to lay off certain employees under certain specific conditions. The second award, issued February 26, 1979, set forth the details of the current Article 6.

Lifetime Protection for Employees On Rolls in 1978: Article 6 provides lifetime protection against layoff for employees who were in the regular workforce on September 15, 1978. Employees with lifetime protection against layoff are referred to as "protected employees." Lifetime protection is not lost by those employees on the rolls on September 15, 1978 who later leave USPS and are later rehired after any break in service or who transfer from one office to another.

"Unprotected" Defined: With that exception, "non-protected employees" are defined as those who enter the regular workforce whether by hire, transfer, demotion, reassignment, reinstatement, or re-employment on or after September 16, 1978. They are subject to layoff or reduction in force—until they achieve "protected" status.

Layoff Protection After Six Years: Non-protected employees achieve protected status upon completion of six (6) years of continuous service in the regular workforce, which includes all part-time flexible, full-time regular and part-time regular carriers. To receive credit, such employees must work at least one (1) hour or receive a call-in guarantee (Article 8.8) in lieu of work in at least 20 of the 26 pay periods during each "anniversary year." The "anniversary year" begins on the first day of the pay period in which the employee enters the regular work force.

Details of Service Requirement: For the purpose of the six-year requirement, absence from work for any of the following reasons is considered to be "work":

(1) To the extent required by law: (a) court leave, (b) certain time spent in military service covered Chapter 43 of Title 38, or (c) time spent on continuation of pay (COP), leave without pay (LWOP) or on the OWCP rolls because of compensable injury on duty (Article 6.A.3(a)(1));

(2) Time spent on paid annual or sick leave (Article 6.A.3(a)(2));

(3) Time spent on leave without pay (LWOP) for performing union business as provided for in Article 24 of the Agreement (Article 6.A.3(a)(3); and

(4) Temporary details outside the regular workforce in which the employee's position of record remains in the regular force (Article 6.A.3(b).

See NALC Material

The parties do not currently agree upon the extent to which time spent on leave covered by the Family Medical Leave Act (FMLA) is considered "work" for the purpose of the six-year requirement.

The period of continuous service is "broken" when a non-protected employee leaves the regular force for a position outside the Postal Service and fails to return within thirty (30) calendar days, or when such an employee leaves the regular force for a position within the Postal Service and fails to return within two (2) years. Article 6.A.3(c), (d).

"Layoff and "Reduction in Force": Article 6 defines "layoff" as the separation of non- protected, non-preference eligible employees in the regular work force because of lack of work or other legitimate, non-disciplinary reasons. "Reduction in force" refers to the separation or reduction in the grade of a non-protected veterans' preference eligible in the regular work force because of lack of work or other legitimate, non-disciplinary reasons. (See "Preference Eligible Carriers," below.)

Procedural Protections: Article 6 provides certain procedural protections. For instance, management may not implement a layoff or reduction in force without at least 90 days notification to the union, 60 days notification of layoff to the affected employee, and posting of any available vacancies no less than 20 days prior to layoff. Grievances regarding Article 6 may be introduced at Step 3 and are subject to priority arbitration.

Article 6 Untested: As of this writing postal management has never used layoff or reduction in force procedures to separate a letter carrier. So these provisions have not been interpreted in the grievance procedure or in arbitration.

Preference Eligible Carriers: It should be noted that "preference eligible" letter carriers have special rights under the Veterans' Preference Act regarding separation or reduction in grade. They may have different or greater rights under the law than those set forth in Article 6. Article 6 provides that a preference eligible employee who exercises legal appeal rights under the Veterans' Preference Act thereby loses access to the grievance procedure beyond Step 3.

ARTICLE 7 EMPLOYEE CLASSIFICATIONS

Article 7, Section 1 establishes the employee classifications within the letter carrier craft. It also contains provisions establishing limits on the work hours of non-career casual and transitional employees in order to protect career employment and the work hours of career employees.

7.1.A **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:

1. **Full-Time**. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.

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.

Job classifications. Section 1.A defines the three basic classifications of career letter carriers: (1) full-time, with a guaranteed 5-day, 40-hour weekly schedule in each service week; (2) part-time regulars, who have regular schedules of less than 40 hours; and (3) part-time flexibles, who have flexible work hours rather than a fixed schedule and have no weekly work hour guarantees. The transitional workforce is defined separately by Section 1.C.

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.

7.1.B.1

See NALC Material

B. Supplemental Work Force.

1. The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees.

Casual Employees—Limitations

Article 7.1.B establishes the "supplemental work force," which consists of casual employees. Article 1.2 excludes casual employees from the bargaining unit represented by NALC, so casuals do not have the contractual protections enjoyed by career or transitional bargaining-unit employees. Casual employees receive lower pay than career or transitional carriers and they receive no benefits. Article 7, Sections 1.B.1-4 contain limitations on the hiring and use of casual employees who perform letter carrier work.

Employed in lieu of: In Q98C-4Q-C 00100499, August 29, 2001 (C-22465) National Arbitrator Shyam Das held the following concerning Article 7.1.B.1:

> 1. Article 7.1.B.1 of the APWU National Agreement (and the corresponding provision in the NALC and NPMHU National Agreements) establishes a separate restriction on the employment of casual employees, in addition to the other restrictions set forth in other paragraphs of Article 7.1.B.
>
> 2. The Postal Service may only employ (hire) casual employees to be utilized as a limited term supplemental work force and not in lieu of (instead of, in place of, or in substitution of) career employees.
>
> 3. The following formulation in the May 29, 1986 Downes Memorandum sets forth a jointly endorsed understanding as to the circumstances under which it is appropriate to employ (hire) casual employees to be utilized as a limited term supplemental work force consistent with Article 7.1.B.1:
>
> > Generally, casuals are utilized in circumstances such as heavy workload or leave periods; to accommodate any temporary intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate.

7.1.B.2

See NALC Material

2. During the course of a service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to casuals.

PTF straight-time hours priority over casuals: Article 7.1.B.2 obligates management to give part-time flexibles working at the straight-time rate a priority in scheduling over casual employees. This priority is not absolute: The employer's obligation may be fulfilled over the course of a "service week," and the part-time flexible employees must be "qualified and available." (A "service week" begins at 12:01 a.m. Saturday and ends at 12:00 midnight the following Friday. See Article 8.2.A.)

Service week: A successful grievance on this issue must show that management scheduled a casual for work which a PTF carrier could have performed instead, and that the PTF carrier worked less than 40 straight-time hours during the service week. Because the contract language addresses the *service week* rather than any specific day's assignment, management does not necessarily violate the contract by, for instance, using a casual on a Monday while PTFs are unscheduled. A violation occurs when that assignment causes a PTF who could have performed the Monday work to lose straight-time work hours during the service week. See National Arbitrator Howard Gamser's decision in AC-C-13148, December 20, 1979 (C-00403).

7.1.B.3

See NALC Material

3. The number of casuals who may be employed in any period, other than December, shall not exceed 3½% of the total number of employees covered by this Agreement.

National 3.5 percent limit on casuals: Article 7, Section 1.B.3 restricts the number of casuals employed nationwide in the carrier craft to 3.5 percent of the total number of employees covered by the National Agreement, except during December.

The 3.5 percent limit is computed on a *nationwide* basis and does not apply to any particular postal facility or installation, where casuals may exceed 3.5 percent. NALC monitors the overall casual employee limit at its headquarters in Washington, D.C. Thus there is no basis for a local grievance concerning this provision.

7.1.B.4

See NALC Material

4. Casuals are limited to two (2) ninety (90) day terms of casual employment in a calendar year. In addition to such employment, casuals may be reemployed during the Christmas period for not more than twenty-one (21) days.

Limited employment terms: Article 7, Section 1.B.4 restricts individual casual employees who work in the carrier craft to two 90-day terms per year plus 21 days during the Christmas period.

7.1.C.1 **C. Transitional Work Force**

1. The transitional work force shall be comprised of noncareer, bargaining unit employees utilized to fill vacated assignments as follows:

The work force of "transitional employees" or "TEs" was created by the Mittenthal interest arbitration award of January 16, 1992, known as the "TE Award." The TE Award is reprinted as an appendix to this document.

a. Transitional employees may be used to cover duty assignments which are due to be eliminated by automation and residual vacancies withheld pursuant to Article 12.

b. Transitional employees may be used to replace part-time attrition. Over the course of a pay period, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour, provided that the reporting guarantee for transitional employees is met.

The parties agreed to the following in the Step 4 Settlement E90N-4E-C 94026528, February 12, 1996 (M-01241):

> The issue in these grievances involves the scheduling priority to be given part-time flexible employees over transitional employees. During our discussion, we mutually agreed as follows: During the course of **a service week**, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour, provided that the reporting guarantee for the transitional employee is met. (Emphasis added)

7.1.C.2

2. Transitional employees shall be hired pursuant to such procedures as the Employer may establish. They will be hired for a term not to exceed 359 calendar days for each appointment. Transitional employees will have a break in service of at least 6 days between appointments.

(Additional provisions regarding Transitional Employees can be found in Appendix B)

The primary regulations governing the hiring, use and retention of transitional employees are found in the Transitional Employee Interest Arbitration Award reprinted as an appendix to this publication, in the September 17, 1992 memorandum (M-01111) and in the Revised Chapter Six of *Building Our Future by Working Together* (M-01307).

In addition, the parties have agreed at the national level that the local parties are to be guided by the following (See Prearbitration Settlement, F90N-4F-C 95034723, May 11, 1998, M-01311).

The conversion of PTF to full-time does constitute "PTF attrition" for purposes of TE hiring under Revised Chapter 6 of *Building Our Future by Working Together* ONLY where the other criteria of Revised Chapter 6 regarding the DPS impact calculation are met and the unit is in the transition period.

Management may unilaterally change the DPS target percentage. If the target percentage is changed, the "DPS methodology" must be used to recalculate the estimated reduction in carrier office time. This recalculation must be made using the established methodology, and requires re-drawing the route map for the planned adjustments. It also impacts entitlement to transitional employees and may have the effect of requiring a reduction in TE hours.

TEs may be hired under Method A in Revised Chapter 6 ("Delivery Point Sequencing impact calculation plus triggers") only after the unit or installation has entered the transition period (defined as that length of time needed for attrition to fulfill staffing requirements). The question of whether a unit is in a transition period does not present an interpretive issue.

The hiring of TEs should be reasonable within the local fact circumstances. The attrition rate used should neither be artificially understated (so as to limit the hiring of TEs) nor artificially overstated (so as to permit excessive TE hiring).

If TEs have been hired under Section A in Revised Chapter 6 ("Delivery Point Sequencing impact calculation plus triggers"), management must provide the local union with the "DPS methodology" calculations, and all relevant information on which the calculations are based, under which those TEs have been hired (See Step 4 Settlement H90N-4H-C 95052857, May 26, 1998, M-01311)

7.2.A **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 full-time 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.

7.2.A.2

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.

Combining craft duties to create full-time assignments. Section 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 Section 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 Section 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. And 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.

7.2.B 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.

7.2.C 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.

Cross-craft assignments. 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 Section 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 or 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 non-scheduled 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. Section 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.

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. See A8-W-0656 (C-4560), a 1982 national-level award of Arbitrator Richard Bloch. (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 (pp. 6-7):

> 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 a violation. 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 A8-W-0656 (C-04560) ruled that an available Special Delivery Messenger on the ODL should be made whole for missed overtime for special delivery functions performed by a PTF letter carrier.

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.

B. It is also agreed that where this Agreement makes reference to offices/facilities/installations with a certain number of employees or man years, that number shall include all categories of bargaining unit employees in the office/facility/installation who were covered by the 1978 National Agreement.

Date: August 19, 1995

Rural carriers excluded. Paragraph A of this memorandum of understanding (National Agreement page 157) provides that the crossing craft provisions of Article 7, Section 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" as explained below.

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.

Counting employees or workyears. Paragraph B of the memorandum provides that only the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance, mail handler—are counted when any Agreement provision refers to the number of employees or "man years" in an office, facility or installation. In the 1998 National Agreement the term "man year" was changed to "workyear."

For example, Article 7.3.A below requires management to maintain at least an 88 percent full-time carrier craft work force in installations which have 200 or more workyears of employment. See also Article 8.8.C, which provides a call-in guarantee of four (4) hours of work or pay "in a post office or facility with 200 or more workyears of employment per year," and two (2) hours in smaller facilities.

7.3.A **Section 3. Employee Complements**

A. The Employer shall staff all postal installations which have 200 or 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.

Maximization of full-time regulars. 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.

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 six 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%. (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 below.)

Withholding for excessing. National Arbitrator Mittenthal ruled in H7N-3D-C-22267, October 26, 1990 (C-10343), that management may fall below the Article 7.3.A percentage full-time staffing requirement when withholding full-time positions under Article 12.5.B.2. Under that provision, management may withhold positions for other employees who may be reassigned involuntarily (excessed).

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 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 full-time/part-time ratio as provided for in paragraph 3.A. above.

7.3.C 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). 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. See Step 4, A94N-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 (see 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. See Step 4, A94N-4A-C 97040950, January 7, 2000 (M-01398).

Article 7.3.C applies to all installations regardless of size. See Step 4, H7N-3F-C-39104. December 6, 1991 (M-01032).

7.3.D 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 grown to 40 hours.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Article 7.3

Part-time flexible employees with three (3) or more years of service in the same craft and same installation on the effective date of this award, who are employed in an office with 200 or more man years of employment will not have their average weekly workhours reduced as a result of the revision to Article 7.3 of the 1990 National Agreement.

Nothing shall preclude management from reducing such hours for other legitimate reasons.

The average weekly workhours for the part-time flexible employees with three (3) or more years of service will be the weekly workhour average for the 12 months prior to the effective date of this Agreement. The weekly workhour average cannot exceed forty (40) hours or be combined with any paid leave to exceed forty (40) hours.

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.*

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%. However, after full-time flexible positions have been created they may be counted as full-time toward the 88 percent requirement.

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.

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 with the installation depending on operational requirements.

The Letter of Intent 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 flexibles 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 flexibles are subject to reductions in full-time carrier positions through either reversion (see Article 41.1) or excessing (see Article 12.5) before full-time regular carrier positions (paragraph 6).

ARTICLE 8 HOURS OF WORK

8.1 Section 1. Work Week

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

8.2 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 midnight 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.

Service Week. Article 8.2.A defines the "service week" of bargaining-unit employees. The service week begins at 12:01 a.m. Saturday and ends at 12 midnight the following Friday. Defining the service week enables the parties to make and enforce rules about weekly hours guarantees, limits on weekly work hours, overtime paid for work over a certain number of hours during a service week, etc.

The service week is not necessarily the same as a "week" for vacation planning purposes; see Article 10.3.E. The "FLSA work week" also has a different definition; see Article 8.4, FLSA Overtime.

Service Day: Article 8.2.B defines the "service day" for pay and overtime purposes. The definition is more important for other crafts than for letter carriers, who are seldom scheduled to work past midnight into another calendar day. The service day is defined as 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.

Full-time employee schedules. Read together, Article 8, Sections 1 and 2.C provide that the work week for *all* full-time carriers (i.e., full-time regulars and full-time flexibles—including unassigned regulars, reserve regulars and Carrier Technicians), consists of five days, forty (40) hours per week, and eight (8) hours per day within ten (10) consecutive hours. Additionally, in all offices with more than 100 full-time employees in the bargaining units the eight hours per day must be within nine (9) consecutive hours.

Days off. The schedule of a full-time regular employee must include fixed or rotating days off on a permanent basis. (See Article 30, Section B.2) As far as practicable the five days of a fixed regular schedule must be consecutive days within the service week (Article 8.2.C).

Five minute leeway rule. Regardless of exactly what an employee's regular schedule is, there is the question of whether the Postal Service is compensating the employee for *all time worked* at either the straight-time or the overtime rate (see Section 4 below)—whichever is applicable. This issue often arises in regard to the "5-minute leeway rule" contained in both the F-21 and F-22 Handbooks (incorporated into the National Agreement through the provisions of Article 19). Once an employee's time on the clock exceeds the employee's established work schedule for that day by more than five minutes, the total time for that day becomes payable time. In an effort to avoid additional costs and administrative burdens, the Postal Service tries to insure that an employee does *not accumulate a daily total of more than five minutes of clock time* in excess of the employee's schedule worked time—unless, of course, the employee is assigned to work overtime.

8.3 **Section 3. Exceptions**

The above shall not apply to part-time employees and transitional employees.

Part-time employees will be scheduled in accordance with the above rules, except they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week.

Transitional employees will be scheduled in accordance with Section 2, A and B, of this Article.

Work schedules of part-time and transitional employees. Section 3 makes clear that the normal work week defined by Article 8.2.C above applies only to full-time employees and not part-time flexibles or transitional employees, who have no daily 8-hour or weekly 40-hour guarantees. Moreover, the language in Article 7.1.A.2. providing that part-time flexibles "shall be available to work flexible hours as assigned by the Employer during the course of a service week," means that PTFs may be scheduled to work more or less than 5 days per week and more or less than 8 hours per day.

Overtime—PTF and transitional employees. Although PTF and transitional employees have no guaranteed schedules or work hours, the overtime rate provisions of Article 8.4.B regarding work in excess of 8 hours in a service day or 40 hours in a service week do apply to them—as well as all bargaining unit employees. See 8.4.B. below.

8.4 Section 4. Overtime Work

A. Overtime pay is to be paid at the rate of one and one-half (1½) times the base hourly straight time rate.

(The preceding paragraph, Article 8.4.A., shall apply to transitional employees.)

B. Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer.

(The preceding paragraph, Article 8.4.B., shall apply to transitional employees.)

C. Penalty overtime pay is to be paid at the rate of two (2) times the base hourly straight time rate. Penalty overtime pay will not be paid for any hours worked in the month of December.

(The preceding paragraph, Article 8.4.C., shall apply to transitional employees.)

Postal overtime. All bargaining-unit employees are paid postal overtime for time spent in a pay status in excess of 8 hours in a service day and/or in excess of 40 hours in a service week. Hours "in pay status" include hours of actual work and hours of paid leave.

Postal overtime pay rate. The contractual overtime rate of pay is one and one-half times the base straight-time rate. The overtime rate for part-time flexible employees is the same as the overtime rate for full-time regular employees in the same step and grade. This rate is slightly less than one-and one-half times the part-time flexible base straight-time hourly rate. This is a consequence of part-time flexible employees receiving a slightly higher regular straight time hourly rate than full-time regulars in order to compensate them for not receiving paid holidays. See Article 11, Section 7.

FLSA overtime. Totally independent of the contract are those provisions of the federal Fair Labor Standards Act governing overtime for all bargaining-unit employees who *actually work more than 40 hours* during the employee's FLSA work week. The *FLSA overtime rate* is one-and-one-half times the employee's "regular rate" of pay for all hours of actual work in excess of 40 hours in the FLSA work week.

The "regular rate" of pay is computed by adding the employee's total compensation (including night differential, Sunday premium, territorial COLA and higher-level pay, and excluding pay for leave hours, contract overtime pay, out-of-schedule premium pay and penalty overtime pay) for all hours *actually worked* (excluding paid leave hours but including steward's duty time and time off authorized under the 7.01 rule) during the FLSA work week and then dividing the dollar total by the number of

hours the employee actually worked during the FLSA work week. Detailed FLSA overtime regulations can be found in Section 444.21 of the *Employee and Labor Relations Manual*.

Because certain pay premiums are included in the calculation of the FLSA overtime rate, an employee may receive a higher rate of pay for FLSA overtime than for postal overtime.

Penalty overtime rate. The penalty overtime rate is two times the base straight-time hourly rate. Article 8, Section 4.E provides that, excluding December, part-time flexible and transitional employees are paid at the penalty overtime rate for all work in excess of ten (10) hours in a service day or fifty-six (56) hours in a service week. Article 8, Section 4.D provides that full-time regular employees will be paid at the penalty overtime rate for any overtime work in contravention of the restrictions in Section 5.F.

Out-of-schedule Premium. Article 8.4.B refers to the out-of-schedule premium provisions contained in ELM Section 434.6. They provide that out-of-schedule premium is paid at the postal overtime rate to eligible full-time bargaining unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management.

Only full-time regular and full-time flexible letter carriers may receive out-of-schedule pay. A full-time flexible employee's "regular" schedule for the purpose this provision is the schedule established on the preceding Wednesday (See Article 7). However, this does not preclude part-time flexible employees from receiving a monetary remedy for contractual scheduling violations when warranted by fact circumstances (e.g. violations of Article 41.2.B.4).

An employee does not receive out-of-schedule pay when his or her schedule is changed to provide limited or light duty (National Arbitrator Gamser, N8N-N-A 0003, March 12, 1980 (C-03212), when the employee is attending a recognized training session, or when the employee is allowed to make up time due to tardiness in reporting for duty (See ELM Section 434.622).

Note also that letter carriers who fill temporarily vacant Carrier Technician positions under the provisions of Article 25 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 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.

Rules for out-of-schedule pay. In the letter carrier craft the out-of-

schedule premium provisions *are applicable only in cases where management has given advance notice* of the change of schedule by Wednesday of the preceding service week. In all other cases a full time-employee is entitled to work the hours of his or her regular schedule or receive pay in lieu thereof and the regular overtime rules apply—not the out-of-schedule premium rules.

- If notice of a temporary change is given to an employee by Wednesday of the preceding service week, even if this change is revised later, management has the right to limit the employee's work hours to the hours of the revised schedule and out-of-schedule premium is paid for those hours worked outside of, and instead of, his or her regular schedule.
- If notice of a temporary schedule change is *not* given to the employee by Wednesday of the preceding service week, the employee is entitled to work her or his regular schedule and the out-of-schedule provisions do not apply. In this case any hours worked in addition to the employee's regular schedule are not considered out-of-schedule premium hours. Instead, they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week.

Out-of-schedule premium hours cannot exceed the unworked portion of the employee's regular schedule. If employees work their full regular schedule, then any additional hours worked are not instead of their regular schedule and are not considered as out-of-schedule premium hours. Any hours worked which result in paid hours in excess of 8 hours per service day or 40 hours per service week are paid at the overtime rate.

Out-of-Schedule Premium - Daily Schedule Examples

Example Number	Hours Worked	Total Hours Worked	Premium Hours	Straight Time Hours	Overtime Hours
1*	8:00 am-4:30 pm	8	0	8	0
2	6:00 am-2:30 pm	8	2	6	0
3	6:00 am-3:30 pm	9	1	7	1
4	6:00 am-4:30 pm	10	0	8	2

* Original, permanent schedule

Daily schedule examples. The following examples, which refer to the chart above, illustrate the out-of-schedule premium rules.

- **Example 1.** This is the employee's original, permanent schedule of 8:00 a.m.—4:30 p.m. and an 8-hour workday. The employee receives 8 hours of straight-time pay.
- **Example 2.** For examples 2 through 4, the employee has received advance notice by Wednesday of the preceding service week of a schedule change to 6:00 a.m.-2:30 p.m. In this example the employee works the revised schedule's hours only, and receives two hours of

out-of-schedule premium for the hours 6:00-8:00 a.m., which were worked outside of and instead of the regular schedule.

- **Example 3.** The employee works the revised schedule plus 1 additional hour. The employee receives 1 hour of out-of-schedule premium pay, because of time worked outside of and instead of his or her regular schedule. However, out-of-schedule premium hours cannot exceed the unworked hours of the employee's permanent schedule (there is only one such hour here), so the extra work hour is paid as contract overtime rather than out-of-schedule premium.
- **Example 4.** In this example the employee works the revised schedule plus two hours of overtime. Two hours of postal overtime are paid but and no out-of-schedule premium, because the employee has worked his or her full, permanent schedule.

Weekly schedule example. Say an employee's regular schedule is Monday through Friday and she is given timely notice of a temporary schedule change to Sunday through Thursday, with the same daily work hours. She works 8 hours per day Sunday through Thursday. The hours worked on Sunday are out-of-schedule premium hours provided they are worked instead of the employee's regularly scheduled hours on Friday. However, if the employee also works her regular schedule on Friday, then there can be no out-of-schedule premium hours. The employee is paid overtime for the hours worked in excess of 40 during the service week.

Voluntary schedule changes. There may be situations in which full-time employees wish to have their regular schedules temporarily changed for their *own* convenience. Management need not pay out-of-schedule premium when a change in a full-time employee's schedule meets *all three* of the following criteria:

1. The requested change in schedule is for the **personal** convenience of the employee—not for the convenience of management. Note: Arbitrator Gamser held in case AB-C 341 (C-00161) that management could not be relieved of the obligation to pay out-of-schedule premium by informing employees who volunteered for higher level assignments that such assignments would be considered to be "at the request of the employee." Additionally, Arbitrator Mittenthal determined in case A8-W-939 (C-00580) that acting supervisors (204Bs), or the "employee-supervisors" in the grievances before him were "entitled to the out-of schedule premium during their details as temporary supervisors." He based his decision both on an October 10, 1975 Postal Service directive which authorized the payment of out-of-schedule premium to acting supervisors, and the four year practice of following that directive prior to the NLRB decision which management believed supported a change in that policy.

2 . The employee has signed a form 3189, *Request for Temporary Schedule Change for Personal Convenience.*

3. Management and the union's representative (normally the certified steward in the employee's work location) agree to the change and both sign the Form 3189 .

8.4.D D. Penalty overtime pay will be paid to full-time regular employees for any overtime work in contravention of the restrictions in Section 5.F.

Penalty overtime entitlement of full-time employees. A full-time employee receives penalty overtime pay (at 2 times the base straight-time rate—see Article 8.4.C) for work beyond the limits stated in Article 8.5.F, which are, excluding December:

- Overtime worked on more than four (4) of the employee's five (5) scheduled days in a service week;
- Work over ten (10) hours on a regularly scheduled day;
- Work over eight (8) hours on a non-scheduled day; or
- Work over six (6) days in a service week.

This provision applies only to full-time regular and full-time flexible employees.

8.4.E E. Excluding December, part-time flexible employees will receive penalty overtime pay for all work in excess of ten (10) hours in a service day or fifty-six (56) hours in a service week.

(The preceding paragraph, Article 8.4.E., shall apply to transitional employees.)

Penalty overtime for other employees. Article 8.E requires the payment of penalty overtime (at 2 times the base straight-time rate—see Article 8.4.C) for all work beyond 10 hours in a service day or 56 hours in a service week. This section applies to part-time flexibles and transitional employees; part-time regulars are also in the same category as PTFs for penalty overtime purposes.

8.4.F F. Wherever two or more overtime or premium rates may appear applicable to the same hour or hours worked by an employee, there shall be no pyramiding or adding together of such overtime or premium rates and only the higher of the employee's applicable rates shall apply.

(The preceding paragraph, Article 8.4.F., shall apply to transitional employees.)

No pyramiding of overtime rates. Because this sub-section prohibits the "pyramiding" or adding together of overtime and premium rates, it generally results in a "ceiling" on postal overtime of two times the employee's

base rate—the penalty overtime rate, which is the highest premium pay rate. However, night-shift differential (Article 8.7) is added to overtime premium rates because the night-shift differential is not a "premium" for the purpose of this section. Also note that an employee receiving "Christmas Work Pay (Article 11.4.B) would also receive applicable night differential and Sunday premiums (see ELM exhibit 434.8).

8.5 Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

Overtime assignment rules apply to full-time employees. The introduction to Section 5 clarifies that its provisions as a whole apply *only* to full-time employees who are "needed" to work overtime. This provision does not require management to use a full-time employee desiring to work overtime in preference to a part-time flexible, transitional or casual working overtime. Rather, management has the right to determine whether to give overtime work to a part-time flexible, casual or a full-time employee.

8.5.A A. Employees desiring to work overtime shall place their names on either the "Overtime Desired" list or the "Work Assignment" list during the two weeks prior to the start of the calendar quarter, and their names shall remain on the list until such time as they remove their names from the list. Employees may switch from one list to the other during the two weeks prior to the start of the calendar quarter, and the change will be effective beginning that new calendar quarter.

Signing overtime lists. Full-time letter carriers, including full-time flexibles, who want to work overtime may place their names on either the "Overtime Desired" list or the "Work Assignment" list, but not both. Carriers may sign a list or switch between lists only during the two weeks prior to the beginning of the calendar quarter. There is an exception for employees who were on military leave during the sign up period. They are permitted to sign the list upon return to work (see Step 4, H7N-1K-C 41588, April 1, 1988, M-00820, and the *Joint Statement on Overtime*, M-00833). Carriers newly promoted from part-time flexible to full-time regular status must wait until the beginning of the next calendar quarter before they can sign a list. Unless the Local Memorandum provides otherwise, when a carrier bids or is transferred to another unit *within an installation*, the carrier may sign the list in the new unit immediately if he/she was on the list in the old unit (see the *Joint Statement on Overtime*, M-00833).

The 1984 National Memorandum of Understanding on overtime provides that "normally, employees on the overtime desired list who don't want to work more than 10 hours a day or 56 hours a week shall not be

required to do so as long as employees who do want to work more than 10 hours a day or 56 hours a week are available to do the needed work without exceeding the 12-hour and 60-hour limitations." (The complete text of this memorandum is reprinted at the end of this Article.) To implement this agreement, the parties have agreed that an asterisk may be used on the overtime desired list to distinguish between those who wish to work more than 10 hours in a day and those who do not. Once a carrier signs a list, his or her name remains on the list from quarter to quarter until the carrier asks that it be removed. Carriers may remove their names from a list *at any time* during the quarter. However, management need not immediately honor the request if the employee is needed for overtime work on the day the request is made (see the *Joint Statement on Overtime*, M-00833).

8.5.B B. "Overtime Desired" lists will be established by craft, section or tour in accordance with Article 30, Local Implementation.

Establishment of Overtime Desired Lists. The subject of whether the Overtime Desired List is established "by section and/or tour" may be locally negotiated under the provisions of Article 30, Section B.14. However, as a practical matter, in most installations letter carriers do not work during more than one tour.

Local Memorandum of Understanding provisions on this subject might provide, for example, that Overtime Desired Lists will be by sections as defined in the LMU, or by individual stations, or by zones with separate sections for parcel post and collection routes. See Article 30 in this publication, below.

The "Work Assignment" list is distinct from the regular overtime list discussed in Article 8, Section C.2. It is discussed in a separate section below.

8.5.C.1 **C.1. (Reserved)**

Reserved Section 5.C.1. In the 1990 and earlier National Agreements this section contained provisions that did not apply to the letter carrier craft. When the references to other crafts were deleted in the 1994 National Agreement, Section 5.C.1 was intentionally reserved to avoid renumbering the remainder of Article 8, Section 5.C.

8.5.C.2 **5.C.2.a.** When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.

5.C.2.b During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list.

5.C.2.c. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.

Equitable distribution of overtime opportunities. For letter carriers, seniority does *not* govern the availability of overtime work for those carriers who wish to work overtime. Nor is overtime distributed on a rotating basis. Rather, Section 5.C.2 provides that for those carriers who sign the Overtime Desired List, overtime "*opportunities*" must be distributed "*equitably*" (i.e., fairly). This does not mean that actual overtime hours *worked* must be distributed *equally*. National Arbitrator Bernstein ruled in H1N-5G-C-2988 (C-06364) that in determining "equitable" distribution of overtime, the number of *hours* of overtime as well as the number of *opportunities* for overtime must be considered. Overtime worked on a letter carrier's own route on a regularly scheduled day is not counted or considered in determining whether overtime has been equitably distributed among carriers on the list. See the explanation under Article 8.5.C.2.d, below.

Since full-time flexible employees may have flexible reporting locations within an installation (see Article 7), determining whether overtime has been "equitably" distributed can become complex. Of course, if a full-time flexible works within the same overtime "section" for an entire quarter, determining whether overtime has been equitably distributed during the quarter is perfectly straight-forward. However, a full-time flexible letter carrier assigned to another overtime "section" during a quarter may sign the overtime desired list in the new section immediately if he/she was on the list in the old section. In such cases the right to an "equitable" share of overtime is only in the new section and is only determined from the time the full-time flexible signed the overtime desired list in the new section. Overtime worked in the section to which previously assigned is not a consideration.

If opting on an assignment under the provisions of Article 41, Section 2.B.3 results in a six day work week, the eight hours of overtime resulting from work on the sixth day is not counted in determining whether overtime has been equitably distributed among carriers on the list (See Article 41.2.B.3, below).

National Arbitrator Howard Gamser ruled in NC-S-5426, April 3, 1979 (C-3200) that 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 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." In all other cases, Gamser held, the proper remedy is to provide "an equalizing opportunity in the next immediate quarter, or pay a compen-

satory monetary award if this is not done..."

National Arbitrator Benjamin Aaron ruled in H8N-5B-C-17682, April 12, 1983 (C-03319), that management violated Article 8, Section 5 when it assigned a carrier not on the overtime desired list to carry a route on overtime on his non-scheduled day rather than splitting up the route between available carriers from the list. Aaron ruled that management must have "good cause" before going off the list.

Counting overtime on a holiday. Much of what is often considered "overtime" worked by full-time employees on their holiday or designated holiday is technically not overtime. Rather it is "Holiday Worked Pay" or "Holiday Scheduling Premium." The only work that is contractually overtime for full-time employees working on a holiday or designated holidays is work beyond eight hours in a day (See ELM 432.531). Thus, only work over eight hours on a holiday or designated holiday is considered and counted toward determining equitability at the end of the quarter. 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. See Arbitrator Mittenthal, H4N-NA-C 21 (2nd Issue), January 19, 1987 (C-06775).

Normally, employees on the overtime desired list who have annual leave, including incidental annual leave, immediately preceding and/or following non-scheduled days will not be required to work overtime on those non-scheduled days. However, if they desire, employees on the overtime desired list may advise their supervisor in writing of their availability to work on a non-scheduled day that is in conjunction with approved leave. (Step 4, H1N-5H-C-18583, March 12, 1984, M-00492); Step 4, E94N-4E-C 98053676, October 22, 1998, M-01367).

8.5.C.2.d

5.C.2.d. 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.

Not counted toward "equitability." This section provides 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." As a consequence, overtime accrued by a carrier working on the carrier's own route on a regularly scheduled day is not considered or counted in determining whether overtime has been "equitably" distributed among carriers on the list. This situation is controlled by the prearbitration settlement of H8N-5D-C l8624, 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.

Carrier Technicians. Overtime worked by a Carrier Technician on the Overtime Desired List on the specific route to which properly assigned on a given day, **is not counted** or considered in determining whether overtime has been "equitably" distributed among carriers on the list. Overtime worked by a Carrier Technician on the Overtime Desired List **is counted** in the consideration of the equitable distribution of overtime hours 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. See Step 4, C94N-4C-C 98099737, October 2, 1998 (M-01323).

The "Letter Carrier Paragraph." For many years Section 8.5.C.2.d also gave management the right to require a letter carrier working on his/her own route on a regularly scheduled day to work mandatory overtime rather than assigning the overtime to a carrier from the Overtime Desired List. However, in the Overtime Memorandum first negotiated as part of the 1984 National Agreement, the Postal Service and the NALC added the following qualification, known as the "letter carrier paragraph".

> In the Letter Carrier Craft, 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.

(The complete text of this memorandum is reprinted at the end of this article.)

National Arbitrator Mittenthal ruled in H4N-NA-C-21, June 26, 1986 (C-06297), that this paragraph was an enforceable obligation.

Implementing memorandum on "letter carrier paragraph." A memorandum of understanding signed December 20, 1988 (M-00884) further explained the requirement to seek to use auxiliary assistance before requiring a carrier not on the ODL or work assignment list to work overtime. Management must seek to use all of the following to provide auxiliary assistance:

- casuals
- part-time flexibles at the straight-time or regular overtime rate
- transitional employees at the straight-time or regular overtime rate
- available full-time regular employees such as unassigned or reserve regulars at the straight time rate

- full-time carriers from the overtime desired list at the regular overtime rate

However, the memo states that management does not have to use ODL carriers to provide auxiliary assistance if such an assignment would mean that the ODL carriers would be working *penalty overtime*. In that limited situation—if no auxiliary assistance is available without going into penalty overtime—management can require full-time regular carriers not on the overtime desired list to work overtime on their own routes on a regularly scheduled day. Remember that this limited exception applies only when a full-time non-ODL letter carrier is required to work overtime on his/her own assignment on a regularly scheduled day. Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime.

The memo goes on to state that "the determination of whether management must use a carrier from the ODL to provide auxiliary assistance must be made on the basis of the rule of reason." For example, management is not required to use a carrier from the ODL when the travel time would be excessive for the amount of assistance being given. The full text of the memorandum is reprinted at the end of this article.

A Carrier Technician's "own route" for the purpose of applying Article 8.5.C.2.d and the "Letter Carrier Paragraph" is the specific route to which properly assigned on a given day. Overtime on any other route on the string is not considered to be on the Carrier Technician's "own route" and may only be required under the provisions of Article 8.5.D, below. See Step 4, E94N-4E-C 98097684, October 2, 1998 (M-01322).

8.5.D

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. 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 a local memorandum 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. 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 this section do not apply in the case of a full-time letter carriers working on their own assignment on a regularly scheduled day. That situation is governed by Article 8, Section 5.C.2.d as amended by the letter carrier paragraph, see above.

8.5.E 8.5.E Exceptions to C and D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

Exceptional situations may excuse mandatory overtime. This language is intended to serve as a guideline for local management in excusing employees from overtime work because of "exceptional" situations. Consequently, the four examples listed in the parentheses are illustrative of the kinds of cases to which management should give full consideration in excusing employees from overtime. However, as Arbitrator Sylvester Garrett held in NC-C 7933, January 8, 1979 (C-3226), Section 5.E. "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'."

8.5.F 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.

This section 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, below). Both work and paid leave hours are "work" for the purposes of the administration of Article 8.5.F and 8.5.G.

National Arbitrator Mittenthal ruled in H4N-NA-C-21, April 11, 1986 (C-5860) that an employee on the ODL does not have the option of accepting or refusing work over eight hours on a nonscheduled day, work over six days in a service week or overtime on more than four of the five scheduled days in a service week; instead an employee on the ODL must be required to work up to twelve hours in a day and sixty hours in a week before management may require employees not on the ODL to work overtime. (This ruling does not extend to situations involving a letter carrier working on his or her own route on a regularly scheduled day. See the discussion under 8.5.C.2.D and 8.5.G.)

8.5.G 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.F); 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.

Article 8.5.G provides that employees on the overtime desired list may be required to work up to 12 hours per day and 60 hours per week. It further provides that the 12 and 60 hour restrictions do not apply to employees on the Overtime Desired List during the month of December.

Employees desiring up to 10 hours per day. The 1984 Overtime Memorandum states, in part: "Normally, employees on the overtime desired list who don't want to work more than l0 hours a day or 56 hours a week shall not be required to do so as long as employees who do want to work more than 10 hours a day or 56 hours a week are available to do the needed work without exceeding the 12 and 60-hour limitations." (The complete text of this memorandum is reprinted at the end of this Article.) The parties have agreed that an asterisk may be used on the overtime desired list to distinguish between those who wish to work more than 10 hours and those who do not.

Maximum hours—60 hour limit. National Arbitrator Mittenthal ruled in H4C-NA-C-21 "Fourth Issue", June 9, 1986 (C-06238) that the 12- and 60-hour limits are absolutes—a full-time employee may neither volunteer nor be required to work beyond those limits. He held that no single, uniform remedy is appropriate for violations of the twelve and sixty hour limits; instead, the appropriate remedy must be decided on a case-by-case basis according to the specific circumstances present.

In H4C-NA-C 21 "Third Issue", September 11, 1987 (C-07323) Arbitrator Mittenthal ruled that an employee sent home in the middle of a scheduled day, because of the bar against employees working more than 60 hours in a service week, is entitled to be paid for the remainder of his or her scheduled day.

On October 19, 1988 the national parties signed the following Memorandum of Understanding (M-00859).

> The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a sin-

gle 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 an 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 an 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 Mittenthal'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-07323).

National Arbitrator Snow held in A90N-4A-C 94042668, November 30, 1998 (C-18926) that the October 19, 1988 Memorandum of Understanding (M-00859) provides the exclusive remedy for violations of the 12 and 60 hour work limits in Article 8.5.G.2.

Article 8.5.G violations during a service week. The remedy of 50% of the base hourly straight time rate provided in the Memorandum applies for **each hour** worked in excess of twelve on a service day (excluding December) by a full-time employee. The remedy of 50% of the base hourly straight time rate also applies for **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. For example, if during the same service week a full-time employee worked 14 hours on Monday and ended up with 62 hours for the week on Friday, four hours would have been worked in violation of the Article 8.5.G restrictions. The appropriate remedy in this example would be four hours of pay at 50% of the base hourly straight time rate—two for Monday and two for Friday. In this example, management should have instructed the carrier to "clock off" and go home on Friday when sixtieth hour was reached. The employee would then be paid any applicable guarantee time for the remainder of the service day.

In those circumstances where the **same work hours** of a full-time employee simultaneously violate both the twelve hour and sixty hour limits, only a single remedy of 50% of the base hourly straight time rate is applied. For example if a full-time employee worked 14 hours on Friday, resulting in a 62 hour workweek, only two hours would have been worked in violation of the Article 8.5.G restrictions. The appropriate remedy in this example would be two hours of pay at 50% of the base hourly straight time rate. See Step 4, J94N-4L-C 99050117, September 6, 2001 (M-01445).

Maximum hours—12 hour limit. The overtime limits in Article 8, Section 5.G apply only to full-time regular and full-time flexible employees. However, Part 432.32 of the *Employee & Labor Relations Manual* provides the following rule that applies to all employees:

> 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. (Emphasis added)

Because this language limits total daily service hours, including work and mealtime, to 12 hours, an employee is effectively limited to 11½ hours per day of work plus a ½-hour meal. However, the ELM also permits the collective bargaining agreement to create exceptions to this general rule. The only exception to this rule in the NALC National Agreement is for full-time employees on the overtime desired list or "work assignment" list who, in accordance with Article 8.5.G, "may be required to work up to twelve (12) hours in a day." 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 12½ consecutive hours. This exception does not apply to full-time employees who are *not* on the overtime desired list.

National Arbitrator Snow held in B90N-4B-C 94027390, August 20, 1996 (C-15699) that the ELM 432.32 restrictions apply to transitional as well as career employees.

The "Work Assignment List." The work assignment list is distinct from the regular overtime desired list discussed in Article 8.5.C.2. It was established by a Letter of Intent dated May 28, 1985. The full text of the work assignment agreement is reprinted at the end of this article.

The work assignment list was established for full-time letter carriers who only want to work overtime on their own assignment on regularly scheduled days. Signing up for the work assignment overtime does not create any entitlement or obligation to work overtime on a non-scheduled day. For purposes of overtime on a non-scheduled day or on other than their own assignment, carriers on the work assignment list are treated *exactly the same as any other full- time carriers not on the overtime desired list*—They may only be required to work overtime under the provisions of Article 8, Section 5.D.

Full-time letter carriers who sign the "work assignment" list are considered to be available for up to 12 hours per day on regularly scheduled days. However, the Work Assignment Agreement recognizes that it is normally in the parties' 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".

Management may use an employee from the regular ODL to work regular overtime to avoid paying penalty pay to a carrier who has signed for work assignment overtime. This exception does not apply during the December exclusion period when penalty overtime is not paid. Management may always assign another carrier to perform the work at the straight time rate rather than giving overtime to a carrier on the work assignment list.

Reserve letter carriers and unassigned regulars are considered available for overtime on the assignment they are working on a given day.

Carrier Technicians are considered available for overtime on any of the routes on their string. Subject to the penalty overtime exceptions discussed above, this provision should be applied as follows:

- A Carrier Technician 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.
- When overtime is required on the regularly scheduled day of the route of a carrier who is on the ODL and whose Carrier Technician is on the work assignment list, the Carrier Technician is entitled to work the overtime.
- When overtime is required on the regularly scheduled day of the route of a carrier who is on the work assignment list and whose Carrier Technician is also on the work assignment list, the regular carrier on the route is entitled to work the overtime.

8.6 Section 6. Sunday Premium Payment

Each employee whose regular work schedule includes a period of service, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, shall be paid extra compensation at the rate of 25 percent of the employee's base hourly rate of compensation for each hour of work performed during that period of service. An employee's regularly scheduled reporting time shall not be changed on Saturday or Sunday solely to avoid the payment of Sunday premium payment.

Sunday Premium Payment: A carrier who works on a Sunday or any work period that falls partly on a Sunday, receives Sunday premium pay—an extra 25 percent of the base hourly straight-time rate. The "no pyramiding" provisions of Article 8.4.F apply to the Sunday premium.

8.7 Section 7. Night Shift Differential

For time worked between the hours of 6:00 p.m. and 6:00 a.m., career employees shall be paid additional compensation at the applicable flat

dollar amount at each pay grade and step in accordance with Appendix A attached hereto.

(The preceding paragraph, Article 8.7, shall apply to transitional employees.)

APPENDIX A

NIGHT SHIFT DIFFERENTIAL HOURLY RATES
APPLICABLE TO NALC FULL-TIME EMPLOYEES
EFFECTIVE NOVEMBER 22, 1997

GRADE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
5	$1.12	$1.25	$1.35	$1.45	$1.46	$1.47	$1.48	$1.50	$1.51	$1.52	$1.53	$1.55	$1.56	$1.57	$1.58
6	$1.19	$1.32	$1.38	$1.48	$1.49	$1.50	$1.52	$1.53	$1.54	$1.56	$1.57	$1.58	$1.60	$1.61	$1.63

NIGHT SHIFT DIFFERENTIAL HOURLY RATES
APPLICABLE TO NALC HOURLY RATE REGULAR EMPLOYEES
EFFECTIVE NOVEMBER 22, 1997

GRADE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
5	$1.12	$1.25	$1.35	$1.45	$1.46	$1.47	$1.48	$1.50	$1.51	$1.52	$1.53	$1.55	$1.56	$1.57	$1.58
6	$1.19	$1.32	$1.38	$1.48	$1.49	$1.50	$1.52	$1.53	$1.54	$1.56	$1.57	$1.58	$1.60	$1.61	$1.63

NIGHT SHIFT DIFFERENTIAL HOURLY RATES
APPLICABLE TO NALC HOURLY RATE FLEXIBLE EMPLOYEES
EFFECTIVE NOVEMBER 22, 1997

GRADE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
5	$1.16	$1.29	$1.40	$1.50	$1.51	$1.53	$1.54	$1.55	$1.57	$1.58	$1.59	$1.60	$1.62	$1.63	$1.64
6	$1.23	$1.37	$1.43	$1.53	$1.55	$1.56	$1.57	$1.59	$1.60	$1.62	$1.63	$1.64	$1.66	$1.67	$1.69

Night shift differential. The "no pyramiding" provisions of Article 8, Section 4.F do not apply to the night shift differential because the night-shift differential is not considered a "premium" under Article 8.4.F.

8.8.A **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.

Regular schedule employee call-in guarantees. This section applies to full-time regular, full-time flexible and part-time regular employees (see 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 flexibles do not have *permanent* regular schedules, they must be assigned weekly schedules by Wednesday of the prior week (See Article 7). This is considered their schedule for the purpose of administering the guarantee provisions of Article 8, Sections 8.A and B.

Section 218.31 of the *PSDS Time and Attendance Handbook* F-22 provides the following concerning employees called back to work:

218.31 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.

8.8.B 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 non-scheduled day is guaranteed 8 hours of work (or pay in lieu thereof). This guarantee also applies on a holiday or designated holiday.

8.8.C 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 This section, Article 8.8.C, applies only to part-time flexible employees (See Arbitrator Mittenthal, H4N-NA-C 21, September 11, 1987, C-07323).

- A part-time flexible requested or scheduled to work in a post office or facility with 200 or more workyears of employment is guaranteed 4 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 requested or scheduled to work in a post office or facility with fewer than 200 workyears of employment is guaranteed 2 hours of work (or pay in lieu of work).
- ELM 432.62 further provides that a part-time flexible who is called back to work on a day the employee has completed an assignment and clocked out is guaranteed 4 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 (2) or four (4) hour guarantee provided for in Article 8 Section 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 See the Step 4 settlement 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 (2) 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 (4) hours of pay if called back to work. This guarantee is applicable to any size office.

8.8.D D. Any transitional employee who is scheduled to work and who reports for work shall be guaranteed four (4) hours' work or pay.

Transitional employee call-in guarantees

- A transitional employee requested or scheduled to work is guaranteed 4 hours of work (or pay in lieu of work). This guarantee applies regardless of office size.

- **Split Shifts**—The national level prearbitration settlement J90N-4J-C 93048774, June 29, 1994 (M-01191) provides the following guarantee for transitional employees who work a split shift:

  1. When a Transitional Employee (TE) is notified prior to clocking out that he or she should return within two (2) hours, this will be considered as a split shift and no new guarantee applies.

  2. When a Transitional Employee (TE), prior to clocking out, is told to return after two (2) hours, that employee must be given another minimum guarantee of four (4) hours work or pay.

National Arbitrator Snow held in E90N-4E-C-94021412, August 20, 1996 (C-15698) that Article 8, Section 8.D **does not** provide a four hour call-back guarantee to NALC transitional employees requested to return to work on a day they have worked more than four hours, completed their assignment, and clocked out.

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 F22, Section 22.14 and the ELM, Section 432.63."

8.9 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 transitional employees.)

Wash-up time. This section 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, Section B.1 authorizes branches to negotiate "additional or longer wash-up periods" as part of a Local Memorandum of Understanding. See Article 30 in this publication, below.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

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 contract 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 carrier 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.

5. There is normally no monetary remedy for a carrier improperly required to work overtime on his own route. However, on a one-time, nonprecedential basis, the Postal Service will pay $7 for each hour of overtime worked to each carrier who has a timely grievance pending at Step 2 or 3 as of the date of this agreement In order to recover, the grievant must establish that he/she was not on the ODL or work assignment list and was required to work overtime in violation of the principles set forth above.

Date: December 20, 1988

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND JOINT BARGAINING COMMITTEE (American Postal Workers Union, AFL-CIO, and National Association of Letter Carriers, AFL-CIO)

Re: Article 8

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interests of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement.

The new provisions of Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to use of employees not on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, if there are five available employees on the overtime desired list and five not on it, and if 10 workhours are needed to get the mail out within the next hour, all ten employees may be required to work overtime. But if there are 2 hours within which to get the mail out, then only the five on the overtime desired list may be required to work.

The parties agree that Article 8, Section 5.G.l., does not permit the Employer to require employees on the overtime desired list to work overtime on more than 4 of the employee's 5 scheduled days in a service week, over 8 hours on a nonscheduled day, or over 6 days in a service week.

Normally, employees on the overtime desired list who don't want to work more than 10 hours a day or 56 hours a week shall not be required to do so as long as employees who do want to work more than 10 hours a day or 56 hours a week are available to do the needed work without exceeding the 12-hour and 60-hour limitations.

In the Letter Carrier Craft, 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. (Emphasis added)

In the event these principles are contravened, the appropriate correction shall not obligate the Employer to any monetary obligation, but instead will be reflected in a correction to the opportunities available within the list. In order to achieve the objectives of this memorandum, the method of implementation of these principles shall be to provide, during the 2-week period prior to the start of each calendar quarter, an opportunity for employees placing their name on the list to indicate their availability for the duration of the quarter to work in excess of l0 hours in a day. During the quarter the Employer may require employees on the overtime desired list to work these extra hours if there is an insufficient number of employees available who have indicated such availability at the beginning of the quarter.

The penalty overtime provisions of Article 8.4 are not intended to encourage or result in the use of any overtime in excess of the restrictions contained in Article 8.5.F.

LETTER OF INTENT BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Work Assignment Overtime

A. 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.

B. 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.

C. An annotation on the overtime desired list (ODL) may be used to identify employees desiring "work assignment" overtime.

D. The ODL provided for in Article 8, Section 5, would continue to function.

E. "Work assignment" overtime will not be considered in the application of Article 8, Section 5.C.2.b.

F. 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.

G. 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 in which to have the work performed.

H. 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.

I. Management could schedule employees from the ODL to avoid paying penalty pay to the carrier on his/her own work assignment.

J. With respect to overtime work opportunities for employees on the fifth regularly scheduled day, the parties recognize a dispute exists concerning scheduling obligations which would involve hours in excess of the limitations in Article 8, Section 5.F, i.e., the fifth day in this case. This issue is one of those we identified to be placed expeditiously before an arbitrator.

K. Implementation of such a scheduling approach should occur July 1, 1985.

L. Grievances presently within the system which deal with the issue of "overtime on a carrier's own assignment" should be released from their current "on hold" status, and processed within the system with a concerted effort by the parties toward settlement.

Date: May 28, 1985.

Joint Statement on Overtime
June 8, 1988
M-00833

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 l8624, 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.

ARTICLE 9 SALARIES AND WAGES

Article 9 is the central wage article of the National Agreement. It sets forth the amounts and timing of salary increases including general wage increases, cost-of-living adjustments (COLA) and one-time cash payments.

9.1 Section 1. Basic Annual Salary

For those grades and steps in effect during the term of the **1994** Agreement, the basic annual salary schedules, with proportional application to hourly rate employees, for those employees covered under the terms and conditions of this Agreement shall be increased as follows:

Effective **November 20, 1999**—the basic annual salary for each grade and step shall be increased by an amount equal to **2.0%** of the **basic** annual salary for the grade and step in effect as of **November 20, 1998**.

Effective **November 20, 1999**—the basic annual salary for each grade and step shall be increased by an amount equal to **1.4%** of the **basic** annual salary for the grade and step in effect as of **November 20, 1998**.

Effective November 18, 2000—the basic annual salary for each grade and step shall be increased by an amount equal to 1.2% of the basic annual salary for the grade and step in effect as of November 20, 1998.

General wage increases: Section 1 provides for three general wage increases of 2.0, 1.4, and 1.2 percent through November 18, 2000. The first two of these were effective on the same date, November 20, 1999.

PTFs: The "proportional application to hourly rate employees" means that part-time flexible carriers, who are paid on an hourly basis and have no guaranteed annual salaries, receive these raises in their hourly rates.

9.2 Section 2. Upgrade

Effective November 18, 2000, all Grade 5 employees covered by this Agreement will be upgraded to Grade 6, and the existing carrier technician differential will be maintained, in accordance with the Arbitration Award issues September 19, 1999.

[see Memo]

Effective November 18, 2000, all Grade 5 city letter carriers will be upgraded to the new NALC City Carrier (CC) Grade 1. The upgrade applies to full-time, part-time regular, part-time flexible, and transitional employees. The upgrade will be based on a step-to-step procedure.

In order to maintain the Carrier Technician differential, new CC Grade 2 salaries will be developed by applying the dollar differential by step between Grades 5 and 6 as of November 18, 2000. This dollar differential

will then be added to the new CC Grade 1, by step, to create the new CC Grade 2, by step. The Carrier TEchnician upgrade will also be effective November 18, 2000, and be based on a step-to-step procedure.

9.3.A **Section 3. One-Time Cash Payments**

A. Full-Time Employees

All non-probationary full-time employees covered by this Agreement shall receive one-time cash payments, not to be included in basic pay, as follows:

Grade 5		**Grade 6**	
A	**$725**	**A**	**$767**
B	**$802**	**B**	**$849**
C	**$863**	**C**	**$881**
D	**$923**	**D**	**$942**
E	**$931**	**E**	**$950**
F	**$938**	**F**	**$958**
G	**$946**	**G**	**$967**
H	**$954**	**H**	**$975**
I	**$961**	**I**	**$984**
J	**$969**	**J**	**$992**
K	**$977**	**K**	**$1,000**
L	**$985**	**L**	**$1,009**
M	**$992**	**M**	**$1,017**
N	**$1,000**	**N**	**$1,025**
O	**$1,008**	**O**	**$1,034**

9.3.B **B. Hourly Rate Employees**

Non-probationary hourly rate employees, who have been paid for less than 2,000 hours during the twenty-six pay periods prior to the effective **date** of the cash **payment, i.e., September 19, 1999,** shall receive such **payment** based on their number of paid hours during **that** period in accordance with the following schedule:

Number of Paid Hours	Percent of Cash Payment
1 and Under 500	25
500 and Under 1000	50
1000 and Under 1500	75
1500 and Over	100

The percentage determined as a result of the above computation will be applied to the cash **payment** to determine the non-probationary hourly rate employee's share of the one-time cash payments. **This payment** does not become part of the employee's basic pay.

9.3.C **C. Eligibility**

1. Full-Time Employees

In order to be eligible to receive a cash payment, the employee must be in a full-time regular pay status during the pay period immediately prior to the effective **date** of the **cash payment,** i.e., **September 19, 1999.**

2. Hourly Rate Employees

In order to be eligible to receive a cash payment, an hourly rate employee must be in a pay status during the pay period immediately prior to the effective **date** of the **cash payment,** i.e., **September 19, 1999.**

9.4 Section 4. Cost of Living Adjustment

A. Definitions

1. "Consumer Price Index" refers to the "National Consumer Price Index for Urban Wage Earners and Clerical Workers," published by the Bureau of Labor Statistics, United States Department of Labor (1967=100) and referred to herein as the "Index."

2. "Consumer Price Index Base" refers to the Consumer Price Index for the month of **October 1998** and is referred to herein as the "Base Index."

B. Effective Dates of Adjustment

Each employee covered by this Agreement shall receive cost-of-living adjustments, upward, in accordance with the formula in Section **4.C**, below, effective on the following dates:

— based on the release of the January 1999 Index (effective November 20, 1999

— based on the release of the July 1999 Index (effective November 20, 1999

— the second full pay period after the release of the **January 2000** Index

— the second full pay period after the release of the **July 2000** Index

— the second full pay period after the release of the **January 2001** Index

— the second full pay period after the release of the **July 2001** Index

C. The basic salary schedules provided for in this Agreement shall be increased 1 cent per hour for each full 0.4 of a point increase in the applicable Index above the Base Index. For example, if the increase in the Index from **October 1998** to **January 1999** is 1.2 points, all pay scales for employees covered by this Agreement will be increased by 3 cents per hour. In no event will a decline in the Index below the Base Index result in a decrease in the pay scales provided for in this Agreement.

D. In the event the appropriate Index is not published on or before the beginning of the effective payroll period, any adjustment required will be made effective at the beginning of the second payroll period after publication of the appropriate Index.

E. No adjustment, retroactive or otherwise, shall be made due to any revision which may later be made in the published figures for the Index for any month mentioned in 4.B, above.

F. If during the life of this Agreement, the BLS ceases to make available the CPI-W (1967=100), the parties agree to use the CPI-W

(1982-84=100) at such time as BLS ceases to make available the CPI-W (1967=100). At the time of change to the CPI-W (1982-84=100), the cost-of-living formula in Section 3.C will be recalculated to provide the same cost-of-living adjustment that would have been granted under the formula using the CPI-W (1967=100).

Six cost-of-living adjustments: Section 4 provides for six cost-of-living adjustments, also known as COLA raises, at six-month intervals starting late in 1999.

The Consumer Price Index: COLA raises are variable and based on the rise in the Consumer Price Index, which Section 3.A.1 defines as the "National Consumer Price Index for Urban Wage Earners and Clerical Workers," or CPI-W, published monthly by the U.S. Department of Labor's Bureau of Labor Statistics (BLS). The BLS also publishes a different index known as the "Consumer Price Index for All Urban Consumers," or "CPI-U," which is the CPI widely reported in the news.

The Consumer Price Index (either CPI-W or CPI-U) tracks the cost of a fixed "market basket" of goods each month. The cost of this "market basket" is set equal to 100 points in a given "base year" so that later price changes may be compared to it. The base year of the CPI-W used in the National Agreement is 1967. In December, 1995, the CPI-W (1967=100) was 449.5. This means that it cost about 4 1/2 times as much to purchase the same "market basket" of goods in December, 1996 as it did in 1967.

Section 4.A.2 establishes the CPI-W of October, 1998 as the "Base Index" which is used to calculate CPI increases and COLA raises during the term of the Agreement. Section 4.B sets the time of each COLA raise, to follow shortly after the BLS's release of the CPI-W at six-month intervals.

COLA formula: Section 4.C states the formula on which COLA raises are *based—one cent per hour for each full four-tenths (0.4) of a point increase above the Base Index*. So, for example, the January, 1996 CPI-W was 451.9, which was 2.3 points above the Base Index of 449.6. 0.4 divides 5 times into 2.3 (with a 0.3 remainder), so the first COLA raise under the Agreement was 5 cents per hour or, multiplying by 2080 annual work hours, $104.00 annually. Similarly, the July, 1996 CPI-W was 459.7, another 7.8 points higher than the January index of 451.9. With the 0.3 remainder from the first increase, the additional rise above the base was 8.1 points. Dividing by 0.4 yields 20 cents per hour (with a 0.1 remainder). 2080 hours X 20 cents per hour = $416.00 annually, the amount of the National Agreement's second COLA raise.

Section 4.C also provides that each COLA raise shall become part of "basic" salary.

Potential CPI change: Section 4.5 ensures continuity of the COLA provisions should the BLS decide to discontinue the CPI-W (1967=100) during the contract's term. If that should happen, the parties will use instead the CPI-W (1982-84=100), which measures price increases the same way but with a base of 1982-84=100. In addition, Section 3.C's COLA formula would be changed to ensure that carriers receive COLA raises equal to what they would have received under the CPI-W (1967=100).

Different CPI bases: Although the 1982-84 based CPI-W reflects the same *percentage* increases in prices, it produces less *numerical* increase than the CPI-W (1967=100) for the same percentage increase in inflation. For example, from December, 1994 to December, 1996 the CPI-W (1982-84=100) rose from 147.2 to 155.9, an increase of 8.7 points. During the same time period the CPI-W (1967=100) rose from 438.6 to 464.3, a rise of 25.7 points. The two indexes measured the identical price increases and both rose by 5.9 percent in the two-year period. However, the numerical point increases are different—8.7 points versus 25.7 points. Under the current COLA language the 25.7 point increase in the CPI-W (1967=100), divided by 0.4, yields a COLA raise of *64 cents per hour*. But if COLA raises were based on the CPI- W (1982-84=100), the point increase of 8.7 points would yield (when divided by 0.4) *21 cents per hour*. This is why a switch to the CPI-W (1982-84=100) would necessitate a revision of the COLA formula.

"Basic" salary versus "base" salary: The 1994-1998 National Agreement brought an end to a decades-long practice in letter carriers' compensation—it eliminated the difference between "basic" salary increases and cost-of-living-adjustment (COLA) raises, which had been known as "base" salary increases. As a result, all COLA increases in the current agreement are immediately made part of "basic" salary used to compute retirement benefits.

Since the 1970's, National Agreements had differentiated between negotiated *general wage increases* of a fixed percentage or flat amount, and *COLA increases*, which are variable based on the rise in the Consumer Price Index (CPI). The general wage increases were added to so-called "basic" salary (a term that appeared in 1978) which is the basis for *calculating retirement benefits* under the Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS). That is, the "high-3 average" salary is calculated from "basic" pay and both letter carriers and USPS pay retirement contributions calculated on "basic" pay.

Before the 1994-1998 National Agreement, COLA increases, on the other hand, were added to "base" salary but not to "basic" at the time they became effective. So each letter carrier had two salary rates—a "basic rate" that excluded COLA increases accumulated during the term of an

agreement, and a "base rate" that included the COLA increases. The "base" salary rate was used to figure overtime and shift premiums, call-in pay, leave pay and holiday pay, but not to compute retirement benefits.

During the 1970s the parties agreed that, at the start of each new National Agreement, the total of accumulated COLA increases paid during the preceding Agreement would be "rolled-in"—added to what became known in 1978 as the "basic" salary rate. In this way the credit for COLA raises would start to apply toward raising the "high-3" for retirement purposes.

This system changed with the 1981 contract, which *delayed* the roll-in of previously- accumulated COLA by another full contract term for most employees. So, for instance, the roll-in of $3,619 in COLA increases accumulated during the 1978-1981 National Agreement was delayed; rather than occurring near the start of the 1981 Agreement, the roll-in occurred for most employees in October, 1984.

An exception was made for employees who were eligible for optional retirement or who would become eligible for it within six years after the start of the 1981 Agreement. Those employees exercised an *option* that permitted them to roll-in their COLA in November, 1981. This *roll-in option* protected carriers whose High-3 salary and retirement benefits otherwise would have been reduced as a result of the three-year roll-in delay.

The automatic, immediate roll-in of COLA to basic salary means that carriers begin to earn retirement credit on their COLA increases as soon as they are paid. So the basic wage upon which the "high-3" salary is based will rise eight times during the term of the current National Agreement—twice due to general wage increases and six times due to COLA raises.

9.5 **Section 5. Application of Salary Rates**

Except as provided in Section 2, the Employer shall continue the current application of salary rates for the duration of this Agreement.

Section 6. Granting Step Increases

The Employer will continue the program on granting step increases for the duration of this Agreement.

Step increases: In the 1990 contract the parties agreed, in the national Memorandum of Understanding reprinted below, that step increases would not be delayed for performance reasons. The Memorandum remains effective during the term of the 1994 National Agreement.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO and the
National Association of Letter Carriers, AFL-CIO)

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.

Step increase progression: The step increase program is contained in Section 422.3 of the *Employee and Labor Relations Manual,* which sets forth the following progression for CC Grade 1 and 2 city letter carriers:

STEP PROGRESSION

From Step	To Step	Waiting Period (in weeks)
A	B	96
B	C	96
C	D	44
D	E	44
E	F	44
F	G	44
G	H	44
H	I	44
I	J	44
J	K	34
K	L	34
L	M	26
M	N	26
N	O	24

Promotion Pay Anomaly

The "promotion pay anomaly" occurs when a letter carrier is promoted to a higher grade, begins a new waiting period for the next step increase in that grade, and as a result *earns less* for certain periods than if the carrier had never been promoted. This anomaly occurs because in certain situations the carrier would have received a step increase earlier if he or she had not been promoted. The anomaly is an unintended result of the 1984 contract negotiations, in which the interest arbitration panel added several new steps to letter carriers' pay-grade levels.

The anomaly typically occurs when a CC Grade 1 carrier is promoted to a CC Grade 2 Carrier Technician position. For example, consider the case of a carrier hired in October 1999 at Grade 5, Step A (before PS

Grade 5 became CC Grade 1 under the terms of the 1998 National Agreement) whose first scheduled step increase—to Grade 1, Step B—was set for August 2001.

In December 2000, after serving 60 weeks, she bid on a Grade 2 Carrier Technician position and was required to begin a new waiting period for a step increase to Grade 2, Step B. Her pay increased immediately by approximately $1,650 annually. Yet 36 weeks later she would have received a step increase to Grade 1, Step B had she not been promoted—which would have raised her salary by about $3,200 annually. So, 36 weeks after her promotion, the carrier was earning $33,117 annually at Grade 2, Step A, or $1,573 less than what she would have earned had she never been promoted.

In this case the pay anomaly abated when the carrier reached Grade 2, Step B because that salary was higher than that for Grade 1, Step B. However, the anomaly then recurred 60 weeks later, when she would have received a step increase to Grade 1, Step C had she never been promoted. This is because the Grade 1, Step C salary exceeds that for Grade 2, Step B. In fact, the anomaly would continue off and on until the carrier reaches Grade 2, Step D. From that point forward, the carrier's Grade 2 salary would generally be above what she would have earned by staying in Grade 1.

1990 settlement: In 1990 the NALC and USPS reached an agreement to resolve the promotion pay anomaly. It provided that:

> 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 for step increases. This includes affected employees who are or were promoted to a higher grade and subsequently reassigned to their former grade.
>
> For each pay period following 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 the latter amount is higher, the difference will be paid to the employee in a one-time lump sum payment.

The lump sum payments provided by the settlement are calculated based on all paid hours, including paid leave. This includes straight-time hours, overtime hours and any applicable premium pay. The lump sums are paid on a quarterly basis on a schedule determined at the beginning of each calendar year. Because these payments are not part of a carrier's "basic" pay, they are not considered when determining CSRS or FERS contributions or figured as part of the "high-3" average salary for retirement purposes.

Who is affected: The promotion pay anomaly ordinarily affects only those carriers who are at Step C or below. Except in a few cases in which a carrier loses more than 88 weeks in waiting for a promotion, by the time a carrier reaches Step D the pay schedule works as intended—the promotion to a higher grade results in a salary that is continuously higher than what the carrier would have received in the lower grade.

Return to the former lower grade: The 1990 settlement agreement also required that Section 422 of the *Employee and Labor Relations Manual* (ELM) be modified to make clear that employees returning to a former lower grade must be assigned to the step and the next step increase date as if service had been uninterrupted in the lower grade. In other words, all time, including time spent in the higher grade, is credited toward determining the date of the next periodic step increase in the lower grade. As a practical matter, this means that any Carrier Technician who later successfully bid on a route end up exactly where they would have been, in pay terms, had they never left Grade 1. In such situations, the time temporarily "lost" as a result of beginning a new waiting period in Grade 2 is fully restored.

Repromotion to a higher grade: A particularly complex situation arises in the occasional case of carriers repromoted to Grade 2—that is, when periods in Grade 2 are interrupted by a period in Grade 1. This situation is controlled by the provisions of ELM Section 422.232. That section specifies that a repromoted employee is placed in the higher grade with credit toward the next periodic step increase as if the employee had remained continuously in that previously held higher grade.

For example, say a carrier was promoted from Grade 1, Step B to Grade 2, Step B, and then returned to Grade 1, Step B and subsequently received a step increase to Grade 1, Step C. If the carrier then successfully bids on a Grade 2 position a second time, he will not necessarily be placed in Grade 2, Step C. This is because he started a new waiting period for his increase to Grade 2, Step C when he first was promoted to Grade 2. Upon his return to Grade 2 his waiting period for the Step C increase will be reestablished as if he had never returned to Grade 1.

Calculating promotion pay anomaly payments: Generally speaking, so long as the individual service history and hours information about an employee are correct, anomaly payments will be calculated and paid correctly by the Postal Service. In a few cases, carriers may experience difficulty receiving the correct payments because there are mistakes in their service histories in USPS records. In such cases the carrier or the union representative should contact the National Business Agent's office for assistance.

If it is determined that a carrier's step placement or waiting period was incorrectly established in the past, the Postal Service will calculate the amount of the resulting over- or under-payments. In the case of overpayments, it is possible that the Postal Service will initiate an employer claim under the provisions of Article 28. In the case of underpayments, the Postal Service will make the carrier whole by making a separate payment. Such payments are made to correct a mistake and should not be confused with promotion pay anomaly payments.

The ELM and the Promotion Pay Anomaly: Relevant language pertaining to the promotion pay anomaly appears in Section 422 of the ELM:

422.231 Basic Rules.

C. 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, instead, advanced in step increments in the lower grade by fulfilling the waiting time requirements necessary for step increases. This includes employees who were promoted to a higher grade and subsequently reassigned to their former grade. If during any pay period following the promotion, the employee's basic salary is less than the employee would have received for that pay period if the employee had not been promoted, the difference is paid to the employee in a lump sum payment.

422.232. Supplemental Rules.

a. Repromotion. An employee repromoted to a previously held grade is assigned the step the employee would have attained with credit toward the next step date as if the employee had remained continuously in that previously held higher grade.

422.25. Reductions in Grade.

422.251. General. Reductions in grade include voluntary changes to lower level, management initiated change to lower level, and demotions.

422.252. Step and Step Date Assignment.

a. To Former Lower Grade. The employee is assigned to the step and next step date as if service had been interrupted in the lower grade.

9.7 Section 7. Protected Salary Rates

The Employer shall continue the current salary rate protection program for the duration of this Agreement.

Salary rate retention: Section 7 specifically continues in effect the three salary rate retention provisions contained in Section 421.5 of the *Employee and Labor Relations Manual* (ELM). These are:

1. **Protected rate**, ELM Section 421.51—Under the circumstances described in this section a career employee assigned to a lower grade position will continue to receive the salary paid in the previous grade, for a maximum period of two calendar years.
2. **Saved rate**, ELM Section 421.52—An employee receives permanent "saved rate" salary protection when management gives him or her a permanent, nondisciplinary and involuntary assignment to a lower grade due to a management action such as a change in job ranking criteria affecting more than one person under the same job description. Saved rate protection is also available to employees receiving a "red circle" salary amount in excess of the maximum for the grade.
3. **Saved grade,** ELM Section 421.53—Article 4.3 specifically incorporates this ELM provision, which provides that an employee's salary rate is retained *indefinitely* if his or her job is eliminated due to mechanization or technological change, until such time as the employee fails to bid or apply for a position in his or her former wage level.

9.8 Section 8. Transitional Employees

Except as provided in Section 2, transitional employees will be hired at Grade 1, Step A, and will be paid at Step A of the position to which they are assigned.

The hourly rate paid to transitional employees will be subject to the increases and adjustments set forth in Sections 1, 3 and 4 above.

Transitional employee wages: Section 8 provides that transitional letter carriers are hired at the same salary level as starting career carriers (Grade 1, Step A), and that they receive all general wage increases and COLA increases applicable to that level and step. Transitional employees do not receive step increases.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO and the
National Association of Letter Carriers, AFL-CIO)

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.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Upgrade of NALC Represented Employees

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that, based on Arbitrator Fleischli's September 19, 1999, Interest Arbitration Award regarding the upgrade of NALC represented grade 5 employees and maintaining the existing salary differential for NALC represented grade 6 carrier technician employees as well as other considerations, the following procedures will apply.

1. UPGRADE OF NALC REPRESENTED GRADE 5 EMPLOYEES

a. Effective November 18, 2000, all NALC represented grade 5 employees will be upgraded to new NALC grade 1. The upgrade applies to full-time, part-time regular, part-time flexible, and transitional employees. The parties further agree that the new NALC grade 1 salary schedule shall be implemented, effective November 18, 2000.

b. All NALC represented grade 5 employees will be upgraded to new NALC grade 1 based on a step-to-step upgrade procedure. Effective November 18, 2000, employees will be upgraded to new NALC grade 1 at the same step they previously held in grade 5. As an example, grade 5 step A employees will be upgraded to new NALC grade 1 step A, while grade 5 step O employees will be upgraded to new NALC grade 1 step O. All upgraded

employees will receive waiting period credit applied towards their next step for accumulated weeks served in their current step.

2. MAINTAINING THE CARRIER TECHNICIAN DIFFERENTIAL

a. In order to maintain the carrier technician differential, effective November 18, 2000, NALC represented grade 6 carrier technician employees (occupation code 2310-2010) will be placed into new NALC grade 2. NALC represented grade 6 vehicle operations and maintenance assistant employees (occupation code 2310-2012) will not be placed into new NALC grade 2. Instead, these employees will continue to be paid at new NALC grade 1. The parties further agree that the new NALC grade 2 salary schedule shall be implemented, effective November 18, 2000.

b. New NALC grade 2 salaries will be developed by applying the dollar differential by step between NALC grades 5 and 6 as of November 18, 2000. This dollar differential will then be added to new NALC grade 1, by step, to create new NALC grade 2, by step, effective November 18, 2000.

c. NALC grade 6 carrier technician employees will be placed into new NALC grade 2 based on a step-to-step procedure. Effective November 18, 2000, NALC grade 6 carrier technician employees will be placed into the new NALC grade 2 at the same step they previously held in grade 6. As an example, grade 6 step A employees will be placed into the new NALC grade 2 step A, while grade 6 step O employees will be placed into the new NALC grade 2 step O. All employees placed into the new NALC grade 2 will receive waiting period credit applied towards their next step based on accumulated weeks served in their current step.

3. ADDRESSING THE PROMOTION PAY ANOMALY

The parties intend to continue discussions either prior to or during national negotiations in 2001 in an effort to permanently resolve the promotion pay anomaly associated with the NALC salary schedule.

The parties agree this Memorandum of Understanding is a full and complete settlement of any claims that have been, or could be, asserted against the Postal Service with regard to the upgrade provisions of Arbitrator Fleischli's September 19, 1999, Interest Arbitration Award. This Memorandum of Understanding is being entered into on a nonprecedential basis and may not be cited or used in any forum whatsoever, except to enforce its provisions.

Date: March 21, 2000

ARTICLE 10 LEAVE

Sources for Leave Rules

The rules governing the various types of USPS leave are contained in several source documents:

Article 10. Article 10 contains the National Agreement's general provisions concerning the leave program. Article 10 guarantees continuation of the leave program (Sections 1-2), outlines the national program for the use of annual leave through vacation planning (Sections 3-4), provides for sick leave (Section 5), and states certain additional leave rules concerning minimum leave charges and leave without pay (LWOP) (Section 6).

- **ELM Subchapter 510.** Article 10, Section 2 specifically incorporates the *Employee and Labor Relations Manual's* (ELM) Subchapter 510. Subchapter 510 (Sections 511- 519) contains the specific regulations controlling leave for career letter carriers.
- **TE Award.** Leave provisions regarding Transitional Employees are found in Attachment D of the January 16, 1992 national arbitration award on transitional employees (TE Award, M-01228, reprinted as an appendix to this publication).
- **National Memorandums of Understanding.** Certain National Memorandums of Understanding, appearing on pages 161-165 of the National Agreement, also address leave issues.
- **Local Memorandums of Understanding.** Many important features of letter carrier leave are governed by local leave programs, which are negotiated locally under Article 30, Local Implementation, and contained in Local Memorandums of Understanding (LMUs).
- **Federal law.** The Family and Medical Leave Act (FMLA) is a federal law that entitles eligible employees to time off to care for a new child, to care for a seriously ill family member and for an employee's serious medical problems. The detailed rules governing the FMLA are found in the federal law and in the Code of Federal Regulations (Chapter 29 C.F.R. Part 825).

This material explains the main provisions of Article 10, summarizes other important leave rules and gives references to more detailed provisions concerning leave. It does not attempt to cover all of the detailed leave regulations contained in ELM Subchapter 510 or the FMLA.

10.1 Section 1. Funding

The Employer shall continue funding the leave program so as to continue the current leave earning level for the duration of this Agreement.

10.2 Section 2. Leave Regulations

See NALC Material

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

Continuation of Leave Program

Sections 1 and 2 guarantee continuation of the leave program and refer to the detailed leave regulations published in the ELM.

Subchapter 510 of the ELM contains the detailed Postal Service regulations concerning the administration of the leave program. There are several categories of leave available for absences: Annual Leave (Section 512), Sick Leave (Section 513), LWOP (Section 514), Court Leave (Section 516), Military Leave (Section 517), and Administrative Leave (Section 519). Within these sections there may be distinctions defined for bargaining-unit, nonbargaining-unit, full-time, part-time regular and part-time flexible employees. In addition, Section 515 contains regulations concerning absences covered by the Family and Medical Leave Act and Section 518 contains regulations concerning holidays.

Annual Leave

Annual leave is paid vacation time. The rate of annual leave earnings is based on "creditable service," that is, total cumulative federal service (employment), including certain kinds of military service (See ELM Section 512.2, Determining Annual Leave Category).

New employees earn annual leave but are not credited with the leave and may not take it prior to completing 90 days of continuous employment (ELM Section 512.313(b)). There is an exception for employees who transfer without a break in service.

Annual leave is paid at an employee's regular straight-time rate and is limited to a maximum of eight hours during any single day.

As explained further below, letter carriers typically use annual leave in three ways:

1. By annual bidding in advance, based on seniority, on vacation time as specified in this Article and in the Local Memorandum of Understanding (LMU);
2. Other requests for annual leave, as needed throughout the year.
3. Emergency annual leave taken for emergencies.

Annual leave accrual—full-time employees. Full-time employees earn annual leave as set forth in ELM Section 512.311, reproduced below. They are credited with the year's annual leave at the start of each leave year.

512.311 Full-Time Employees

a. Accrual Chart. Full-time employees earn annual leave based on their number of creditable years of service.

Leave Category	Creditable Service	Maximum Leave Per Year
4	Less than 3 years	4 hours for each full biweekly pay periods; i.e., 104 hours (13 days) per 26-period leave year.
6	3 years but less than 15 years	6 hours for each full biweekly pay period plus 4 hours in last pay period in leave year, i.e. 160 hours (20 days) per 26-period leave year.
8	15 years or more	8 hours for each full biweekly pay period; i.e., 208 hours (26 days) per 26-period leave year.

b. Credit at Beginning of Leave. Full-time employees are credited at the beginning of the year with the total number of annual leave hours that they will earn for that leave year.

Annual leave accrual—part-time employees. Part-time employees earn annual leave as set forth in ELM Exhibit 512.312, reproduced here. ELM section 512.312.b provides that PTFs are credited with annual leave earnings at the end of each biweekly pay period.

Exhibit 512.312

Accrual and Crediting Chart for Part-Time Employees

Leave Category	Creditable Service	Maximum Leave per Year	Rate of Accrual	Hours in Pay Status	Hours of Leave Earned per Period
4	Less than 3 years.	104 hours, or 13 days per 26-period leave year or 4 hours for each biweekly pay period.	1 hour for each unit of 20 hours in pay status.	20 40 60 80	1 2 3 4 (max.)
6	3 years but less than 15 years.	160 hours, or 20 days per 26-period leave year or 6 hours for each full biweekly pay period, plus 4 hours in last pay period in leave year.[1]	1 hour for each unit of 13 hours in pay status.	13 26 39 52 65 78	1 2 3 4 5 6 (max.)
8	15 years or more.	208 hours, or 26 days per 26-period leave year or 8 hours for each full biweekly pay period.	1 hour for each unit of 10 hours in pay status.	10 20 30 40 50 60 70 80	1 2 3 4 5 6 7 8 (max.)

[1]Except that the accrual for the last pay period of the calendar year may be 10 hours, provided the employee has the 130 creditable hours or more in a pay status in the leave year for leave purposes.

Annual leave accrual—transitional employees (TEs). TE annual leave is governed by the 1992 TE Award, reprinted as an appendix to this publication. Appendix D to the award outlines the rules for TE annual leave. Briefly, TEs are credited with 1 hour of annual leave for each 20 hours spent in a pay status during each biweekly pay period. TE "annual leave" is used both for the usual annual leave purposes (rest, recreation, emergencies, etc.) as well as for illness or injury in lieu of sick leave.

10.3.A **Section 3. Choice of Vacation Period**

A. It is agreed to establish a nationwide program for vacation planning for employees in the regular work force with emphasis upon the choice vacation period(s) or variations thereof.

Vacation Planning—Local Implementation

This section establishes a nationwide program for vacation planning for the regular work force and specifically addresses the selection of choice vacation period(s). Article 30 provides for local implementation of more specific leave provisions consistent with the general provisions of Article 10.

A new Local Memorandum of Understanding (LMU) is usually negotiated shortly after each new National Agreement is finalized through negotiations or arbitration. The LMU is negotiated with local management under Article 30 covering, among other items, the operation of local vacation planning. The LMU sets forth a scheme in which a locally defined "leave year" is divided into times known as the "choice vacation period" (also called "prime time") and other times which are outside the choice vacation period ("non-prime time"). For example, the choice vacation period might run from the first week of May through the last week of October.

The LMU usually provides that full-time regular and part-time flexible carriers bid, based on seniority, for blocks of continuous vacation time (annual leave). (Part-time regulars also may bid on vacation time, but they have a separate seniority system and bid separately for vacation time.) Key LMU provisions state the percentage of carriers (or a number of carriers) to receive vacation each week, both during the choice vacation period and during the non-choice periods. The number of carriers that must be permitted off during the choice vacation period is typically higher than the number during non-prime time.

The procedures for bidding on blocks of vacation time are controlled by the LMU. Typically the bidding proceeds one carrier at a time, starting with the most senior carrier making vacation selections and then proceeding down the seniority list until all carriers have made vacation selections from the remaining blocks of time. Full-time regulars may bid based on all credited annual leave, including the year's annual leave

credited at the start of the leave year. Part-time flexible employees, who are credited with annual leave each pay period as they earn it, may bid based only on the amounts credited at the time of bidding (ELM Section 512.61.b).

The LMU also may set forth procedures for making vacation selections during times *outside* of the choice vacation period; this may be handled by a second round of bidding based on seniority. In addition, the LMU may contain rules for handling other requests for annual leave, which may be requested by individual carriers as needed throughout the year, outside of the vacation bidding process.

10.3.B

B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

Leave carryover. A letter carrier may carry over up to 440 hours (55 days) of accumulated annual leave from one leave year to the next. See the Memorandum of Understanding at the end of this article. (Although the memorandum refers to the 1990 National Agreement, it was renewed as part of the 1998 National Agreement.) Any amount beyond the carryover maximum is forfeited.

Avoiding forfeiture of annual leave. Supervisors should exercise care to assure that no bargaining-unit employees have to forfeit any part of their annual leave. For their part, employees must be sure to submit sufficient leave requests. Stewards should encourage carriers to keep a watchful eye on their leave balances and vacation plans.

10.3.C

C. The parties agree that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures.

Duration of choice period. The provisions of this section should be read in conjunction with any applicable Local Memorandum of Understanding (LMU) provisions negotiated pursuant to Article 30, Section B.(5). Article 10, Section 3.C recognizes that the choice vacation period(s) may vary among installations. This section empowers local installation heads and branches to engage in local implementation under Article 30 to determine the duration of the choice vacation period. The duration varies from one geographical section of the country to another, and among local unions. During implementation, the period's duration is closely related to the issue of how many carriers are permitted to take vacation during the choice period—a subject under Article 10, Section 3.D.1 & 2, and Article 30, Section B.9.

10.3.D

D. Annual leave shall be granted as follows:

1. Employees who earn 13 days annual leave per year shall be granted up to ten (10) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed ten (10), shall be at the option of the employee.

2. Employees who earn 20 or 26 days annual leave per year shall be granted up to fifteen (15) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed fifteen (15), shall be at the option of the employee.

Number of continuous days off. Section 3.D.1. establishes that those employees who have less than three (3) years of creditable service will be granted a maximum of ten (10) continuous days of annual leave. Section 3.D.2. establishes that, those employees with more than three (3) years of creditable service will be granted a maximum of fifteen (15) continuous days of annual leave for their choice vacation period selection(s).

These sections do not foreclose the right of an employee to request additional annual leave continuous with the maximum number of days applicable in either Section 3.D.1 or 3.D.2 above. Nor does it preclude an employee being granted additional annual leave during the choice vacation period(s) if there are fewer employees on annual leave than the maximum number or percentage negotiated in a LMU pursuant to Article 30, Section B.9 (See Step 4 AC-C 10648, March 17, 1977, M-00865).

Part-time flexible employees. Part-time flexible employees may bid on choice vacation only to the extent that they have already been credited with annual leave at the time the bidding is done. ELM Section 512.61(b).

10.3.D.3

3. The subject of whether an employee may at the em ployee's option request two (2) selections during the choice period(s), in units of either 5 or 10 working days, the total not to exceed the ten (10) or fifteen (15) days above, may be determined pursuant to local implementation procedures.

Requesting one or two vacation selections. The provisions of this section should be read in conjunction with any applicable LMU provisions established pursuant to Articles 30, Section B.7. This section allows the LMU to determine if the maximum number of days of continuous annual leave for choice vacation selection will be requested as a single block of either ten (10) or fifteen (15) continuous days or as two (2) separate blocks of either five (5) or ten (10) continuous days each. For instance, an employee who has 15 days may request 10 continuous days of annual leave in May and 5 continuous days in August.

10.3.D.4

4. The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

Other annual leave requests. This section should be read in conjunction with Article 10, Sections 3.A and 4.C and with any applicable LMU provisions established pursuant to Article 30.B.12. It establishes that employees may request annual leave in addition to their selection(s) for choice vacation period(s). See Article 10, Section 4.C below.

10.3.E

E. The vacation period shall start on the first day of the employee's basic work week. Exceptions may be granted by agreement among the employee, the Union representative and the Employer.

Start of vacation period. This section establishes that the first day of an employee's vacation period(s) shall start on the first day of the employee's basic work week. Exceptions may be granted when the employee, the NALC representative and the employer agree. This section should be read in conjunction with any applicable LMU provisions established pursuant to Article 30, Section B.6, which states that the local parties can determine the beginning day of an employee's vacation period selection(s). Where the LMU provides that the employee's vacation period selection(s) begins on a day other than the first day of an employee's basic work week, the LMU is controlling.

10.3.F

F. An employee who is called for jury duty during the employee's scheduled choice vacation period or who attends a National, State, or Regional Convention (Assembly) during the choice vacation period is eligible for another available period provided this does not deprive any other employee of first choice for scheduled vacation.

Jury duty or NALC convention interrupting vacation. This section provides that if an employee serves on jury duty, attends a National, State, or Regional convention or assembly during the employee's scheduled choice vacation period, the employee is entitled to another choice vacation period selection(s). However, that employee can not deprive any other employee of his/her scheduled vacation period(s). The provisions of this section should be read in conjunction with any applicable LMU provisions eatablished pursuant to Articles 30, Sections B.8 and B.20. Those sections authorize a LMU to determine whether those absences will be charged to the choice vacation period and whether annual leave for union activities requested prior to the determination of the choice vacation period will be a part of the local vacation plan. See Article 24, Employees on Leave with Regard to Union Business.

10.4

Section 4. Vacation Planning
The following general rules shall be observed in implementing the vacation planning program:

10.4.A

A. The Employer shall, no later than November l, publicize on bulletin boards and by other appropriate means the beginning date of the new leave year, which shall begin with the first day of the first full pay period of the calendar year.

Notification of start of new leave year. The provisions of this section should be read in conjunction with any applicable LMU provisions established pursuant to Articles 30, Section B.11. The local installation head must notify all employee's when the new leave year will begin. Where LMU provisions established pursuant to Article 30, Section B.11 provide for another date and means of notifying employees, the LMU is controlling.

10.4.B

B. The installation head shall meet with the representatives of the Union to review local service needs as soon after January 1 as practical. The installation head shall then:

1. Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount he/she expects to take in the current year.
2. Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).
3. Provide official notice to each employee of the vacation schedule approved for each employee.

Deadline to apply; official notice of schedule. Section B.2 and B.3 should be read in conjunction with any applicable LMU provisions established pursuant to Articles 30, Sections B.4 and B.10, under which the local parties may negotiate LMU provisions concerning, respectively: (1) the final date for employees to submit applications for choice vacation period(s); and (2) how management must give official notice of the approved vacation schedule to each employee.

10.4.C

C. A procedure in each office for submission of applications for annual leave for periods other than the choice period may be established pursuant to the implementation procedure above.

Applying for annual leave outside choice period. The provisions of this section should be read in conjunction with Article 10, Sections 3.A and 3.D.4 and any applicable LMU provisions established pursuant to Articles 30, Section B.12. The LMU may provide for two different kinds of leave rules under Article 30.B.12:

(a) Selections outside the choice period. Many LMUs have established a second round of bidding immediately following the first, enabling carriers to make advance vacation selections during times *outside* the choice vacation period (or during any remaining time during the choice period). (Any LMU provision that allows employees to ignore

the choice period and make their initial selection of leave from the non-choice period is not permitted; a national arbitration award by Mittenthal, HIC-NA-C-59, dated January 29, 1986 (C-05670), held that such provisions are in conflict or inconsistent with the National Agreement.)

(b) Other requests for annual leave. In addition, a LMU may specify rules governing other requests for annual leave, made as the need arises throughout the year rather than through the annual vacation bidding process. For example, a carrier might win tickets to a World Series game the following week and request leave to attend. A typical LMU might specify that such leave requests must be made prior to the posting of the next week's schedule. It also might specify how long management has to reply to such requests, set forth procedures for handling daily leave, and specify priorities—by seniority or first-come, first served—for both advance and daily requests for annual leave.

Where LMU provisions do not cover rules concerning annual leave of this type, ELM Section 512.61(a) provides, "For all regular employees, both full-time and part-time, vacation leave is granted when requested—to the extent practicable."

10.4.D D. All advance commitments for granting annual leave must be honored except in serious emergency situations.

Honoring advance commitments for annual leave. This section requires management to grant annual leave as approved in advance, in nearly all circumstances.

Emergency Annual Leave: In an emergency a carrier need not obtain advance approval for leave, but must notify management as soon as possible about the emergency and the expected duration of the absence. The carrier must submit Form 3971 and explain the reason for the absence to the supervisor as soon as possible. ELM Section 512.411-12.

10.5 Section 5. Sick Leave

The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

A. Credit employees with sick leave as earned.

B. Charge to annual leave or leave without pay (at employee's option) approved absence for which employee has insufficient sick leave.

C. Employee becoming ill while on annual leave may have leave charged to sick leave upon request.

D. For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.

Sick Leave: Article 10, Section 5 provides for the continuation of the sick leave program, whose detailed regulations are contained in ELM Section 513. Section 513.1 defines sick leave as leave which "insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment."

Sick leave accrual. Full- and part-time employees accrue sick leave as shown in ELM Section 513.21:

513.21 Accrual Chart

Employee Category	Time Accrued
a. Full-time employees	4 hours for each full biweekly pay period—i.e., 13 days (104 hours) per 26-period leave year.
b. Part-time employees	1 hour for each unit of 20 hours in pay status up to 104 hours (13 days) per 26-period leave year.

Sick leave is credited at the end of each pay period and can accumulate without any limitation of yearly carryover amounts (ELM Section 513.221).

Transitional employees. Transitional employees do not earn sick leave. Rather, they receive "annual" leave to be used for rest, recreation, emergency purposes as well as illness or injury. See the explanation under Article 10, Section 2 above.

Sick leave use. Letter carriers apply for sick leave, either in advance or after returning to work, by submitting a Form 3971. When an employee has an unexpected need for sick leave, he or she must notify the appropriate postal authorities as soon as possible of the illness or injury and the expected duration of the absence. Upon returning to work, the employee must submit a Form 3971 (ELM Section 513.332).

ELM Section 513.65 provides, "If an employee becomes ill while on annual leave and the employee has a sick leave balance, the absence may be charged to sick leave."

Sick leave is paid at the employee's regular straight-time rate, and limited to maximums of 8 hours per day, 40 per week and 80 per pay period (ELM Section 513.421(b)). Full-time employees may request paid sick leave on any scheduled workday of the employee's basic workweek (ELM 513.411). Part-time employees receive sick leave in accordance with ELM section 513.42 which provides:

513.42 Part-Time Employees

513.421 General

a. Absences due to illness are charged as sick leave on any day that an hourly rate employee is scheduled to work except national holidays.

b. Except as provided in 513.82, paid sick leave may not exceed the number of hours that the employee would have been scheduled to work, up to:

(1) A maximum of 8 hours in any 1 day.

(2) 40 hours in any 1 week.

(3) 80 hours in any one pay period. If a dispute arises as to the number of hours a part-time flexible employee would have been scheduled to work, the schedule will be considered to have been equal to the average hours worked by other part-time flexible employees in the same work location on the day in question.

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 nonduty time which is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

The restriction in ELM 513.421.c on granting sick leave to PTF employees "who have been credited with 40 hours or more paid service" applies only to PTF employees who have already been credited with 40 hours of service at the time the sick leave request is made (Step 4, I94N-4I-C 98093715, December 22, 1998, M-01374).

Sick leave authorization. The conditions for authorization of sick leave are outlined in Section 513.32 of the ELM. When a request for sick leave is disapproved, the supervisor must check the block "Disapproved" and write the reason(s) on the Form 3971, and note any alternative type of leave granted. (ELM Section 513.342). If sick leave is disapproved and the absence is nonetheless warranted, the supervisor may approve, at the employee's option, annual leave or LWOP (ELM Section 513.63).

If the employee does not have sufficient sick leave to cover the absence, at the option of the employee any difference may be charged to annual leave and/or LWOP (ELM Section 513.61). Likewise, if the employee does not have any sick or annual leave for an approved absence, the approved absence may be charged to LWOP (ELM Section 513.62).

Medical certification. ELM Section 513.361 establishes three rules:

a. 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 ("three days" means three *scheduled workdays*; see Step 4 H1N-5B-C 3428, November 3, 1983, M-00489); and

b. 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

c. 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."

Numerous disputes have arisen over situations in which a supervisor has required an employee not in restricted sick leave status to provide medical documentation for an illness of three days or less. Generally, to challenge such a decision successfully the union should demonstrate that the supervisor acted arbitrarily, capriciously or unreasonably in requiring the employee to obtain medical documentation. The union should be prepared to show that the grievant has a good overall sick leave record and no record of abuse.

Employees who are on extended periods of sick leave must submit at regular intervals, but not more frequently than once every 30 days, satisfactory evidence of their continued inability to perform their regular duties, unless "a responsible supervisor has knowledge of the employee's continuing incapacity for work" (ELM Section 513.363).

Restricted sick leave. Management may place an employee in "restricted sick leave" status, requiring medical documentation to support every application for sick leave, if: (a) management has "evidence indicating that an employee is abusing sick leave privileges"; or (b) if management reviews the employee's sick leave usage on an individual basis, first discusses the matter with the employee and otherwise follows the requirements of ELM Section 513.371.

Advance sick leave. Up to 30 days (240 hours) of sick leave may be *advanced* to an employee with a serious disability or ailment if there is reason to believe the employee will return to duty (ELM Section 513.511). The USPS installation head has authority to approve such requests. An employee need not use up all annual leave before receiving advance sick leave.

Sick Leave for Dependent Care

The National Agreement provides a right to use sick leave in certain situations, known as Sick Leave for Dependent Care. Under language contained in the national Memorandum of Understanding reprinted at the end of this Article, a letter carrier is entitled to use up to 80 hours of Sick Leave for Dependent Care per year:

> …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. Approval of sick leave for dependent care will be subject to normal procedures for leave approval.

The right to use paid sick leave *does not* add to the amount of sick leave earned. Rather, it enables a carrier to *use earned sick leave for a new purpose*—caring for an ailing family member.

The carrier's right to Sick Leave for Dependent Care under the contract is separate and different from the right to leave under the Family and Medical Leave Act of 1993, explained below. Sick Leave for Dependent Care is a benefit established by the National Agreement; the FMLA is a federal law affecting almost all employers and employees in the nation. Still, there are certain overlaps. For instance, the definitions of son, daughter, spouse and parent used for Sick Leave for Dependent Care are the same as the FMLA definitions—so an employee may take time off to care for the same persons under both Sick Leave for Dependent Care and the FMLA. However, there are many important differences; see the brief explanation of FMLA leave, below.

10.6 Section 6. Minimum Charge for Leave

The minimum unit charged for sick leave and annual leave for regular work force employees as defined in Article 7, Section 1.A, is one hundredth of an hour (.01 hour).

Employees may utilize annual and sick leave in conjunction with leave without pay, subject to the approval of the leave in accordance with normal leave approval procedures. 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.

Minimum Charge for Leave The one-hundredth-of-an-hour minimum leave usage amount means, for example, that an employee who obtains advance approval for 2-3 hours of sick leave for a doctor's appointment and who returns to work and clocks in after 2 hours and 37 minutes, will be charged only for the amount of sick leave actually used, rounded to the hundredth of an hour.

Leave Without Pay

An employee may request unpaid time off—leave without pay (LWOP)—by submitting a Form 3971. If the requested LWOP is for more than 30 days, the application must contain a written statement giving the reason for the requested LWOP absence (ELM Section 514.51).

As a general rule, management may grant LWOP as a matter of administration discretion. There are certain exceptions concerning disabled veterans, military reservists and members of the National Guard. See ELM Section 514.22 for more information.

A national Memorandum of Understanding establishes that an employee need not exhaust annual leave and/or sick leave before requesting leave without pay. ELM Exhibit 514.4(d).

Administrative Leave is governed by the provisions of Section 519 of the *Employee and Labor Relations Manual (ELM).* It is defined as absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay. The ELM autho-

The carrier's right to Sick Leave for Dependent Care under the contract is separate and different from the right to leave under the Family and Medical Leave Act of 1993, explained below. Sick Leave for Dependent Care is a benefit established by the National Agreement; the FMLA is a federal law affecting almost all employers and employees in the nation. Still, there are certain overlaps. For instance, the definitions of son, daughter, spouse and parent used for Sick Leave for Dependent Care are the same as the FMLA definitions—so an employee may take time off to care for the same persons under both Sick Leave for Dependent Care and the FMLA. However, there are many important differences; see the brief explanation of FMLA leave, below.

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authorizes administrative leave under certain circumstances for various reasons such as civil disorders, state and local civil defense programs, voting or registering to vote, blood donations, attending funeral services for certain veterans, relocation, examination or treatment for on-the-job illness or injury and absence from duty due to "Acts of God".

Leave under the Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) applies to Postal Employees. The Postal Service regulations implementing the Act are found in ELM Section 515. The law entitles eligible employees to take up to 12 workweeks of job-protected absence during any 12 month period for one or more of the following reasons:

- The birth of an employee's child and to care for that child during the first year after birth; circumstances may require that FMLA leave begin before the actual date of birth of a child, i.e. before the birth of a child for prenatal care or if the mother's condition prevents her from performing the functions of her position.
- The placement of a child with the employee for adoption or foster care; the employee may be entitled to FMLA leave before the actual placement or adoption of a child when, for example, the employee is required to attend counseling sessions, appear in court, or consult with attorneys or doctors representing the birth parent prior to placement. FMLA coverage expires one year after the date of the placement.
- To care for the employee's spouse, son, daughter, or parent with a serious health condition; this requires medical certification that an employee is "needed to care for" a family member and encompasses both physical and psychological care.
- Because of a serious health condition that makes the employee unable to perform the functions of the employee's job. An employee is "unable to perform the functions of the position" when the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position.

There is no "laundry list" of serious health conditions. Other than pregnancy, 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 of a serious health condition, as defined by the statute and regulations, to the information provided by the employee and the employee's health care provider.

Eligibility Requirements Any career or non-career employees who meet the eligibility requirements may take FMLA if they meet the eligibility requirements at the time the leave starts; that is, they have been employed by the Postal Service for at least 12 months (this time does not have to be consecutive) and they have completed at least 1,250

workhours during the 12-month period immediately preceding the date the leave starts. The 1250 workhours includes overtime, but excludes any paid or unpaid absence.

Calculating the 1250 per condition, per leave year. The 1250 work hour eligibility test is applied only once, at the beginning of a series of intermittent absences, if all absences are for the same FMLA-qualifying condition during the same 12-month leave year. The employee remains eligible throughout that leave year even if subsequent absences bring the employee below the 1250 work hour requirement.

The employer defines the FMLA leave year. In the Postal Service, FMLA leave is calculated on the basis of the postal leave year.

If an employee has a different serious health condition during the leave year, the employee must meet the 1250 work hour eligibility test at the commencement of the leave for the second condition. If the employee does so, he/she is eligible for FMLA protection of absences for both conditions for the remainder of the leave year, or until the 12 week entitlement has been exhausted.

However, if the employee is unable to meet the 1250 work hour requirement for the second condition in the leave year, the employee is NOT entitled to FMLA protection for the second condition, but remains entitled to FMLA protection for the first condition for the remainder of the leave year or until the 12 week entitlement has been exhausted. Therefore, it is possible for this employee to be eligible for FMLA protection of one qualifying condition, but not for the second and different condition.

The 1250 work hour eligibility requirement must be re-calculated at the commencement of each subsequent and separate condition for which the employee needs leave, in order to determine eligibility for each condition in each leave year.

The 1250 work hour eligibility requirement is re-calculated upon the first absence in the new leave year, related to the FMLA certified condition. However, this does not mean that the employee is required to re-certify the serious health condition. The certification from the previous leave year remains valid for the duration indicated by the health care provider, unless management requires a re-certification in accordance with the provisions of the statute or regulations.

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 requirement 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 work hour eligibility requirement under the FMLA. See Step 4, B94N-4B-C 98056900, April 4, 2001 (M-01436).

Military leave counts toward the 12 month eligibility, but does not count toward the 1250 work hour eligibility requirement.

Employee Rights For postal employees, the leave year begins with the first full pay period that begins in a calendar year and ends with the start of the next year. Up to 12 workweeks of annual leave, sick leave, LWOP, or a combination of these, depending on the situation, may be used for FMLA-covered conditions. LWOP must be approved for a covered condition when an eligible employee has no paid leave available. The leave may be taken in a single block of time, in separate blocks, or intermittently depending on the condition and the medical necessity for the leave. The FMLA requires employees to make a reasonable effort to schedule intermittent or reduced leave in a way that will not unduly disrupt workplace operations.

The right to take leave under FMLA applies equally to male and female employees. For example, a father, as well as a mother, may take FMLA for the placement for adoption or foster care, or to care for a child during the 12 months following the date of birth or placement.

On return from an FMLA absence, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Employer Responsibilities The employer is prohibited from interfering with, restraining, or denying the exercise of any rights provided by the Act. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions. Likewise, FMLA- covered absences may not be used towards any disciplinary actions. Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA.

Employers must post and keep posted Wage and Hour Publication 1420, Your Rights under the Family and Medical Leave Act of 1993. The employer is also required to notify the employee within 2 business days of learning of the employee's need for leave, that the absence is designated as FMLA leave, the type of leave charged (annual, sick, LWOP), and/or any additional documentation the employee needs to furnish. In the Postal Service, this notification notice is met by providing the employee a copy of the PS Form 3971 accompanied by a copy of Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act.

Under FMLA, the employee may request or the employer may require the substitution of paid leave for the 12 workweeks (12 times the

employee's normal scheduled hours per week, up to 40 hours) of unpaid absence per year in accordance with normal leave policies and bargaining unit agreements.

Employee Responsibilities: The following are the employee's responsibilities when a request for FMLA leave is submitted:

- When the need for leave is foreseeable (e.g., pregnancy) notify management of the need for leave and provide appropriate supporting documentation at least 30 days before the absence is to begin.
- When the need for leave is not foreseeable, notify management as soon as practicable, i.e., within two business days, after learning of the need for leave.
- Provide the documentation required for FMLA-covered absences within a reasonable period of time, i.e., 15 days from the time the employer requests documentation.
- For medical emergencies, the employee or his spokesperson may give oral notice of the need for leave, or notice may be given by phone, telegraph, fax, or other means.

Although an employee is only required by FMLA to give oral notice of the need for leave, FMLA allows the Postal Service to require employees to comply with its usual and customary notice requirements for leave, i. e., PS Form 3971, Request for or Notification of Absence. However, if an employee fails to give written notice, the Postal Service may not deny or delay leave if an employee gives timely verbal or other notice, but may take appropriate disciplinary action.

If the FMLA absence is for more than three days but less than 21 days, the employee must submit a statement from his health care provider substantiating that the employee was incapacitated for work, nature of the illness; and the employee's ability to return to work. If the absence is less than three days and is due to a substantiated FMLA-covered condition, the supervisor may accept the employee's statement that he is able to return to work.

If an employee's absence exceeds 21 calendar days, involves hospitalization, or is due to a contagious disease, a mental or nervous condition, diabetes, cardiovascular disease, or epilepsy, the employee must submit acceptable medical evidence of his ability to return to work with or without limitations and without hazard to himself or others.

When an employee requests leave the manager or supervisor must determine whether the employee is an eligible employee for FMLA purposes; the absence is covered under FMLA; or whether additional documentation is required in order to designate the leave as FMLA.

The employee may, but need not, ask for the absence to be covered by FMLA, rather, it is the supervisor's responsibility to designate the leave based on information provided by the employee.

The supervisor should provide the employee a copy of the employee's PS Form 3971 designating the leave and indicating whether additional documentation is necessary along with Publication 71. Documentation to substantiate FMLA is acceptable in any format, including a form created by the union, as long as it provides the information indicated in Publication 71.

This is a simplified overview of the FMLA and there is no intent to change any Department of Labor rules or regulations or Postal policies.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Leave Sharing

The Postal Service will continue a Leave Sharing Program during the term of the **1998** 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. 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.

Date: March 21, 2000

(The preceding Memorandum of Understanding, Leave Sharing, applies to Transitional Employees.)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Sick Leave for Dependent Care

The parties agree that, during the term of the **1998** 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.

Date: March 21, 2000

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

It is hereby agreed and understood by the U.S. Postal Service and the 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 Dependent Care or Leave Sharing that was granted during the period of September 20, 1999 through March 20, 2000 will be honored.

Date: April 7, 2000

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Return to Duty

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.

2. 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.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO,
National Association of Letter Carriers, AFL-CIO)

Re: Annual Leave Carryover

The parties agree that, as soon as practicable after the signing of the 1990 National Agreement, the applicable handbooks and manuals will be modified to provide revised regulations for annual leave carryover as follows:

(a) Regular work force employees covered by this agreement may carry over 440 hours of accumulated annual leave beginning with leave carried over from leave year 1990 to leave year 1991.

(b) Employees who fall under the provisions of Public Law 83-102 and who have maintained a carryover of more than 440 hours cannot increase their present ceiling.

(c) The parties agree that ELM 512.73d shall be changed to reflect that any employee covered by the APWU/NALC National Agreement is not paid for annual leave in excess of 55 days. In all other respects, the ELM provisions for payment of accumulated leave are not changed because of this Memorandum.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Leave Policy

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.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Paid Leave and LWOP

The parties agree that an employee need not exhaust annual leave and/or sick leave before requesting leave without pay. As soon as practicable after the signing of the 1990 National Agreement, Employee and Labor Relations Manual (ELM) Exhibit 514.4(d) will be amended to conform to this Agreement.

The parties further agree that this Memorandum does not affect the administrative discretion set forth in ELM Part 514.22, nor is it intended to encourage any additional leave usage.

Grievance Number H7C-NA-C 61 is withdrawn.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

Re: Clarification of Regulations for National Day of Observance

The parties agree that the following procedures will apply to affected employees if the Postmaster General or designee determines that the Postal Service will participate in a National Day of Observation (e.g., National Day of Mourning), subsequent to the declaration of a National Day of Observance having been made by Executive Order of the President of the United States.

1. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day but who are not directed to report for work, will be granted administrative leave for that day.

2. Full-time employees whose basic work week includes the National Day of Observance as a scheduled work day, and who perform service, will be granted a day of administrative leave at a future date, not to exceed eight hours.

3. Full-time employees whose basic work week includes the National Day of Observance as a non-scheduled day and are not directed to report for work, will be granted a day of administrative leave at a future date.

4. If the National Day of Observance is a full-time employee's non-scheduled day and the employee is scheduled to work, the employee will receive overtime pay, plus up to eight hours of future administrative leave for the number of hours worked.

5. The same provisions apply to part-time regular employees as apply to full-time employees. The total hours of administrative leave should only equal the scheduled hours for the National Day of Observance, which may be less than eight hours. However, part-time regular employees whose basic work week includes the National Day of Observance as a non-scheduled work day and who are not directed to report for work on the National Day of Observance will be granted a day of administrative leave at a future date equal to the average number of daily paid hours in their schedule for the service week previous to the service week in which the National Day of Observance occurs, which may be less than eight hours.

6. Part-time flexible employees should be scheduled based on operational needs. Part-time flexible employees who work will be granted a day of administrative leave at a later date. The day of administrative leave will be based on the number of hours actually worked on the National Day of Observance, not to exceed eight hours. Part-time flexible employees who are not directed to work on the National Day of Observance will be granted administrative leave at a future date equal to the average number of daily paid hours during the service week previous to the service week in which the National Day of Observance occurs, not to exceed eight hours.

7. Transitional employees will only receive pay for actual work hours performed on the National Day of Observance. They will not receive administrative leave.

8. If an employee is on leave or Continuation of Pay on the National Day of Observance, the employee will be granted a day of administrative leave at a future date, not to exceed eight hours.

9. An employee on OWCP, AWOL, suspension or pending removal on the National Day of Observance will not be granted administrative leave. If the employee on AWOL, suspension or pending removal is returned to duty and made whole for the period of AWOL, suspension or removal, the employee may be eligible for administrative leave for the National Day

of Observance if the period of suspension or removal for which the employee is considered to have been made whole includes the National Day of Observance. Such determination will be made by counting back consecutive days from the last day of the suspension or removal to determine if the employee had been made whole for the National Day of Observance.

10. Where provisions in this Memorandum of Agreement provide for a day of administrative leave to be taken at a future date, such leave must be granted and used within six months of the National Day of Observance or by the end of the Fiscal Year, whichever is later. However, administrative leave will not be granted to employees who are on extended leave for the entire period between the Day of Observance and six months from that date, or between the Day of Observance and the end of the Fiscal Year, whichever is later.

11. Administrative leave taken at a future date must be taken at one time.

12. Administrative leave to be taken at a future date may, at the employee's option, be substituted for previously scheduled but not used annual leave.

13. Administrative leave to be taken at a future date should be applied for by using the same procedures which govern the request and approval of annual leave consistent with Local Memoranda of Understanding.

Date: May 4, 2000

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: PTF Court Leave

1. Effective September 26, 1987, part-time flexible employees who have completed their probationary period shall be eligible for court leave as defined in Employee and Labor Relations Manual Part 516.1 and Part 516.31.

2. Appropriate provisions of the applicable handbooks and manuals shall be amended to carry out these changes consistent with the principles expressed in paragraphs 3, 4, and 5 below. The handbooks and manuals, including Part 516 of the Employee and Labor Relations Manual, shall be amended pursuant to Article 19, except that the sixty (60) day notice of such changes shall be waived.

3. A part-time flexible employee will be eligible for court leave if the employee would otherwise have been in a work status or annual leave status. If there is a question concerning the status, the part-time flexible employee will be eligible if the employee was in work status or annual leave status on any day during the pay period immediately preceding the period of court leave.

4 If eligibility is established under paragraph 3, the specific amount of court leave for an eligible part-time flexible employee shall be determined on a daily basis as set forth below:

a. If previously scheduled, the number of straight-time hours the Employer scheduled the part-time flexible employee to work;

b. If not previously scheduled. the number of hours the part-time flexible employee worked on the same service day during the service week immediately preceding the period of court leave;

c If not previously scheduled and if no work was performed on the same day in the service

week immediately preceding the period of court leave, the guarantee as provided in Article 8, Section 8, of the National Agreement, provided the part-time flexible would otherwise have been requested or scheduled to work on the day for which court leave is requested.

5. The amount of court leave for part-time flexible employees shall not exceed 8 hours in a service day or 40 hours in a service week.

Date: July 21, 1987

ARTICLE 11 HOLIDAYS

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 and part-time regular employees receive holiday pay. Part-time flexible employees do not. Instead, as explained under Section 7 below, 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 8 hours of holiday pay. Part-time regular employees scheduled to work a minimum of 5 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 5 days per service week receive holiday pay only if the holiday falls on a regularly scheduled workday (see ELM Section 434.422).

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 approved sick or annual leave on the employee's 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 (l 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 a holiday will be paid at the base straight-time rate for all hours worked, up to 8. Overtime is paid for work in excess of 8 hours. (ELM 434.531)

Regular employees who are required to work on Christmas day or their designated Christmas holiday are paid an additional 50% of their base hourly straight time rate up for up to eight hours of Christmas worked pay, in addition to their holiday worked pay. Part-Time Flexibles receive an additional 50% Christmas worked pay for hours actually worked on Christmas Day—December 25. (ELM 434.531).

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 (8) 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.

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 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 transitional employees 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 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, Section 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 LMU may contain a local "pecking order." In the absence of LMU provisions or a past practice concerning holiday assignments, the following minimum pecking order should be followed:

1) All casual and part-time flexible employees to the maximum extent possible, even if the payment of overtime is required.
2) All full-time 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) Transitional employees
4) All full-time 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 regulars who possess the necessary skills and **have not** volunteered on what would otherwise be their non-scheduled day—by inverse seniority.
6) Full-time regulars 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 LMU 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".

Holiday Schedule Posting: The provisions of Section 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 8 hours. However, ELM 434.533(b) provides that:

> **ELM 434.533(b)** In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises which 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) will 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)."

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-00155)

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 supervi-

sion 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 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, 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.

Note: 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 flexibles (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, Section 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."

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 (l/2) times the employee's regular straight time hourly rate for each hour worked up to eight (8) hours.

Both Section 1 and Section 7 of Article 11 provide that part-time flexible employees do not receive pay for holidays. Instead, Section 7 provides

that the holiday pay that regular carriers receive is "built into" the regular hourly rate for part-time flexibles. 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 Section 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 80 hours is exactly equivalent to a regular employee's pay for ten holidays.

For example: Effective November 18, 2000, a Grade 1, Step A full-time regular carrier's annual salary was $31,470. Dividing this by 2080 results in a straight-time hourly rate for a full-time regular in that grade and step of $15.13. However, dividing the same number by 2000 results in a straight-time hourly rate for a Grade 1, Step A part-time flexible of $15.74.

ARTICLE 12 PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

12.1.A **Section 1. Probationary Period**

A. 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.

Probationary Employees: 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.

None of the provisions of Article 12 apply to transitional employees. Note, however, that they also serve a "probationary period" under the terms of the Arbitration Award establishing Transitional Employees. The award states in this regard that they "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."

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. See National Arbitrator Shyam Das, Q98C-4Q-C 99251456, September 10, 2001, C-22547.

ELM Exhibit 365.23 11.A.1.a) 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 requirement."

12.1.B 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, Section 1 requiring that non-probationary employees may only be disciplined for "just cause".

12.1.C

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 do not have "seniority" for any purpose. For example, they may not opt for temporarily vacant duty assignments under the provisions of Article 41, Section 2.B. However, 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.

12.1.D

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 does not apply to transitional employees. The Step 4 settlement F90N-4F-D 94022367, January 4, 1995 (M-01202) provides that:

> When an NALC transitional employee has completed a previous 359-day term of employment in the same office and in the same position, a termination for cause during the first 90 work days (or 120 calendar days, whichever comes first) of an immediately subsequent appointment is subject to the grievance-arbitration procedure.

12.2.A

Section 2. Principles of Seniority

A. Except as specifically provided in this Article, the principles of seniority are established in the craft Articles of this Agreement.

The language provides that the seniority rules contained in Article 41 govern, except as specifically provided in Article 12. Whenever the seniority rules in Article 12 are inconsistent with the rules in Article 41, the rules in Article 41 prevail.

12.2.B

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.

This sub-section can only be understood when read in conjunction with Article 41, Sections 2.A.2 and 2.F.

Returning from a different installation: If an employee leaves an installation and later returns to the letter carrier craft, Article 12, Section 2.B is not applicable. Rather, Article 41, Section 2.A.2 requires that in such cases the employee begin a new period of seniority. The only exception to this rule is when letter carriers exercise the Article 12 retreat rights described under Section 5, below.

Returning to same installation: Article 12, Section 2.B and Article 41, Sections 2.F, read together, provide for three different situations concerning the seniority of carriers who leave the bargaining unit, never leave the installation, and who then return to the carrier craft on or after July 21, 1978:

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, Section 2.F again applies and the carrier would receive credit for the seniority he or she had prior to leaving the bargaining 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, Section 2.F. does not apply; rather Article 12, 2.B.2 takes care of the entire matter.)

CARRIERS RETURNING TO THE BARGAINING UNIT AT THE SAME INSTALLATION AFTER JULY 21, 1978

	Left craft before July 21, 1973	**Left craft on or after July 21, 1973**
Outside of bargaining unit two years or less	Not Applicable	Loses only time spent outside of the bargaining unit
Outside of bargaining unit two years or more	Loses only time spent outside of the bargaining unit	Begins a new period of seniority

12.3.A **Section 3. Principles of Posting**

A. To insure a more efficient and stable work force, an employee may be designated a successful bidder no more than five (5) times during the duration of this Agreement unless such bid:

1. is to a job in a higher wage level;

2. is due to elimination or reposting of the employee's duty assignment; or

3. enables an employee to become assigned to a station closer to the employee's place of residence.

Bidding Restrictions: Employees are entitled to be successful bidders five (5) times during the life of the Agreement without restriction. Six (6) or more successful bids are contingent upon meeting at least one of the listed criteria. The bidding exceptions listed in this section are to be applied from the first bid. See H1C-3W-C 44345 (M-00313) and H1N-5G-C 26398, May 2, 1985 (M-00305).

The period for counting bids during the term of the 1998 National Agreement began on November 21, 1998, the day after the expiration of the 1990 National Agreement. This is the same as was agreed upon at the expiration of prior National Agreements (See M-01238).

The bidding restrictions in this section apply only to those positions posted under the provisions of Article 41, Section 1.B.2. They do not apply to opting under the provisions of Article 41, Section 2.B, bidding under the provisions of Article 41.3.O, restricted bidding under the provisions of Article 12.5.C.4 or to positions applied for under the provisions of Article 25. See Step 4 H1N-1E-C 25953, May 21, 1984 (M-00513).

12.3.B

B. Specific provisions for posting for each craft are contained in the craft posting provisions of this Agreement.

This section provides that with the exception of the bidding restrictions in Article 12, Section 3.A, postings and bidding are governed by the provisions of Article 41.

Introduction and Overview:

Article 12, Sections 4 and 5—Excessing and Withholding

The provisions of Article 12 of the 1998 National Agreement are the same as those in the 1994 National Agreement. Despite the fact that NALC negotiated singly in 1998, the parties agreed to leave the provisions of Article 12 unchanged in order to reflect their understanding that there was to be no change in their application. As a result, Article 12, Sections 4 and 5 still contain references to other bargaining units and have entire sections that have no application in the letter carrier craft. The sections that do not apply to the letter carrier craft will be specifically identified below.

Viewed from a broad perspective, the excessing provisions of Article 12 are intended to protect career postal employees by providing a mecha-

nism for reducing the number of career employees faster than is possible through normal attrition. These provisions are inherently complicated since they were negotiated to be applied in a variety of different situations. The Article 12 excessing provisions fall into two main sections: Article 12, Sections 4, 5.A and 5.B contain the general principles that apply to all excessing situations. Article 12, Section 5.C contains the various provisions that apply in specific excessing situations.

Superseniority: The excessing provisions of Article 12, Sections 4 and 5 must be read in conjunction with the "superseniority" provisions of Article 17, Section 3, which provide in pertinent part:

> 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.

The superseniority rights of stewards supersede the provisions of Article 12. Thus, stewards are the last to be excessed from a section, the craft or an installation regardless of their seniority or their full or part-time status. See Arbitrator Britton H7N-5C-C 17075, July 27, 1988 (C-08504) and Step 4 H1N-2B-C 7422, October 25, 1983 (M-00077).

12.4.A **Section 4. Principles of Reassignments**

A. A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below.

Article 12, Section 4.A: This section is applicable to all excessing situations. It states the general rule, repeated in Section 5.B.1 below, that the dislocation and inconvenience to excessed employees must be kept to a minimum. To accomplish this Article 12, Section 5.C identifies the different circumstances under which excessing may occur and the correct procedures in each.

- Where applicable, management must seek to excess employees to another section in the same craft and installation under the provisions of Article 12, Section 5.C.4.b.
- Next, management must seek to excess employees to another craft in the same installation under the provisions of Article 12, Section 5.C.5.a(4).
- Then, management must seek to excess employees to same craft in another installation within 100 miles of the losing installation under the provisions of Article 12, Section 5.C.5.b(1).
- Finally, management may then seek to excess employees to another craft in another installation under the provisions of Article 12, Section 5.C.5.b(2).

For example, it is a violation for management to excess a clerk to the carrier craft in another installation under the provisions of Article 12, Section 5.C.5.b(2) when it could instead have excessed the clerk to a clerk craft position in another installation within 100 miles of the losing installation under the provisions of Article 12, Section 5.C.5.b(1).

12.4.B

B. When a major relocation of employees is planned in major metropolitan areas or due to the implementation of national postal mail networks, the Employer will apply this Article in the development of the relocation and reassignment plan. At least 90 days in advance of implementation of such plan, the Employer will meet with the Unions at the national level to fully advise the Unions how it intends to implement the plan. If the Unions believe such plan violates the National Agreement, the matter may be grieved.

Such plan shall include a meeting at the regional level in advance (as much as six months whenever possible) of the reassignments anticipated. The Employer will advise the Unions, based on the best estimates available at the time, of the anticipated impact; the numbers of employees affected by craft; the locations to which they will be reassigned; and, in the case of a new installation, the anticipated complement by tour and craft. The Unions will be periodically updated by the Region should any of the information change due to more current data being available.

Article 12, Section 4.B: This section is administered at the national level with the assistance of the national business agents in the affected regions. Any branches impacted by such a "major relocation" will be kept informed through the office of the national business agent.

12.4.C

C. When employees are excessed out of their installation, the Union at the national level may request a comparative work hour report of the losing installation 60 days after the excessing of such employees.

If a review of the report does not substantiate that business conditions warranted the action taken, such employees shall have their retreat rights activated. If the retreat right is denied, the employees have the right to the grievance-arbitration procedure.

See NALC Material

Comparative Work Hour Report: Since the contract requires that *Comparative Work Hour Reports* must be requested at the national level, the office of the NALC Vice President should be contacted whenever a report is requested.

12.4.D

D. In order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation. The junior full-time employee who is being excessed has the option of reverting to part-time flexible status in his/her craft, or of being reassigned to the gaining installation.

Whenever management proposes to excess letter carriers out of an installation, or excess employees, regardless of craft, from another installation into the letter carrier craft, all casual employees in the losing installation must first be separated "to the extent possible."

A junior full-time employee always has the option of voluntarily reverting to part-time flexible status in his/her own craft and installation rather than being excessed to another installation. However, the Postal Service may never require an employee to revert to part-time flexible status in such circumstances.

12.5.A **Section 5. Reassignments**

A. Basic Principles and Reassignments

Article 12, Sections 5.A.1-8 are merely a table of contents for the appli cation of Article 12, Section 8.5.C. As indicated below, each of the numbered sections in Article 12, Section 5.A 1-8 refers to a specific section of Article 12, Section 5.C.

12.5.A.1 When it is proposed to:
l. Discontinue an independent installation;

The reference is to Article 12, Section 5.C.1.

12.5.A.2 2. Consolidate an independent installation (i.e., discontinue the independent identity of an installation by making it part of another and continuing independent installation);

The reference is to Article 12, Section 5.C.2.

12.5.A.3 3. Transfer a classified station or classified branch to the jurisdiction of another installation or make an independent installation;

The reference is to Article 12, Section 5.C.3.

12.5.A.4 4. Reassign within an installation employees excess to the needs of a section of that installation;

The reference is to Article 12, Section 5.C.4.

12.5.A.5 5. Reduce the number of regular work force employees of an installation other than by attrition;

The reference is to Article 12, Section 5.C.5.

12.5.A.6 6. Centralized mail processing and/or delivery installation (Clerk Craft only);

The reference is to Article 12, Section 5.C.6 which does not apply to the letter carrier craft.

12.5.A.7 7. Reassignment—motor vehicles;

The reference is to Article 12, Section 5.C.7 which does not apply to the letter carrier craft.

12.5.A.8 8 . Reassignment—part-time flexibles in excess of quota; such actions shall be subject to the following principles and requirements.

The reference is to Article 12, Section 5.C.8.

12.5.B.1 **B. Principles and Requirements**
l. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

This section repeats the general rule contained in Article 12, Section 4.A. See Section 4.A, above, for a complete explanation.

12.5.B.2 2. The **Vice Presidents Area Operations** shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned.

Withholding full and part-time vacancies under this provision is not merely a management right, it is an obligation in order to keep "dislocation and inconvenience" to full-time and part-time flexible employees to the minimum consistent with the needs of the service. National Arbitrator Gamser, wrote in NC-E-16340, December 7, 1979 (C-5904) as follows:

> There is no question that [the] National Agreement imposed upon management **an obligation to anticipate dislocations which might occur and to withhold full-time vacancies** for the purpose of preserving as many opportunities for regular full-time employees to avoid the dislocation of moving out of the area by bidding into such full-time positions when they were forced out of their regular positions. Such a requirement was agreed to by the parties to several previous national negotiations, regardless of the craft or crafts represented on the union side of the bargaining table, because both labor and management recognized that full-time employees, in this instance, were members of a career work force, with tenure and stability of employment to be protected wherever possible, with rights which superseded those with a less protected career status regardless of craft. That is obviously why the provisions of the earlier Article XII and those of Appendix A, pertinent to this proceeding, as well as those of the present Article XII, did not impose a restriction upon the Area Postmaster General to withhold vacant full time positions only for the benefit and protection of employees who are members of the same craft as that in which the vacancy exists. (Emphasis added)

Thus, it is a violation of the National Agreement for management to fail to withhold positions under the provisions of Article 12, Section 5.B.2 when it can reasonably be anticipated that there will be a need to excess employees. If, for example, a letter carrier is excessed to another installation because management failed to withhold a position in the carrier's own installation even though the need for excessing could reasonably have been anticipated, a contract violation has occurred.

Length of withholding: There is no established contractual time limit on the length of time management may withhold positions. Rather, Arbitrator Gamser wrote in case NC-E-16340, December 7, 1979 (C-5904) that the parties must apply "a rule of reason based upon the facts and circumstances then existing." Whether management has been reasonable in a particular case depends on the full facts and circumstances. Gamser held that the Postal Service had not violated the National Agreement by withholding letter carrier positions for approximately one year.

Number of withheld positions: Management may not withhold more positions than are reasonably necessary to accommodate any planned excessing. Article 12, Section 5.B.2 only authorizes management to withhold "sufficient **...** positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned."

There are no blanket rules that can be used to determine whether management is withholding an excessive number of positions, or withholding positions for an excessive period of time. Rather, each situation must be examined separately based upon local fact circumstances. Generally, this involves calculating the number of positions that will be reduced, the length of time over which the reductions will occur and then determining whether the reductions will occur faster than can be accommodated by normal attrition.

Withholding positions for excessing is only justified when positions in the losing craft or installation must be reduced faster than can be accomplished through normal attrition. Projections of anticipated attrition must take into account not only local historical attrition data, but also the age composition of the employees. Installations with a high percentage of employees approaching retirement age can reasonably anticipate higher attrition than installations with younger employees. Thus accurate projections require an examination of the local fact circumstances rather than the mere application of a national average attrition rate.

- Once management has determined that withholding is necessary, part-time flexibles should not be converted to full-time status within the area of withholding until management has withheld sufficient authorized positions.
- Management may not withhold Carrier Technician positions in anticipation of excessing employees from another craft. Article 12, Sections 5.B.9, 5.C.5.a(4) and 5.C.5.b(2) require that when employ-

ees are excessed into another craft, they must meet the minimum qualifications for the position. The minimum qualification standards for Carrier Technician positions include one year of experience as a city carrier (See Qualification Standards for Carrier Technician—Level 6: 2310-02). Clerks can not meet the minimum experience requirements for Carrier Technician positions except when former letter carriers will be excessed back into the letter carrier craft.

- Management may not withhold letter carrier positions in anticipation of excessing employees from lower level positions. The provisions of Article 12, Sections 5.C.5.a(4) and 5.C.5.b(2) specifically require that when excess employees are excessed to other crafts it must be to positions in the **same or lower level**.
- 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 (Prearbitration Settlement F90N-4F-C 93022407, July 18, 2000, M-01432).

12.5.B.3 3. No employee shall be allowed to displace, or "bump" another employee, properly holding a position or duty assignment.

Excessed employees may normally be placed only in residual vacancies or withheld assignments. This includes vacant or withheld assignments that have been opted for under the provisions of Article 41, Section 2.B. Excessed employees are never allowed to displace or bump the incumbent employees in bid positions.

When two or more employees are excessed into the same unit at the same time, or when there are more vacant or withheld positions than employees being excessed into a unit, management must comply with the provisions of Article 41, Section 1.A.7 by allowing the excessed employees to exercise their seniority.

12.5.B.4 4. Unions affected shall be notified in advance (as much as six (6) months whenever possible), such notification to be at the regional level, except under A.4 above, which shall be at the local level.

Advance notice. It is a violation to excess employees without advance notice to the Union. NALC is entitled to advance notice whenever a letter carrier is excessed or whenever an employee from another craft is excessed into the letter carrier craft. Whenever possible, as much as six months advance notice must be made to the national business agent except in those cases which concern the reassignment to the same craft within an installation of employees excess to the needs of a section of that installation (See Article 12, Section 5.C.4, below). In these cases notification must be made to the local union.

12.5.B.5 5. Full-time and part-time flexible employees involuntarily detailed or reassigned from one installation to another shall be given not less than 60 days advance notice, if possible. They shall receive moving, mileage, per diem and reimbursement for movement of household goods, as appropriate, if legally payable, as governed by the standardized Government travel regulations as set forth in **the applicable** Handbook.

Article 12, Section 5.B.5 establishes two separate rights:

- Full-time and part-time flexible employees involuntarily *detailed or reassigned* from one installation to another shall be given not less than 60 days advance notice, "if possible". Note that this provision applies not only to those employees who are involuntarily "reassigned" or excessed from one installation to another, but also to *employees who are temporarily detailed* on an involuntary basis. Employees are to be given 60 days advance notice except in very exceptional circumstances.
- Eligible excessed employees receive moving, mileage, per diem and reimbursement for movement of household goods in accordance with the regulations contained in the applicable Handbook. Currently the regulations are in the *Handbook F-12, Relocation Policy*.

12.5.B.6 6. Any employee volunteering to accept reassignment to another craft or occupational group, another branch of the Postal Service, or another installation shall start a new period of seniority beginning with such assignment, except as provided herein.

Section 5.B.6: This provision is consistent with the provisions of Article 41, Section 2.G.

12.5.B.7 7. Whenever changes in mail handling patterns are undertaken in an area including one or more postal installations with resultant successive reassignments of clerks from those installations to one or more central installations, the reassignment of clerks shall be treated as details for the first 180 days in order to prevent inequities in the seniority lists at the gaining installations. The 180 days is computed from the date of the first detail of a clerk to the central, consolidated or new installation in that specific planning program. If a tie develops in establishing the merged seniority roster at the gaining installation, it shall be broken by total continuous service in the regular work force in the same craft.

Section 5.B.7: This section does not apply to the letter carrier craft.

12.5.B.8 8. In determining seniority of special delivery messengers who received career status under Civil Service Regulation 3.101, that period of continuous service as a special delivery messenger prior to attaining career status shall be included.

Section 5.B.8: This section does not apply to the letter carrier craft.

12.5.B.9 9. Whenever in this Agreement provision is made for reassignments, it is understood that any full-time or part-time flexible employee reassigned must meet the qualification requirements of the position to which reassigned.

Section 5.B.9: The minimum qualification standards for Carrier Technician positions include one year of experience as a city carrier. If employees from other crafts do not meet this requirement, they may not be excessed into Carrier Technician positions. See also the discussion of withholding Carrier Technician positions under Article 12, Section 5.B.2, above.

12.5.B.10 10. Whenever the provisions of this Section establishing seniority are inconsistent with the provisions of the Craft Articles of this Agreement, the provisions of the Craft Articles shall prevail.

Section 5.B.10: This language requires that the craft article seniority provisions determine the seniority of employees excessed from one craft to another. Under the provisions of Article 41, Section 2.G employees from another craft excessed into the letter carrier craft begin a new period of seniority. They will be junior to all part-time flexibles, and not just one day junior to the junior full-time regular.

12.5.B.11 11. It is understood that any employee entitled hereunder to a specific placement may exercise such entitlement only if no other employee has a superior claim hereunder to the same position.

Section 5.B.11: This section states the self-evident. If two or more employees are entitled to "a specific placement", it must be given to the employee with the "superior claim". Seniority should be used to determine which employee has the "superior claim".

12.5.B.12 12. Surplus U.S. Postal Service employees from non-mail processing and non-mail delivery installations, regional offices, the U.S. Postal Service Headquarters or from other Federal departments or agencies shall be placed at the foot of the part-time flexible roll and begin a new period of seniority effective the date of reassignment.

Section 5.B.12: This provision is consistent with the provisions of Article 41, Section 2.G.

Additional Excessing Requirements

Excessing by Grade: When management proposes to excess full-time employees under the provisions of Article 12, Section 5.C, the contract provides that the junior full-time employee in the same grade level as the

excess position should be excessed. Thus, if management proposes to excess a Grade 1 letter carrier, the junior full-time Grade 1 letter carrier must be excessed, even if there is a more junior carrier in a Grade 2 Carrier Technician position.

Failure to Excess Full-Time Flexibles First: The Memorandum of Understanding entitled Maximization/Full-time Flexibles provides that where a part-time flexible has performed letter carrier duties in an installation at least 40 hours a week, 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time carrier status. The letter of intent implementing this memorandum states in relevant part:

> 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.

This means that when management proposes to excess full-time employees under the provisions of Article 12, Section 5.C, all full-time flexibles must be excessed before management may excess any full-time regulars. This rule applies even in cases where a full-time regular is junior to a full-time flexible. In order to avoid the possibility of being excessed before more junior employees, full-time flexibles should be advised to bid on all full-time letter carrier assignments that are posted for bids.

Failure to Separate Transitional Employees: Management is required to separate all Transitional Employees prior to excessing any letter carriers except where "management can demonstrate that the work cannot be performed on a full-time basis in compliance with the requirements of the National Agreement." This is required by the September 17, 1992 TE memorandum which states:

> A full-time letter carrier may not be excessed and the resulting vacancy filled by a TE, except where management can demonstrate that, as a result of legitimate operational changes, there is insufficient work to continue to support a full-time position. For example, management may not abolish a full-time router position and excess the full-time letter carrier and hire or assign one or more TE's to perform the work of the abolished position, **unless management can demonstrate that the work cannot be performed on a full-time basis in compliance with the requirements of the National Agreement**. (Emphasis added)

12.5.C C. Special Provisions on Reassignments

In addition to the general principles and requirements above specified, the following specific provisions are applicable:

12.5.C.1.a 1. **Discontinuance of an Independent Installation**

a. When an independent installation is discontinued, all full-time and part-time flexible employees shall, to the maximum extent possible, be involuntarily reassigned to continuing postal positions in accordance with the following:

b. Involuntary reassignment of full-time employees with their seniority for duty assignments to vacancies in the same or lower level in the same craft or occupational group in installations within 100 miles of the discontinued installation, or in more distant installations, if after consultation with the affected Unions, it is determined that it is necessary. The Postal Service will designate such installations for the reassignment of excess full-time employees. When two or more such vacancies are simultaneously available, first choice of duty assignment shall go to the senior employee entitled by displacement from a discontinued installation to such placement.

c. Involuntary reassignment of full-time employees for whom consultation did not provide for placement under C.1.b above in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level with permanent seniority for duty assignments under (1) and (2) below, whichever is lesser:

(1) One day junior to the seniority of the junior full-time employee in the same level and craft or occupation in the installation to which assigned, or

(2) The seniority the employee had in the craft from which reassigned.

Seniority: The stated seniority rule is inconsistent with Article 41, Sec tion 2.G. Therefore, in accordance with Article 12, Section 5.B.10, the correct seniority under this particular sub-section is that such employees, when reassigned to the letter carrier craft, begin a new period of seniority in accordance with Article 41, Section 2.G.

12.5.C.1.d

d. Involuntary reassignment of part-time flexible employees with seniority in any vacancy in the part-time flexible quota in the same craft or occupational group at any installation within 100 miles of the discontinued installation, or in more distant installations, if after consultation with the affected Unions it is determined that it is necessary, the Postal Service will designate such installations for the reassignment of the part-time flexible employees.

The term “quota” in this section is obsolete (Arbitrator Das, H7C-NA-C-82, March 21, 2000, C-20485). It comes from an long discontinued staffing practice requiring one part-time flexible employee for every five regulars. There are no longer any “quotas”. Rather, staffing levels are now governed by the provisions of Article 7, Section 3.

12.5.C.1.e

e. Involuntary reassignment of part-time flexible employees for whom consultation did not provide for placement under C.1.d above in other crafts or occupational groups in which they meet minimum qualification at the same or lower level at the foot of the existing part-time flexible roster at the receiving installation and begin a new period of seniority.

f. Full-time employees for whom no full-time vacancies are available by the time the installation is discontinued shall be changed to part-time flexible employees in the same craft and placed as such, but shall for six months retain placement rights to full-time vacancies developing within that time within any installation within 100 miles of the discontinued installation, or in more distant installations, if after consultation with affected Unions it is necessary, U.S. Postal Service will designate such installations for the reassignment of excess full-time employees on the same basis as if they had remained full-time.

Obsolete Section: This section predates and may be inconsistent with the no-layoff provisions of Article 6 and with statutory protections given preference eligible employees.

12.5.C.1.g

g. Employees, full-time or part-time flexible, involuntarily reassigned as above provided shall upon the reestablishment of the discontinued installation be entitled to reassignment with full seniority to the first vacancy in the reestablished installation in the level, craft or occupational group from which reassigned.

Retreat Rights: As in the case of employees excessed under other provisions of Article 12, full- and part-time employees excessed under the provisions of Article 12, Section 5.C.1 have "retreat rights". In the event a discontinued installation is reestablished, excessed employees are entitled to reassignment with full seniority to the first vacancy in the reestablished installation in the level, craft or occupational group from which they were reassigned. These retreat rights are terminated if excessed employees fail to accept the first available vacancy. However, if management fails to inform an employee with retreat rights of an available vacancy, the retreat rights are not terminated.

12.5.C.2

2. Consolidation of an Independent Installation

Consolidation of an independent installation is defined in Article 12, Section 5.A.2 , above, as to "discontinue the independent identity of an installation by making it part of another and continuing independent installation".

12.5.C.2.a

a. When an independent postal installation is consolidated with another postal installation, each full-time or part-time flexible employee shall be involuntarily reassigned to the continuing installation without loss of seniority in the employee's craft or occupational group.

Note that Article 30, Section E provides for a new period of negotiations concerning the Local Memorandum of Understanding when installations are consolidated.

12.5.C.2.b

b. Where reassignments under 2.a, preceding, result in an excess of employees in any craft or occupational group in the continuing installa-

tion, identification and placement of excess employees shall be accomplished by the continuing installation in accordance with the provisions of this Agreement covering such situations.

c. If the consolidated installation again becomes an independent installation, each full-time and part-time flexible employee whose reassignment was necessitated by the previous consolidation shall be entitled to the first vacancy in the reestablished installation in the level and craft or occupational group held at the time the installation was discontinued.

Retreat Rights: As in the case of employees excessed under other provisions of Article 12, full- and part-time employees excessed under the provisions of Article 12, Section 5.C.1 have "retreat rights". In the event a consolidated installation again becomes independent, excessed employees are entitled to reassignment with full seniority to the first vacancy in the reestablished installation in the level, craft or occupational group from which they were reassigned. These retreat rights are terminated if they fail to apply for the first available vacancy. However, if management fails to inform an employee with retreat rights of an available vacancy, the retreat rights are not terminated.

12.5.C.3.a

3. **Transfer of a Classified Station or Classified Branch to the Jurisdiction of Another Installation or Made an Independent Installation**

a. When a classified station or classified branch is transferred to the jurisdiction of another installation or made an independent installation, all full-time employees shall at their option remain with the classified station or classified branch without loss of seniority, or remain with the installation from which the classified station or classified branch is being transferred.

This section should be read in conjunction with Article 12, Section 5.C.5.b.1(a) which provides that when routes are transferred from one installation to another, the full-time letter carriers whose routes are transferred have the option of transferring with their routes without loss of seniority.

12.5.C.3.b

b. A realistic appraisal shall be made of the number of employees by crafts or occupations who will be needed in the station after transfer, and potential vacancies within these requirements created by the unwillingness of employees to follow the station to the new jurisdiction shall be posted for bid on an office-wide basis in the losing installation.

c. If the postings provided in paragraph 3.b, preceding, do not result in sufficient employees to staff the transferred classified station or classified branch, junior employees, by craft or occupational group on an installation-wide seniority basis in the losing installation, shall be involuntarily reassigned to the classified station or classified branch

and each employee thus involuntarily reassigned shall be entitled to the first vacancy in such employee's level and craft or occupational group in the installation from which transferred.

Retreat Rights: As in the case of employees excessed under other provisions of Article 12, full- and part-time employees excessed under the provisions of this section have "retreat rights" to the first vacancy in such employee's level and craft or occupational group in the installation from which transferred. These retreat rights are terminated if they fail to accept the first available vacancy. However, if management fails to inform an employee with retreat rights of an available vacancy, the retreat rights are not terminated.

12.5.C.4

4. **Reassignment Within an Installation of Employees Excess to the Needs of a Section**

   a. The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If no sections are established immediately by local negotiations, the entire installation shall comprise the section.

   b. Full-time employees, excess to the needs of a section, starting with that employee who is junior in the same craft or occupational group and in the same level assigned in that section, shall be reassigned outside the section but within the same craft or occupational group. They shall retain their seniority and may bid on any existing vacancies for which they are eligible to bid. If they do not bid, they may be assigned in any vacant duty assignment for which there was no senior bidder in the same craft and installation. Their preference is to be considered if more than one such assignment is available.

   c. Such reassigned full-time employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding. Such bidding in the section is limited to employees in the same salary level as the vacancy. Failure to bid for the first available vacancy will end such retreat right. The right to retreat to the section is optional with the employee who has retreat rights with respect to a vacancy in a lower salary level. Failure to exercise the option does not terminate the retreat rights in the salary level in which the employee was reassigned away from the section. In the Clerk Craft, an employee may exercise the option to retreat to a vacancy in a lower salary level only to an assignment for which the employee would have been otherwise eligible to bid.

   d. The duty assignment vacated by the reassignment of the junior full-time employee from the section shall be posted for bid of the full-time employees in the section. If there are no bids, the junior remaining unassigned full-time employee in the section shall be assigned to the vacancy.

Excessing from a Section: Article 12, Section 5.C.4 provides for special rules when employees are excessed from a section. These rules *are only applicable* when a Local Memorandum of Understanding identifies separate sections within an installation for excessing purposes as authorized by Article 30, Section B.18. If a Local Memorandum of Understanding *does not identify separate sections* for excessing purposes, then Article 12, Section 5.C.4(a) applies and the entire installation is considered a section.

If a Local Memorandum of Understanding *does identify separate sections* for excessing purposes, then the special rules in Article 12, Sections 5.C.4(b) and (c) will apply whenever management proposes to reassign letter carriers within an installation who are excess to the needs of one of the defined sections. These rules give excessed letter carriers "retreat rights" to the first residual vacancy in the same grade that occurs in the section. Failure to bid on the first available vacancy at the former grade level in the section ends such retreat rights.

In order to implement these retreat rights, Article 12, Section 5.C.4 provides that as long as an excessed employee has retreat rights to the section, bidding for vacant duty assignments *in the grade level* from which the employee was excessed is subject to the following rules:

- Bidding is limited to employees in the section even if, for example, the LMU ordinarily provides for installation-wide bidding.
- Bidding for positions in the grade from which the employee was excessed is limited to employees in that grade. For example, if a Grade 2 Carrier Technician is excessed from a section, only Grade 2 letter carriers from the section may bid on Carrier Technician vacancies in the section.

The scope of postings under the provisions of Article 41.3.O can also be affected when a Local Memorandum of Understanding identifies sections for excessing purposes. National Arbitrator Snow ruled in B90N-4B-C-92021294, March 22, 1996 (C-15248), that if a branch has installation-wide bidding for vacant or newly created duty assignments, then assignments made available for bids under the provisions of Article 41.3.O should also be posted on an installation-wide basis. An exception to this general rule occurs if a branch has defined separate sections for excessing purposes and if an employee has been excessed from the section under the provisions of Article 12 Section 5.C.4. Since Article 12.5.C.4(c) provides the reassigned employee with retreat rights in such cases, as long as an employee has such retreat rights to the section, bidding under the provisions of Article 41.3.O is also limited to employees from the section at the same salary level as the vacancy.

12.5.C.5.a(1)

5. Reduction in the Number of Employees in an Installation Other Than by Attrition

a. Reassignments within installation. When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:

(1) Shall determine by craft and occupational group the number of excess employees;

(2) Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals;

Casuals: In HOC-NA-C-12, July 27, 2001 (C-22368), National Arbitrator Snow held that the language of Article 12.5.C.5.a (2) allows the Employer discretion in separating casuals to the extent the discretion is exercised 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." See award at page 8.

12.5.C.5.a(3)

(3) Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours;

PTF Hours: This section requires that management must "to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours" prior to excessing employees.

12.5.C.5.a(4)

(4) Shall identify as excess the necessary number of junior full-time employees in the salary level, craft, and occupational group affected on an installation-wide basis within the installation; make reassignments of excess full-time employees who meet the minimum qualifications for vacant assignments in other crafts in the same installation; involuntarily reassign them (except as provided for letter carriers and special delivery messengers and vehicle service employees in Section C.5.b below) in the same or lower level with seniority, whichever is the lesser of:

(a) One day junior to the seniority of the junior full-time employee in the same level and craft or occupational group in the installation to which assigned, or

(b) The seniority the employee had in the craft from which reassigned.

Seniority: National Arbitrator Snow held in W7N-4Q-C 10845, December 19, 1991 (C-11528) that the stated seniority rule is inconsistent with Article 41, Section 2.G. Therefore, in accordance with Article 12, Section 5.B.10, the correct seniority under this particular sub-section is that such employees, when reassigned to the letter carrier craft, begin a new period of seniority in accordance with Article 41, Section 2.G.

This provision is mandatory. Employees excessed to another craft under the provisions of Article 12, Section 5.C.5.a must be returned to the craft from which they were excessed at the first available opportunity.

12.5.C.5.a(6)

(6) When returned, the employee retains seniority previously attained in the craft augmented by intervening employment in the other craft.

When an employee is returned to his/her original craft as required by Article 12, Section 5.C.5.a(5), above, seniority is reestablished as if the employee had served continuously in the original craft and had never been excessed.

12.5.C.5.a(7)

(7) The right of election by a senior employee provided in paragraph b(3), below is not available for this cross-craft reassignment within the installation.

Under the provisions of Article 12, Section 5.C.5.b(3), below, a senior employee may voluntarily elect to be reassigned to another installation in lieu of a more junior employee from the same craft subject to reassignment. This section makes clear that this right does not apply to reassignments across craft lines within an installation.

12.5.C.5.b

b. Reassignments to other installations after making reassignments within the installation:

(1) Involuntarily reassign such excess full-time employees starting with the junior with their seniority for duty assignments to vacancies in the same or lower level in the same craft or occupational group in installations within 100 miles of the losing installation, or in more distant installations if after consultation with the affected Union it is determined that it is necessary, the Postal Service will designate such installations for the reassignment of excess full-time employees. However:

(a) Whenever full-time Grade 1 letter carrier routes are transferred from one installation to another, the full-time letter carriers whose complete routes are transferred shall have the option of transferring with their routes with their seniority.

Transfer of Routes: This section may appear out of place since it does not concern excessing. Its purpose is to reduce or eliminate the need for excessing. It provides that when routes are transferred from one installation to another, the full-time letter carriers whose routes are transferred have the option of transferring with their routes without loss of seniority.

12.5.C.5.b(1)(b)

(b) Whenever full-time or part-time motor vehicle craft assignments are discontinued in an installation and there is an excess in a position designation and salary level, the excess shall be adjusted to the maximum extent possible by making voluntary reassignments to vacant motor vehicle craft positions in installations within 100 miles unless the employee applies for a vacancy in a more distant installation. Senior qualified applicants for such vacant positions shall be reassigned. When reassignment is in the same designation and salary level, the reassigned employee retains his/her seniority.

(c) When the entire special delivery messenger unit is moved from one independent installation to another and all special delivery territory is transferred, the special delivery messengers will be reassigned in the gaining unit with full seniority credit for all seniority gained in the craft and installation. When less than the entire special delivery messenger unit is transferred and it is necessary to reassign one or more special delivery messengers to the gaining installation, senior special delivery messengers shall be given option for reassignment. If no special delivery messenger elects to be reassigned, the junior special delivery messenger shall be reassigned.

Sections 12.5.C.5.b(1)b and c do not apply to the letter carrier craft.

12.5.C.5.b(2)

(2) Involuntarily reassign full-time employees for whom consultation did not provide for placement under b(1) above in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level with permanent seniority for duty assignments whichever is lesser of:

(a) one day junior to the seniority of the junior full-time employee in the same level and craft or occupational group in the installation to which assigned, or

(b) the seniority he/she had in the craft from which reassigned.

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Seniority: The stated seniority rule is inconsistent with Article 41, Section 2.G. Therefore, in accord with Article 12, Section 5.B.10, the correct seniority under this particular sub-section is that such employees, when reassigned to the letter carrier craft, begin a new period of seniority in accordance with Article 41, Section 2.G.

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12.5.C.5.b(3)

(3) Any senior employee in the same craft or occupational group in the same installation may elect to be reassigned to the gaining installation and take the seniority of the senior full-time employee subject to involuntary reassignment. Such senior employees who accept reassignment to the gaining installation do not have retreat rights.

(4) When two or more such vacancies are simultaneously available, first choice of duty assignment shall go to the senior employee entitled by displacement from a discontinued installation to such placement.

(5) A full-time employee shall have the option of changing to part-time flexible in the same craft or occupational group in lieu of involuntary reassignment.

(6) Employees involuntarily reassigned under b(1) and (2) above, other than senior employees who elect to be reassigned in place of junior employees, shall be entitled at the time of such reassignment to file a written request to be returned to the first vacancy in the level, in the craft or occupational group in the installation from which reassigned, and such request shall be honored so long as the employee does not withdraw it or decline to accept an opportunity to return in accordance with such request.

Retreat Rights: As in the case of employees excessed under other provisions of Article 12, full- and part-time employees excessed under the provisions of Article 12, Section 12.5.C.5.b(1) and b(2) have "retreat rights". These retreat rights are terminated if they fail to accept the first available vacancy.

12.5.C.5.b(6) continued

In the Clerk Craft, an employee(s) involuntarily reassigned shall be entitled at the time of such reassignment to file a written request to return to the first vacancy in the craft and installation from which reassigned. Such request for retreat rights must indicate whether the employee(s) desires to retreat to the same, lower, and/or higher salary level assignment and, if so, what salary level(s). The employee(s) shall have the right to bid for vacancies within the former installation and the written request for retreat rights shall serve as a bid for all vacancies in the level from which the employee was reassigned and for all residual vacancies in other levels for which the employee has expressed a desire to retreat. The employee(s) may retreat to only those assignments for which the employee(s) would have been otherwise eligible to bid. If vacancies are available in a specified lower, higher or same salary level, the employee will be given the option. Failure to exercise retreat rights to the first available vacancy terminates such rights. Furthermore, employee(s) electing to retreat to a lower level assignment are not entitled to salary protection.

12.5.C.6

6. Centralized Mail, Processing and/or Delivery Installation (Clerk Craft Only)

a. When the operations at a centralized installation or other mail processing and/or delivery installation result in an excess of full-time clerks at another installation(s), full-time clerks who are excess in a losing installation(s) by reason of the change, shall be reassigned as provided in Section C.5.b. Reassignments of clerks shall be treated as details for the first 180 days to avoid inequities in the selection of preferred duty assignments by full-time clerks in the gaining installation.

b. Previously established preferred duty assignments which become vacant before expiration of the detail period must be posted for bid and awarded to eligible full-time clerks then permanently assigned in the gaining installation. Excess part-time flexible clerks may be reassigned as provided for in Section C.8.

c. All new duty assignments created in the gaining installation and all other vacant duty assignments in the centralized installation shall be posted for bid. One hundred eighty (180) days is computed from the date of the first detail of an employee. Bidding shall be open to all full-time clerks of the craft involved at the gaining installation. This includes full-time clerks assigned to the gaining installation.

d. When the centralized installation is a new one:

(1) Full-time clerks who apply for reassignment from the losing installation, shall be reassigned with their seniority.

(2) Reassignments shall be in the order of seniority and shall not exceed the number of excess full-time clerks in the losing installation.

(3) The provisions of 5.a, above, apply to reassign junior full-time excess clerks, with their seniority, when there are excess full-time clerks after the reassignment of senior full-time clerks who apply for reassignment.

Article 12.5.C.6 applies only to the clerk craft. National Arbitrator Snow held in I90N-4I-C-92057810, June 20, 1997 (C-16923), that the provisions of Article 12.5.C.6 do not alter the reassignment rules specified by Article 12.5.C.5 pursuant to which excess employees are reassigned across craft lines within the installation before being assigned to a different installation.

12.5.C.7

7. Reassignments - Motor Vehicle

a. When a vehicle maintenance facility is established to replace an auxiliary garage, full-time and part-time flexible craft positions in the gaining installation are to be posted in the losing installation for applications by full-time and part-time flexible employees, respectively. Senior qualified applicants shall be reassigned without loss of seniority, but not to exceed the number of excess employees in the losing installation.

b. When a vehicle maintenance facility is established to replace vehicle maintenance in a perimeter office, full-time and part-time flexible craft positions in the new maintenance facility shall be posted in the losing installation for applications by full-time and part-time flexible employees, respectively. Senior qualified applicants shall be reassigned without loss of seniority, but not to exceed the number of excess employees in the losing installation.

c. When vehicle operations are changed by transfer from one installation to another, new full-time and part-time flexible craft positions shall be posted for applications in the losing installation by full-time and part-time flexible employees in the craft, respectively. Senior qualified applicants shall be reassigned without loss of seniority, but not to exceed the number of excess employees in the losing installation.

d. After all reassignments have been made to the gaining installation, pursuant to Subsections a, b and c, the new full-time assignments in the gaining installation shall be posted for bids.

e. If, after establishment of a new installation, operations result in further excess at losing installation(s), the procedures in Subsections a, b, c and d, above, apply to reassign senior applicants from the losing installation(s) to positions in the new installation.

Article 12.5.C.7 applies only to the motor vehicle craft. The provisions of this section *do not* apply to letter carriers in VOMA positions. They remain members of the letter carrier craft. The provisions of this section are relevant to the letter carrier craft only to the extent that management must exhaust its requirements before it may excess motor vehicle craft employees into the letter carrier craft.

12.5.C.8

8. **Reassignment—Part-Time Flexible Employees in Excess of Quota (Other Than Motor Vehicle)**

Where there are part-time flexible employees in excess of the part-time flexible quota for the craft for whom work is not available, part-time flexibles lowest on the part-time flexible roll equal in number to such excess may at their option be reassigned to the foot of the part-time flexible roll in the same or another craft in another installation.

The term "quota" in this section is obsolete (Arbitrator Das, H7C-NA-C-82, March 21, 2000, C-20485). It comes from a long discontinued staffing practice requiring one part-time flexible employee for every five regulars. There is no longer any "quota". Rather, staffing levels are now governed by the provisions of Article 7, Section 3.

12.5.C.8.a

a. An excess employee reassigned to another craft in the same or another installation shall be assigned to the foot of the part-time flexible roll and begin a new period of seniority.

This provision is consistent with the provisions of Article 41, Section 2.G.

12.5.C.8.b

b. An excess part-time flexible employee reassigned to the same craft in another installation shall be placed at the foot of the part-time flexible roll. Upon change to full-time from the top of the part-time flexible roll, the employee's seniority for preferred assignments shall include the seniority the employee had in losing installation augmented by part-time flexible service in the gaining installation.

Questions concerning the seniority of part-time flexible letter carriers excessed into the letter carrier craft in another installation should be addressed to the parties' headquarters representatives.

12.5.C.8.c

c. A senior part-time flexible in the same craft or occupational group in the same installation may elect to be reassigned in another installation in the same or another craft and take the seniority, if any, of the senior excess part-time flexible being reassigned, as set forth in a and b, above.

This section permits a senior part-time flexible from the same installation to voluntarily take the place of a more junior part-time flexible being reassigned. If a part-time flexible from another craft is excessed into the letter carrier craft under the provisions of this section, he or she begins a new period of seniority under the provisions of Article 12, Section 5.C.8.a, above. If a part-time flexible letter carrier is excessed into the letter carrier craft at another installation under the provisions of this section, he or she takes the seniority the more junior employee would have been assigned under the provisions of 12.5.C.8.b, above.

12.5.C.8.d

d. The Postal Service will designate, after consultation with the affected Union, vacancies at installations in which excess part-time flexibles may request to be reassigned beginning with vacancies in other crafts in the same installation; then vacancies in the same craft in other installations; and finally vacancies in other crafts in other installations making the designations to minimize relocation hardships to the extent practicable.

e. Part-time flexibles reassigned to another craft in the same installation shall be returned to the first part-time flexible vacancy within the craft and level from which reassigned.

This provision is mandatory. Employees excessed to another craft under the provisions of Article 12, Section 5.C.8 must be returned to the craft from which they were excessed at the first available opportunity.

12.5.C.8.f

f. Part-time flexibles reassigned to other installations have retreat rights to the next such vacancy according to their standing on the part-time flexible roll in the losing installation but such retreat right does not extend to part-time flexibles who elect to request reassignment in place of the junior part-time flexibles.

g. The right to return is dependent upon a written request made at the time of reassignment from the losing installation and such request shall be honored unless it is withdrawn or an opportunity to return is declined.

Retreat Rights: Part-time employees excessed under the provisions of Article 12, Section 5.C.8 have "retreat rights" only if they make a written request at the time of reassignment from the losing installation. These retreat rights are terminated if they fail to accept the first available vacancy.

12.5.D **D. Part-Time Regular Employees**

Part-time regular employees assigned in the craft units shall be considered to be in a separate category. All provisions of this Section apply to part-time regular employees within their own category.

Part-time regular employees also may be excessed under the provisions of Article 12, Sections 4 and 5.

12.6 **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 acknowledgment shall be given in a timely manner.

Transfers: The provisions of Article 12, Section 6 must be read in conjunction with the Memorandum of Understanding on Transfers reprinted below.

The denial of transfer requests is a grievable matter. When the denial of a transfer request is grieved, the disputed decision is by the Postmaster of another installation. Nevertheless, any grievances concerning the denial of a transfer request must be filed with the aggrieved employee's immediate supervisor as required by Article 15, Section 2. Arbitrators from one region have the authority to order Postmasters in another region to accept a transfer request.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO,
National Association of Letter Carriers, AFL-CIO)

Re: Transfers

The parties agree that the following procedures will be followed when career Postal Employees request reassignment from Postal installations in one geographical area of the country to Postal installations in another geographical area. Local reassignments (reassignments within the same MSC, Division, or to adjacent MSCs or Divisions) are covered by the provisions of Section 2 of this memorandum.

The terms MSC and Division are obsolete. Wherever these terms appear in this memorandum, they should be understood as referring to USPS Districts. Thus, reassignments to the same District or to adjacent Districts are now considered "local" transfers and covered by Section 2 of the memorandum.

Transfer Memo 1.A

Section 1. Reassignments (Transfers) to other geographical areas.

A. Installation heads may continue to fill authorized vacancies first through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc., consistent with existing regulations and applicable provisions of the National Agreement.

The memorandum obligates management to give full consideration to transfer requests before seeking to fill vacancies with new hires from registers. However, it does not change existing regulations, such as those in the EL-311, concerning first filling vacancies through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc.

Transfer Memo 1.B

B. Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of positions requested. Such requests from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied. Local economic and unemployment conditions, as well as EEO factors, are valid concerns. When hiring from entrance registers is justified based on these local conditions, an attempt should be made to fill vacancies from both sources. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment at least one out of every four vacancies will be filled by granting requests for reassignment in all offices of 100 or more man-years if sufficient requests from qualified applicants have been received. In offices of less than 100 man-years a cumulative ratio of 1 out of 6 for the duration of the National Agreement will apply.

Transfer requests from qualified employees will not be unreasonably denied. However management may take into account local economic and unemployment conditions and EEO concerns to justify hiring from registers. Except in the **most unusual of circumstances**, if there are sufficient qualified applicants for reassignment, management must comply with the following minimums:

- In all offices of 100 or more workyears, at least one out of every four vacancies will be filled by granting requests for reassignment.
- In all offices of less than 100 workyears at least one out of every six vacancies during the duration of the National Agreement will be filled by granting requests for reassignment.

Transfer Memo 1.C

C. MSCs will maintain a record of the requests for reassignment received in the offices within their area of responsibility. This record may be reviewed by the Union on an annual basis upon request. Additionally, on a semiannual basis local Unions may

request information necessary to determine if a 1 out of 4 ratio is being met between reassignments and hires from the entrance registers in all offices of 100 or more man-years.

D. Managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. An employee must have an acceptable work, attendance, and safety record and meet the minimum qualifications for all positions to which they request reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. An employee must have at least one-year of service in their present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of one year, unless released by the installation head earlier, before being eligible to be considered for reassignment again, except in the case of an employee who requests to return to the installation where he/she previously worked. Employees serving under craft lock-in periods per the provisions of the National Agreement must satisfy those lock-ins prior to being reassigned to other installations.

In evaluating transfer requests managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. However, local managers may not add additional criteria for accepting transfer requests. For example, a policy of only accepting transfer requests from within the District would be a violation of the memorandum.

Evaluations must be fair, valid and to the point, with unsatisfactory work records accurately documented. They must be based upon an examination of the totality of an employee's individual work record. Evaluations based on the application of arbitrary standards such as a defined minimum sick leave balance do not meet this standard.

Except as otherwise provided, employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of one year. This "lock-in" provision is not the same as a "craft lock-in." There are no "craft lock-ins" in the letter carrier craft. Thus, the requirement concerning "employees serving under craft lock-in periods" is not applicable to letter carriers.

Transfer Memo 1.E

E. Installation heads considering employees for reassignment will contact the installation head of the losing installation and arrange for mutually agreeable reassignment and reporting dates. A minimum of thirty days' notice to the losing office will be afforded. Except in the event of unusual circumstances at the losing installations, reasonable time will be provided to allow the installation time to fill vacancies, however, this time should not exceed ninety days.

Read as a whole this section provides that "except in unusual circumstances at the losing installation" the reporting date at the new installation will be a minimum thirty days and should not be more than ninety days after a transfer request is approved.

Transfer Memo 1.F

F. Reassignment granted to a position in the same grade will be at the same grade and step. Step increase anniversaries will be maintained. Where voluntary reassignments are to a position at a lower level, employees will be assigned to the step in the lower grade consistent with Part 420 of the Employee and Labor Relations Manual.

In no case may an employee be required or requested to accept pay at a lower step as a condition for transfer. Employees' periodic step increases following a transfer continue exactly as they would have progressed had the employee not transferred, but instead remained in the original installation. Where voluntary reassignments are to a position at a lower level, for example when a Grade 2 Carrier Technician transfers to a Grade 1 letter carrier position, the employee's step and waiting period for the next step increase will be established in accordance with the normal rules in ELM Section 420.

Transfer Memo 1.G

G. Employees reassigned under these provisions will be reassigned consistent with the provisions of the appropriate craft article contained in the National Agreement. Employees will not be reassigned to full-time regular positions to the detriment of career part-time flexible employees who are available for conversion at the gaining installation. Seniority for employees transferred per this memorandum will be established consistent with the provisions of the National Agreement.

Seniority: The seniority of letter carriers voluntarily transferred to another installation is governed by Article 41, Section 2.G.3 which requires that they begin a new period of seniority. Consequently, they become part-time flexible employees upon transfer. A possible exception exists when transferring to an installation with no part-time flexible letter carriers. In such cases they may immediately be assigned to a full-time status. Also note that the seniority rule for transfers is different than the seniority rule for carriers who have completed mutual exchanges (see "Mutual Exchanges", below).

Transfer Memo 1.H

H. Relocation expenses will not be paid by the Postal Service incident to voluntary reassignment. Such expenses, as well as any resulting interview expenses, must be borne by employees.

All moving expenses must be borne by the employee who requested the transfer. If any time off is necessary to complete the move, it must be covered by annual leave or leave-without-pay.

Transfer Memo 1.I

I. Under no circumstances will employees be requested or required to resign, and then be reinstated in order to circumvent these pay provisions, or to provide for an additional probationary period.

Transferred employees should have continuous service and are not required to serve a new probationary period.

Transfer Memo 2.A

Section 2. Local Reassignments (Transfers)

A. For local reassignment(s), managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. An employee must have an acceptable work, attendance, and safety record and meet the minimum qualifications for all positions to which he/she requests reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. An employee must have at least eighteen months of service in his/her present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this paragraph must remain in the new installation for a period of eighteen months (unless released by the installation head earlier) before being eligible to be considered for reassignment again, except in the case of an employee who requests to return to the installation where he/she previously worked. Employees serving under craft lock-in periods per the provisions of the National Agreement must satisfy those lock-ins prior to being reassigned to other installations. Local transfers are included in the 1 out of 4 ratio.

The term "Local Reassignments" means reassignments to the same District or to adjacent Districts.

An important difference between local reassignments and reassignments to other geographical areas concerns the mandatory lock-in periods. The lock-in period for local reassignments is eighteen months (unless released by the installation head earlier) except in the case of an employee who requests to return to the installation where he/she previously worked. In contrast, the lock-in period for transfers to other geographical areas is one year. This "lock-in" provision is not the same as a "craft lock-in." There are no "craft lock-ins" in the letter carrier craft. Thus, the requirement concerning "employees serving under craft lock-in periods" is not applicable to letter carriers.

Transfer Memo 2.B

B. The provisions of Section l, paragraphs A, C, E, F, G, H and I are applicable to local reassignments.

C. In those instances where an employee can substantially increase the number of hours (8 hours or more per week) by

transferring to another installation and the employee meets the other criteria the lock-in period will be 12 months.

Date: July 21, 1987

Mutual Exchanges are exchanges of positions in the complement of different installations. Carriers do not exchange actual bid assignments since the vacated bid positions must be posted for bidding in accordance with the provisions of Article 41, Section 1 and the applicable Local Memorandums of Understanding. Regulations governing mutual exchanges are found in Handbook EL-311, Section 512 which states:

> **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.

These regulations contain the following significant restrictions:

- Part-time employees may only exchange positions with part-time employees and full-time employees with other full time-employees.
- Mutual exchanges must be between positions in the same grade. Thus, Grade 2 Carrier Technician may not exchange positions with Grade 1 letter carriers.
- An exchange of positions does not mean an exchange of bid assign ments, but only of positions in the complement

Mutual Exchanges—Seniority: Article 41, Section 2.E provides that when mutual exchanges are made between letter carriers, the carriers will retain their seniority or shall take the seniority of the other exchangee, whichever is the lesser. This is different than the seniority rule in Section Article 41, Section 2.G.3, which applies to other transfers, and which requires that the transferring employee begin a new period of seniority.

Mutual Exchanges—Full consideration: The provisions of the Transfer Memorandum requiring that installation heads afford “full consideration” to all reassignment requests apply to mutual exchanges just as to any other transfers. Such requests “will not be unreasonably denied”. In evaluating and responding to mutual exchange requests, installation heads should follow the criteria provided for in the Transfer Memorandum.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO
National Association of Letter Carriers, AFL-CIO)

Re: Articles 12 and 13

The parties hereby agree that the following amendments to Articles 12 and 13 shall become effective only in the event that the legality of the effect of reassignments made under these amendments is sustained by the M.S.P.B. and by a precedential decision of a court of competent jurisdiction.

Article 12, Section 5.B.10 (amendment indicated by underscoring):

10. Whenever the provisions of this Section establishing seniority are inconsistent with the provisions of the Craft Articles of this Agreement, the provisions of the Craft Articles shall prevail, except as provided in (a) (b) and (c) below with regard to assignment to and from the letter carrier craft.

    In reassignments between the clerk, motor vehicle services, special delivery and maintenance crafts the seniority provisions to Section 5 of this Article shall apply.

    In reassignments to or from the letter carrier craft, the following shall apply:

(a) If only one employee is reassigned, that employee's seniority in his/her original craft is compared to the seniority of the senior part-time flexible in the gaining craft. If the seniority of the reassigned employee is less than that of the senior part-time flexible, the reassigned employee reverts to part-time flexible status and the senior part-time flexible is promoted to regular. If the seniority of the reassigned employee is greater than that of the senior part-time flexible, the reassigned employee retains regular status.

(b) If more than one employee is reassigned, a merged seniority list is created of the employees reassigned—using the seniority such employees had in their former craft—and of the part-time flexible in the gaining craft. From this list a number of senior employees equal to the number of employees reassigned are either promoted to regular (in the case of part-time flexible in the gaining craft) or retain regular status (in the case of reassigned employees). Those reassigned employees, if any, with insufficient seniority to retain regular status revert to part-time flexible status.

(c) All reassigned employees must begin a new period of seniority in the craft to which reassigned whether such employees retain regular status or revert to part-time flexible status. However, employees who revert to part-time flexible status retain limited seniority for the sole purpose of re-promotion to regular status.

Article 13, Section F. I (amendment indicated by underscoring).

F. Seniority of an Employee Assigned to Another Craft.

1. Except as provided for in Section D.9., above, a full-time regular employee assigned to another craft or occupational group in the same or lower level in the same installation shall take the seniority for preferred tours and assignments, whichever is the lesser of (a) one day junior to the junior full-time regular employee in the craft or occupational group (b) retain the seniority the employee had in the employee's former craft.

    The above procedure shall not apply to reassignments to or from the letter carrier craft. In such situations the following procedure shall apply:

    (a) If only one employee is reassigned, that employee's seniority in his/her original craft is compared to the seniority of the senior part-time flexible in the

gaining craft. If the seniority of the reassigned employee is less than that of the senior part-time flexible, the reassigned employee reverts to part-time flexible status and the senior part-time flexible is promoted to regular. If the seniority of the reassigned employee is greater than that of the senior part-time flexible, the reassigned employee retains regular status.

(b) If more than one employee is reassigned, a merged seniority list is created of the employees reassigned—using the seniority such employees had in their former craft—and of the part-time flexibles in the gaining craft. From this list a number of senior employees equal to the number of employees reassigned are either promoted to regular (in the case of part-time flexibles in the gaining craft) or retain regular status (in the case of reassigned employees) Those reassigned employees, if any, with insufficient seniority to retain regular status revert to part-time flexible status.

(c) All reassigned employees must begin a new period of seniority in the craft to which reassigned whether such employees retain regular status or revert to part-time flexible status.

However, employees who revert to part-time flexible status retain limited seniority for the sole purpose of re-promotion to regular status.

Date: July 21, 1981.

ARTICLE 13 ASSIGNMENT OF ILL OR INJURED REGULAR WORKFORCE EMPLOYEES

The provisions of Article 13 govern voluntary requests for **light** duty work by employees who are temporarily or permanently incapable of performing their normal duties as a result of illness or injury.

The term "light duty" should not be confused with the term "limited duty". The term limited duty is not used in the National Agreement. Rather, the term limited duty was established by 5 Code of Federal Regulations, Part 353 —the O.P.M. regulation implementing 5. U.S.C. 8151(b), that portion of the Federal Employees' Compensation Act (FECA) pertaining to the resumption of employment following job-related injury or illness. USPS procedures regarding limited duty are found in Part 540 of the *Employee & Labor Relations Manual (ELM)*. Limited duty may be provided for an employee who is temporarily or permanently incapable of performing his/her normal duties as a result of a job-related compensable illness or injury. National Arbitrator Mittenthal held in H8N-5B-C 22251, November 14, 1983 (C-03855), that Article 13, Section 4.H applies to both light and limited duty situations (see below).

An employee who has suffered a compensable illness or injury may seek permanent light duty work through the procedures provided in Article 13. However, in most circumstances such employees will find the procedures and regulations provided in ELM Chapter 540 better suited to their needs. The limited duty provisions contained in ELM Section 540 will be discussed at the end of this article.

13.1.A **Section 1. Introduction**

A. Part-time **regular** schedule employees assigned in the craft unit shall be considered to be in a separate category. All provisions of this Article apply to part-time **regular** schedule employees within their own category.

Part-time regular schedule employees are in a category separate and apart from full- and part-time flexible employees.

13.1.B

B. The U.S. Postal Service and the Union recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

As discussed below, Article 30, Sections B.15, 16 and 17 provide for the identification of light duty assignments during local implementation. However, the fact that no agreement has been reached does not prevent an eligible employee from requesting available light duty.

13.2.A **Section 2. Employee's Request for Reassignment**

A. Temporary Reassignment

Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment. The request shall be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor stating, when possible, the anticipated duration of the convalescence period. Such employee agrees to submit to a further examination by a physician designated by the installation head, if that official so requests.

The following requirements apply to an employee seeking temporary reassignment to light duty work.

- Any full-time regular or part-time flexible employee may request temporary light duty, regardless of length of service.
- The request must be submitted in writing.
- The request must be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor.
- The employee bears any cost connected with the statement required under this section.
- The employee must agree to submit to a further examination by a physician designated by the installation head, if requested.
- The Postal Service will be responsible for any costs when it requests a second medical examination.
- The employee may specifically seek light duty or may seek "other assignment" within his/her medical limitations

13.2.B.1 **B. Permanent Reassignment**

1. Any ill or injured full-time regular or part-time flexible employee having a minimum of five years of postal service, or any full-time regular or part-time flexible employee who sustained injury on duty, regardless of years of service, while performing the assigned duties can submit a voluntary request for permanent reassignment to light duty or other assignment to the installation head if the employee is permanently unable to per-

form all or part of the assigned duties. The request shall be accompanied by a medical certificate from a physician designated by the installation head giving full evidence of the physical condition of the employee, the need for reassignment, and the ability of the employee to perform other duties. A certificate from the employee's personal physician will not be acceptable.

The following requirements apply to an employee seeking permanent reassignment to light duty work.

- An employee must have five years of postal service to be eligible to apply for permanent reassignment due to a non-job related injury or illness.
- Any full- or part-time employee, regardless of length of postal service, may choose to request permanent reassignment duty if unable to perform all or part of his/her assigned duties due to job related illness or injury instead of using the procedures in ELM Section 540.
- The request must be submitted in writing.
- The request must be accompanied by a medical statement from a physician designated by the installation head. Unlike the case in requests for temporary reassignment, a statement from the employee's own physician is not acceptable
- The Postal Service will be responsible for the costs of a medical examination required and scheduled by the Postal Service.
- The employee may specifically seek light duty or may seek "other assignment" within his/her medical limitations

13.2.B.2

2. The following procedures are the exclusive procedures for resolving a disagreement between the employee's physician and the physician designated by the USPS concerning the medical condition of an employee who has requested a permanent light duty assignment. These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury. On request of the Union, a third physician will be selected from a list of five Board Certified Specialists in the medical field for the condition in question, the list to be supplied by the local Medical Society. The physician will be selected by the alternate striking of names from the list by the Union and the Employer. The Employer will supply the selected physician with all relevant facts including job description and occupational physical requirements. The decision of the third physician will be final as to the employee's medical condition and occupational limitations, if any. Any other issues relating to the employee's entitlement to a light duty assignment shall be resolved through the grievance-arbitration procedure. The costs of the services of the third physician shall be shared by the Union and the Employer.

The dispute resolution procedure in this section does not apply to situations involving on-the-job illness or injury. Only OWCP has the authority to resolve disputes concerning the medical condition of employees who have suffered a compensable injury or illness (see *Limited Duty*, below).

On request of the local branch, a third doctor will be selected from a list supplied, in each separate case, by the local Medical Society of certified specialists for the condition in question.

13.2.C

C. Installation heads shall 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. When a request is refused, the installation head shall notify the concerned employee in writing, stating the reasons for the inability to reassign the employee.

This language requires that the installation heads make a bona fide effort to identify light duty work. It further requires management to give the matter "the greatest consideration" and "careful attention". If management does not provide the requested light duty work, it has an obligation to explain in writing why light duty work is unavailable. Disputes concerning the failure to provide light duty work may be addressed through the grievance arbitration procedure.

13.3.A

Section 3. Local Implementation

Due to varied size installations and conditions within installations, the following important items having a direct bearing on these reassignment procedures (establishment of light duty assignments) should be determined by local negotiations.

A. Through local negotiations, each office will establish the assignments that are to be considered light duty within each craft represented in the office. These negotiations should explore ways and means to make adjustments in normal assignments, to convert them to light duty assignments without seriously affecting the production of the assignment.

B. Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee.

13.3.C

C. Number of Light Duty Assignments. The number of assignments within each craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number of reassignments that can be expected during each year, and the method used in reserving these assignments to

insure that no assigned full-time regular employee will be adversely affected, will be defined through local negotiations. The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.

Local Implementation: Article 13, Section 3, together with Article 30, Sections B.15, 16 and 17 provide that the parties **may discuss** the following during the local implementation period.

- The number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment (Article 30.B.15).
- The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected (Article 30.B.15).
- The identification of assignments that are to be considered light duty within each craft represented in the office (Article 30.B.16).

Article 13, Section 3 provides that changes may be made in an employee's regular schedule and work location in order to accommodate light duty request (See Step 4, NC-S 5127, April 15, 1977, M-00734). National Arbitrator Mittenthal held in H1C-4E-C 35028, June 12, 1987 (C-00935) that full-time employees on light duty are not guaranteed eight hours a day or forty hours a week of light duty work. They may be sent home before the end of their tour due to lack of work.

13.4.A **Section 4. General Policy Procedures**

A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

When possible, letter carriers should be provided light duty work within the letter carrier craft. This section obligates management to reduce casual hours, if necessary, in order to provide light duty work in the letter carrier craft for career letter carriers.

13.4.B B. The full-time regular or part-time flexible employee must be able to meet the qualifications of the position to which the employee is reassigned on a permanent basis. On a temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.

13.4.C C. The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.

13.4.D D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

13.4.E E. An additional full-time regular position can be authorized within the craft or occupational group to which the employee is being reassigned, if the additional position can be established out of the part-time hours being used in that operation without increasing the overall hour usage. If this cannot be accomplished, then consideration will be given to reassignment to an existing vacancy.

13.4.F F. 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.

13.4.G G. The following procedures are the exclusive procedures for resolving a disagreement between the employee's physician and the physician designated by the USPS concerning the medical condition of an employee who is on a light duty assignment. These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury. On request of the Union, a third physician will be selected from a list of five Board Certified Specialists in the medical field for the condition in question, the list to be supplied by the local Medical Society. The physician will be selected by the alternate striking of names from the list by the Union and the Employer. The Employer will supply the selected physician with all relevant facts including job description and occupational physical requirements. The decision of the third physician will be final as to the employee's medical condition and occupational limitations, if any. Any other issues relating to the employee's entitlement to a light duty assignment shall be resolved through the grievance-arbitration procedure. The costs of the services of the third physician shall be shared by the Union and the Employer.

The dispute resolution procedure in this section does not apply to situations involving job-related illness or injury. Only OWCP has the author-

ity to resolve disputes concerning the medical condition of employees who have suffered a compensable injury or illness (see *Limited Duty*, below).

The procedure in this section is the same as that in Section 2.B.2 of this Article. It provides that on request of the local branch, a third doctor will be selected from a list supplied, in each separate case, by the local Medical Society of certified specialists for the condition in question.

13.4.H

H. When a full-time regular employee in a temporary light duty assignment is declared recovered on medical review, the employee shall be returned to the employee's former duty assignment, if it has not been discontinued. If such former regular assignment has been discontinued, the employee becomes an unassigned full-time regular employee.

National Arbitrator Mittenthal held in H8N-5B-C 22251, November 14, 1983 (C-03855), that this provision also applies to employees who have been assigned temporary limited duty work in other crafts under the provisions of ELM 546.

13.4.I

I. If a full-time regular employee is reassigned in another craft for permanent light duty and later is declared recovered, on medical review, the employee shall be returned to the first available full-time regular vacancy in complement in the employee's former craft. Pending return to such former craft, the employee shall be an unassigned full-time regular employee. The employee's seniority shall be restored to include service in the light duty assignment.

Unlike the "retreat rights" provided in Article 12, which an employee has the right of declining, this provision is mandatory. The seniority rule stated in this section is applicable to the letter carrier craft and is an exception to the general rule in Article 41, Section 2.G.

13.4.J

J. When a full-time regular employee who has been awarded a permanent light duty assignment within the employee's own craft is declared recovered, on medical review, the employee shall become an unassigned full-time regular employee.

K. When a part-time flexible on temporary light duty is declared recovered, the employee's detail to light duty shall be terminated.

13.4.L

L. When a part-time flexible who has been reassigned in another craft on permanent light duty is declared recovered, such assignment to light duty shall be terminated. Section 4.I, above, does not apply even though the employee has advanced to full-time regular while on light duty.

13.5 Section 5. Filling Vacancies Due to Reassignment of an Employee to Another Craft

When it is necessary to permanently reassign an ill or injured full-time regular or part-time flexible employee who is unable to perform the regularly assigned duties, from one craft to another craft within the office, the following procedures will be followed:

A. When the reassigned employee is a full-time regular employee, the resulting full-time regular vacancy in the complement, not necessarily in the particular duty assignment of the losing craft from which the employee is being reassigned, shall be posted to give the senior of the full-time regular employees in the gaining craft the opportunity to be reassigned to the vacancy, if desired.

The seniority of full-time employees reassigned to another craft under the provisions of this section is determined by Section 6.A below.

National Arbitrator Bloch held in H1C-4B-C 7361, October 5, 1983 (C-00383) that where a clerk obtained a letter carrier position as a result of a letter carrier being assigned light duty work in the clerk craft under this provision, it was improper to return the former clerk to the clerk craft after the letter carrier successfully grieved the light duty assignment that had been accepted under duress.

13.5.B

B. If no full-time regular employee accepts the opportunity to be assigned to the vacancy in the complement, not necessarily in the particular duty assignment in the other craft, the senior of the part-time flexibles on the opposite roll who wishes to accept the vacancy shall be assigned to the full-time regular vacancy in the complement of the craft of the reassigned employee.

When no full-time regulars in the gaining craft desire to take the vacancy in the losing craft, the vacancy is then offered to part-time flexibles in the gaining craft by seniority. Part-time flexibles so reassigned become full-time regulars upon reassignment. However, under the provisions of Section 6.B, below, they are required to begin a new period of seniority.

13.5.C

C. When the reassigned employee is a part-time flexible, the resulting vacancy in the losing craft shall be posted to give the senior of the full-time regular or part-time flexible employees in the gaining craft the opportunity to be assigned to the part-time flexible vacancy, if desired, to begin a new period of seniority at the foot of the part-time flexible roll.

Full-time regulars from another craft who bid into the letter carrier craft under this provision must begin a new period of seniority and become part-time flexibles.

13.5.D

D. The rule in A and B, above, applies when a full-time regular employee on permanent light duty is declared recovered and is returned to the employee's former craft, to give the senior of the full-time regular or part-time flexible employees in the gaining craft the opportunity, if desired, to be assigned in the resulting full-time regular vacancy in the complement, not necessarily in the particular duty assignment of the losing craft.

13.6 Section 6. Seniority of an Employee Assigned to Another Craft

A. Except as provided for in Section 4.I, above, a full-time regular employee assigned to another craft or occupational group in the same or lower level in the same installation shall take the seniority for preferred tours and assignments, whichever is the lesser of (a) one day junior to the junior full-time regular employee in the craft or occupational group, (b) retain the seniority the employee had in the employee's former craft.

B. A part-time flexible employee who is permanently assigned to a full-time regular or part-time flexible assignment in another craft, under the provisions of this Article, shall begin a new period of seniority. If assigned as a part-time flexible, it shall be at the foot of the part-time flexible roll.

The seniority of full-time regulars assigned to other crafts as a result of Article 13 is the lesser of the employee's own seniority or one day junior to the junior full-time employee in the craft to which assigned. This is an exception to Article 41, Section 2.G.2.

Bidding while on light or limited duty: A Memorandum of Understanding, H1N-NA-C 119 dated March 16, 1987 (M-00752) governs bidding by letter carriers on light or limited duty. It provides:

> 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 4l.l.B.l 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.

Limited Duty work is work provided for an employee who is temporarily or permanently incapable of performing his/her normal duties as a result of a compensable illness or injury. The term limited duty work was established by 5 Code of Federal Regulations, Part 353 —the O.P.M. regulation implementing 5. U.S.C. 8151(b), that portion of the Federal Employees' Compensation Act (FECA) pertaining to the resumption of employment following compensable injury or illness. USPS procedures regarding limited duty are found in Part 540 of the *Employee & Labor Relations Manual (ELM)*. The Office of Workers' Compensation Programs has the exclusive authority to adjudicate compensation claims and to determine the medical suitability of proposed limited duty work.

However, ELM Section 546.14, below, provides for additional rules that must be observed when offering limited duty work.

546.14 Disability Partially Overcome

546.141 Obligation: When an employee has partially overcome the injury or disability, the USPS has the following obligation:

a. Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

(1) To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.

(2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of

duty, other work may be assigned within that facility.

(3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

(4) An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.

These provisions specify the steps that must be taken in seeking limited duty work in order to ensure the assignments are minimally disruptive to the ill or injured employee. The Step 4 Settlement G90N-4G-C 95026885, January 28, 1997 (M-01264), specifically provides that the provisions of ELM 546.141 are enforceable through the grievance/arbitration procedure.

Situations may occur wherein a limited duty assignment is offered that meets OWCP's requirements, but fails to meet the requirements of ELM 546.141. Carriers refusing such disputed assignments could risk termination of compensation benefits. These situations are addressed in the Memorandum of Understanding M-01120, dated January 29, 1993 which allows a partially recovered employee to accept a limited duty job offer "under protest" and still pursue a grievance concerning the assignment. The memorandum provides that:

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.

ARTICLE 14 SAFETY AND HEALTH

14.1 Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer will meet with the Union on a semiannual basis and inform the Union of its automated systems development programs. The Employer also agrees to give appropriate consideration to human factors in the design and development of automated systems. Human factors and ergonomics of new automated systems are a proper subject for discussion at the National Joint Labor-Management Safety Committee.

Responsibilities: It is management's responsibility to provide safe working conditions; it is the union's responsibility to cooperate with and assist management in its efforts to fulfill this responsibility.

14.2 Section 2. Cooperation

The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employee may:

(a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;

(b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;

(c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; and/or

(d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.

Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.

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.

Priority handling of safety issues. Section 2 provides a special priority for the handling of safety and health issues, providing for cooperative

correction of unsafe conditions and enforcement of safety rules, and requiring special handling of individual safety issues as they arise.

Safety grievances filed at Step 2. Section 2.(b) provides that safety and health grievances may be filed directly at Step 2 of the grievance procedure. However, if a health or safety grievance is filed at Step 1 instead, it is not procedurally defective.

14.3 Section 3. Implementation

To assist in the positive implementation of the program:

A. There shall be established at the Employer's Headquarters level, a Joint Labor-Management Safety Committee. Representation on the Committee, to be specifically determined by the Employer and the Union, shall include one person from the Union and representatives from appropriate Departments in the Postal Service. Not later than 60 days following the effective date of this Collective Bargaining Agreement, designated representatives of the Union and Management will meet for the purpose of developing a comprehensive agenda which will include all aspects of the Employer's Safety Program. Subsequent to the development of this agenda priorities will be established and a tentative schedule will be developed to insure full discussion of all topics. Meetings may also be requested by either party for the specific purpose of discussing additional topics of interest within the scope of the Committee.

The responsibility of the Committee will be to evaluate and make recommendations on all aspects of the Employer's Safety Program, to include program adequacy, implementation at the local level, and studies being conducted for improving the work environment.

The Chair will be designated by the Employer. The Union may designate a coordinator who, in conjunction with the Chair, shall schedule the meetings, and recommended priorities on new agenda items. In addition, the coordinator may assist the Chair in conducting the activities of the Committee. The Employer shall furnish the Union information relating to injuries, illness and safety, including the morbidity and mortality experience of employees. This report shall be in form of reports furnished OSHA on a quarterly basis.

The Headquarters level Committee will meet quarterly and the Employer and Union Representatives will exchange proposed agenda items two weeks before the scheduled meetings. If problems or items of significant, national nature arise between scheduled quarterly meetings either party may request a special meeting of the Committee. Either party will have the right to be accompanied to any Committee meeting by no more than two technical advisors.

B. There shall be established at the Employer's Area level, an Area Joint Labor-Management Safety Committee, which will be scheduled to meet quarterly. The Employer and Union Representatives will exchange proposed agenda items two weeks before the scheduled meetings. If problems or items of a significant, area nature arise between scheduled quarterly meetings, either party may request a special meeting of the Committee. Either party will have the right to be

accompanied to any Committee meeting by no more than two technical advisors.

Representation on the Committee shall include one person from the Union and appropriate representatives from the Postal Service Area Office. The Chair will be designated by the Employer.

C. The Employer will make Health Service available for the treatment of job related injury or illness where it determines they are needed. The Health Service will be available from any of the following sources: U.S. Public Health Service; other government or public medical sources within the area; independent or private medical facilities or services that can be contracted for; or in the event funds, spaces and personnel are available for such purposes, they may be staffed at the installation. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs, including employee choice of health services.

D. The Employer will comply with Section 19 of the Williams-Steiger Occupational Safety and Health Act.

OSHA. The Postal Employees' Safety Enhancement Act of 1998 (PESEA) changed the status of the Postal Service as an employer under the Occupational Safety and Health Act of 1970. Previously, the Postal Service, as a federal agency, was exempt from the private-sector provisions of the OSH Act and was only covered by Section 19 of the Act and Executive Order 12196. When PESEA became effective, the Postal Service, unlike other federal agencies, became fully subject to the OSH Act. This means that OSHA has jurisdiction over the Postal Service in matters relating to employee safety and health.

14.4 Section 4. Local Safety Committee

At each postal installation having 50 or more employees, a Joint Labor-Management Safety and Health Committee will be established. In installations having fewer than 50 employees, installation heads are encouraged to establish similar committees when requested by the Union. Where no Safety and Health Committee exists, safety and health items may be placed on the agenda and discussed at labor-management meetings. There shall be equal representation on the Committee between the Union and management. The representation on the Committee to be specifically determined by the Employer and the Union shall include one person from the Union and appropriate management representatives. The Chair will be designated by the Employer.

It is recognized that under some circumstances, the presence of an additional employee employed at the installation will be useful to the local Safety and Health Committee because of that employee's special expertise or experience with the agenda item being discussed. Under these circumstances, which will not normally be applicable to most agenda items, the employee may, at the request of the Union, be in

attendance only for the time necessary to discuss that item. Payment for the actual time spent at such meetings by the employee will be at the applicable straight-time rate, providing the time spent is a part of the employee's regular workday.

Local committees. This section requires the creation of local, joint safety committees at each installation with 50 or more employees, and encourages their creation at smaller facilities. In small facilities without committees, safety and health issues may be discussed in Labor-Management meetings.

14.5 Section 5. Subjects for Discussion

Individual grievances shall not be made the subject of discussion during Safety and Health Committee meetings.

14.6 Section 6. Employee Participation

It is the intent of this program to insure broad exposure to employees, to develop interest by active participation of employees, to insure new ideas being presented to the Committee and to make certain that employees in all areas of an installation have an opportunity to be represented. At the same time, it is recognized that for the program to be effective, it is desirable to provide for a continuity in the committee work from year to year. Therefore, except for the Chair and Secretary, the Committee members shall serve three-year terms and shall at the discretion of the Union be eligible to succeed themselves.

Employee participation. This section allows, at the union's discretion, all union members of the Safety and Health Committee to succeed themselves at the conclusion of each three-year term.

14.7 Section 7. Local Committee Meetings

The Safety and Health Committee shall meet at least quarterly and at such other times as requested by a Committee member and approved by the Chair in order to discuss significant problems or items. The meeting shall be on official time. Each Committee member shall submit agenda items to the Secretary at least three (3) days prior to the meeting. A member of the Health Unit will be invited to participate in the meeting of the Labor-Management Safety and Health Committee when agenda item(s) relate to the activities of the Health Unit.

The local Safety and Health Committee must meet at least quarterly, but may meet more often than that if it wishes, on official (paid) time.

The language which provides that local Safety and Health Committee "shall be on official time" pertains only to members of the carrier craft. If a local branch has appointed a member of another craft to be its representative, that person is compensated only if the meeting is held during the representative's regular schedule. (National Arbitrator Bernstein, H1N-3D-C 40171, April 8, 1987, C-06949)

14.8.A Section 8. Local Committee Responsibilities

A. The Committee shall review the progress in accident prevention and health at the installation; determine program areas which should have increased emphasis; and it may investigate major accidents which result in disabling injuries. Items properly relating to employee safety and health shall be considered appropriate discussion items. Upon a timely request, information or records necessary for the local Safety and Health Committee to investigate real or potential safety and health issues will be made available to the Committee.

In addition, the Committee shall promote the cause of safety and health in the installation by:

1. Reviewing safety and health suggestions, safety training records and reports of unsafe conditions or practices.
2. Reviewing local safety and health rules.
3. Identifying employee unsafe work practices and assisting in enforcing safety work rules.
4. Reviewing updated list of hazardous materials used in the installation.
5. Reviewing local dog bite prevention efforts.

The Committee shall at its discretion render reports to the installation head and may at its discretion make recommendations to the installation head for action on matters concerning safety and health. The installation head shall within a reasonable period of time advise the Committee that the recommended action has been taken or advise the Headquarters Safety and Health Committee and the President of the local Union as to why it has not. Any member of the Committee may also submit a written report to the Headquarters Safety and Health Committee in the event the Committee's recommendations are not implemented.

Upon proper written request to the Chair of the Committee, on-the-spot inspection of particular troublesome areas may be made by individual Committee members or a Subcommittee or the Committee as a whole. Such request shall not be unreasonably denied. When so approved, the Committee members shall be on official time while making such inspection.

The Union representative from the local Safety and Health Committee may participate on the annual inspection, conducted by district safety and health services personnel in accordance with ELM Section **824**, provided that the Union represents employees at the facility being inspected. In no case shall there be more than one NALC representative on such inspections.

The Union representative from the local Safety and Health Committee may participate on other inspections of the main facility of each post office or other installation with 100 or more workyears of employment in the regular work force, and of an individual station or branch where the station or branch has 100 or more workyears of employment in the regular work force, provided that the Union represents employees at the main facility or station or branch and provided that the Union representative is domiciled at the main facility or station or branch to be

14.8.A inspected. If the Union representative to the local Safety and Health Committee is not domiciled at the main facility or station or branch to be inspected and if the Union represents employees at the main facility or station or branch, at the Union's option, representatives from the Committee may participate on the inspection (at no additional cost for the Employer) or the Union may designate representatives domiciled at the main facility or station or branch to be inspected to participate on the inspection. In no case shall there be more than one NALC representative on such inspections.

The Union representative from the local Safety and Health Committee may participate on the annual inspection of each installation with less than 100 workyears of employment in the regular work force, where such Committee exists in the installation being inspected. In those installations that do not have a Safety and Health Committee, the inspector shall afford the opportunity for a bargaining unit employee from the Union, if it represents employees in that installation, to accompany him/her during these inspections. If requested, these bargaining unit employees should be selected by the various exclusive bargaining representatives in that installation. In no case shall there be more than one NALC representative on such inspections.

14.8.B B. An appointed member of a local committee will receive an orientation by the Employer which will include:

1. Responsibilities of the Committee and its members.
2. Basic elements of the Safety and Health Program.
3. Identification of hazards and unsafe practices.
4. Explanation of reports and statistics reviewed and analyzed by the Committee.

14.8.C C. Where an investigation board is appointed by a Vice President, Area Operations or a District Manager to investigate a fatal or serious industrial non-criminal accident and/or injury, the appropriate Union at the installation will be advised promptly. When requested by the Union, a representative from the local Safety and Health Committee will be permitted to accompany the board in its investigation.

14.8.D D. In installations where employees represented by the Union accept, handle and/or transport hazardous materials, the Employer will establish a program of promoting safety awareness through communications and/or training, as appropriate. Elements of such a program would include, but not be limited to:

1. Informational postings, pamphlets or articles in Postal Area Bulletins.
2. Distribution of Publication 52 to employees whose duties require acceptance of and handling hazardous or perishable items.
3. On-the-job training of employees whose duties require the handling and/or transportation of hazardous or perishable items. This training will include, but is not limited to, hazard identification; proper handling of hazardous materials; personal protective equipment availability and its use; cleanup and disposal requirements for hazardous materials.

14.8.D.4

4. All mailbags containing any hazardous materials, as defined in Publication 52, will be appropriately identified so that the employee handling the mail is aware that the mailbag contains one or more hazardous material packages.

5. Personal protective equipment will be made available to employees who are exposed to spills and breakage of hazardous materials.

Local Safety and Health Committees have review responsibilities over accident prevention and health issues such as the review of safety and health suggestions, safety-related records and rules, dog bite prevention efforts, and the list of hazardous materials.

On-the-spot inspection of particular troublesome areas may be made by individual Committee members, a subcommittee or the Committee as a whole upon proper written request to the Chair of the Committee. Such request shall not be unreasonably denied. When so approved, the Committee members shall be on official time while making such inspection.

A Union representative from the local Safety and Health Committee may participate on the annual inspection, conducted by district safety and health services personnel in accordance with ELM Section 824, provided that the Union represents employees at the facility being inspected. In no case shall there be more than one NALC representative on such inspections.

14.9 Section 9. Field Federal Safety and Health Councils

In those cities where Field Federal Safety and Health Councils exist, one representative of the Union who is on the Local Safety and Health Committee in an independent postal installation in that city and who serves as a member of such Councils, will be permitted to attend the meetings. Such employee will be excused from regularly assigned duties without loss of pay. Employer authorized payment as outlined above will be granted at the applicable straight time rate, provided the time spent in such meetings is a part of the employee's regular work day.

(The preceding Article, Article 14, shall apply to Transitional Employees.)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

Re: Joint Safety and Accident Control Teams

The United States Postal Service and the National Association of Letter Carriers agree that it is in the best interest of both parties to have an effective health and safety program. Therefore, it is hereby agreed that representatives of the parties will meet at the national level for the purpose of developing an agenda to ensure the effectiveness of the Headquarters Joint Labor-Management Safety Committee.

The Committee may establish Joint Safety and Accident Control Teams whose aim is to reduce accidents and injuries and promote improved safety performance. The Joint Safety and Accident Control Teams will consider establishing where appropriate, local accident prevention guidelines and procedures for

1) reporting and abating hazardous conditions and practices,

2) expediting resolution of local safety and health issues, and

3) promoting safety awareness and investigating safety and health complaints.

The Joint Safety and Accident Control Teams will develop periodic progress reports to the Headquarters Joint Labor-Management Safety Committee and will make recommendations regarding the program structure where necessary. The Headquarters Joint Labor-Management Safety Committee will monitor the efforts of the local programs with the aim of expanding the Joint Safety and Accident Control Teams if the program is deemed successful by the parties.

It is further understood that nothing in this Memorandum of Understanding is intended to infringe on management or union rights as found in the National Agreement.

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Note. On July 11, 2000, the Postal Service and the NALC agreed to implement the new negotiated Dispute Resolution Procedure (DRP). To insure the proper training and certification of all Step B representatives, implementation of DRP will be phased in, by district. Until DRP is activated by district, the current grievance/arbitration procedure under Article 15 is to be followed. The DRP memos are found at the end of this article.

15.1 Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement

Broad grievance clause. This section sets forth a broad definition of a grievance. This means that most work related disputes may be pursued through the grievance/arbitration procedure. The language recognizes that most grievances will involve violations of the National Agreement or a Local Memorandum of Understanding. Other types disputes that may be handled within the grievance procedure may include:

- Violations of postal handbooks or manuals (see Article 19);
- Violations of other enforceable agreements between NALC and the Postal Service, such as *Building Our Future by Working Together,* the Article 16.9 Memorandum (M-00830) and the Joint Statement on Violence and Behavior in the Workplace. In his award in national case Q90N-4F-C 94024977, August 16, 1996 (C-15697) Arbitrator Snow found that the Joint Statement constitutes a contractually enforceable agreement between the parties and that the union has access to the grievance procedure to resolve disputes arising under it. Additionally, in his discussion of the case, Snow writes that arbitrators have the flexibility in formulating remedies to consider, if a violation is found, removing a supervisor from his or her "administrative duties." (Note: The National parties disagree over the meaning of "administrative duties.")
- Violations of law (see Article 5);
- Other complaints relating to wages, hours or conditions of employment

15.2 Step 1

Section 2. Grievance Procedure—Steps

Step 1:

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step l within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step l Union grievance may involve a complaint affecting more than one employee in the office.

Filing grievances: The grievant or the union must discuss the grievance with the employee's immediate supervisor within 14 days of when the grievant or the union first learned, or may reasonably have been expected to have learned, of the alleged grievance.

- If the grievant files his or her own grievance, then the grievant may be accompanied and represented by a union representative.
- If the union initiates a grievance on behalf of an individual, the individual grievant's participation in a Step 1 meeting is neither required nor prohibited.
- Should the grievance affect more than one employee in the office, the union may initiate a class grievance on behalf of all affected employees.

Although an employee may file and discuss a grievance at Step 1 without the presence or assistance of a steward, the pre-arbitration settlement H7N-5R-C 26829, April 2, 1982 (M-01065), acknowledged the Union's right to be present at the settlement of a grievance at Step 1. The settlement states:

> 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.

Time Limits: The 14 days for filing a grievance to Step 1 begin with the day of the occurrence or the day when the grievant or the union may reasonably have been expected to have learned of the occurrence. For example: if a grievant receives a letter of warning, day 1 of the 14 days is the day *after* the letter of warning is received.

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.

15.2 Step 1 (b)

(b) In any such discussion the supervisor shall have authority to settle the grievance. The steward or other Union representative likewise shall have authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.

This section specifically confers upon management's and the union's grievance representatives the authority to resolve a grievance. While either representative may consult with higher levels of management or the union on an issue in dispute, this section establishes that the parties to the initial discussion of a grievance retain independent authority to settle the dispute. Where it can be demonstrated that management's representative lacked authority, i.e. someone else made the decision, discipline has sometimes been overturned by arbitrators.

15.2 Step 1 (c)

(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties

agree to extend the five (5) day period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is used at Step 2 confirming the date upon which the decision was rendered.

If the parties are unable to resolve the grievance at Step 1, the supervisor shall give the reasons for the denial when rendering the oral decision which must be given within 5 days of the Step 1 meeting, unless the time limits are mutually extended. Within 5 days from the issuance of the decision, the supervisor must—if the union so requests—initial the Standard Grievance Form to confirm the date of the Step 1 decision.

15.2 Step 1 (d)

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.

When appealing a grievance to Step 2, day 1 is the day following the receipt of the supervisor's oral decision.

In appealing any grievance beyond Step 1, a union representative has until the last day to mail the appeal. Thus, the appeal must be postmarked on the 10th day following the Step 1 decision (for example on the 14th if the decision is received on the fourth), and the 15th day following the Step 2 decision. To avoid problems union representatives should not wait until the last day.

Appeals to Step 2 must be made on a Standard Grievance Form. Standard Grievance Forms are available without cost through the NALC Supply Department.

15.2 Step 2 (a)

Step 2:

(a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

(b) Any grievance initiated at Step 2, pursuant to Article 2 or 14 of this Agreement, must be filed within 14 days of the date on which the Union or the employee first learned or may reasonably have been expected to have learned of its cause.

The same 14 day time limit applicable for grievances filed at Step 1 is applicable for those grievances that may be filed directly at Step 2. Grievances that *may*, but need not be filed directly at Step 2 are:

- **Discrimination:** Article 2 of the Agreement forbids discrimination against employees because of race, color, creed, religion, national origin, sex, age, marital status, or (if the employee can adequately perform the job) physical handicap. Any grievance relating to this provision may be initiated at Step 2 within 14 days of when the employee or the union has first learned or may reasonably have been expected to have learned of the alleged discrimination.
- **Safety and Health:** Article 14, Section 2 provides that if an employee believes that he or she is being required to work under unsafe conditions, the employee may:
  - Notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;
  - Notify such employee's steward. if available, who may discuss the alleged unsafe condition with each employee's supervisor;
  - File a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour.
- **Route Adjustments:** The pre-arbitration settlement H7N-3A-C 39011, dated June 23, 1992 (M-1072) provides that a grievance concerning an exception granted to the 52 time limit for adjusting a route following a route examination may be filed at directly Step 2. The settlement provides in pertinent part:

> 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. 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.

15.2 Step 2 (c)

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Step 2 appeal unless the parties agree upon a later date. In all grievances appealed from Step 1 or filed at Step 2, the grievant shall be represented in Step 2 for all purposes by a steward or a Union representative who shall have authority to settle or withdraw the grievance as a result of discussions or compromise in this Step. The installation head or designee in Step 2 also shall have authority to grant or settle the grievance in whole or in part.

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

(e) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems.

15.2 Step 2 (f)

(f) Where agreement is not reached the Employer's decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

The Step 2 meeting must be held within 7 days of receipt of the Step 2 appeal unless the time limits are mutually extended. The union representative at the Step 2 meeting shall discuss fully the union's position, violation alleged, and corrective action requested. Moreover, the union is entitled to furnish written statements from witnesses or other individuals who have information pertaining to the grievance. Both parties are required to state in detail the facts and contract provisions relied upon to support their positions. The Postal Service is also required to furnish to the union, if requested, any documents or statements of witnesses as provided for in Article 31, Section 3.

In non-discharge cases, the parties can mutually agree to jointly interview witnesses at the Step 2 meeting. In discharge cases, either party can present two witnesses at that meeting—with additional witnesses possible should the parties so mutually agree. As provided in Article 17, Section 4, all witnesses present will be on the clock while traveling to and from the Step 2 meeting and while in attendance at the Step 2 meeting.

The parties' representatives at Step 2 shall have the authority to settle or withdraw grievances in whole or in part. Such settlement or withdrawal shall be in writing or noted on the Standard Grievance Form and will not be a precedent unless the parties specifically agree otherwise.

Management must give the union representative a written decision within 10 days of the Step 2 meeting unless time limits are mutually extended. The decision shall include: 1) all relevant facts; 2) contract provisions involved; and 3) detailed reasons for denial.

15.2 Step 2 (g)

(g) If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3.

Additions and Corrections: The union may file a written statement with the Postal Service representative setting forth any corrections and additions to the Step 2 decision the union believes are necessary within 10 days after receipt of Step 2 decision. The filing of any corrections or additions does not extend the time limits for filing the appeal to Step 3. The Step 4 decision A8-S-0309, December 7, 1979 (M-01145) establishes that a steward is entitled to time on-the-clock to write the Union's statement of corrections and additions to the Step 2 decision.

15.2 Step 2 (h)

(h) The Union may appeal an adverse Step 2 decision to Step 3. Any such appeal must be made within fifteen (15) days after receipt of the Employer's decision unless the parties' representatives agree to extend the time for appeal. Any appeal must include copies of (1) the standard grievance form, (2) the Employer's written Step 2 decision, and, if filed, (3) the Union corrections or additions to the Step 2 decision.

An appeal to Step 3 must be filed within 15 days of receipt of the Step 2 decision, and must include copies of:

- The Standard Grievance Form
- The Postal Service's written Step 2 decision, and
- The Union's corrections or additions, if filed.

Time spent handling this appeal activity to Step 3 is compensable under the provisions of Article 17, Section 4 (National Arbitrator Mittenthal, AB-E 021, December 10, 1979, C-00381).

15.2 Step 3 (a)

Step 3:

(a) Any appeal from an adverse decision in Step 2 shall be in writing to the Grievance/Arbitration Processing Center, with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal.

(b) The grievant shall be represented at the Employer's Step 3 Level by a Union's Regional representative, or designee. The Step 3 meeting of the parties' representatives to discuss the grievance shall be held within fifteen (15) days after it has been appealed to Step 3. Each party's representative shall be responsible for making certain that all relevant facts and contentions have been developed and considered. The Union representative shall have authority to settle or withdraw the grievance in whole or in part. The Employer's representative likewise

shall have authority to grant the grievance in whole or in part. In any case where the parties' representatives mutually conclude that relevant facts or contentions were not developed adequately in Step 2, they shall have authority to return the grievance to the Step 2 level for full development of all facts and further consideration at that level. In such event, the parties' representatives at Step 2 shall meet within seven (7) days after the grievance is returned to Step 2. Thereafter, the time limits and procedures applicable to Step 2 grievances shall apply.

(c) The Employer's written Step 3 decision on the grievance shall be provided to the Union's Step 3 representative within fifteen (15) days after the parties have met in Step 3, unless the parties agree to extend the fifteen (15) day period. Such decision shall state the reasons for the decision in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Step 2. Such decision also shall state whether the Employer's Step 3 representative believes that no interpretive issue under the National Agreement or some supplement thereto which may be of general application is involved in the case.

The Step 3 meeting must be held within 15 days after receipt of the appeal to Step 3 unless parties mutually agree to an extension of the time limits. The union is represented by the national business agent or designee. The parties' representatives shall have the authority to dispose of the grievance in whole or in part. Management must issue the union's Step 3 representative a written Step 3 decision within 15 days of the Step 3 meeting, unless the time limits are mutually extended. Finally, in the Step 3 decision the Postal Service must indicate whether it considers a grievance to involve an issue pertaining to the interpretation of the National Agreement or some supplement thereto which may be of general application.

New facts and contentions: This section gives the parties' representatives not only the right, but the affirmative obligation to ensure that the grievance is fully developed at Step 3. The grievance discussion and the Postal Service's Step 3 decision must include any new facts and contentions not set forth in the Step 2 decision.

Remands: Should the Postal Service and the union mutually agree during the Step 3 meeting that the relevant facts or contentions were not developed adequately at Step 2, they may return the grievance to Step 2 for further consideration. In such an event, the parties' Step 2 representatives shall meet within 7 days after the grievance is returned to their level. Thereafter, the time limits and procedures applicable to Step 2 grievances shall apply.

15.2 Step 3 (d)

(d) The Union may appeal an adverse decision directly to arbitration at the Grievance/Arbitration Processing Center within twenty-one (21) days after the receipt of the Employer's Step 3 decision in accordance with the procedure hereinafter set forth; provided the Employer's Step 3 decision states that no interpretive issue under the National

Agreement or some supplement thereto which may be of general application is involved in the case.

(e) If either party's representative maintains that the grievance involves an interpretive issue under the 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 (National level) of the grievance procedure. Any such appeal must be made within twenty-one (21) days after receipt of the Employer's decision and include copies of the standard grievance form, the Step 2 and Step 3 decision and, if filed, any Union corrections and additions filed at Step 2 or 3. The Union shall furnish a copy of the Union appeal to the Grievance/Arbitration Processing Center.

Appeal Routes: These sections provide for two different appeal routes depending upon whether management or the union believes the grievance involves an interpretive issue of general application. Interpretive cases are appealed to Step 4 (the national level). Non-interpretive cases are appealed to regular arbitration.

5.2 Step 3 (f)

(f) Where grievances appealed to Step 3 involve the same, or substantially similar issues or facts, one such grievance to be selected by the Union representative shall be designated the "representative" grievance. If not resolved at Step 3, the "representative" grievance may be appealed to Step 4 of the grievance procedure or to arbitration in accordance with the above. All other grievances which have been mutually agreed to as involving the same, or substantially similar issues or facts as those involved in the "representative" grievance shall be held at Step 3 pending resolution of the "representative" grievance, provided they were timely filed at Step 1 and properly appealed to Steps 2 and 3 in accordance with the grievance procedure.

Following resolution of the "representative" grievance, the parties involved in that grievance shall meet at Step 3 to apply the resolution to the other pending grievances involving the same, or substantially similar issues or facts. Disputes over the applicability of the resolution of the "representative" grievance shall be resolved through the grievance-arbitration procedures contained in this Article; in the event it is decided that the resolution of the "representative" grievance is not applicable to a particular grievance, the merits of that grievance shall also be considered.

Representative cases: When more than one grievance appealed to Step 3 involves the same or substantially similar issues or facts, the union representative *may* select one grievance as the "representative" grievance to be used at Step 3. If not resolved at Step 3, the "representative" grievance may be appealed directly to arbitration or to Step 4, depending upon the nature of the grievance. The ultimate resolution of the "representative" grievance will be applied to the remaining grievances held at Step 3 in accordance the provisions of this section.

15.2 Step 4

Step 4:

(a) In any case properly appealed to this Step the parties shall meet at the National level promptly, but in no event later than thirty (30) days after filing such appeal in an attempt to resolve the grievance. The Union representative shall have authority to settle or withdraw the grievance in whole or in part. The Employer's representative shall have authority to grant or settle the grievance in whole or in part. The parties' Step 4 representatives may, by mutual agreement, return any grievance to Step 3 where (a) the parties agree that no national interpretive issue is fairly presented or (b) it appears that all relevant facts have not been developed adequately. In such event, the parties shall meet at Step 3 within fifteen (15) days after the grievance is returned to Step 3. Thereafter the procedures and time limits applicable to Step 3 grievances shall apply. Following their meeting in any case not returned to Step 3, a written decision by the Employer will be rendered within fifteen (15) days after the Step 4 meeting unless the parties agree to extend the fifteen (15) day period. The decision shall include an adequate explanation of the reasons therefor. In any instance where the parties have been unable to dispose of a grievance by settlement or withdrawal, the National President of the Union involved shall be entitled to appeal it to arbitration at the National level within thirty (30) days after receipt of the Employer's Step 4 decision.

Grievances appealed to Step 4 are handled at the Headquarters level.

15.3.A

Section 3. Grievance Procedure—General

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.

B. The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

Timeliness: If management fails to raise the issue of timeliness, in writing, at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, it waives the right to raise the issue at a later time. Management's obligations depend upon the step at which it asserts the grievance was untimely.

- If management asserts that a grievance is untimely filed at Step 1, it must raise the issue in the written Step 2 decision (because Step 2 is "later" than Step 1) or the objection is waived. It is not sufficient to assert during the Step 1 meeting that a grievance is untimely.
- If management asserts that a grievance is untimely at Step 2 or a later step, it must raise the objection in the written decision at the step at which the time limits were not met.

15.3.C

C. Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

Warning: This section can easily be misunderstood. It *does not* mean that grievances are automatically appealed if management fails to issue a timely decision. Rather, if management fails to issue a timely decision (unless the parties mutually agree to an extension) the union must appeal the case to the next step within the prescribed time limits if its wishes to pursue the grievance.

In cases where management fails to issue a timely decision, the time limits for appeal to the next step are counted from the date management's decision was due. For example: If management fails to issue a Step 2 decision within ten (10) days of a Step 2 meeting, the union must make any appeal to Step 3 within fifteen (15) days of the date the Step 2 decision was due.

15.3.D

D. It is agreed that in the event of a dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated as a grievance at the Step 4 level by the President of the Union. Such a grievance shall be initiated in writing and must specify in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the contention of the Union. Thereafter the parties shall meet in Step 4 within thirty (30) days in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. Should they fail to agree, then, within fifteen (15) days of such meeting, each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to such issues. In the event the parties have failed to reach agreement within sixty (60) days of the initiation of the grievance in Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter.

This section authorizes NALC to file interpretive grievances directly at the national level and specifies the procedure to be used in handling such grievances.

15.4.A

Section 4. Arbitration

A. General Provisions

1. A request for arbitration shall be submitted within the specified time limit for appeal.

Article 15, Section 2, Step 3 provides that adverse Step 3 decisions may be appealed to arbitration within 21 days after receipt of the decision.

15.4.A.2

2. No grievance may be arbitrated at the National level except when timely notice of appeal is given the Employer in writing by the National President of the Union. No grievance may be appealed to Regular or Expedited arbitration except when timely notice of appeal is given in writing to the appropriate Grievance/Arbitration Processing Center by the certified representative of the Union. Such representative shall be certified to appeal grievances by the National President of the Union to the Employer at the National level.

The NALC national business agents have been certified as the representatives authorized to appeal cases to regular or expedited arbitration.

15.4.A.3

3. All grievances appealed to arbitration will be placed on the appropriate pending arbitration list in the order in which appealed. The Employer, in consultation with the Union, will be responsible for maintaining appropriate dockets of grievances, as appealed, and for administrative functions necessary to assure efficient scheduling and hearing of cases by arbitrators at all levels.

This section must be read in conjunction with Article 15, Section 5 below, which provides that the efficient functioning of the arbitration procedure is the "joint responsibility" of the parties. The Postal Service handles the purely administrative aspects of arbitration scheduling in accordance with procedures and policies negotiated with the union.

Cancellations: While the Postal Service handles the purely administrative aspects of arbitration scheduling, it *does not* have the unilateral right to cancel an arbitration hearing once it has been scheduled. The prearbitration settlement M-00945, September 19, 1989, provides that "except as provided under the National Agreement, neither Management nor the Union may unilaterally cancel the hearing of a grievance scheduled for arbitration."

Ex parte communication with an arbitrator is strictly prohibited. *Ex parte* communication is any communication, whether orally or in writing, without the *actual presence or explicit advance concurrence* of the other party. Merely providing the other party with a copy of a communication with an arbitrator (for example with a "cc") does not make an *ex parte* communication permissible. An exception to this rule is communication in the ordinary course of business regarding necessary, routine scheduling matters. In order to underscore the importance of this issue, the parties have agreed to the following Memorandum of Understanding, M-00815, dated April 11, 1988.

Memorandum Of Understanding

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.

The May 1998 preabitration settlement G94N-4G-D 96088399 (M-01315) provides that:

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.

National Arbitrator Snow held in F94N-4F-D 97049958, January 4, 2000, C-20301 that the Employer violated the parties' collective bargaining agreement when it engaged in *ex parte* communication with an arbitrator during an *in camera* inspection of evidence in the presence of only the Employer's advocate.

The parties should scrupulously observe the prohibition against *ex parte* communication with an arbitrator. Any violation of these rules should be brought to the immediate attention of the responsible officials.

15.4.A.4

4. In order to avoid loss of available hearing time, except in National level cases, back-up cases should be scheduled to be heard in the event of late settlement or withdrawal of grievances before hearing. In the event that either party withdraws a case less than five (5) days prior to the scheduled arbitration date, and the parties are unable to agree on sched-

uling another case on that date, the party withdrawing the case shall pay the full costs of the arbitrator for that date. In the event that the parties settle a case or either party withdraws a case five (5) or more days prior to the scheduled arbitration date, the back-up case on the appropriate arbitration list shall be scheduled. If the parties settle a case less than five (5) days prior to the scheduled arbitration date and are unable to agree to schedule another case, the parties shall share the costs of the arbitrator for that date. This paragraph shall not apply to National level arbitration cases.

This section provides back-up cases to avoid the loss of hearing dates. It is administered by the national business agents and the USPS grievance/arbitration processing center.

15.4.A.5

5. Arbitration hearings normally will be held during working hours where practical. Employees whose attendance as witnesses is required at hearings during their regular working hours shall be on Employer time when appearing at the hearing, provided the time spent as a witness is part of the employee's regular working hours.

Union witnesses are considered on-the-clock while appearing at an arbitration hearing during their regular working hours. However, National Arbitrator Mittenthal held in H1N-NA-C-7, February 15, 1985 (C-04657), that the Postal Service is not required to pay union witnesses for the time spent traveling to and from arbitration hearings.

15.4.A.6

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

The decisions of arbitrators are final and binding. Arbitration is the last step of the grievance-arbitration procedure and there are no further contractual avenues for management or the union to challenge or appeal an arbitration award.

15.4.A.7

7. All arbitrators on the Regular Panels and the Expedited Panels and on the National Panel shall serve for the term of this Agreement and shall continue to serve for six (6) months thereafter, unless the parties otherwise mutually agree.

15.4.A.8

8. Arbitrators on the National and on the Regular and Expedited Panels shall be selected by the method agreed upon by the parties at the National Level.

The appointment of arbitrators to serve on the various panels is administered at the national level.

15.4.A.9

9. In any arbitration proceeding in which a Union feels that its interests may be affected, it shall be entitled to intervene and participate in such arbitration proceeding, but it shall be required to share the cost of such arbitration equally with any or all other Union parties to such proceeding. Any dispute as to arbitrability may be submitted to the arbitrator and be determined by such arbitrator. The arbitrator's determination shall be final and binding.

Intervention: This provision gives postal unions the right to intervene in each others' arbitration proceedings if they feel that their interests may be affected. National Arbitrator Britton held in H4N-4J-C-18504, March 16, 1989 (C-08730), in a decision concerning NALC and the NRLCA that the right of a postal union to intervene in a jurisdictional case is not contingent upon the two unions being signatory to a joint contract.

The National Association of Letter Carriers, when it has intervened in an area level arbitration case pursuant to the provisions of Article 15, Section 4.A.9, has the right to refer the case to Step 4 of the grievance procedure (National Arbitrator Snow, Q94N-4Q-C 98062054, January 1, 2000, C-20300).

15.4.B

B. Arbitration - Regular

1. At the Grievance/Arbitration Processing Center three (3) separate lists of cases to be heard in arbitration shall be maintained: (a) one for all removal cases and cases involving suspensions for more than 14 days, (b) one for all cases referred to Expedited Arbitration, and (c) one for all other cases appealed to Regular Arbitration. Separate panels will be established for scheduling (a) removal cases and cases involving suspensions for more than 14 days, (b) for all cases referred to Expedited Arbitration, and (c) for all other cases appealed to Regular Arbitration.

2. Cases will be scheduled for arbitration in the order in which appealed, unless the Union and Employer otherwise agree.

3. Only discipline cases involving suspensions of 14 days or less and those other disputes as may be mutually determined by the parties shall be referred to Expedited Arbitration in accordance with Section C hereof.

4. Cases referred to arbitration, which involve removals or suspensions for more than 14 days, shall be scheduled for hearing at the earliest possible date in the order in which appealed.

As provided by Article 15, Section 4.A.3, the Postal Service is responsible for administrative functions necessary to schedule cases in accordance with Sections 4.B.1-4.

National Arbitrator Snow held in E94N-4E-D 96075418, April 19, 1999 C-19372, that 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.

15.4.B.5

5. If either party concludes that a case referred to Regular Arbitration involves an interpretive issue under the National Agreement or some supplement thereto which may be of general application, that party may withdraw the case from arbitration and refer the case to Step 4 of the grievance procedure

Either party may withdraw a case from regular arbitration and refer it to Step 4 at any time prior to the issuance of the arbitrator's decision (see H8C-4C-C-12764, January 18. 1983, C-00431, National Arbitrator Mittenthal). However, if the parties at the national level conclude that the case did not present an interpretive issue, the case must be rescheduled in accordance with the following Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE,
THE AMERICAN POSTAL
WORKERS UNION, AFL-CIO,
AND THE NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

Re: Step 4 Procedures

This memorandum represents the parties' agreement with regard to withdrawing a grievance from regional arbitration and referring it to Step 4 of the grievance procedure.

If a case is withdrawn from regional arbitration, referred to Step 4, and then remanded as non-interpretive, it will be returned directly to regional arbitration to be heard before the same arbitrator who was scheduled to hear the case at the time of the referral to Step 4. Additionally, if the hearing had opened, the case will be returned to the same stage of arbitration.

The party referring the case to Step 4 from arbitration on the day of the hearing or after the hearing opens shall pay the full costs of the arbitrator for that date unless another scheduled case is heard on that date by the arbitrator.

The effect of this memorandum is to prevent the use of Article 15, Section 4.B.5 referrals to Step 4 as a means of shopping for a new arbitrator.

15.4.B.6

6. The arbitrators on each Regular Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties.

7. Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Arbitration, except either party at the National level may

request a transcript, and either party at the hearing may request to file a post-hearing brief. However, each party may file a written statement setting forth its understanding of the facts and issues and its argument at the beginning of the hearing and also shall be given an adequate opportunity to present argument at the conclusion of the hearing.

Transcripts: This contract provision prohibits either party to an arbitration from seeking a transcript without notifying the other party in advance at the headquarters level. After receiving such notification, the national office informs the advocate and other interested representatives. If one party requests a transcript, that party bears the full cost, unless the other party requests a copy, in which case the expenses will be shared. By mutual agreement, a copy may be provided to the arbitrator. The cost of the arbitrator's copy is also shared.

Post Hearing Briefs: National Arbitrator Snow held in H4C-3W-C-8590, March 31, 1993 (C-15480), that this section 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.

15.4.B.8

8. The arbitrator in any given case should render an award therein within thirty (30) days of the close of the record in the case.

The parties enforce this provision by requiring arbitrators to sign a contract before being placed on an arbitration panel. The contract provides for reduced fees to arbitrators if they fail to issue timely awards.

15.4.C

C. Arbitration - Expedited

1. The parties agree to continue the utilization of an expedited arbitration system for disciplinary cases of 14 days suspension or less which do not involve interpretation of the Agreement and for such other cases as the parties may mutually determine. This system may be utilized by agreement of the Union through its National President or designee and the Vice President, Labor Relations, or designee.
2. If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the Regular Arbitration Panel, that party shall notify the other party of such reference at least twenty-four (24) hours prior to the scheduled time for the expedited arbitration.
3. The hearing shall be conducted in accordance with the following:
   a. the hearing shall be informal;
   b. no briefs shall be filed or transcripts made;
   c. there shall be no formal rules of evidence;

d. the hearing shall normally be completed within one day;

e. if the arbitrator or the parties mutually conclude at the hearing that the issues involved are of such complexity or significance as to warrant reference to the Regular Arbitration Panel, the case shall be referred to that panel; and

f. the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. Such decision shall be based on the record before the arbitrator and may include a brief written explanation of the basis for such conclusion. These decisions will not be cited as a precedent. The arbitrator's decision shall be final and binding. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within forty-eight (48) hours of the close of the hearing.

4. No decision by a member of the Expedited Panel in such a case shall be regarded as a precedent or be cited in any future proceeding, but otherwise will be a final and binding decision.

The decisions of an expedited arbitrator are final and binding. However, they may not be cited as a precedent.

15.4.D D. National Level Arbitration

1. Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

2. A docket of cases appealed to arbitration at the National level shall be maintained. The arbitrators on the National Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties. Cases on the docket will be scheduled for arbitration in the order in which appealed, unless the Union and Employer otherwise agree.

15.5 Section 5. Administration

The parties recognize their continuing joint responsibility for efficient functioning of the grievance procedure and effective use of arbitration. Commencing April 1, 1979, and quarterly thereafter, the Employer will furnish to the President of the Union a copy of a quarterly report containing the following information covering operation of the arbitration procedure at the National level, and for each Area separately:

(a) number of cases appealed to arbitration;

(b) number of cases scheduled for hearing;

(c) number of cases heard;

(d) number of scheduled hearing dates, if any, which were not used;

(e) the total number of cases pending but not scheduled at the end of the quarter.

Administration: This section establishes that the efficient functioning of the grievance procedure and effective use of arbitration is the *joint* responsibility and prerogative of the NALC and the Postal Service. Neither party may make unilateral decisions concerning any aspect of the process. As provided by Section 4.A.3, above, the actual administration of the scheduling process, including any necessary correspondence concerning scheduling, is done by the Postal Service in accordance with mutually agreed upon procedures. As established in the prearbitration settlement M-00945, cited above, the administrative responsibility for scheduling does not include the right to unilaterally cancel an arbitration date after it has been scheduled.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

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.

(The preceding Memorandum of Understanding, Processing of Post-Removal Grievances, applies to Transitional Employees.)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO
National Association of Letter Carriers, AFL-CIO)

Re: Processing of Grievances

It is agreed by the United States Postal Service, the National Association of Letters, 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.

Date: October 16, 1981.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Article 15

In an effort to provide a more effective process for resolving disputes in the workplace and improve the working environment, the parties have agreed to the nationwide implementation of a new dispute resolution process. Given the magnitude of this effort, the parties recognize that implementation will be in managed stages, with districts going

live with the new process as the required Step B training/certification and district orientation is completed. The implementation period will likely extend beyond the term of the 1998 National Agreement.

Until such time as a district implements the new process, it will continue to operate under the current procedures of Article 15 contained in the 1998 National Agreement or local initiatives previously approved at the national level. The procedures and principles of the new process set forth below are to be followed upon implementation of the new process; they will be incorporated into Article 15 of the next National Agreement during collective bargaining in 2001.

NEW DISPUTE RESOLUTION PROCESS

Step A:

Employee and/or union steward define and discuss the complaint with the immediate supervisor within fourteen (14) days of the cause. This constitutes the Step A filing date.

If the parties are unable to reach a resolution during that discussion, the steward may initiate a Step A meeting by sending a joint Step A grievance form within seven (7) days of the discussion to the installation head or designee who serves as management's Step A official. The steward will complete the first part of the joint Step A grievance form, including the issue statement and date of the initial discussion (which should be initialed by the supervisor).

The Step A officials will meet no later than seven (7) days following receipt of the joint grievance form to attempt to resolve the grievance. The parties will cooperate fully to share all relevant facts.

If the grievance is resolved, a copy of the resolution will be sent to the steward and supervisor who initially were unable to resolve the grievance.

If the parties are unable to reach a resolution of the grievance, they will complete and date the joint Step A grievance form within seven (7) days after the Step A meeting. The union may appeal the grievance to Step B within seven (7) days of the form's completion. The appeal letter will be sent to the Step B resolution team office and will include a copy of the joint Step A grievance form and all supporting documentation.

Step B:

The Step B resolution team will review the grievance and issue a joint report of the decision and any supporting findings within fourteen (14) days of receipt of the grievance at Step B.

The Step B parties will give priority consideration to discussion and decision of removal cases.

The Step B team may 1) resolve the grievance; 2) declare an impasse; 3) remand the grievance, or 4) hold the grievance pending resolution of a representative case or national interpretive case.

Copies of the joint report will be sent to Step A and Step B parties and the parties at the national level.

In the event of an impasse, the NALC NBA may appeal the grievance to arbitration within fourteen (14) days after receipt of the Step B joint report. In cases where the Step B team has declared the grievance interpretive, any appeal must be made to Step 4, absent agreement between the NBA and the area to remand and hold.

A preference eligible is not hereunder deprived of whatever rights of appeal are applicable under the Veteran's Preference Act. If the employee appeals under the Veteran's Preference Act, however, the time limits for appeal to arbitration and the normal con-

tractual 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 procedure beyond Step B.

Date: July 11, 2000

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: New Dispute Resolution Process Implementation

ROLES AND RESPONSIBILITIES

- In support of the new dispute resolution process, the national parties have developed a set of principles by which behavior should be guided at all levels of the organization. The *USPS-NALC Joint Statement of Expectations* represents behaviors which the national parties believe to be essential to the effectiveness of any dispute resolution process as well as effective working relationships between the union and management at all levels.
- The NALC NBAs and District and Area management are responsible for ensuring that the dispute resolution process is effective in all ways, including the timeliness of decision-making. All parties are expected to monitor the functioning of the new process and, generally, to assume a proactive role regarding the labor/management relationship. Process disputes should be resolved whenever possible at the district level, but, when necessary, Area management, along with the NBA, may be called upon to assist in resolutions as part of their oversight responsibilities. In the event the NBA and Area are unable to resolve any differences, the issue will be referred to the national parties for resolution, an event which is expected to be an infrequent occurrence.
- The primary role of the Step B Dispute Resolution Team is to decide the grievance presented to them and to communicate the basis for the decision to the parties at Step A and B, using a format agreed upon at the national level. Additionally, with the joint concurrence of the District Manager and NBA, the Teams may be called upon to provide training and other assistance to the local parties. The national parties encourage the use of the Step B Teams to provide contract training throughout the district, especially when grievance activity suggests a lack of understanding of the provisions of the contract. As noted above, however, the primary role of the Step B team is to process and resolve disputes. No other secondary activities should be undertaken if the timely processing of grievances is negatively impacted.
- The Step B Teams are responsible for issuing decisions that are fair and consistent with the contract and the Joint Contract Administration Manual (JCAM), and written in a manner which is both educational and informative. The national parties encourage the Step B teams to jointly respond to questions concerning the proper interpretation or application of their decisions.
- The Step B team is not responsible for building the file and are not to go into the field for that purpose. If a file lacks proper documentation, the grievance should be remanded to the local level, or the parties should jointly call the local parties, with instructions concerning needed documentation and a timeframe for response.
- If the Step B team wishes to identify a representative grievance for similar disputes in its jurisdiction, it may only do so in conjunction with and approval of the appropriate NBA.

- Step B representatives may not be subjected to instruction or coercion intended to subvert the application of the contract as understood by the national parties.
- A back-up Step B Team will be designated in each district to provide coverage for vacations or other lengthy absences or, when warranted by the workload, to ensure timely grievance processing. Back-up teams also may be effectively utilized to provide training or such other assistance as may be agreed upon by the District Manager and NBA.
- The Step B Dispute Resolution Team (and back-up Team) will be made up of one management representative and one union representative. Although the Postal Service and the NALC will each determine its method of selection for its Step B representatives, it is anticipated that the NBAs and District Managers will discuss together their separate recommendations for appointment to the Dispute Resolution Teams prior to submitting their recommendations.
- In the interest of providing stability and developing expertise, the parties expect that Step B representatives will serve for no less than 2 to 3 years, absent special circumstances such as retirement, promotion, relocation, decertification, etc.
- Step B representatives will undergo a joint comprehensive training and certification program. Training and certification of Step B representatives (including back-ups) is required before Step B representatives may assume their duties.
- Unless alternate arrangements are agreed upon by the District Manager and NBA, the Step B Teams will work at the District office. If the District Manager and the NBA agree to use an alternate location, any additional expenses will be shared equally by the local parties. The Dispute Resolution Teams should be provided suitable office space, clerical support as typically provided in that office, a telephone, and computers with CD-ROM, and such other support as may be needed to perform their assignments.
- Step B representatives will not be involved in arbitrations or other hearings involving letter carriers except as jointly approved by the District Manager and NBA.
- Concerns about the performance of a Step B representative may be forwarded to the national level by either the District Manager or the NBA. When this occurs, the Vice President, Labor Relations, and the President, NALC, or their designees, will review relevant evidence and determine jointly whether the subject of the complaint should be decertified from Step B responsibilities. In the event the parties are unable to agree on the issue of decertification, the matter will be submitted to mediation.
- The Postal Service will compensate the union's Step B representatives at their appropriate rate of pay on a no loss, no gain basis. One full-time NALC Step B representative per District will be provided unless the national parties agree that the workload warrants part-time status or an additional Step B representative. Part-time back-ups likewise will be compensated on the same basis during their service as a Step B representative.
- If a Step B representative's original duty assignment becomes a holddown assignment. the NALC will not seek the conversion of PTF to full-time as a consequence of a PTF serving in that asssignment meeting the maximization criteria of Article 7.3.C or the Memorandum on Maximization.

NATIONWIDE IMPLEMENTATION

- The national parties will mutually agree upon a nationwide implementation process and timetable which provides for a rollout over a period of months and insures that adequate orientation is conducted prior to implementation in each District. Input on

the roll-out will be solicited from the Areas and NBAs prior to finalizing the plan.

- In addition, in preparation for implementation in each District, all grievances currently pending regular arbitration will be reviewed for possible resolution. The purpose of this review/resolution phase is to reduce the current arbitration caseloads to only those which represent legitimate differences in contract application between the parties. As part of the review/resolution effort, the parties should, where possible and applicable, identify representative grievances and those involving national issues, and hold them at the current level pending outcome of the representative or national case.
- In support of this effort, the national parties will issue a memorandum expressing their mutual intent to significantly reduce the pending arbitration caseload in conjunction with implementing the revised dispute resolution process.
- Crucial to this review/resolution phase is a commitment to contract compliance, a full exchange of information, and a willingness to resolve disputes in a constructive manner. This effort should be a first step in reestablishing a professional working relationship between the parties based on the principles articulated in the parties' *Joint Statement of Expectations.*
- Effective with each district's implementation of the new Dispute Resolution Process, removal actions, subject to the thirty (30) day notification period in Article 16.5 of the National Agreement, will be deferred until after the Step B decision has been rendered, or fourteen (14) days after the appeal is received at Step B, whichever comes first, except for those removals involving allegations of crime, violence, or intoxication or cases where retaining the employees on duty may result in damage to postal property, loss of mails, or funds, or where the employee may be injurious to self or others, pursuant to Article 16.6 and 16.7.
- As soon as this agreement is finalized, Area offices and NBAs are to establish a review/resolution procedure for each District for which they are responsible.
- The national parties will update the current JCAM not later than September 30, 2000. We further agree to review the content of the JCAM on a regular basis and provide updates to the field when completed. The JCAM should be consulted jointly by the parties when disputes arise.
- The national parties agree to establish a procedure for monitoring and intervention to ensure the effectiveness of the dispute resolution process and to address any offices with significant grievance activity or workplace disputes. The parties further agree that the new dispute resolution process should be continually evaluated at the national level to ensure that full advantage is taken of all opportunities to improve the process as the needs of the parties evolve. As part of this effort, key national level representatives will participate in joint mediation training and explore possible applications of mediation models in the field.

Date: September 7, 2000

ARTICLE 16 DISCIPLINE PROCEDURE

16.1 Section 1. Principles

See NALC Material

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

Just Cause Principle

The principle that any discipline must be for "just cause"establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action.

- **Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule 10 years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.
- **Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance. Management's rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.
- **Is the rule consistently and equitably enforced?** A rule must be applied fairly and without discrimination. Consistent and equitable

enforcement is a critical factor, and claiming failure in this regard is one of the union's most successful defenses. The Postal Service has been overturned or reversed in some cases because of not consistently and equitably enforcing the rules. Consistently overlooking employee infractions and then disciplining without warning is one issue. If employees are consistently allowed to smoke in areas designated as *No Smoking* areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again. Singling out employees for discipline is another issue. If several employees commit an offense, it is not equitable to discipline only one.

- **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be give a reasonable opportunity to defend themselves *before* the discipline is initiated.

- **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?** The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues 5-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a 30-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgement must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.

- **Was the disciplinary action taken in a timely manner?** Disciplinary actions should be taken as promptly as possible after the offense has been committed.

Corrective Rather than Punitive

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis

of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

Examples of behavior. Article 16, Section 1 states several examples of misconduct which may constitute just cause for discipline. Some USPS managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is "automatically" for just cause. However, almost all arbitrators have recognized that these behaviors are intended as examples and that, in any event, even if particular type of misconduct constitutes just cause for some discipline, management still must prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, and so forth. So all of the usual rules of "just cause" apply to these specific examples of misconduct as well as to any other conduct for which management issues discipline.

Remedies. Section 1's last sentence establishes the principle that discipline may be overturned in the grievance-arbitration procedure and that remedies may be provided to the aggrieved employee—"reinstatement and restitution, including back pay." If union and management representatives settle a discipline grievance, the extent of remedies for improper discipline is determined as part of the settlement. If a case is pursued to arbitration, the arbitrator states the remedy in the award.

Back pay: The implementing regulations concerning the back pay provided for in this section are found in ELM Section 436. A Memorandum of Understanding incorporated into the contract provides that where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Postal Service must pay interest on the back pay at the Federal Judgment Rate.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE

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.

16.2 Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable.

Following such discussions, 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 record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

Although included in Article 16, a "discussion" is non-disciplinary and thus is *not* grievable. Discussions are conducted in private between a supervisor and an employee.

Both the supervisor and the employee may keep a record of the discussion for *personal* use, however the notations are not to be considered official Postal Service records. They may not be included in the employee's personnel folder, nor may they be passed to another supervisor.

Discussions cannot be cited as past record items in any letter of charges in a future disciplinary action. They may be used (when they are relevant and timely) only to establish, via testimony of a supervisor, that an employee has been made aware of some particular obligation or responsibility.

16.3 Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

Letters of warning are official discipline and should be treated seriously. They may be cited as elements of prior discipline in subsequent disciplinary actions subject to the two year restriction discussed in Section 10 below. National Arbitrator Fasser held in NB-E 5724, February 23, 1977 (C-02968) that a letter of warning which fails to advise the recipient that it may be appealed through the grievance is procedurally deficient.

16.4 Section 4. Suspensions of 14 Days or Less

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after ten (10) calendar days during which ten-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

Letter carriers must be given ten calendar days advance written notice prior to serving a suspension of 14 days or less. During the notice period they must remain either on the job or on-the clock at the option of the

Postal Service. The only exceptions are for emergency or crime situations as provided for in Sections 6 and 7 below.

The Postal Service has agreed that letters of warning must be used instead of suspensions of less than five work (not calendar) days. If suspensions of five days or more are reduced administratively, it must be to a letter of warning rather than to a suspension of four days or less. The only exception is in cases where a suspension of less than five days is the result of a grievance settlement. See USPS Letters M-00582 and M-01234.

Paper Suspensions: The parties have agreed to the following Memorandum of Understanding for the duration of the 1998-2001 National Agreement:

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Article 16

The parties agree that the following modifies the provision of Article 16.4 for the term of the 1998 National Agreement.

Employees issued discipline involving suspensions of fouteen days or less will remain on duty during the term of the suspension with no loss of pay. These disciplinary actions shall, however, be considered to be of the same degree of seriousness and satisfy the same corrective steps in the pattern of progressive discipline as the time-off suspensions. Such suspensions are equivalent to time-off suspensions and may be cited as elements of past discipline in subsequent discipline in accordance with Article 16.10.

Seven and fourteen day suspensions issued pursuant to this memorandum shall contain the following language:

> While this suspension does not result in a loss of time or pay, it is equivalent to and is of the same degree of seriousness as a time-off suspension. It satisfies the same requirement for progressive discipline as a time-off suspension, and may be cited as an element of past discipline in subsequent discipline pursuant to Article 16.10. You have the right to appeal this action under the grievance-arbitration procedure set forth in Article 15, Section 2 of the National Agreement within 14 days of your receipt of this notice.

Nothing in this Memorandum of Understanding shall be construed to preclude the employer from placing an employee in a non-pay, non-duty status in accordance with Article 16.6 or 16.7 or to affect the procedures for allegations or misconduct that are considered appropriate for immediate removal. In addition, the parties understand that this Memorandum of Understanding does not preclude time-off suspensions where modification of a discharge is agreed to by the parties as a settlement or a third party (e.g., arbitrator, administrative law judge) determines to reduce the penalty of discharge to a time-off suspension.

This Memorandum of Understanding is effective with corrective action with an issue date of October 15, 2000 or after, and will expire at midnight on November 20, 2001.

Date: August 31, 2000

16.5 Section 5. Suspensions of More Than 14 Days or Discharge

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his/her discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his/her MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

Letter carriers must be given 30 days advance written notice prior to serving a suspension of more than 14 days or discharge. During the notice period they must remain either on the job or on-the clock at the option of the Postal Service. The only exceptions are for emergency or crime situations as provided for in Sections 6 and 7 below.

Issues concerning the MSPB appeal rights afforded preference eligibles are discussed under Section 9 below.

16.6.A Section 6. Indefinite Suspensions—Crime Situation

A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer is not required to give the employee the full thirty (30) days advance notice of indefinite suspension, but shall give such lesser number of days of advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

16.6.B B. The just cause of an indefinite suspension is grievable. The arbitrator shall have the authority to reinstate and make the employee whole for the entire period of the indefinite suspension.

C. If after further investigation or after resolution of the criminal charges against the employee, the Employer determines to return the employee to a pay status, the employee shall be entitled to back pay for the period that the indefinite suspension exceeded seventy (70) days, if the employee was otherwise available for duty, and without prejudice to any grievance filed under B above.

D. The Employer may take action to discharge an employee during the period of an indefinite suspension whether or not the criminal charges have been resolved, and whether or not such charges have been resolved in favor of the employee. Such action must be for just cause, and is subject to the requirements of Section 5 of this Article.

This section, which deals with indefinite suspensions in crime situations, provides the following:

- The full 30-day notice is not required in such cases. (See also Section 5.)
- Just cause of an indefinite suspension is grievable and that an arbitrator has the authority to reinstate and make whole. In NC-NAT 8580, September 29, 1978 (C-03216) National Arbitrator Garrett wrote that an indefinite suspension is:

  > reviewable in arbitration to the same extent as any other suspension to determine whether 'just cause' for the disciplinary action has been shown. Such a review in arbitration necessarily involves considering at least (a) the presence or absence of 'reasonable cause' to believe the employee guilty of the crime alleged, and (b) whether such a relationship exists between the alleged crime and the employee's job in the USPS to warrant suspension.

- If the USPS returns an employee who was on an indefinite suspension to duty, the employee is automatically entitled to back pay for all but the first 70 days of pay. The indefinite suspension and entitlement to the first 70 days of pay still remains subject to the grievance provisions stated in Subsection (B).
- During an indefinite suspension, the Employer can take final action to remove the employee. Such removals must be for the just-cause and are subject to Section 5 of Article 16, like any other removal.

16.7 Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

The purpose of this provision is to allow the Postal Service to act "immediately" to place an employee in an off duty status in the specified "emergency" situations.

Written Notice. Management is not required to provide advance written notice prior to taking such emergency action. However, an employee placed on emergency off-duty status is entitled to written charges within a reasonable period of time. In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

> The fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has the right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action.

What test must management satisfy? Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Section 7 depends upon the nature of the "emergency". In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

> My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "just cause" standard is not applicable. Management then need only show "reasonable cause" (or "reasonable belief") a test which is easier to satisfy.
>
> One important caveat should be noted. "Just cause" is not an absolute concept. Its impact, from the standpoint of the degree of proof required in a given case, can be somewhat elastic. For instance, arbitrators ordinarily use a "preponderance of the

evidence" rule or some similar standard in deciding fact questions in a discipline dispute. Sometimes, however, a higher degree of proof is required where the alleged misconduct includes an element of moral turpitude or criminal intent. The point is that "just cause" can be calibrated differently on the basis of the nature of the alleged misconduct.

Separate grievances: If, subsequent to an emergency suspension, management suspends the employee for more than thirty (30) days or discharge the employee, the emergency action taken under this section should be grieved separately from the later disciplinary action.

16.8 Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

Concurrence is a specific contract requirement to the issuance of a suspension or a discharge. It is normally the responsibility of the immediate supervisor to initiate disciplinary action. Before a suspension or removal may be imposed, however, the discipline must be reviewed and concurred in by a manager who is a higher level than the initiating, or issuing, supervisor. This act of review and concurrence must take place prior to the issuance of the discipline. While there is no contractual requirement that there be a written record of concurrence, management should be prepared to identify the manager who concurred with a disciplinary action so he/she may be questioned if there is a concern that appropriate concurrence did not take place.

16.9 Section 9. Veterans' Preference

A preference eligible is not hereunder deprived of whatever rights of appeal such employee may have under the Veterans' Preference Act; however, if the employee appeals under the Veterans' Preference Act, the employee thereby waives access to any procedure under the Agreement beyond Step 3 of the grievance-arbitration procedure

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-311, Section 241.3.) Article 16, Section 9 prevents a preference eligible carrier who has exercised his or her legal appeal rights under the Veterans Preference Act—that is, through an appeal to the Merit Systems Protection Board (MSPB)—to

pursue the same matter through the contractual grievance procedure beyond Step 3.

1988 memorandum. In 1988 the parties executed M-00830, a Memorandum of Understanding spelling out the purpose and intent of Article 16.9. It provides, in sum, that a grievance may not be pursued to arbitration where a preference eligible grievant has appealed the same management action through the grievance procedure and to the Merit Systems Protection Board, and where the MSPB appeal remains pending or has been settled or otherwise resolved on the merits, at the time the union appeals the grievance to arbitration. The Memorandum also requires management to provide notice of this rule to affected preference eligible employees. The full text of the Memorandum appears below.

Memorandum of Understanding

I. As general principles, the parties agree that the purpose and intent of Article 16, Section 9 is:

   A. To afford preference eligible employees, because of their status under the Veteran's Preference Act, a choice of forums in which to obtain a resolution on the merits of certain adverse employer actions set forth in Chapter 75 of Title 5, U.S. Code. (e.g., suspensions of more than 14 days, discharge), and

   B. To prevent situations in which the Employer is required to defend the same adverse action before the MSPB and in the Grievance-Arbitration procedure.

II. In accordance with the principles stated in I, above, the following procedures shall be applied:

   A. A preference eligible employee may both file a grievance and appeal to the MSPB, as appropriate, and the Union shall be entitled, at its discretion to pursue a grievance so filed to arbitration. However, the union will be deemed to have waived access to arbitration in any of the following circumstances:

      1. If at the time that the union appeals the grievance to arbitration, the grievant also has an appeal pending before the MSPB. (Postmark will constitute the date of appeal to arbitration; Postmark will also constitute date of withdrawal of appeal to the MSPB).

      2. If the grievant appeals the matter to the MSPB at any time after the union appeals the matter to arbitration. (Postmark will constitute the date of the MSPB appeal);

      3. If the MSPB issues a decision on the merits;

      4. If at any time the MSPB begins a hearing on the merits;

      5. If at any time the employee requests the MSPB to issue a decision on the record without a hearing and the MSPB has closed the record; or

6. If at any time the employee and Employer resolve the MSPB appeal through settlement.

III. In notices in which the Postal Service advises employees of their right to appeal to the MSPB, the following statement shall be included:

You have the right to file an MSPB appeal and a grievance on the same matter. However, if the MSPB issues a decision on the merits of your appeal, if an MSPB hearing begins, if the MSPB closes the record after you request a decision without a hearing, or if you settle the MSPB appeal you will be deemed to have waived access to arbitration. Further, if you have an MSPB appeal pending at the time the Union appeals your grievance to arbitration, or if you appeal to the MSPB after the grievance has been appealed to arbitration, you will be deemed to have waived access to arbitration.

IV. If the Postal Service erroneously advises an employee that he or she is entitled as a result of veterans' preference to appeal to the MSPB and if MSPB declines jurisdiction, the employee or the Union shall be entitled to initiate a grievance within 14 days from receipt of notice that the MSPB has dismissed the appeal for lack of jurisdiction. (Receipt of notice shall be presumed to have occurred 5 days from the date of the letter dismissing the appeal). If a grievance had previously been initiated, and if the grievance is pending at the time the MSPB dismissal notice is received, the Union shall be entitled to continue processing the grievance.

V. At the Step 3 discussion of a grievance, the Union representative and the USPS representative each have an obligation to inform the other of the existence of a companion MSPB appeal.

EEO and dual EEO/MSPB filings—no bar to arbitration. Article 16.9 does not apply and thus 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).

16.10 Section 10. Employee Discipline Records

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.

Upon the employee's written request, any disciplinary notice or decision letter will be removed from the employee's official personnel folder after two years if there has been no disciplinary action initiated against the employee in that two-year period.

The purpose of Section 10 is to protect employees from having their past records considered when they have shown over a two-year period that they performed their job without incurring any further disciplinary action.

The Step 4 settlement M-00889, January 5, 1989, provides the following:

> A notice of discipline which is subsequently fully rescinded, whether by settlement, arbitration award, or independent management action, shall be deemed not to have been "initiated" for purposes of Article 16.10, and may not be cited or considered in any subsequent disciplinary action.

Special Transitional Employee Rules: A January 16, 1992 Mittenthal Panel Arbitration award established the category of Transitional Employee (TE). The award, which appears as an Appendix to this publication, provided the following in Items 9 through 11:

9. Transitional employees will have access to the grievance procedure for those provisions which apply to transitional employees.

10. Transitional employees are temporary N.T.E. (not to exceed) employees who may be terminated at any time prior to completion of the 359-day term as provided in paragraph 11 or as otherwise required by this Award.

11. 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. Section 11 does not restrict the union and management from agreeing to a lesser penalty during discussions at earlier steps of the grievance-arbitration procedure. However, it does provide that where the employee is found guilty of the charge against him or her, the arbitrator shall not have the authority to modify the discharge.

National Arbitrator Mittenthal held in G90N-4G-D 93040395, August 18, 1994 (C-13837) that a Transitional Employee removed for cause is entitled to advance written notice of the charges against him/her and, in accordance with Article 16, Section 5, is entitled to remain on the job or on the clock at the option of the employer during the notice period provided by Item 11 above.

In the Step 4 Settlement F90N-4F-D 94022367, January 4, 1995 (M-01202) the parties agreed that when an NALC transitional employee has completed a previous 359-day term of employment in the same office

and in the same position, a termination for cause during the first 90 work days (or 120 calendar days, whichever comes first) of an immediately subsequent appointment is subject to the grievance-arbitration procedure.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Discipline Task Force

The parties agree to continue at the national level the "Task Force on Discipline." The Task Force shall have two representatives of the NALC, two representatives of the APWU and four representatives of the USPS.

The purpose of the Task Force shall be to study the manner in which discipline is administered by the USPS, the manner in which disputes about discipline are handled by the parties, and to recommend changes and improvements which can be made in the discipline and dispute resolution systems.

The Task Force is authorized, at its discretion, to conduct tests of alternative discipline and dispute resolution systems in various facilities.

The Task Force is further authorized to review and approve requests made by local parties to implement the modified grievance/arbitration procedure, as well as alternative discipline systems.

The Task Force shall convene periodically but at least quarterly, at such times and at such places as it deems appropriate during the term of the 1990 National Agreement. No action or recommendations may be taken by the Task Force except by a consensus of its parties.

Nothing herein shall preclude any of the parties from exercising the rights which they may otherwise have.

ARTICLE 17 REPRESENTATION

17.1 Section 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, presenting 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, Sections 3 and 4 are supplemented by additional rights stated in other parts of the National Agreement, including:

- Article 6, Section C.4 (superseniority in layoff or reduction in force)
- Article 15 (grievance handling)
- Article 27 (employee claims)
- Article 31, Section 3 (right to information)
- Article 41, Section 4.H (right to use USPS telephones)

17.2.A Section 2. Appointment of Stewards

A. 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. This language obligates 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, Section 3). See Step 4 NC-C-8435, October 6, 1977 (M-00455).

17.2.B

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.

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.

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.

Acting as steward. This language establishes three alternate ways individuals may be certified as stewards as circumstances warrant.

- **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 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)
- **17.2.C** In offices with twenty or less total craft employees which have no steward certified under 17.2.A, the union the union may certify a representative who is compensated by the union.
- **17.2.D** The union may certify a representative not on the employer's payroll shall to perform the functions of a steward or chief steward. Such representatives must be certified in writing to the Postal Service Area and will act in lieu of stewards designated under the provisions of 17.2.A or 17.22.B.

17.2.E 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.)

17.3 Section 3. Rights of Stewards

See NALC Material

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.

17.4 Section 4. Payment of Stewards

The Employer will authorize payment only under the following conditions:

Grievances—Steps 1 and 2: 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 Step 2 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.

Steward Rights: Sections 3 and 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 transfers;
- 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 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 as 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);
- Interview supervisors; Step 4, H7N-3Q-C 31599, May 20, 1991 (M-00988);
- Interview postal inspectors; Management Letter, March 10, 1981 (M-00225);
- Review relevant documents; Step 4, H4N-3W-C 27743, May 1, 1987 (M- 00837);
- Review an employee's Official Personnel Folder when relevant; Step 4, NC-E 2263, August 18, 1976 (M-00104);
- Write the union statement of corrections and additions to the Step 2 decision; Step 4, A8-S-0309, December 7, 1979 (M-01145).

A steward has the right to conduct all such activities *on the clock* (see below).

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-10835). 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). Steward time to discuss a grievance may not be denied 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).

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).

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)

Although Article 17, Section 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 Step 2 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, NC-N-12792, December 13, 1978 M-00647)

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 time spent processing the grievance off-the-clock which should have been paid time.

Right to information. The NALC's rights to information relevant to collective bargaining and to contract administration are set forth in Article 31. This section states stewards' specific rights to review and obtain documents, files and other records, in addition to the right to interview a grievant, supervisors and witnesses.

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 the 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, Section 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).

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)*

Weingarten rule does not apply to other types of meetings:

- **Discussions.** Article 16, Section 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.
- Employees do not have the right 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. They do 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 W*eingarten* to a pre-interview consultation with a steward. Federal Courts have extended this right to pre-meeting consultations to cover Inspection Service interrogations. (M-01092, *U.S. Postal Service v. NLRB*, D.C. Cir. 1992).

In a *Weingarten* interview the employee has the right to a steward's *assistance*—not just a silent presence. The employer violates the employee's *Weingarten* rights when it refuses to allow the representative to speak or tries to restrict the steward to the role of a passive observer.

Although ELM Section 666.6 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.

Superseniority in Transfers

The contract contains special provisions protecting steward positions from transfer or reassignment. These special steward rights are known as "superseniority." Article 17's steward superseniority provision is contained in the last paragraph of Article 17, Section 3. That language protects stewards from being transferred from a facility or tour where letter carriers are working—unless there is *no other carrier job left*.

National Arbitrator Britton ruled in H4N-5C-C-17075, November 28, 1988 (C-08504), that Article 17, Section 3 bars both temporary and permanent reassignments of stewards, and that the prohibition applies even if there are no vacant job assignments. In other words superseniority rights must be observed even if that requires an involuntary transfer of another, more senior carrier, whether full- or part-time. (Step 4, H1N-2B-C 7422, October 25, 1983, M-00077)

The steward's superseniority rights override the excessing provisions of Article 12, Principles of Seniority, Posting and Reassignments. So stewards are always the last employees to be excessed from a section, the craft or an installation, regardless of their seniority or their full- or part-time status.

17.5 Section 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 regular scheduled work day.

17.6 Section 6. Union Participation in New Employee Orientation

See NALC Material

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.)

Orientation time. 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 Forms 1187 during new employee orientation time. (Step 4, H4N-4J-C 2536, July 19 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).

17.7.A Section 7. Checkoff

A. In conformity with Section 2 of the Act, 39 U.S.C. 1205, without cost to the Union, the Employer shall deduct and remit to the Union the regular and periodic Union dues from the pay of employees who are members of the Union, provided that the Employer has received a written assignment which shall be irrevocable for a period of not more than one year, from each employee on whose account such deductions are to be made. The Employer agrees to remit to the Union all deductions to which it is entitled fourteen (14) days after the end of the pay period for which such deductions are made. Deductions shall be in such amounts as are designated to the Employer in writing by the Union.

17.7.B B. The authorization of such deductions shall be in the following form:

UNITED STATES POSTAL SERVICE
AUTHORIZATION FOR DEDUCTION
OF UNION DUES

I hereby assign to the *National Association of Letter Carriers, AFL-CIO*, from any salary or wages earned or to be earned by me as your employee (in my present or any future employment by you) such regular and periodic membership dues as the Union may certify as due and owing from me, as may be established from time to time by said Union. I authorize and direct you to deduct such amounts from my pay and to remit same to said Union at such times and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect, which includes a $8.00 yearly subscription to the Postal Record as part of the membership dues.

Notice: Contributions or gifts to the National Association of Letter Carriers, AFL-CIO are not tax deductible as charitable contributions for Federal income tax purposes. However, they may be tax deductible under other provisions of the Internal Revenue Code.

This assignment, authorization and direction shall be irrevocable for a period of one (1) year from the date of delivery hereof to you, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year, unless written notice is given by me to you and the Union not more than twenty (20) days and not less than ten (l0) days prior to the expiration of each period of one (1) year. This assignment is freely made pursuant to the provisions of the Postal Reorganization Act and is not contingent upon the existence of any agreement between you and my Union.

(Form to be revised to conform to Postal Service Machine Requirements as on SF 1187.)

17.7.C C. Notwithstanding the foregoing, employees' dues deduction authorizations (Standard Form 1187) which are presently on file with the Employer on behalf of the Union shall continue to be honored and given full force and effect by the Employer unless and until revoked in accordance with their terms.

D. The Employer agrees that it will continue in effect, but without cost to employees, its existing program of payroll deductions at the request and on behalf of employees for remittance to financial institutions including credit unions. In addition the Employer agrees without cost to the employee to make payroll deductions on behalf of such organization or organizations as the Union shall designate to receive funds to provide group automobile insurance and/or homeowners/tenant liability insurance for employees, provided only one insurance carrier is selected to provide such coverage.

(The preceding Section, Article 17.7, shall apply to Transitional Employees.)

ARTICLE 18 NO STRIKE

18.1 Section 1. Statement of Principle

The Union in behalf of its members agrees that it will not call or sanction a strike or slowdown.

18.2 Section 2. Union Actions

The Union or its local Unions (whether called branches or by other names) will take reasonable action to avoid such activity and where such activity occurs, immediately inform striking employees they are in violation of this Agreement and order said employees back to work.

18.3 Section 3. Union Liability

It is agreed that the Union or its local Unions (whether called branches or by other names) which comply with the requirements of this Article shall not be liable for the unauthorized action of their members or other postal employees.

18.4 Section 4. Legal Impact

The parties agree that the provisions of this Article shall not be used in any way to defeat any current or future legal action involving the constitutionality of existing or future legislation prohibiting Federal employees from engaging in strike actions. The parties further agree that the obligations undertaken in this Article are in no way contingent upon the final determination of such constitutional issues.

(The preceding Article, Article 18, shall apply to Transitional Employees.)

Prohibition on strikes: Federal law has long prohibited strikes by postal and most other federal employees, and provided criminal penalties for violations. The Postal Reorganization Act of 1970 continued to apply the strike prohibitions of Title 5, Section 7511 of the U.S. Code (5 U.S.C. §7511) to postal employees, as well as the federal criminal penalties for violations contained in 18 U.S.C. §1918.

ARTICLE 19 HANDBOOKS AND MANUALS

See NALC Material

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 transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

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.

Local Policies: Locally developed policies may not vary from nationally established Handbook and Manual provisions (National Arbitrator Aaron, N1N-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 stew-

ards' 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."

ARTICLE 20 PARKING

20.1 Section 1. National Study Committee

The existing parking program will remain in effect. A National Study Committee on Parking will be established in order to improve the parking program at existing facilities and to recommend such programs for new facilities.

20.2 Section 2. Security

Recognizing the need for adequate security for employees in parking areas, and while en route to and from parking areas, the Employer will take reasonable steps, based on the specific needs of the individual location, to safeguard employee security, including, but not limited to, establishing liaison with local police authorities, requesting the assignment of additional uniformed police in the area, improving lighting and fencing, and, where available, utilizing mobile security force patrols.

20.3 Section 3. Labor-Management Committee

Parking is a proper subject for discussion at local Labor-Management Committee meetings. The location of new, additional, or improved parking facilities; the number of parking spaces; security and lighting in the parking areas as well as similar subjects are proper agenda items for such meetings. The local Labor-Management Committee may make recommendations to the installation head concerning such subjects.

(The preceding Article, Article 20, shall apply to Transitional Employees.)

Employee Parking: Article 20 requires USPS to continue the existing parking program, discuss improvements in a national study committee, and take reasonable steps to safeguard employee security in parking areas. Furthermore, parking is a proper subject for discussion in local labor-management committee meetings.

Article 30 Local Implementation: Article 30, Section B lists "The assignment of employee parking spaces" as Item 19 of the 22 subjects for local implementation.

The intent of Item 19 is to enable the parties to negotiate over the number of *existing* parking spaces which will be allocated to letter carriers—rather than over the construction of new spaces. Local memorandum provisions may, for instance, determine the number of spaces allocated to letter carriers, may assign spaces based on seniority (or first-come, first-served or any other method), and may provide for carrier parking in other available parking spaces.

Negotiation between NALC branches and USPS installation heads over a local memorandum of understanding takes place during the "local implementation" period following the execution of each successive National Agreement. See also Article 30 in this publication.

ARTICLE 21 BENEFIT PLANS

21.1 **Section 1. Health Benefits**

The method of determining the Employer bi-weekly contributions to the cost of employee health insurance programs under the Federal Employees Health Benefits Program (FEHBP) will be as follows:

A. The Office of Personnel Management shall calculate the subscription charges under the FEHBP that will be in effect the following January with respect to self only enrollments and self and family enrollments.

B. The bi-weekly Employer contribution for self only and self and family plans is adjusted to an amount equal to 85% of the weighted average bi-weekly premiums under the FEHBP as determined by the Office of Personnel Management. The adjustment begins on the effective date determined by the Office of Personnel Management in January 2000, January 2001, and January 2002.

C. The weight to be given to a particular subscription charge for each FEHB plan and option will be based on the number of enrollees in each such plan and option for whom contributions have been received from employers covered by the FEHBP as determined by the Office of Personnel Management.

D. The amount necessary to pay the total charge for enrollment after the Employer's contribution is deducted shall be withheld from the pay of each enrolled employee. To the extent permitted by law, the Employer shall permit employees covered by this Agreement to make their premium contributions to the cost of each plan on a pre-tax basis, and shall extend eligibility to such employees for the U.S. Postal Service's flexible spending account plans for unreimbursed health care expenses and work-related dependent child care and elder care expenses as authorized under Section 125 of the Internal Revenue Code.

E. The limitation upon the Employer's contribution towards any individual employee shall be 88.75% of the subscription charge under the FEHBP in 2000, 2001, and 2002.

Health Benefits Contribution Formula: Article 21, Section 1 specifies the percentage of employee health benefit premium costs.

The method of paying health benefits for NALC employees will change as a result of the 1998 Agreement. The change reflects adoption of the Federal Government's weighted average formula. The weighted average formula is based on the number of federal and postal employees who elect coverage in any given plan and option.

The Office of Personnel Management (OPM) will calculate the subscription charges that will be in effect the following January for both individual and family plans. The Postal Service contribution will equal 85% of the weighted average bi-weekly premiums as determined by OPM. The

maximum that the Postal Service will pay in any given plan is 88.75% of the subscription charge under Federal Employees Health Benefit Program (FEHBP).

The change begins with plan year 2000 and continues through plan year 2002.

Letter carriers are covered by the Federal Employees' Health Benefit Program (FEHBP), which enables each carrier to choose among many offering different levels and types of coverage. The premium amounts differ among different FEHBP health insurance plans and also by the option chosen—self-only versus family plan—so the actual amounts of employee and employer contributions vary from one employee to another.

Regulations. More information about letter carriers' FEHBP coverage is contained in ELM Chapter 520.

21.2 Section 2. Life Insurance

The Employer shall maintain the current life insurance program in effect during the term of this Agreement.

FEGLI coverage. Letter carriers are covered by the Federal Employees' Group Life Insurance (FEGLI) program. More information about FEGLI coverage is contained in ELM Chapter 530.

21.3 Section 3. Retirement

The provisions of Chapter 83 and 84 of Title 5 U.S. Code, and any amendments thereto, shall continue to apply to employees covered by this Agreement.

CSRS and FERS retirement. Letter carriers are covered by federal retirement law guaranteeing them retirement annuities. Each carrier is covered by either the Civil Service Retirement System (CSRS) or by the newer Federal Employees Retirement System (FERS). More detailed retirement information is contained in ELM Chapter 560.

21.4 Section 4. Injury Compensation

Employees covered by this Agreement shall be covered by Subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.

Workers' compensation. Letter carriers who sustain occupational injury or disease are entitled to workers' compensation benefits under the Federal Employees' Compensation Act (FECA), administered by the U. S. Department of Labor's Office of Workers' Compensation Programs (OWCP).

Sources of information concerning federal workers' compensation benefits are:

- ELM Chapter 540—USPS regulations governing workers' compensation;
- USPS Handbook EL-505, *Injury Compensation* (December 1995);
- Title 5 United States Code Section 8101 (5 U.S.C. 8101)—the Federal Employees' Compensation Act (FECA);
- Title 20 Code of Federal Regulations Section Chapter 1 (20 C.F.R. 1)—regulations of the Office of Workers' Compensation Programs;
- Title 5 Code of Federal Regulations Part 353 (5 C.F.R. 353)—regulations concerning the restoration to duty of employees who sustain compensable injuries.

21.5 Section 5. Health Benefit Brochures

When a new employee who is eligible for enrollment in the Federal Employee's Health Benefit Program enters the Postal Service, the employee shall be furnished a copy of the Health Benefit Plan brochure of the Union which represents the craft in which the employee is to be employed.

ARTICLE 22 BULLETIN BOARDS

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 avail able. 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 Transitional Employees.)

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 USPS 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.

ARTICLE 23 RIGHTS OF UNION OFFICIALS TO ENTER POSTAL INSTALLATIONS

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 Transitional Employees.)

This Article 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);
- There should be no unreasonable delays in granting a requesting union official access to a postal facility Step 4, NC-C 10535, March 28, 1978 (M-00032); and
- High mail volume on a particular day is not a legitimate reason to prevent union officials from entering a facility. Step 4, NC-S-881, November 14, 1977 (M-00441).

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.

24.2 Section 2. Leave for Union Conventions

A. Full or part-time employees will be granted annual leave or leave without pay at the election of the employee to attend National, State and Regional Union Conventions (Assemblies) provided that a request for leave has been submitted by the employee to the installation head as soon as practicable and provided that approval of such leave does not seriously adversely affect the service needs of the installation.

B. If the requested leave falls within the choice vacation period and if the request is submitted prior to the determination of the choice vacation period schedule, it will be granted prior to making commitments for vacations during the choice period, and will be considered part of the total choice vacation plan for the installation, unless agreed to the contrary at the local level. Where the specific delegates to the Convention (Assembly) have not yet been determined, upon the request of the Union, the Employer will make provision for leave for these delegates prior to making commitments for vacations.

C. If the requested leave falls within the choice vacation period and the request is submitted after the determination of the choice vacation period schedule, the Employer will make every reasonable effort to grant such request, consistent with service needs.

(The preceding Article, Article 24, shall apply to Transitional Employees.)

Types of leave for union business include: (1) leave for union employment, (2) leave for union conventions, and (3) leave for other union activities.

Reason for leave—NALC employment. Article 24, Section 1 addresses leave from postal employment taken because of a full- or part-time job with NALC—typically with a local union or the national union. Section 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.

Reason for leave—NALC conventions. Article 24.2.B provides for a union member's right to annual leave or leave without pay (LWOP), at the employee's election, to attend a national, state or regional NALC convention. This is an exception to the general rule that the granting of LWOP is at the discretion of management (see ELM Subchapter 514). Once a carrier gives management appropriate notice of the need for leave, management should grant it unless the leave would "seriously adversely affect the service needs of the installation."

Article 24.2.B establishes three rules. First, it provides that employees requesting leave for union conventions during the choice vacation period will receive priority over other carriers, even those with greater seniority. Second, unless the local memorandum provides otherwise, such leave for conventions will be counted toward the "quota" of employees that must be given leave during that period. Third, the union may reserve a specified number of "slots" during the choice vacation period for convention purposes, even if the names of delegates are not yet known.

Under Article 24.2.C, if an employee requests convention leave after the choice vacation period selection process is done, management must follow the usual rule (see Article 10, Section 4.D) which provides that "all advance commitments for granting annual leave must be honored except in serious emergency situations." So although management cannot cancel another employee's leave to honor the convention leave request, this section requires management to "make every reasonable effort to grant such request."

Reason for leave—other union activities. Requests for leave to attend other sorts of NALC activities are handled under the usual leave rules; see Article 10.

Article 30—Local Implementation: Section B lists two items for local implementation which involve leave for union activities. These items are described here.

Item 8: Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period. Under this item a branch may negotiate language to alter the effect of Article 24.2.B above, under which leave for union conventions during the choice vacation period is counted toward the "quota" of employees that must be given leave during that period.

Item 20. The determination as to whether annual leave to attend Union activities requested prior to determination of the choice vacation schedule is to be a part of the total choice vacation plan. "Union activities" in this item differ from the "national and state conventions" addressed by Item 8. "Union activities" may include a wide variety of union programs other than conventions, for example, legislative rallies or training seminars.

ARTICLE 25 HIGHER LEVEL ASSIGNMENTS

25.1 Section l. 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. These first three sections 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. This section 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. Full-time regular letter carriers with bid positions are eligible to apply for higher level assignments under the provisions of this section.

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, Section 2.B. Rather, temporarily vacant Carrier Technician positions must be filled in accordance with this section (see Step 4 Settlement, H8N-3P-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 may be understood to apply to "Carrier Technician" positions.

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 language from a management document known as the "Brown Memo" (M-00452, November 5, 1973) is a contractual commitment and remains in effect:

> 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.

The Postal Service agreed by letter dated November 24, 1992 (M-01104) that transitional employees will be paid at Grade 2 for time spent performing the Carrier Technician duties and at Grade 1 for time spent performing other work.

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 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.

Terminal leave payments resulting from death will be 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. This section provides that a carrier working a higher-level detail for less than 30 working days will receive sick or annual leave pay at the higher rate, but for only 3 leave days. If a replacement for the detailed employee is needed, the detail is automatically canceled.

ARTICLE 26 UNIFORMS AND WORK CLOTHES

26.1 Section 1. Uniform Control Committee

The parties agree that the National Joint Labor-Management Uniform Control Committee shall be continued.

The Committee shall be composed of a representative of the Union and a representative of the Employer. The Chair of the Committee shall alternate each meeting between the Union and the Postal Service.

The Committee shall meet at least once each three months and at such other times as may be necessary or as requested by either of the parties.

The Committee shall have jurisdiction to consider the matters set out below and all non-cost matters pertaining to the Uniform Allowance Program, including but not limited to, the uniform items or work clothes items for which allowances are applicable; the design, color, quality and fabrics of authorized reimbursable items.

All employees who are required to wear uniforms or work clothes shall be furnished uniforms or work clothes or shall be reimbursed for purchases of authorized items from duly licensed vendors.

The current administration of the Uniform and Work Clothes Program shall be continued unless otherwise changed by this Agreement or by the Employer based on recommendations of the Committee.

"Wear-out" periods for uniform items being changed or replaced shall be determined by the Committee and appropriate recommendations made after giving full consideration to the type of changes being made, the economic effect upon the employees involved for replacement, and the overall appearance of the uniform.

The Committee shall establish its own rules of procedure. Recommendations of the Committee shall be addressed to the Postmaster General or his designee.

Uniform program and national committee. Section 1 guarantees the continuation of the current uniform and work clothes program, whose detailed regulations are contained in ELM Chapter 930. It also sets up a joint NALC-USPS committee at the national level to discuss this topic and to recommend changes in the uniform program.

26.2 Section 2. Annual Allowance

The annual allowance for eligible employees in the reimbursable uniform program shall be as follows:

A. Annual allowance for all eligible employees shall be increased from present **$277.00** per annum to **$291.00** per annum **effective November 20, 1999.** The increase shall become effective on the employee's anniversary date. **Annual allowance for all eligible employees shall be increased from $291.00 per annum to $298.00 per annum effective November 18, 2000. The increase shall become effective on the employee's anniversary date.**

B. A newly eligible employee entering the reimbursable uniform program will receive an additional credit to the employee's allowance of **$67.00** if entitled to **$291.00** per annum effective **November 20, 1999. A newly eligible employee entering the reimbursable uniform program will receive an additional credit to the employee's allowance of $69.00 if entitled to $298.00 per annum effective November 18, 2000.**

An eligible employee cannot receive this additional credit more than once; however, the current procedures regarding employees transferring from one allowance category to another shall be continued.

Uniform allowance. Each employee required to wear a uniform receives a $291.00 annual uniform allowance, credited on the employee's uniform allowance anniversary date. The credit may then be spent at approved uniform vendors who sell approved uniform items. Newly eligible employees receive an additional credit of $67.00. (A new carrier becomes eligible for a uniform allowance after completing the 90-day probationary period. Full-time carriers and part-timers who work at least 4 hours per day performing letter carrier duties are eligible for the allowance.)

26.3 Section 3. Transitional Employee

In the event that the Postal Service requires transitional employees to wear uniform items, local Postal Service management, at its option, may provide such uniform items, which will be returned at the time of separation. For each three months of service during the first term of appointment the transitional employee may be entitled to purchase up to 25 percent of the $252.00 uniform allowance. The uniform purchases are reimbursed by the Postal Service direct to the vendor. Purchase and payment provisions will continue as previously agreed to by the USPS and NALC.

Transitional employee uniforms. When the Postal Service requires transitional employees to wear uniform items, it may either provide the items and collect them at the time of separation from employment, or provide each transitional employee with a pro-rata uniform allowance of $63.00 (25 percent of $252.00) for each three months of employment.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Centralized Uniform Program

The parties agree to the joint development, establishment, and phase-in through the National Joint Labor-Management Uniform Control Committee (Uniform Committee) of a centralized system of purchasing and distributing uniforms and work clothes. By allowing the U.S. Postal Service to procure the items directly

from the manufacturer(s), uniform items can be acquired at a reduced cost, in comparison to the current system. As a result of such volume purchasing, the parties anticipate that employees can be supplied with more uniform items with the U.S. Postal Service realizing monetary savings in the Uniform Program.

1. Under this system, the U.S. Postal Service will enter into contract(s) with uniform manufacturer(s) for authorized uniform items which would provide for a controlled price on uniform items. The contract(s) will also address matters such as the quality of items and the method of distribution to the employees and other requirements as agreed upon by the Uniform Committee.

2. Under the new program, the annual dollar allowance will be replaced by an allowance of points to be spent by employees on authorized uniform items. The parties agree to meet for the purpose of negotiating the specific elements of the uniform and work clothes allowance, including, but not limited to, the points assigned to each authorized item, the allowance of total points or number of items available for eligible employees in the distribution of such items.

3. Until phased in, the employees will acquire uniforms under the current system. It is further understood that the current system remains in effect until such time as the parties agree upon the matters enumerated above and the new system, meeting the requirements set by the Uniform Committee, is operational. During the phase-in period, the Uniform Committee will monitor the progress of the program to ensure the success of the new system and address matters of concern that may arise. Issues not resolved by this Memorandum will be discussed and resolved by the parties through the Uniform Committee.

4. It is understood by the parties that any increase in the existing uniform allowance in Article 26 of this Agreement will be credited toward the authorized uniform items to be negotiated as set forth in paragraph 2.

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 area office for determination. The claim will be adjudicated within thirty (30) days after receipt at the area office. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.

A decision letter denying 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 area office will provide to the Union's Regional Representative a copy of the denial letter referenced above, the claim form, and all documentation submitted in connection with the claim.

The installation head or designee will provide a copy of the denial letter 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 Transitional Employees.)

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 prop-

erty does *not* include automobiles (see "Automobile exclusion," below).

On some occasions management has argued that carrier uniforms should not be considered personal property, at least to the extent that they were acquired with Postal Service funds through the uniform program. The following arbitrators rejected that argument: Roberts in NC-W-107, February 21, 1978 (C-03004); Caraway in S1N-3A-C 10700, October 9, 1984 (C-04462); Caraway in S1N-3T-C 107 December 21, 1982 (C-02686).

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.

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. See Pre-arbitration settlement F90N-4F-C 95004286 (M-01440).

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.

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. "Negligence" means a failure to act with reasonable prudence or care.

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.

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 14 days after the loss or damage occurred. Generally, the employee is expected to know the proper procedures to file, including the time limits.

8. Written claim. Section 645.2 of the Employee and Labor Relations Manual (ELM) provides that Form 2146, Employee Claim for Personal Property, must be filed to document a claim. However, this section also provides, "any written document received within the period allowed is 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 even a statement from a seller about the replacement value.

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 this Article, 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.

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, Section 3.C, below.

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. This section protects letter carriers against management claims resulting from the loss or damage of mails, unless the employee "failed to exercise reasonable care."

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. This section protects letter carriers against management claims for the loss or damage to other USPS property, including vehicles, unless the loss or damage resulted from the "willful or deliberate misconduct" of the letter carrier.

28.4.A Section 4. Collection Procedure

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. This language 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.

28.4.B

B. No more that 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 Transitional Employees.)

Limit on deduction amount. This language 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.

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 Form 3074, Request for a Waiver of Claim for Erroneous Payment of Pay, upon receipt of the Postal Service's letter of demand for "recovery of pay which was erroneously paid." The completed form should contain all the information the carrier may have concerning the overpayment, including a statement of the circumstances which the carrier feels would justify a waiver of the claim—typically, that the mistake was the Postal Service's and was not connected in any way to what the carrier did or did not do, and that it would be unfair to require repayment under the circumstances.

The waiver is reviewed by the installation head who adds any relevant facts or circumstances, including the reason for the overpayment. The installation head then makes a recommendation for approval or disapproval of the waiver, and forwards the Form 3074 to the appropriate compensation unit, which adds any pertinent comments and forwards the entire file to the Postal Data Center (PDC). ELM Section 437.6 provides that:

> **Section 437.6 Action by Eagan Accounting Service Center**
> The Eagan Accounting Service Center 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 USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, 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 USPS.

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. See Step 4 settlement Q98N-4Q-C 00187353, September 20, 2001, (M-01446).

ARTICLE 29 LIMITATION ON REVOCATION OF DRIVING PRIVILEGES

An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver.

Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include but are not limited to, traffic law violations, accidents or failure to meet required physical or operation standards.

The report of the Safe Driver Award Committee cannot be used as a basis for revoking or suspending an employee's driving privileges. When a revocation, suspension, or reissuance of an employee's driving privileges is under consideration, only the on-duty record will be considered in making a final determination. An employee's driving privileges will be automatically revoked or suspended concurrently with any revocation or suspension of State driver's license and restored upon reinstatement. Every reasonable effort will be made to reassign such employee to non-driving duties in the employee's craft or in other crafts. In the event such revocation or suspension of the State driver's license is with the condition that the employee may operate a vehicle for employment purposes, the employee's driving privileges will not be automatically revoked. When revocation or suspension of an employee's driving privileges is under consideration based on the on-duty record, such conditional revocation or suspension of the state driver's license may be considered in making a final determination.

Initial issuance—an employee shall be issued a Certificate of Vehicle Familiarization and Safe Operation when such employee has a valid State driver's license, passes the driving test of the U.S. Postal Service, and has a satisfactory driving history.

An employee must inform the supervisor immediately of the revocation or suspension of such employee's State driver's license.

The reinstatement of driving privileges is treated in the national Memorandum of Understanding below.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Reinstatement of Driving Privileges

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that:

1. The safety and health of employees is of significant concern to the parties. Accordingly, the parties further agree that the following is not intended to provide driving privileges to an employee when such privilege would place the safety of the public or the employee at risk.

2. The mere fact that an employee was involved in a vehicle accident is not sufficient to warrant automatic suspension or revocation of driving privileges or the automatic application of discipline.

3. When an employee's driving privilege is temporarily suspended as a result of a vehicle accident, a full review of the accident will be made as soon as possible, but not later than fourteen (14) days, and the employee's driving privileges must either be reinstated, suspended for a specified period of time not to exceed sixty (60) days, or revoked as warranted. If the decision is to suspend or revoke the employee's driving privileges, the employee will be provided, in writing, the reason(s) for such action.

4. If an employee requests that revoked or suspended driving privileges be reinstated, Management will review the request and make a decision as soon as possible but not later than 45 days from the date of the employee's request. If the decision is to deny the request, the employee will be provided with a written decision stating the reasons for the decision.

The Management review must give careful consideration to:

— the nature, severity and recency of the incident(s) which led to the revocation or suspension;

— any driver's training or retraining courses completed from private schools, state sponsored courses, or Postal Service training programs, especially when directly relevant to the incident(s) that led to the revocation;

— successful participation in an EAP program, when relevant to the reasons for revocation;

— the employee's state driving record consistent with the criteria for initial certification of driving privileges as stated in the applicable Handbook. The Employer may waive these criteria if warranted in light of the other factors listed above.

5. This Memorandum of Understanding is not intended to define the conditions or circumstances for which an employee's driving privileges may be suspended or revoked.

Date: August 19, 1995

Revocation or Suspension of Driving Privileges. "Driving privileges" is a relatively new term in the Postal Service. For many years USPS issued special postal "Operator's Identification Cards" known as the OF-346 and, before that, the SF-46. This practice has been discontinued and currently there is no special postal driver's certificate.

Management may suspend or revoke a carrier's driving privileges under certain specified circumstances:

- Automatically, concurrently with the suspension or revocation of the employee's state driver's license. Automatic reinstatement of postal driving privileges must follow reinstatement of the state driver's license.
- Temporarily following a vehicle accident, in which case "a full review of the accident will be made as soon as possible, but not later than fourteen (14) days, and the employee's driving privileges must

either be reinstated, suspended for a specified period of time not to exceed sixty (60) days, or revoked as warranted." (Memorandum, paragraph 3)

- Where management can demonstrate that "the on-duty record shows that the employee is an unsafe driver." (Article 29, paragraph 1)

Additional rules regarding the suspension or revocation of driving privileges are contained in Section 1 (VI) of the management training program entitled *Driver Selection, Orientation, Familiarization and Certification*, issued in 1993. That handbook replaced former Handbook EL-827, *Driver Selection, Testing and Licensing*. Section 1(VI-B) states:

VI. Suspension and Revocation of Driving Privileges

B. For Unsafe Driving

1. An employee's driving privileges may be suspended or revoked when the on-duty record shows that the employee is an unsafe driver. Elements of an employee's on-duty record that may be used to determine whether the employee is an unsafe driver include, but are not limited to traffic law violations, accidents, or failure to meet required physical or operation standards.

2. When a suspension, revocation, or reissuance of an employee's driving privileges is under consideration, only the on-duty record may be considered when making the final determination. However, an employee's driving privileges will automatically be suspended or revoked concurrently with an suspension or revocation of State driver's license and restored upon reinstatement. It is the responsibility of the employee to provide documentation that the State license has been reinstated. If such suspension or revocation includes the condition that the employee may operate a vehicle for employment purposes, the driving privileges will not be automatically suspended or revoked. When suspension, revocation, or reissuance of an employee's driving privileges is under consideration based on the on-duty record, such conditional suspension or revocation of the State driver's license may be considered in making the final determination.

C. In Case of Accident

1. Review of Driving Privileges. The employee's driving privileges are reviewed at the time of an accident by the employee's supervisor and/or another official in charge. There are no provisions for the automatic suspension of an employee's driving privilege based on the fact that the employee was involved in a vehicle accident. Rather, the circumstances surrounding each accident are assessed at the time of the accident

to determine whether a temporary suspension of driving privileges is warranted.

2. Assessment of Circumstances. The circumstances surrounding an accident that should be assessed include, but are not limited to, the employee's condition (shock, fatigue, alcohol/controlled substance impairment, or other related physical or emotional condition), the seriousness of the unsafe driving practices, if any, that resulted in the accident, and a determination by the supervisor as to whether the public's or the employee's safety would be jeopardized by allowing the employee to continue driving.

3. Temporary Suspension. If an immediate determination cannot be made based upon a review of the above, the employee's driving privileges may be withheld temporarily pending completion of the accident investigation. At this time a final decision to suspend, revoke, or re-instate can be made. The length of time involved in withholding driving privileges pending investigation can vary in each case but must not exceed 14 days. Not later than 14 days, the employee's driving privileges must either be reinstated, suspended for a period of time not to exceed 60 days, or revoked, as warranted. If the decision is to suspend or revoke the employee's driving privileges provide the employee, in writing, of the reason(s) for such action.

4. Decision Criteria. Decisions to suspend or revoke driving privileges are made after investigation and determination as to whether the driver was at fault (whether the driver's actions were the primary cause of the accident), the driver's degree of error, past driving and discipline records, and/or the severity of the accident. The quality or absence of prior training in a particular driving activity should be considered as well, and the employee's inability to meet USPS physical standards at the time of an accident is also a factor to be considered. The preventability or non-preventability of an accident as determined by the Safe Driver Award Committee is NOT a factor to be considered in the suspension or revocation of driving privileges. The decision of the Safe Driver Award Committee is for contest purposes only.

Every Reasonable Effort to Reassign: Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, "every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts." This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work.

National Arbitrator Snow held in I94N-4I-D 960276608, April 8, 1998 (C-18159) that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft must be placed on leave with pay until such time as he may return to work without violating either unions' agreement. In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city 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 employees of that other craft.
- 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.

ARTICLE 30 LOCAL IMPLEMENTATION

Local Implementation. Article 30 of the National Agreement enables NALC branches to negotiate with local postal officials 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.

30.A A. Presently effective local memoranda of understanding not inconsistent or in conflict with the **1998** 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.

Local Memorandum of Understanding (LMU). Local Implementation procedures result in the execution of a Local Memorandum of Understanding—a local, enforceable agreement between NALC and the Postal Service.

Article 30, Section A provides that a currently effective LMU 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.

Inconsistent or in conflict. Section A 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 a LMU may add to the National Agreement's rules but may not contradict them. A LMU may not, for example, alter Article 9's wage provisions or Article 8's overtime rules. See the discussion under the national Memorandum of Understanding on local implementation, below, concerning the handling of management claims during the local implementation period that a LMU provision is "inconsistent or in conflict" with the National Agreement.

30.B B. There shall be a 30-day period of local implementation to commence **October 2, 2000** on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the **1998** National Agreement:

30-day period. Local negotiations take place during a 30-day local

implementation period following completion of each national agreement. National Arbitrator Mittenthal held in a decision H7N-1F-C-39072, dated June 2, 1995 (C-14489), that the local parties may not negotiate wholesale changes to Local Memorandums of Understanding except during the 30-day period provided by Article 30.

The 22 Items: Article 30, Section B lists 22 Items which the parties may discuss during the period of local implementation. The local parties are required to discuss any of these items which are raised by either party. This means that if one party raises one of the listed items, the other must discuss it in good faith. These are "mandatory subjects" of discussion if raised during the period of local implementation.

The local parties are free to discuss other subject areas as well, but neither party is required to discuss subjects other than the 22 items listed in Article 30, Section B.

30.B.1

1. Additional or longer wash-up periods.

Article 8. See the discussion of Item 1 under Article 8, Section 9 above.

30.B.2

2. The establishment of a regular work week of five days with either fixed or rotating days off.

Article 41. See the discussion of Item 2 under Article 41, Section 1.A.3 above.

30.B.3

3. 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.

Article 3. See the discussion of Item 3 under Article 3.F above.

30.B.4

4. Formulation of local leave program.
5. The duration of the choice vacation period(s).
6. The determination of the beginning day of an employee's vacation period.
7. Whether employees at their option may request two selections during the choice vacation period, in units of either 5 or 10 days.
8. Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period.
9. Determination of the maximum number of employees who shall receive leave each week during the choice vacation period.
10. The issuance of official notices to each employee of the vacation schedule approved for such employee.

30.B.11

11. Determination of the date and means of notifying employees of the beginning of the new leave year.
12. The procedures for submission of applications for annual leave during other than the choice vacation period.

Article 10. See the discussion of Items 4-12, as well as Item 20, under Article 10 above.

30.B.13

13. The method of selecting employees to work on a holiday.

Article 11. See the discussion of Item 13 under Article 11, Section 6 above.

30.B.14

14. Whether "Overtime Desired" lists in Article 8 shall be by section and/or tour.

Article 8. See the discussion of Item 14 under Article 8, Section 5.B above.

30.B.15

15. The number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment.
16. The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected.
17. The identification of assignments that are to be considered light duty within each craft represented in the office.

Article 13. See the discussion of Items 15, 16 and 17 under Article 13, Sections 3.A and 3.C.

30.B.18

18. The identification of assignments comprising a section, when it is proposed to reassign within an installation employees excess to the needs of a section.

Article 12. See the discussion of Item 18 under Article 12, Section 5.C.4 above.

30.B.19

19. The assignment of employee parking spaces.

Article 20. See the discussion of Item 19 under Article 20 above.

30.B.20

20. The determination as to whether annual leave to attend Union activities requested prior to determination of the choice vacation schedule is to be part of the total choice vacation plan.

Article 10. See the discussion of Item 20, as well as the leave-related Items 4-12, under Article 10 above.

30.B.21

21. Those other items which are subject to local negotiations as provided in the craft provisions of this Agreement.

22. Local implementation of this Agreement relating to seniority, reassignments and posting.

Articles 41 and 12. See the discussion of Items 21 and 22 under Article 41, Sections 1.A.3, 1.A.5, 1.B.2, 1.B.3, 1.C.4 and 3.0, and Article 12, Section 5.C.4.

30.C

C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President or the Vice President, Labor Relations. The request for arbitration must be submitted within 10 days of the end of the local implementation period. However, where there is no agreement and the matter is not referred to arbitration, the provisions of the former local memorandum of understanding shall apply, unless inconsistent with or in conflict with the **1998** National Agreement. [see the Memorandum below]

Impasses. Certain subjects of local implementation may be "impassed." That is, when an impasse occurs—a failure to reach agreement in local negotiations—the union or management may appeal the dispute for resolution in final binding arbitration, subject to certain rules. The detailed rules for the processing of impasses are contained in a national Memorandum of Understanding on local implementation, below. Rules on which sorts of proposals may be impassed are set forth under Article 30, Section F below.

30.D

D. An alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure.

An LMU is enforceable. After the local memo is negotiated and signed, all of its provisions may be enforced through the grievance procedure—both those provisions within the 22 items and those outside the 22 items. The only exception is language found to be inconsistent or in conflict with the National Agreement. See N8W-0406, National Arbitrator Mittenthal, September 21, 1981 (C-03206).

30.E

E. When installations are consolidated or when a new installation is established, the parties shall conduct a thirty (30) day period of local implementation, pursuant to Section B. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President or the Vice President, Labor Relations. The request for arbitration must be submitted within 10 days of the end of the local implementation period.

New or consolidated installations. Section E provides for a new period of local implementation upon the consolidation of installations or the creation of a new one.

30.F

F. Where the Postal Service, pursuant to Section C, submits a proposal remaining in dispute to arbitration, which proposal seeks to change a presently-effective Local Memorandum of Understanding, the Postal Service shall have the burden of establishing that continuation of the existing provision would represent an unreasonable burden to the USPS.

What may be impassed: The interest arbitrator who determined the provisions of the 1994 National Agreement imposed certain changes in the *impasse rules* for local implementation. Under those changed rules, management gained a limited right to bring any of the 22 listed bargaining items to impasse. The rules are, in short:

- Either party may impasse an item.
- Only a subject within Article 30's 22 items may be impassed.
- Where management submits a proposal to arbitration to change an existing local memo provision, it has the burden of establishing that continuation of the existing provision would represent an *unreasonable burden* to the USPS. (There is no such burden on the union when it seeks to change a local memorandum.)

National Arbitrator Mittenthal, in decision H0C-NA-C-3, dated July 12, 1993 (C-13080), ruled that management may *not* impasse a subject that is *outside* the 22 items.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Local Implementation

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 to the implementation of Article 30 during the **1998** local implementation period.

1. 1994 local implementation will commence on **October 2, 2000** and terminate on **October 31, 2000**.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) day local implementation period, each party shall identify such issue(s) in writing. Initialed copies of this written statement and copies of all proposals and counterproposals pertinent to the issue(s) in dispute will be furnished by the appropriate local party to the appropriate management official at the Grievance/Arbitration Processing Center with copies to the Postmaster and the Union's Regional

Representative within fifteen (15) days of the expiration of the local implementation period. Inclusion of any matter in the written statement does not necessarily reflect the agreement of either of the parties that such matter is properly subject to local implementation.

3. The Representative of the Employer from the Grievance/ Arbitration Processing Center and the Union's Regional Representative shall attempt to resolve the matters in dispute within seventy-five (75) days after the expiration of the local implementation period. The Representatives of both the Union and the Employer will have full authority to resolve all issues still in dispute.

4. If the parties identified above are unable to reach agreement by the end of the seventy-five (75) day period provided for above, the issue(s) may be appealed to final and binding arbitration by the National Union President or the Vice President, Labor Relations within twenty-one (21) days of the end of the seventy-five (75) day period.

5. Where there is no agreement and the matter is not referred to the Grievance/Arbitration Processing Center or to arbitration, the provision(s), if any, of the former Local Memorandum of Understanding shall apply unless inconsistent with or in conflict with the **1998** National Agreement.

6. Where a dispute exists as to whether an item in the former Local Memorandum of Understanding is inconsistent or in conflict with the 1994 National Agreement, such dispute will be processed in accordance with the procedures outlined in two (2) through four (4) above.

This Memorandum of Understanding expires at 12 midnight November 20, **2001**.

Impasse Procedure. This Memorandum, which has been updated with successive national agreements, sets forth the procedural rules for handling impasses from local implementation. Where the parties do not reach agreement on a subject (or subjects) the impasse is submitted to higher levels of NALC and USPS for settlement discussions. If the settlement discussions are not successful, the matter may be taken before a neutral arbitrator. The arbitrator hears evidence from both sides and decides what the language of the disputed Local Memorandum provision contract will be. The resulting arbitration award is final and binding.

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. See Article 30, Sections A and C.

Management may take the position during local negotiations that certain items in an existing local memorandum are inconsistent or in conflict with the National Agreement. The proper method for challenging this position depends upon whether the disputed provision falls within Article 30's list of 22 negotiating items. If it *does fall within the 22 items*, then the branch *must impasse the provision* in the local negotiations process; see Section 6 of the Memorandum above. If the provision *does not fall within the 22 items*, then the branch may challenge management's action solely through the grievance procedure.

ARTICLE 31 UNION-MANAGEMENT COOPERATION

31.1 Section 1. Membership Solicitation

The Union may, through employees employed by the Employer, solicit employees for membership in the Union and receive Union dues from employees in non-work areas of the Employer's premises, provided such activity is carried out in a manner which does not interfere with the orderly conduct of the Employer's operation.

Organizing and dues collection on USPS premises. Section 1 gives NALC representatives the right to engage in membership organizing and to collect dues from members in non-work areas of postal facilities.

31.2 Section 2. Computer Tapes

The Employer shall, on an accounting period basis, provide the Union at its national headquarters with a computer tape containing information as set forth in the Memorandum of Understanding regarding Article 31.

Bargaining unit information. This language, supplemented by the more specific description of information in the Memorandum of Understanding on bargaining information (National Agreement p. 176), requires USPS to provide detailed information about each member of the letter carrier bargaining unit represented by NALC. NALC uses this information to conduct its representative functions and administer its membership information system.

31.3 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 Transitional Employees.)

Information: This section 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
- payroll records
- documents in an employee's official personnel file
- internal USPS instructions and memorandums
- disciplinary records
- route inspection records
- patron complaints
- handbooks and manuals
- photographs
- reports and studies
- seniority lists
- overtime desired and work assignment lists
- bidding records
- wage and salary records
- training manuals
- Postal Inspection Service investigative memoranda (IM's)

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 USPS 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 USPS 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), the EL-806 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)

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 USPS 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.

Cost: The costs which management may charge NALC for providing information are governed by the Administrative Support Manual (ASM). (Step 4, H4N-5R-C 30270, May 22, 1987, M-00826; Step 4 H7C-3B-C 37176, June 26, 1992, M-01141) Currently the ASM provides for a waiver of information fees for the *first 100 pages of duplication* and the *first 2 hours of search time*. ASM Section 352.735, All Other Requesters. Otherwise, the costs for searching are set by ASM Section 352.721 (costs for manual and computer searches) and for duplication by Section 352.722 (currently 15 cents per page).

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO,
National Association of Letter Carriers, AFL-CIO)

Re: Bargaining Information

Pursuant to the provisions of Article 31 of the National Agreement, as soon as practicable after the ratification of the 1987 National Agreement between the United States Postal Service and the Joint Bargaining Committee (JBC), the Employer shall, on an accounting period basis, provide the Union with a computer tape containing the following information on those in their respective bargaining units:

1. SSN
2. Last Name
3. First Name (Full)
4. Middle Initial
5. Address
6. City
7. State
8. ZIP Code
9. Post Office Name
10. PO State
11. PO ZIP
12. PO Finance Number
13. PO CAG
14. Rate Schedule
15. Nature of Action
16. Effective Date
17. Pay Grade
18. Pay Step
19. Health Benefit Plan
20. Designation Activity
21. Enter on Duty Date
22. Retire on Date
23. Layoff
24. Occupation Code
25. Pay Location

As a result of the Joint Bargaining Committee's request to have the full first name included, each Union will pay 50 percent of the actual systems and programming cost associated with this change, not to exceed a total cost of $10,000. Subsequently, the Postal Service will provide the Unions with the information above without charge.

Date: July 21, 1987

ARTICLE 32 SUBCONTRACTING

32.1.A **Section 1. General Principles**

A. The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

Factors. This section sets forth the factors which the employer must consider in evaluating the need to subcontract.

32.1.B B. The Employer will give advance notification to the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet to consider the Union's view on minimizing such impact. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

Notification and consultation: This section provides that the Postal Service will provide advance notice to the NALC at the national level when a national program of subcontracting is being considered which will have a "significant impact" on bargaining unit work. In those qualifying circumstances in which the impact is significant on the bargaining unit, the Postal Service will meet with the union at the national level to discuss its views on how to minimize the impact prior to making a decision.

32.1.C C. The Employer and the Union agree that upon the request of the NALC National President, the Employer will furnish relevant cost information prior to the commencement or renewal of any contract delivery route which performs service formerly performed in a particular installation by a city letter carrier. The Employer's decision as to whether to commence or renew the contract delivery route will be made on a cost effective basis.

Information: When it is decided to subcontract pursuant to a local initiative, the NALC National President may request and be provided the relevant cost information upon which the decision to subcontract was made. This request may be made for any subcontracted route, whether it involves new service or service formerly performed by a city letter carrier. Additional information beyond cost information thought by a branch to be relevant and necessary for the processing of a grievance on this level of subcontracting initiative should be requested by the local branch authorized to represent the affected delivery unit. It is the responsibility of local management initiating the action to respond to this request. This section also establishes the criterion that the employer's decision is to be made on "…a cost effective basis."

32.2 Section 2. Joint Committee

A joint committee is established at the national level to study the problems in this area leading towards a meaningful evolutionary approach to the issue of subcontracting.

(The preceding Article, Article 32, shall apply to Transitional Employees.)

ARTICLE 33 PROMOTIONS

33.1 Section 1. General Principles

The Employer agrees to place particular emphasis upon career advancement opportunities. First opportunity for promotions will be given to qualified career employees. The Employer will assist employees to improve their own skills through training and self-help programs, and will continue to expand the Postal Employee Development Center concept.

Principles. This section provides that in all cases, the Postal Service must seek to fill career positions by making them available to qualified career employees prior to hiring new employees. Furthermore, this section obligates USPS to assist employees seeking advancement through training and self-help programs.

33.2 Section 2. Craft Promotions

When an opportunity for promotion to a craft position exists in an installation, an announcement shall be posted on official bulletin boards soliciting applications from employees of the appropriate craft. Craft employees meeting the qualifications for the position shall be given first consideration. Qualifications shall include, but not be limited to, ability to perform the job, merit, experience, knowledge, and physical ability. Where there are qualified applicants, the best qualified applicant shall be selected; however, if there is no appreciable difference in the qualifications of the best of the qualified applicants and the Employer selects from among such applicants, seniority shall be the determining factor. Written examinations shall not be controlling in determining qualifications. If no craft employee is selected for the promotion, the Employer will solicit applications from all other qualified employees within the installation.

Promotions to positions enumerated in the craft Article of this Agreement shall be made in accordance with such Article by selection of the senior qualified employee bidding for the position.

Craft promotions. The second paragraph of this section provides that all letter carrier craft positions must be filled by seniority, in accordance with the provisions of Article 41 (see Article 41 below).

There are no "best qualified" positions in the letter carrier craft, so the first paragraph of Section 2 does not apply to the filling of letter carrier craft positions. However, it does apply to letter carriers seeking "best qualified" positions in other crafts.

33.3 Section 3. Examinations

When an examination is given, there shall be no unreasonable limitation on the number of examinations that may be taken by an applicant.

Examinations. Management may not unreasonably limit the number of examinations an employee applicant may take. However, it does not require management to allow employees to take examinations on the clock.

ARTICLE 34 WORK AND/OR TIME STANDARDS

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

B. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union concerned through qualified representatives will be kept informed during the making 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. The Employer agrees that the National President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.

C. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union concerned as far in advance as practicable. When the Employer determines the need to implement any new nationally developed and nationally applicable work or time standards, it will first conduct a test or tests of the standards in one or more installations. The Employer will notify the Union at least 15 days in advance of any such test.

D. If such test is deemed by the Employer to be satisfactory and it subsequently intends to convert the test to live implementation in the test cities, it will notify the Union at least 30 days in advance of such intended implementation. Within a reasonable time not to exceed 10 days after the receipt of such notice, representatives of the Union and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.

E. If no agreement is reached within five days after the meetings begin, the Union may initiate a grievance at the national level. If no grievance is initiated, the Employer will implement the new work or time standards at its discretion.

If a grievance is filed and is unresolved within 10 days, and the Union decides to arbitrate, the matter must be submitted to priority arbitration by the Union within five days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Paragraph I.

F. The arbitrator's award will be issued no later than 60 days after the commencement of the arbitration hearing. During the period prior to the issuance of the arbitrator's award, the new work or time standards will not be implemented beyond the test cities, and no new tests of the new standards will be initiated. Data gathering efforts or work or time studies, however, may be conducted during this period in any installation.

G. The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

H. In the event the arbitrator rules that the national concepts involved in the new work or time standards are not fair, reasonable and equitable, such standards may not be implemented by the Employer until they are modified to comply with the arbitrator's award. In the event the arbitrator rules that the national concepts involved in the new work or time standards are fair, reasonable and equitable, the Employer may implement such standards in any installation. No further grievances concerning the national concepts involved may be initiated.

I. After receipt of notification provided for in Paragraph D of this Article, the Union shall be permitted through qualified representatives to make time or work studies in the test cities. The Union shall notify the Employer within ten (l0) days of its intent to conduct such studies. The Union studies shall not exceed one-hundred fifty (150) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities for the first ninety (90) days. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Employer will provide reasonable assistance in making the study, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in providing such assistance. Upon request, the Union representative shall be permitted to examine relevant available technical information, including final data worksheets, that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's request the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union.

(The preceding Article, Article 34, shall apply to Transitional Employees.)

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.

Joint Employee Assistance Program (EAP). Section 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 program is actually run by three different parties. The Postal Service administers a national EAP structure including headquarters personnel, and EAP-assigned personnel within each of the 85 Customer Service Districts. The District or local-level EAP management officials, once known as EAP Coordinators, were recently renamed Employee Workplace Intervention Analysts (EWIAs). These management officials are *not* EAP Counselors; see below.

Confidential EAP counseling is provided to all USPS employees and their family members through a contract between USPS and the U.S. Department of Health and Human Services's Division of Federal Occupational Health (FOH). The FOH hires EAP contractors who, in turn, provide counselors to postal employees.

NALC officials participate in EAP matters at both the national and local levels. (See Section 2 below). At the local level union activists in many areas take a special interest in EAP and other community service matters and help to coordinate the local EAP program with management officials.

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, or upon the order of a court of law.

Referral. EAP Counselor services are available, through voluntary self-referrals, to every letter carrier and carrier family member. The first 10 sessions are provided free of charge. Currently the national contact number for such self-referrals is 1-800-EAP4YOU, or 1-800-327-4968.

A USPS management official may refer an employee to EAP. However, participation is entirely voluntary.

35.2 Section 2. Joint Committee

For the term of the **1998** 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 **1998** 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 **1998** 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.

ARTICLE 36 CREDIT UNIONS AND TRAVEL

36.1 Section 1. Credit Unions

In the event that the Union or its local Unions (whether called branches or by other names) presently operate or shall hereafter establish and charter credit unions, the Employer shall, without charge, authorize and provide space, if available, for the operation of such credit unions in Federal buildings, in other than workroom space.

Any postal employee who is an employee of any such credit union or an officer, official, or Board member of any such credit union, shall, if such employee can be spared, be granted annual leave or leave without pay, at the option of the employee, for up to eight (8) hours daily, to perform credit union duties.

36.2 Section 2. Travel, Subsistence and Transportation

A. The Employer shall continue the current travel, subsistence and transportation program.

B. Employees will be paid a mileage allowance for the use of privately owned automobiles for travel on official business when authorized by the Employer equal to the standard mileage rate for use of a privately owned automobile as authorized by the General Services Administration (GSA). Any change in the GSA standard mileage rate for use of a privately owned automobile will be put into effect by the Employer within sixty (60) days of the effective date of the GSA change.

(The preceding Article, Article 36, shall apply to Transitional Employees.)

Credit unions. Article 36, Section 1 guarantees free space, if available, in federal buildings for branch-operated credit unions. It also guarantees time off of up to eight hours daily for a postal employee who is an employee, officer or Board member of a branch-operated credit union.

Travel. Section 2.A continues the current travel, subsistence and transportation program, which includes the regulations contained in Section 438 of the *Employee and Labor Relations Manual (ELM)* and *Handbook F-15, Travel and Relocation*.

ARTICLE 41 LETTER CARRIER CRAFT

Section 1. Posting

Section 2. Seniority

Section 3. Miscellaneous Provisions

Section 4. City Carrier Transportation (Driveout) Agreement

Section 5. National Joint City Delivery Committee

Article 41—letter carrier craft article. Article 41 is known as the *letter carrier craft article*, negotiated specifically to cover letter carriers. (Prior to 1994 negotiations the National Agreement was negotiated jointly with other postal unions.) Article 41 establishes fundamental letter carrier rights under the contract—a regular carrier's right to accumulate seniority, and the right to bid on, obtain and hold specific duty assignments based on seniority.

41.1.A **Section 1. Posting**

A. 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 five working days of the day it becomes vacant or is established.

   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 to be used only in those instances where full-time letter carriers are excess to the needs of the delivery unit and not holding a valid bid assignment.

   Positions currently designated in the Letter Carrier Craft:

   City Carrier (includes the duty assignment of Official Mail Messenger Service in the Washington, D.C. Post Office)

   Special Carrier

   Carrier Technician

   Positions that may in the future be designated in the Letter Carrier Craft.

   Changes in the foregoing position titles shall not affect the application of this provision.

41.1.A.1

When a position is under consideration for reversion, the decision to revert or not to revert the position shall be made not later than 30 days after it becomes vacant. If the decision is made not to revert, the assignment must be posted within 30 days of the date it becomes vacant. The Employer shall provide written notice to the Union, at the local level, of the assignments that are being considered for reversion and of the results of such consideration.

Posting for bid. Section 1.A.1 provides for the posting of a vacant duty assignment for bid within five days after it becomes vacant, or in the case of a newly established assignment, within five days of its creation. However, when a newly vacated duty assignment is under consideration for reversion, management has a maximum of 30 days after the date the duty assignment is vacated to either revert the position or post it for bid.

- A duty assignment is a set of duties and responsibilities within a recognized position regularly scheduled during specific hours of duty.
- The five routes on a Carrier Technician swing, or group constitute a full-time duty assignment. Carrier Technicians perform all the duties of the assignments they work.
- Reserve letter carrier (formerly known as floater, leave replacement, vacation regular, etc.) is a bid position with scheduled hours of duty and work days.

41.1.A.2

See NALC Material

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 l.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) l723 showing the beginning and ending of all such details.

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).

41.1.A.3

3. The existing local procedures for scheduling fixed or rotating non-work days and the existing local method of posting and of installation-wide or sectional bidding shall remain in effect unless changes are negotiated locally.

Local implementation NALC branches may establish local rules regarding fixed or rotating days off and the scope of posting and bidding—by section or installation-wide—through local implementation procedures under Article 30 of the National Agreement. Such rules are then contained in a Local Memorandum of Understanding, which must be read in conjunction with Article 41. Fixed or rotating days off are negotiated pursuant to Article 30, Section B.2, and the scope and method of posting are negotiated pursuant to Article 30, Sections B.21 and B.22.

41.1.A.4

4. No assignment shall be posted because of a change in starting time or in non-scheduled days (except as provided in Section l.A.5 below). No overtime payment will be made for a permanent change in starting time.

5. Whether or not a letter carrier route will be posted when there is a change of more than one (1) hour in starting time shall be negotiated locally.

Local implementation. Local negotiations pursuant to Article 30, Sections B.21 and 22 may determine whether a route will be posted when there is a change of more than one hour in starting time.

41.1.A.6

6. When a fixed schedule non-work day is permanently changed, the new non-work day shall be posted.

7. An unassigned full-time carrier 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, who may exercise their preference by use of their seniority. In the event that there are more unassigned full-time 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 than residual vacancies, the residual vacancies may be filled by assigning the unassigned employees by juniority.

- Reserve Regulars are not unassigned regulars and this section does not apply to them.
- This section applies to full-time flexible letter carriers as well as unassigned full-time regular letter carriers.
- When there is no bid, the assignment of an unassigned regular shall be by inverse seniority (juniority).
- When there is more than one vacancy and there are no bids, the unassigned carriers assigned to the vacancies may select their individual assignments by seniority.
- If a 204b loses his/her bid assignment under the provisions of Article 41.1.A.2, management may assign the 204b to a residual vacancy under the provisions of Article 41.1.A.7 while the employee remains in a 204b status (See National Arbitrator Snow, E94N-4E-C 96060312, October 2, 1998, C-18743).

41.1.B **B. Method of Posting**

1. The notice inviting bids for Letter Carrier Craft assignments, and to such other assignments to which a letter carrier is entitled to bid, shall be posted on all official bulletin boards at the installation where the vacancy exists, including stations and branches, as to assure that it comes to the attention of employees eligible to submit bids. Copies of the notice shall be given to the local Union. When an absent employee has so requested in writing, stating a mailing address, a copy of any notice inviting bids from the craft employees shall be mailed to the employee by the installation head.
2. Posting and bidding for duty assignments and/or permanent changes in fixed non-work days shall be installation-wide, unless local agreements or established past practice provide for sectional bidding or other local method currently in use.

Local implementation—scope of posting and bidding. Section 1.B.2 provides that posting and bidding for duty assignments and/or permanent changes in fixed non-work days shall be installation-wide, unless the parties have negotiated a different method—for instance, bidding by specified sections—pursuant to Article 30, Sections B.21 and B.22.

41.1.B.3

3. The notice shall remain posted for 10 days, unless a different length for the posting period is established by local negotiations.

Local implementation—length of posting. Section 1.B.3 requires that the notice be posted for 10 days, unless the parties have negotiated a different time period pursuant to Article 30, Sections B.21 and B.22.

41.1.B.4

4. Information on notices shall be shown as below and shall be specifically stated:

   (a) The duty assignment by position title and number (e.g., Key or Standard).

   (b) **Grade.**

   (c) Hours of duty (beginning and ending), including, in the case of a **Carrier Technician** assignment, the hours of duty for each of the component routes.

   (d) The fixed or rotating schedule of days of work, as appropriate.

   (e) The principal assignment area (e.g., section and/or location of activity).

   (f) Invitation to employees to submit bids.

   (g) Physical requirement unusual to the assignment.

   (h) If a city carrier route is involved, the carrier route number shall be designated. If a **Carrier Technician** assignment is involved, the route number of the **Carrier Technician** assignment and the route numbers of the component routes shall be designated.

   (i) Date of last inspection and date of last adjustment.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

Re: Article 41—Bid Process

The parties agree that where telephone bidding is an alternative form of bidding, bids may be submitted by telephone. When computerized and telephone bidding are available to all employees in an installation, telephone and computerized bidding is mandatory.

Date: August 14, 2000

41.1.C

C. Successful Bidder

1. The senior bidder meeting the qualification standards established for that position shall be designated the "successful bidder."

The parties executed a national Memorandum of Understanding on March 16, 1987 (M- 00752) setting forth specific rules governing the bidding rights of a carrier who is temporarily disabled and unable to work his or her normal assignment. Such a carrier has the right to bid and be awarded a bid assignment so long as the carrier will be able to assume the bid-for position within six months from the time the bid is placed. Upon management's request the carrier must provide medical

documentation showing he or she will be able to do so. If the carrier is still unable to perform the duties of the bid-for position at the end of six months, a second six-month period is permitted if supported by new medical certification. The carrier must relinquish the assignment if he or she cannot work the bid-for position within one year after the bid. A carrier who bids on a higher-level position under these rules will not receive higher level pay until he or she is physically able to, and actually performs work in the bid-for higher-level position.

Successful bidders who develop a disability after a position is awarded are entitled to retain the position if the disability is temporary (Mittenthal, H8N-5B-C 22251, November 14, 1983, C- 03855). If the letter carrier's personal physician determines that the disability results from a medical condition that is permanent and stationary, and prevents the letter carrier from performing the functions of the position, the letter carrier may be removed from the position and the position posted for bid. In cases where the medical condition is not a result of a job-related illness or injury and there is a dispute over whether the disabling condition is permanent or temporary based upon medical evaluations of the letter carrier's personal physician and the USPS physician, a third physician selected by the parties will be final concerning the employee's medical condition and limitations, if any. (See Article 13.2.B.2) In cases where the disability is the result of a job-related illness or injury, such disputes are resolved by the scheduling of a second opinion by OWCP.

41.1.C.2

2. Within ten (10) days after the closing date of the posting, the Employer shall post a notice indicating the successful bidder, seniority date and number.
3. The successful bidder must be placed in the new assignment within 15 days except in the month of December.

The 15 day period begins on the date the notice of the successful bidder is posted. So when read together, except in the month of December, Sections 1.C.2 and 3 provide that the Postal Service will place the successful bidder on the assignment no later than 25 days after the closing date of the posting.

41.1.C.4

See NALC Material

4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to **Carrier Technician** assignments, unless the local agreement provides otherwise.

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 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, Section 5. See Step 4, H7N-3W-C 38708, May 8, 1992 (M-01085).

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.

41.1.D **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. 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)

41.2 **Section 2. Seniority**

A. Coverage

1. This seniority section applies to all regular work force Letter Carrier Craft employees when a guide is necessary for filling assignments and for other purposes and will be so used to the maximum extent possible.

Conversions from part-time flexible to full-time status are made in strict seniority order even if an employee is on limited or light duty. In the

Letter Carrier Craft there are currently no exceptions for any reason, either voluntary or involuntary.

National Arbitrator Richard Mittenthal ruled (in H8N-4B-C 16721, March 8, 1982, C- 03225) that management did not violate Article 41, Section 2.A.1 when it refused to allow letter carriers to use their seniority to choose from among assignments which were available on a certain day. Mittenthal ruled (in H1N-5D-C 2120, July 22, 1983, C-03807) that a past practice of assigning available work to the senior PTF carrier was not binding on USPS.

41.2.A.2

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.

This section establishes the general rule that a letter carrier's seniority is computed continuously from the date of appointment in the Letter Carrier craft if the carrier serves without interruption in the Carrier craft and works in the same installation.

Note that Article 41 Section 2.D, below, provides for exceptions to Article 41, 2.A.2.'s requirements that for a carrier's seniority to be computed continuously from the date of appointment in the Letter Carrier craft, the carrier must serve without interruption in the carrier craft and work in the same installation.

41.2.A.3

3. No employee solely by reason of this Article shall be displaced from an assignment the employee gained in accordance with former rules.

41.2.B

B. Definitions

1. Seniority for bidding on preferred Letter Carrier Craft duty assignments and for other purposes for application of the terms of the National Agreement shall be restricted to all full-time regular city letter carriers.

This section was drafted prior to the December 21, 1987 Memorandum of Understanding establishing the full-time flexible category. Thus, contrary to what is stated in this section, both full-time flexible and full-time regular employees can bid on letter carrier duty assignments.

41.2.B.2

2. Part-time regular letter carriers are considered to be a separate category and seniority for assignment and other purposes shall be restricted to this category.

Part-time regulars may use their seniority only in that category. Upon reassignment to part-time flexible, part-time regulars begin a new period of seniority.

41.2.B.3

3. Full-time reserve letter carriers, and any unassigned full-time letter carriers whose 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.
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.
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, Sections 3, 4 and 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, Section 2.B.3).

Eligibility for opting. Full-time reserve letter carriers, full-time flexible schedule letter carriers, unassigned full-time carriers, and part-time flexible carriers 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).

Although Article 12, Section 3 of the National Agreement provides that "an employee may be designated a successful bidder no more than five (5) times" during the contract period, a national settlement (H1N-1E-C 25953, May 21, 1984, M-0513) 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-0843). 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).

National Arbitrator Bernstein held (in H1N-3U-C 10621, September 10, 1986, C-6461) 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 40 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 40 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, Section 5.C.2.b.

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-0594). Carriers acting in 204(B) supervisory positions may not opt for hold-down positions while in a supervisory status (Step 4, H1N-4B-C 16840, October 24, 1983, M-0552). A national pre-arbitration settlement (H1N-5W-C 26031, January 12, 1989, M-0891) established that an employee's supervisory status is determined by Form 1723, which shows the times and dates of an employee's 204(B) duties.

Duty assignments eligible for opting: Vacancies in full-time Grade 1 assignments, including Reserve Regular assignments, are available for opting. Vacant routes under consideration for reversion are available for opting until they reverted or filled, provided the anticipated vacancy is for five days or more. See Step 4 H0N-5R-C 6380, January 21, 1993, M-01128.

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. (Step 4, H8N-3P-C 25550, May 6, 1981, M-0276) 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.

Vacancies lasting less than five days need not be filled as hold-downs. Clarifying the meaning of this five-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, 1988, C-5865) However, these anticipated five days may include a holiday (H8N-4E-C 14090, July 1, 1982, M-0237).

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, Sections 2.B.3 and 4. Rather, they are higher level assignments filled under the provisions of Article 25.

Posting and opting. The National Agreement does not set forth specific procedures 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 (Memorandum, February 7, 1983, M-0446). In the absence of an LMU provision or mutually agreed-upon local policy, the bare provisions of Article 41, Section 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.

Duration of hold-down. Article 41, Section 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-0748) 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.

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-0669) 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.

An employee on a hold-down assignment may accept a temporary supervisory position (204b). However, unlike the case of full-time bid assignments, carriers in a temporary supervisory position cannot retain hold-

down assignments for up to four months (See Article 41.1.A.2). Rather, National Arbitrator Britton ruled that if a carrier on a hold-down accepts a 204b detail the carrier must return to the hold-down within five working days or lose the hold-down assignment. It that happens, the vacancy must be made available for opting for the duration of the original vacancy, provided it is for five days or more. See H4N-1W-C 34928, July 21, 1989 (C-09187).

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-6461) 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," above). For example, suppose an employee who worked eight hours on a Saturday then began a 40-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, Section 1.A.7 of the National Agreement states that unassigned full-time 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-3U-C 13930, November 2, 1984, C-04484). Of course, management may decide to reassign an employee to a residual vacancy pursuant to Article 41, Section 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.

Removal from hold-down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed 40 hours of work per service week. Thus, they may be assigned work on routes held down by part-time employees if there is not sufficient work available for them on a particular day (H1N-5D-C 6601, September 11, 1985, M-0097). Bumping is still a last resort, as reflected in a Step 4 settlement (H1N-5D-C 7441, October 25, 1983, M-0293), which provides that:

> A PTF, 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.

Another exception occurs if the Local Memorandum allows the regular carrier on a route to "bump" the Carrier 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 if none of the other routes on the string is available. See Step 4, N8-N-0176, January 9, 1980 (M-00154).

PTF pay status and opting. Although a part-time flexible 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 carrier who assumes the duties of a full-time regular by opting is still paid as a part-time flexible during the hold-down. PTF's are not guaranteed eight hours daily or forty hours weekly work if no work is available.

PTF's do not receive holiday pay for holidays which fall within the hold-down period. Instead of being eligible for holiday pay, PTFs are paid at a slightly higher hourly rate than full-time employees (see Article 11, Section 7). PTFs do not receive "out-of-schedule" pay see (ELM Section 434.6).

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 (see 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. Second, when an opting employee is denied work within the regular hours of a hold-down, "out-of-schedule overtime" may not be the appropriate remedy.

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.

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 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 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.

41.2.B.6

6. **Relative Seniority Standing**

   (a) In cases of appointment on the same day, where there is a tie in seniority, the relative standing on the appointment register will determine the more senior carrier.

   (b) Part-time flexible letter carriers shall be converted to full-time positions of the same designation and PS salary level in the order of their standing on the part-time flexible roll.

7. **Seniority Tie Breaker**

Except as otherwise specifically provided for in this Agreement, effective the date of this Agreement, when it is necessary to resolve a tie in seniority between two or more Carrier Craft employees, the following criteria shall apply in the order set forth below:

(a) Total continuous postal career service in the Carrier Craft within the installation.

(b) Total postal career service in the Carrier Craft within the installation.

(c) Total postal career service in the Carrier Craft.

(d) Total postal career service.

(e) Total postal service.

(f) Total federal service as shown in the service computation date on the employee's Form 50.

Seniority tie breaker. The seniority tie breaker provisions of Section 2.B.7 come into play only if the "relative standing on the appointment register" rule of Section 2.B.6 fails to resolve a tie in seniority. In that case the tie is resolved by applying the tie-breaking steps of Section 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. Total federal service, referenced in Article 41.2.B.7 (f), is found in block 16 of an employee's PS Form 50. See Step 4, E90N-4E-C 95058006, April 19, 2001 (M-01439).

C. Responsibility for Administration

The Employer shall be responsible for the day-to-day administration of seniority rules. Every installation, station, branch, and/or delivery unit shall have a roster posted in an appropriate place listing all carriers in order of seniority number. Said roster shall be updated during the months of July and January of every calendar year.

D. Transfers, Separations, etc.

Changes in which seniority is restored as if service had been continuous:

This section contains some of the exceptions to Article 41, 2.A.2.'s requirement that for a carrier's seniority to be computed continuously from the date of appointment in the Letter Carrier craft, the carrier must serve without interruption in the carrier craft and work in the same installation.

41.2.D.1

1. On reinstatement or reemployment after separation caused by disability, retirement or injury on duty or resignation because of personal illness, and the employee so stated in the resignation and furnished satisfactory evidence for inclusion in the personnel

folder, the employee shall receive seniority credit for past service and for time on the disability retirement or for the injury or the illness if reinstated or reemployed in the same postal installation and in the same or lower PS salary level from which originally separated; provided application for reinstatement or reemployment is made within six months from the date of recovery. The date of recovery in the case of disability must be supported by notice of recovery from the Bureau of Retirement, Insurance and Occupational Health, Office of Personnel Management, or the Office of Workers' Compensation Programs; and in the case of injury on duty or resignation due to illness, by a statement from the applicant's attending physician or practitioner.

2. Letter carriers who enter the military shall not have their seniority broken or interrupted because of military service.

Letter carriers restored to duty following military service will have their full uninterrupted seniority restored *even if* involuntarily returned to an installation other than the one they left.

Historical Note: The 1971 National Agreement, which covered all seven crafts, contained the following provision in Article 12, Seniority, Section 2:

> On restoration in the same craft **in the same installation** after return from military service, transfer under letter of authority or unjust removal, employee shall regain the same seniority rights he would have if not separated (emphasis added).

In the 1973 National Agreement the new letter carrier craft seniority provisions deleted the "in the same installation" language in the new Article 41.2.D.2 language. In contrast, all the other crafts have retained the "in the same installation" language in their craft seniority provisions. Consequently letter carriers returning from military service are provided a different level of seniority protection than those returning to other crafts which only allow uninterrupted seniority if the employee returns to the same installation.

41.2.D.3

3. Letter carriers in leave without pay status while serving as Union officers on either part-time or full-time basis shall retain their former seniority and have their seniority computed as though they had remained in an active duty status.

41.2.D.4

4. Letter carriers who are restored to duty in the same installation after unwarranted or unjustified separation shall have their seniority computed as though they had remained in an active duty status.

5. Letter carriers who are changed from a higher level position within the Letter Carrier Craft to a lower level position in the Letter Carrier Craft, whether voluntary or involuntary, shall not have their seniority broken.

There are other exceptions to Article 41.2.A.2.'s requirement that for a carrier's seniority to be computed continuously from the date of appointment in the Letter Carrier craft, the carrier must serve without interruption in the carrier craft and work in the same installation.

- On returning to the Letter Carrier craft following assignment to another craft to work a permanent light-duty assignment (Article 13.4.I).

- Upon involuntary reassignment because of: (a) the discontinuation or consolidation of an independent installation; (b) the transfer of a classified station or branch to the jurisdiction of another installation; or (c) the creation of an independent installation out of a classified station or branch. (Article 12.5.C.1.b. and d.; 12.5.C.2.a.; 12, 5.C.3.a.; 12.5.C.5.b(1)(a).)

41.2.E **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.

This sub-section 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, Section 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 exchange of positions is approved by the officials in charge at the installations involved. 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 with full-time employees.
>
> b. Bargaining unit employees with nonbargaining unit employees.
>
> c. Nonsupervisory employees with supervisory employees.

41.2.F **F. Return From Any Position for Which Selection Was Based on Best Qualified**

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.

This sub-section can be understood only when read in conjunction with Article 12, Section 2.B.2. When these two sections are read together, they provide for three different situations concerning the seniority of a carrier who leaves the bargaining unit for a position based on best qualified, and who then returns to the carrier craft *in the same* installation on or after July 21, 1978:

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, Section 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, Section 2.F. does not apply; rather Article 12, 2.B.2 takes care of the entire matter.)

CARRIERS RETURNING TO THE BARGAINING UNIT AT THE SAME INSTALLATION AFTER JULY 21, 1978

	Left craft before July 21, 1973	Left craft on or after July 21, 1973
Outside of bargaining unit two years or less	Not Applicable	*Loses only time spent outside of the bargaining unit*
Outside of bargaining unit two years or more	*Loses only time spent outside of the bargaining unit*	*Begins a new period of seniority*

Note that the above rules do not apply in situations where an employee is awarded a best qualified position in a different installation and later returns to the letter carrier craft in the original installation. In such cases Article 41, Section 2.A.2 requires that the employee begin a new period of seniority.

41.2.G **G. Changes in Which a New Period of Seniority is Begun:**

1. When an employee from another agency transfers to the Letter Carrier Craft.
2. Except as otherwise provided in this Agreement, when an employee from another USPS craft is reassigned voluntarily or involuntarily to the Letter Carrier Craft.

An employee from another USPS craft who is transferred, either voluntarily or involuntarily, to the letter carrier craft will begin a new period of seniority—except when the assignment qualifies under the provisions of Article 13, Section 6.A., pertaining to cross-craft reassignments of employees for the purpose of assuming light-duty assignments.

3. When a letter carrier transfers from one postal installation to another at the carrier's own request (except as provided in subsection E of this Article).

4. Any former employee of the U.S. Postal Service entering the Letter Carrier Craft by reemployment or reinstatement shall begin a new period of seniority, except as provided in subsections D.1 and D.4 above.

5. Any surplus employees from non-processing and non-mail delivery installations, area offices or the United States Postal Service Headquarters, begin a new period of seniority effective the date of reassignment.

41.3.A **Section 3. Miscellaneous Provisions**

See NALC Material

A. The carrier may use stools while casing mail and performing other office duties, provided the use of such stools does not interfere with or affect efficiency and standard job performance.

B. The Employer will not assess or hold a carrier responsible for incorrect fees collected on mail improperly rated prior to being distributed to the carrier, who is expected to exercise reasonable care and judgment in the matter.

C. The Employer will not assess or hold a carrier responsible for faulty checks accepted in payment for postal fees or postal charges provided the carrier follows regulations governing the acceptance of checks.

The regulations governing the acceptance of checks are contained in Chapter 3 of Handbook F-1. However, it is local management's responsibility to insure that letter carriers are trained in the procedure for properly accepting a check for postal fees and/or services.

D. (Reserved)

This section formerly contained a provision concerning the Postal Service's right to initiate the "T-6 program" in offices where it did not exist. The entire section became obsolete when National Arbitrator Mittenthal ruled in an October 26, 1994 interest arbitration award (C-13963) that all utility carriers would be converted to T-6 (currently Carrier Technician).

41.3.E E. When the Employer requires the use of certain supply items for the proper performance of a carrier's functions, such items will be supplied by the Employer.

F. 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.

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.

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. This does not apply 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 (Pre-arbitration Settlement, H90N-4H-C 94048405, October 21, 1998, M-01366).

H. The Postal Service recognizes that representatives of the NALC should be permitted to use available telephones. Accordingly, the Employer at the local level shall establish a reasonable policy regarding the use of telephones by authorized Union officials and stewards for calls relating to the administration of the National Agreement. The policy will be made known to the President of the NALC Branch.

I. Carriers shall not finger mail when driving, or when walking up or down steps or curbs, when crossing streets, or at any time it would create a safety hazard to the carriers or the public. Consistent with the efficiency of the operation, mail shall be placed in the delivery sequence in a bundle(s) during strapping out. The Employer shall not be required to conduct a special count or route inspection as a result of this Agreement.

Although there have been no significant Step 4 settlements or arbitration awards interpreting this provision, it is wise to bear in mind how arbitrators have generally approached the question of whether employees are justified for refusing to work in a particular place or in a particular fashion because of what the employee believes are unsafe conditions. First, there is the "iron rule" stating than an employee must "obey now and grieve later." Second, there is a narrow exception to that rule which permits an employee to disobey where he or she has a reasonable or good-faith belief that to obey would cause *imminent danger to life or limb*. A mere belief that a safety hazard exists is usually insufficient reason to disobey an order.

41.3.J

J. The Employer agrees that, except in matters where there is reasonable cause to suspect criminal activity, postal management or inspectors shall not inspect lockers unless the employee or the Union representative has been given the opportunity to be present. For a general inspection, in which a number of lockers are to be inspected, where

employees have had prior notification of at least a week, the above is not applicable.

K. Supervisors shall not require, nor permit, employees to work off the clock.

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).

41.3.L

L. In the interest of safety and health and other appropriate considerations, representatives designated by the NALC will be given an opportunity to examine, comment and to submit recommendations on new vehicle specifications during their development and before the specifications are transmitted to potential contractors, before manufacturing and upon completion of vehicles.

M. The NALC will be informed concerning changes in existing regulations relating to the duties and functions of city letter carriers. Further, it is agreed that when changes of a substantive nature are made they will only be made in accordance with the contractual obligations already binding upon the parties under Article 34, "Work and/or Time Standards."

N. Letter Carriers may cross lawns while making deliveries if customers do not object and there are no particular hazards to the carrier.

Lawn crossing. Although in his Cincinnati Lawn Crossing decision (August 20, 1979, NC-NAT-13212, 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."

41.3.O

O. The following provision without modification shall be made a part of a local agreement when requested by the local branch of the NALC during the period of local implementation; provided, however, that the local branch may on a one-time basis during the life of this Agreement elect to delete the provision from its local agreement:

> "When a letter carrier route or full-time duty assignment, other than the letter carrier route(s) or full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway, housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time duty assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article."

That provision may, at the local NALC Branch's request during local implementation, be made applicable (including the right to delete it) to selected delivery units within an installation. For purposes of applying that provision, a delivery unit shall be a postal station, branch or ZIP code area. Any letter carrier in a higher level craft position who loses his/her duty assignment due solely to the implementation of that provision shall be entitled to the protected salary rate provisions (Article 9, Section 7) of this Agreement.

Branch option on Article 41, Section 3.O. It is a branch's option to insert (or not insert) the Article 41, Section 3.O language in its local agreement during local implementation. Management may not refuse the branch's request to insert the language during local implementation. The branch also may change its mind and, once during the term of the National Agreement, elect to delete the provision from the Local Memorandum of Understanding.

National Arbitrator Snow held that when routes are posted under the provisions of Article 41, Section 3.0 it must be done "in accordance with the posting procedures in this Article" (B90N-4B-C 92021294, C-15248, March 22, 1996) This reference is to Article 41, Section 1.B.2 which provides that postings shall be installation-wide unless the local agreement or established past practice provides otherwise. Thus, if a branch has installation-wide bidding for vacant or newly created duty assignments, then all assignments in the affected carrier's delivery unit which are junior to that carrier's assignment must be posted for bid on an installation-wide basis.

An exception to this rule occurs if a branch has defined separate sections for excessing purposes and if an employee has been excessed from the section under the provisions of Article 12 Section 5.C.4. Since Article 12.5.C.4(c) provides the reassigned employee with retreat rights

in such cases, as long as an employee has such retreat rights to the section, bidding under the provisions of Article 41.3.0 is also limited to employees from the section at the same salary level as the vacancy.

Carrier Technician assignments. In a national level settlement (H1N-3A-C 30176, February 6, 1987, M-00694, February 6, 1987), the parties agreed that:

> If a local Memorandum of Understanding contains the Article 41.3.0 language and changes in T-6 [Carrier Technician] strings are so great that the assignments are abolished, they should be reposted in accordance with Article 41.3.0 If a local Memorandum of Understanding does not contain 41.3.0 language, reposting is not required. Changing one route in a T-6 [Carrier Technician] string is not a cause for reposting regardless of local Memorandum of Understanding provisions.

In a Step 4 Settlement dated July 26, 1990 (H4N-3A-C 62482, M-00986) the parties agreed that Carrier Technician positions should be included in postings under Article 41.3.0.

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.

Vacant residual letter carrier assignments properly withheld under the provisions of Article 12.5.B.2 are not included when full-time carrier assignments are posted under the provisions of Article 41.3.0.

41.3.P

P. The Employer shall promptly notify the local Union President of any job-related vehicle accidents involving city letter carriers.

Q. The Employer agrees to continue efforts to improve the comfort and temperature level in postal vehicles.

R. A seasonal route is a route on which the weekly hours of required service are substantially increased as a result of an increase in the number of customers served during a specific period each year. These routes are generally located in resort or vacation areas. The following steps will be taken in regard to the service of those routes during the abnormal period or periods:

(a) The duration of the seasonal periods shall be determined by management after discussion with the local Union.

(b) During those periods, auxiliary assistance if requested shall be provided to the maximum extent possible.

41.3.S

S. City letter carrier mail counts and route inspections and adjustments shall be conducted in accordance with Methods Handbook M-39, Management of Delivery Services, as modified by the parties' Memorandum of Understanding dated July 21, 1981 and October 22, 1984 (incorporated into December 24, 1984 Award).

See NALC Material

This section requires that city letter carrier routes be inspected and adjusted in accordance with the Methods Handbook M-39. The memorandums of understanding referenced in this section have been incorporated into the current version of the M-39 and thus no longer appear in the printed version of the contract.

Special Route Inspections are governed by the provisions of M-39, Section 270 reprinted below:

270 SPECIAL ROUTE INSPECTIONS
271 WHEN REQUIRED

Special route inspections may be required when one or more of the following conditions or circumstances is present:

a. Consistent use of overtime or auxiliary assistance. (When the X-Route process is utilized, routes may be "built up" no more than 8 Hours and 20 Minutes during the interim period, see Memorandum of Understanding dated September 17, 1992.)

b. Excessive undertime.

c. New construction or demolition which has resulted in an appreciable change in the route.

d. A simple adjustment to a route cannot be made.

e. A carrier requests a special inspection and it is warranted.

f. Carrier consistently leaves and/or returns late.

g. If over any 6 consecutive week period (where work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of 3 days or more in each week during this period, the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within 4 weeks of the request. The month of December must be excluded from consideration when determining a 6 consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November and continues into January, then January is considered as a consecutive period even though December is omitted. A new 6 consecutive week period is not begun.

h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail counts and inspections.

272 MANNER IN WHICH CONDUCTED

When special inspections are made because of conditions mentioned in 271, they must be conducted in the same manner as the formal count and inspection.

Management initiated regular or special route inspections are conducted between the first week of September and May 31, excluding December. Employee-initiated special inspections, conducted pursuant to Section 271 g, of the M-39, must be completed within four weeks of the request

for a route that qualifies even if the inspection has to be conducted during the months of June, July, or August (National Arbitrator Britton, H7N-NA-C 68, August 12, 1991, C-11099). Neither management-initiated nor employee-initiated route inspections are conducted during the month of December. The special route inspections provided for in this section are conducted in exactly the same manner as regular counts and inspections.

To qualify for a special route inspection, a route must show **over** 30 minutes of overtime or auxiliary assistance on each of 3 days or more in each of 6 consecutive weeks. The month of December is excluded from this 6 consecutive week period. Only the incumbent letter carrier on a route may make a request for a special route inspection under the provisions of M-39, Section 271.g. The Carrier Technician or a letter carrier who has opted on a route, or the union, for example, may not make the request.

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. Thus the fact that the regular carrier on a route may have been absent for part of the six-week period is not a factor in determining whether a route qualifies for a special inspection. (H1N-5D-C 12264, July 19, 1083, M-01262; Step 4, H1N-5C-C 22733, August 10, 1984, M-01263; Step 4, H8N-4B-C 21531, July 2, 1982, M-00688).

Once a route qualifies and the incumbent requests a special route inspection it can not be avoided by unilaterally providing relief, or making an adjustment. 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.

Performance deficiencies should be addressed in a timely manner. Once the request is made by the incumbent letter carrier, management should not try to avoid conducting the special route inspection by attempting to identify performance deficiencies after-the-fact. Unsatisfactory performance can be a reason for denying a special route inspection if reasonable efforts towards improving performance to a satisfactory level have not been successful and the reasons have been documented and discussed with the carrier during the six week period. Additionally, "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."

In accordance with M-39, Section 211.3, adjustments to routes, if needed as a result of either management-initiated or employee-initiated inspections, must be made within 52 days of the completion of the mail count unless an exception is approved by the District manager.

211.3 In selecting the count period, remember that all route adjustments must be placed in effect within 52 calendar days of the completion of the mail count, and no major scheme changes should be made between the period November 15 and January 1. Exceptions must be approved by the district manager. The local union will be notified promptly of any exception(s) granted.

These provisions are addressed in the following memorandum of understanding on dated July 21, 1987.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Special Count and Inspection - City Delivery Routes

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. Date: July 21, 1987

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 3 within 14 days of notification of the extension.

DPS ISSUES

Adjustments in a DPS environment may be implemented by using the "Hempstead Methodology" (See Memorandum, September 17, 1992 M-1114, Chapter 3, *Building Our Future By Working Together*). Note that the Hempstead Methodology is used for two separate purposes: to establish TE entitlement and to adjust routes in a DPS environment.

In the unilateral process, management may use either the Hempstead Methodology or the traditional M-39 count and inspection procedures to implement route adjustments to capture DPS savings. In the X-Route process, the parties must agree to use the traditional M-39 count and inspection process. Upon completion of such M-39 count and inspections, the delivery unit may no longer use the Hempstead Methodology to adjust routes (See Prearbitration Settlement, H94N-4Q-C 97026594, M-1284).

Before the Hempstead Methodology is used, management must first develop a final target percentage for each delivery unit. In the X-Route process this percentage must be between 70 and 85 percent. Adjustments may occur when the target percentage has been reached and maintained for two weeks with a variance of no more than plus or minus 5 percent (See Step 4, H90N-4H-C 96002907, April 9, 1998, M-01312). When making Hempstead adjustments, the unit target percentage is applied to each individual route. Total DPS savings for the unit is the sum of the savings for the individual routes. (See Step 4, B94N-4B-C 97044293, July 28, 1997, M-1294).

60 DAY REVIEWS: The September 17, 1992 Memorandum entitled *Resolution of Issues Left Open by Mittenthal Award of July 10, 1992* (M-01114) provides 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 to ensure compliance will be based on the most recent route inspection data for the route. However, if the future event occurs after the 18-month time limit expires, a new mail count, route inspection and evaluation must occur, unless the local parties agree otherwise.

Adjustments required pursuant to the 60-day review should be implemented within the 60-day review period. The parties recognize, however, that adjustments within the 60-day review period may not be possible where there are valid operational circumstances which warrant an exception. When management asserts that valid operational circumstances warrant an exception to the 60-day period, it must submit a detailed written statement substantiating the asserted circumstances to the local union within seven days following the expiration of the 60-day period. Disputes concerning the asserted operational circumstances will be resolved through the grievance/arbitration procedure. (See Prearbitration Settlement, Q94N-4Q-C 96091697, December 3, 1997, M-1268).

No prohibition exists that restricts management from also conducting a one-day count in conjunction with the 60-day reexamination of planned adjustments. Special Office Mail Counts (see 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. The only time restraint imposed by the M-39 is that the carrier must be given one-day's advance notification. (See Step 4 Settlement, H90N-4H-C 96077604, January 6, 1997, M-1278).

Case Configuration: Upon implementation of DPS, local managers and union representatives jointly determine, on a route by route basis, which of the two currently approved casing work methods is the most efficient for a route. (Chapter 5, *Building Our Future By Working Together)*

Selection of a route's work method is by agreement of the local union and management and must be based on efficiency, taking into consideration the impact on street time as well as office time, and the need for additional space and casing equipment. If the local parties cannot agree, the matter should be quickly forwarded to the parties at the national level for a joint resolution.

The two currently approved work methods are:

Vertical Flat Casing Work Method (VFC) allows for the casing of residual letters with vertically cased flats and carrying the combined flats/residual mail as a single bundle and carrying the DPS letters as a second bundle.

Composite Bundle Work Method allows for the casing and pulling down of residual letter mail separately, and carrying it separately as a third bundle.

The local parties are encouraged to develop efficient new work methods. If one is developed, it must be submitted to the national parties for evaluation of efficiency and approval prior to implementation.

The VFC work method is **not** the "One-Bundle System" as found in Section 222 a. of the M-41. The "One-Bundle System," the "Two-Bundle System," (Section 222 b.) and the "Modified Two-Bundle System" (Section 222 c.) are pre-DPS systems for casing and preparing mail. As noted above, when a delivery unit implements DPS, the local managers and local union representatives must select one of the two approved work methods, whichever is most efficient.

In non-DPS offices the "Two-Bundle System" and the "Modified Two-Bundle System" casing systems may be used with four or five shelf letter cases. The use of the "One-Bundle System" on other than the standard six shelf letter case requires joint agreement. (Chapter 1, *Building Our Future By Working Together)*

The vertical casing of flats is an option in both non-DPS and DPS delivery units. When first introduced, the vertical casing of flats was implemented through a Memorandum dated January 10, 1990 (M-00983), with accompanying guidelines, that dealt with the number of shelves (four, five, or six) and the prerogative of letter carriers to have input into the size and number of separations within the case(s) on their routes.

Section 221.7 of the M-41 (March 1 1998) provides the authority to configure flat cases for vertically cased flats using four, five, or six shelves.

Casing Accommodations: In his June 9, 1997 arbitration award in case Q90N-4Q-C 93034541 (C- 16863), Arbitrator Snow ruled that a city letter carrier on a park and loop route in a DPS environment who uses the Composite Bundle Work Method may not be required to work "marriage mail" behind addressed flats.

While his award settled the "Fourth Bundle" dispute over the handling of unaddressed flats on park and loop routes using the Composite Bundle Work Method on unaddressed flat days, it did not settle the issue of how unaddressed flats should be handled on the affected routes. Snow remanded this issue to the national parties for discussion and resolution. (Note: While the arbitration award dealt only with park and loop routes, the parties agreed that the ruling also impacted foot routes and foot delivery portions of mixed routes.)

By Memorandum dated August 12, 1997 (M-01303), the Postal Service and the NALC agreed to conduct a study to determine the relative efficiency of the composite bundle and vertical flat casing work methods, with and without unaddressed flats.

Pending the findings of the study, the Memorandum instructed the local parties to select the most efficient approach for handling unaddressed flats on those park and loop and foot routes in a DPS environment for which the composite bundle work method has been selected. This was to be done by September 6, 1997.

During this period, many delivery units were unable to agree on an accommodation for affected routes. As a consequence, by Memorandum dated September 12, 1997 (M-01304), those offices without an agreement were instructed to meet again, avoid extreme positions, and try to reach a resolution on the accommodation issue on affected routes by September 26. Absent agreement by the local parties on that date, the Memorandum stated that the national parties would impose a procedure for determining an interim approach. It additionally provided that until the local parties reached an agreement or began the resolution procedure specified by the national parties, the regular carrier on the route would determine the most efficient approach for handling unaddressed flats.

On September 26, the USPS-NALC Procedure for Determining Interim Approach was sent to the field (M-01305). The document established a procedure to compare the efficiency of a carrier's selected approach to the efficiency of a baseline period, and was to be applied to each affected route on which the local parties had failed to reach an agreement. For each such route, all time used on the route on the first six days unaddressed flats were delivered after September 26 using the carrier's selected approach, including auxiliary assistance and overtime, would be averaged to determine the average daily total work hours used on the route on those days. This daily total would be compared to the average

daily total work hours used on each of the six days unaddressed flats were delivered immediately prior to August 4, 1997.

If the average daily total work hours using the carrier's selected approach did not exceed the average daily total work hours of the comparison period prior to August 4, 1997, the carrier would continue with that approach during the interim period **as long as the same level of efficiency was maintained.**

If the comparison showed an increase in average daily total work hours with the carrier's selected method, the delivery unit manager and the shop steward were to review the data to determine whether the increase was the result of an increase in office or street time. If an increase in office time was not the result of an increase in volume, **or** if the street time increased for any reason, **or** the carrier's level of efficiency is not maintained during the interim period, management can select the approach for handling unaddressed flats for the remainder of the interim period.

41.4 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.
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:
   a. For transportation of carrier and carry-out swing from delivery unit to beginning of route when distance is _ 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	**$2.30**
1.1 to 1.5	**$2.55**
1.6 to 2.0	**$2.65**

2.1 to 3.0	**$2.80**
3.1 to 4.0	**$2.85**
4.1 to 5.0	**$3.15**
Over 5	**$3.20** 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).

Section 4.3.e. Prior to the 1978 National Agreement "article" was "parcel." The change was made so that the provision would apply to all classes of mail.

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.

41.5 Section 5. National Joint City Delivery Committee

There will be established at the national level a Joint City Delivery Committee. The Committee will be comprised of representatives of the Employer and five Union representatives appointed by the President of the NALC and will meet for the purpose of advising on problems affecting city delivery service and to present suggested changes and improvements in operating procedures. Such meetings will be held semiannually at Postal Service Headquarters.

Agenda items shall be exchanged 15 working days in advance of the scheduled meeting, and written minutes shall be kept of all such Committee meetings. The City Delivery Committee shall receive notice of any proposed changes in any instructional booklet regarding the mail count and route inspection and adjustment system. Recommendations of the NALC representatives will be considered and may be adopted by mutual agreement of the Committee provided they are not in conflict with the National Agreement.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

Re: Design, Evaluation, Compensation of Letter Carrier Routes

The parties agree to establish a Task Force at the National level whose purpose shall be to study the manner in which letter carrier assignments are designed, evaluated and compensated, and to recommend changes and improvements. One of the specific studies may be an expeditious method of permanently relieving letter carrier assignments determined to be overburdened.

The Task Force shall convene initially no later than 90 days after the execution of the 1987 National Agreement and at least quarterly thereafter.

The Task Force is authorized at its discretion, to conduct tests or pilot programs.

No actions may be taken by the Task Force nor recommendations implemented without a consensus of the parties to this Agreement.

Nothing herein shall exclude the parties from exercising the rights which they may otherwise have.

Date: July 21, 1987

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

Re: Router, Carrier Craft

1. Router is a level 5 city letter carrier assignment.
2. Router duties consist of casing, routing and sequencing of mail for a specific group of routes. Assignments may include specific street duties as reflected in the assignment posting.
3. Router assignments shall be formed and bid as full-time duty assignments. Part-time router work assignments may be utilized consistent with 4 below.
4. The number of full-time router assignments shall be determined consistent with Article 7, Section 3 of the National Agreement.
5. The notice inviting bids shall include a listing of routes for which router's duties will be performed by the posted assignment.
6. A router may be temporarily moved from his/her bid assignment only in "unanticipated circumstances," pursuant to the provisions of Article 41, Section l.C.4. of the National Agreement.
7. A level 5 replacement router may be utilized where practical to cover the non-scheduled days of other router assignments.

Date: July 21, 1987

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Training Committee

The Postal Service reaffirms its commitment to provide employees with training consistent with organizational needs. Additionally, the Postal Service recognizes the desirability of affording employees opportunities for self-development and will make training programs available to meet such needs.

The Postal Service will afford the Unions, at the national level, the opportunity to discuss concerns about specific training opportunities or programs. A Joint Committee on Training is hereby established at the national level which will consist of representatives of both parties. The Committee shall meet to discuss matters of mutual interest and benefit relating to training programs and opportunities. The Assistant Postmaster General, Training and Development Department, shall be the Employer's chief representative on such Committee. The Committee may consider and develop pilot programs, improved training methods and strategies, and other matters related to employee training and educational opportunities. Issues concerning local training and educational opportunities including the use of postal facilities for noncompensable training in college accredited courses, publicity of self-development training opportunities, and other training and educational matters of mutual interest and benefit are appropriate subjects for resolution at local labor-management committee meetings.

Consistent with established regulations and operational needs, the Postal Service will give consideration to requests for leave without pay by employees for training and educational opportunities.

The parties agree to consult at the national level to define which specific training courses and/or programs are job-related and those which are self-developmental, including the conditions in which a particular course or set of courses could be either. The parties further agree to initiate such discussions at the national level within 90 days of the effective date of this agreement, and to jointly pursue agreed upon strategies and initiatives.

Date: July 21, 1987

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Use of Privately Owned Vehicles

The parties agree that the following represents the policy of the U.S. Postal Service and the American Postal Workers Union concerning the furnishing of privately owned vehicles (POV) by employees of the crafts represented by the APWU:

No craft employee represented by the APWU may be coerced into furnishing a vehicle or carrying passengers without the employee's consent. The use of a personal vehicle is the decision of the employee and it is not the intent of the parties to discourage such use of personal vehicles when transportation is needed from one postal facility to another or in the completion of the employee's assignment. When an employee begins his/her work day at one postal unit and is provided transportation to another unit to complete his/her tour of duty, that employee will be provided transportation back to the unit where his/her tour began if transportation is needed. If the employee ends tour at the new location the

return trip will not be on the clock but transportation will be provided promptly by management upon request.

Date: July 21, 1987

(The preceding Memorandum of Understanding, Use of Privately Owned Vehicles, applies to Transitional Employees.)

SETTLEMENT AGREEMENT
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

Re: Segmentation

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 (see attachment).

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.

Statement of Principles:

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.

The National Association of Letter Carriers, AFL-CIO, and the United States Postal Service acknowledge that this Settlement Agreement is not an admission of fault or liability on the part of either party to this Agreement. The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, also acknowledge that this Agreement sets forth all the terms for settling pending grievance H4N-NA-C 35. The parties agree to meet as soon as practicable to resolve all other outstanding grievances involving segmentation in a manner consistent with this Agreement. The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that the terms of the settlement contained in this document may not be added to or subtracted from, in any way. This Settlement Agreement is without prejudice to the positions of either party with respect to the interpretation or application of the National Agreement in any future proceeding between the parties. The effective date of this agreement is March 9, 1987.

MANAGEMENT OF DELIVERY SERVICES

Handbook M-39

Transmittal Letter 11

November 15, 1985

116.8 Segmentation of Mail

.81 Definition. A major characteristic of the ZIP+4 data file is the segment, or the smallest unit to which distribution can be made. Segmentation is the sortation or preparation of mail into clusters or groupings for the purpose of achieving greater processing and/or carrier sortation efficiency. Using the ZIP+4 segment concept, segmentations may be prepared by customers or contract personnel prior to entry, or in postal operations prior to dispatch or receipt by the carrier. Examples of Segmentations include but are not limited to mail grouped by: unique ZIP+4 code, ZIP+4 blockface, multi-tenant buildings, box sections (including NDCBUs), or individual addresses.

Date: March 9, 1987

**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 of 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-Sized 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.

Transitional Employees—Issue Resolutions

Provides information on the transitional employee and highlights areas of apparent disparity of interpretation where mutual understanding has now been reached. Further, this agreement provides that a joint booklet on the transitional employee will follow.

X-Route Alternative

An optional alternative joint process is provided for preparing installations for the future automated letter mail environment. This agreement has many unique features and should be reviewed in detail before deciding its applicability.

Delivery Point Barcoding Work Methods

This agreement recognizes the substantial contributions that city letter carriers can make in the development of new work methods. It provides a five-step process that ensures a review of alternative methods and continued upgrading of work methods as the process evolves.

Route Adjustments—The Future

The parties have fashioned an agreement that provides clear guidance on procedures to be followed when preparing future route adjustments for letter mail automation in delivery units not selecting the X-route alternative.

Hempstead Resolution—The Past

We are remanding all pending grievances on route adjustments to the local parties for resolution. The parties will be guided by the principles of the above-cited agreements and must take into consideration the following factors.

—Was there a current event; that is, were the routes out of adjustment?

—How far in advance was the future event that was used to adjust the route? The parties

have made no determination as to the appropriate time period.

—What was the projected timing of the upcoming event?

—What was the basis for determining the effect of the future event?

—How certain is that future event?

As you review each case, you will find that either:

—Management preplanned properly and the current structure is within the purview of this agreement; therefore, the current structure is valid;

or

—Management preplanned inappropriately or time frames have changed, negating the validity of the adjustment.

It is your obligation to make these joint determinations and to decide what remedy to apply and how to fix the problem if one is discovered. The parties should consider the impact of any decision on our employees who serve our customers and the impact on the customers which they serve. If the parties cannot resolve these cases, they may be appealed to regional arbitration.

Date: September 17, 1992.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO
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.

Adjustments Near Term—Automation

When routes require a current adjustment and Delivery Point Sequencing will commence within 6 months, management will adjust the routes using non-territorial, non-scheme change adjustments by the use of router assistance, segmentation or permanent handoffs as outlined in the M-39 Handbook Section 243.21b. The 6-month period runs from the first day after the week of route inspection.

Future Events and Adjustments—Automation

Management may utilize the results of a recent route inspection and evaluation to estimate and plan route adjustments, including realignment of assignments, that will be required by a future event which is to take place within 18 months. Management must provide documentation to the local union to support the deployment if they intend to plan the adjustments for a future event. The planned adjustments for future events will not be implemented until automation is on line and operative. Management may implement the planned adjustments if the actual percentage of Delivery Point Sequence (DPS) mail received at the unit is within plus or minus 5 percentage points of the targeted (in Step l) level. Should the actual percentage of DPS mail be outside these limits, then management must recalculate the estimated impact on carrier routes, based on the actual percentage of DPS mail being received at the unit. The results of the recent route inspection and evaluation will be used to determine a new impact and construct a

new plan or management may wait for the plan levels to be received. The 18-month period runs from the first day after the week of route inspection. For purposes of this agreement, a future event is defined as mail being received at a delivery unit in DPS order.

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 to ensure compliance will be based on the most recent route inspection data for the route. However, if the future event occurs after the 18-month time limit expires, a new mail count, route inspection and evaluation must occur, unless the local parties agree otherwise.

Methodology

Where the future event is the introduction of Delivery Point Bar Coding (DPBC) for existing equipment or equipment that will cause a certain percentage of letter mail to be received by the unit in DPS, the following methodology will be used to *estimate* the impact of the event on city delivery routes:

Step 1. Determine the percentage of letter-sized mail *targeted* to be received in DPS order on the date when the adjustments will be implemented.

Step 2. Multiply percentage determined in Step l by the average letter-sized mail received during the week of count and inspection (from PS Form 1840, Column 1) to determine the number of letters for each route, *targeted* to be received in DPS order.

Step 3. Divide letters *targeted* to be received in DPS order (as determined in Step 2) by 18.

Step 4. Divide letters targeted to be received in DPS order (as determined in Step 2) by 70.

Step 5. Add results of Steps 3 and 4 to determine estimated impact.

Step 6. For routes where the carrier was under standard time during the week of count and inspection, multiply results of Step 5 by percentage of standard office time used during the week of inspection. The result is the estimated impact.

EXAMPLE 1:

80 Percent Target for Letter Mail Carrier at/over*
Standard Time Allowance

2,700 Letters
80 Percent Automated

2,160 divided by 18 = 120 minutes
2,160 divided by 70 = 31 minutes
151 minutes = estimated impact

Note: If actual performance is over standard time allowance, the standard casing allowance of 18 pieces per minute is used.

EXAMPLE 2:

80 Percent Target for Letter Mail Carrier used 85 Percent
of Standard Time Allowance

2,700 Letters
80 Percent Automated

2,160 divided by 18 = 120 minutes
2,160 divided by 70 = 31 minutes
151 minutes = estimated impact

(Step 6) 151 x 85 Percent = 128 minutes = estimated impact.

It is mutually agreed that as the parties develop experience in estimating the impact of future events, adjustments to the above described methodology may be jointly adopted at the national level.

Pending Grievances

All pending grievances which involve the adjustment of routes for future events will be remanded to the local parties for resolution.

Date: September 17, 1992.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

X-Route Alternative

The parties have reached agreement on an alternative Route Adjustment strategy—X-Route. The decision to use the X-Route Concept is made on an installation wide basis, even though inspections and planning for individual units/zones may not occur at the same time. In units with more than one delivery unit/zone the planning process is repeated as each delivery unit/zone is inspected, assignments are evaluated and adjustments are planned.

X-Route Process

The X-Route process is an alternative approach to route adjustment in preparation for automation, particularly delivery point sequencing. An X-Route is, in effect, a letter carrier craft assignment held pending reversion. The workload will be divided among remaining routes when agreed upon percentage(s) of letter mail is being received at a unit/zone in delivery point sequence order. The process allows changes to be planned in advance and permits carriers to know what their assignments are expected to be in the automated environment. The X-Route process and time period are considered completed when the unit/zone has achieved the final targeted level of Delivery Point Sequence letter mail and the X-Route work has been distributed.

Pre-Agreement Phase

If there is interest in attempting to utilize the X-Route alternative, local management will meet with the local union to review the provisions of this agreement. This includes a review of the attached Memorandum of Understanding on case configuration, the Work Methods Memorandum, guidance on the Hempstead case resolution and current base count and inspection data. If current route inspection data is not available, plans should be made to conduct route inspections in accordance with Article 41.3.S of the National Agreement to provide a basis to implement the remainder of this agreement.

If the parties are considering pursuing this alternative, they must be committed to mutual resolution of the outcome. Management will share the following information with the union:

The expected accounting period(s) and year that increases in bar-coded mail generated by the Automation Programs will impact the delivery unit/zone, such as customer pre-barcoding, MLOCR, DBCS, and RBCS.

The projected impact on the delivery unit/zone of automated sort schemes, and the basis for the estimate.

Agreement Phase

It must be understood, once the decision to use the X-Route process has been finalized, that decision can only be changed through joint agreement between the local union and management.

Since the planning and adjustment(s) in a delivery unit/zone using the X-Route alternative are a joint endeavor, the parties at the local level must first agree to a joint resolution process, should there be a barrier to full implementation of the parties agreement to use the X-Route alternative.

The parties will then meet to review route examinations for the unit/zone. This exercise is intended to result in agreed upon evaluations.

If the parties fail to reach agreement regarding the use of the X-Route alternative, management may proceed to implement strategies in concert with handbooks and manuals, the Hempstead Resolution, and the National Agreement to accomplish route adjustments. However, the provisions of this agreement are specific to application of the X-Route concept only and are not applicable to any other route adjustment method.

In working out the X-Route adjustment process for the delivery unit/zone, it is recognized and agreed that:

Management must develop the final targeted Delivery Point Sequencing percentage (from a low of 70% to a high of 85%) of delivery point sequencing letter mail for the X-Route period. That percentage is then used to estimate the impact on the unit/zone using the projection methodology outlined in the Hempstead resolution. The parties will jointly determine the number and identity of the routes that will be designated as X-Routes using the above estimates of the impact on the delivery unit. While the X-Route concept may not be applicable to all routes within an installation because of limiting circumstances (i.e., geographic considerations), such circumstances will not be a barrier to implementing the concept. This determination as to the non-applicability to certain routes will be made jointly.

The parties must jointly determine what realignment of routes (in-office or street territory) will be necessary to assure that X-Routes are strategically placed to facilitate the transfer of workload as delivery point sequencing evolves. The decision as to when to realign the routes should be based upon the current need for realignment in order to place the routes on as near an eight-hour-basis as possible based upon the current evaluation from a recent inspection. The parties could decide to defer the proposed realignment of routes until Delivery Point Sequencing was implemented if no significant scheme changes were required to keep routes near eight hours, or they could decide to make the necessary scheme changes for the realignment of routes now if significant scheme changes were going to be needed to adjust routes to eight hours as currently evaluated. In no instance will the parties effect adjustment now based on the future event, except as provided under interim adjustments (below). The regular carrier on any route whose street territory is changed as a result of this adjustment and realignment may elect, on a one-time basis, to vacate his/her route and become an unassigned regular. Such action will not trigger the provisions of Article 41.3.0. All positions vacated in this manner will be posted and filled in accordance with the procedures set forth in Article 41.1.

Where exceptional circumstances require further adjustments, they must be jointly agreed to by the parties. The objective is to provide a smooth transition to the Delivery Point Sequencing environment. Such an outcome requires no change in day-to-day administration of curtailment procedures, auxiliary assistance or overtime.

The parties agree that adjustment strategies for Delivery Point Sequencing will vary based on individual offices, deployment schedules and types of deliveries. For instance, offices that will be impacted by RBCS destinating keying prior to Delivery Point Barcoding and offices further along in the deployment schedule may be at final targeted

barcoding levels when Delivery Point sequencing commences and therefore require only one adjustment.

Some offices may initiate DPBC and Delivery Point Sequencing prior to full barcoding levels and require an interim adjustment strategy. Adjustment strategy decisions will be made jointly based on deployment schedules and current automation.

Once the Postal Service has implemented delivery point sequencing and can demonstrate that the routes in a delivery unit/zone are receiving volumes at the targeted percentage, the local parties will implement the preplanned adjustments. Where an interim adjustment strategy will be necessary as described above due to the gradual increasing of DPBC levels, the local parties will meet and make interim adjustments by removing work from the X-Routes and assigning that work to the regular routes which will remain after full implementation of delivery point sequencing.

After the completion of each interim adjustment, the parties will jointly determine the amount of hours remaining on the X-Routes and will jointly decide how to efficiently combine assignments to provide the maximum number of full-time assignments. If this cannot be accomplished in an efficient manner, the parties may jointly decide to either form auxiliary assignments or split the remaining hours from these assignments to the regular routes that will remain once the final delivery point sequencing adjustments have been made. Where this latter option is agreed upon, it is understood that routes will be built up (not to exceed 8:20). If less than 100% of the routes will be built up, the following priority should be observed if efficiency can be maintained:

(1) By seniority, routes whose regular carrier are on the Work Assignment List.

(2) By seniority, routes whose regular carrier are on the Overtime Desired List.

(3) By inverse seniority, carriers not on any Overtime Desired List.

Incumbents of, and bidders for, routes that are projected to continue after full implementation of automation will know, in advance, what portions of the X-Route a delivery route will receive after full delivery point sequencing is on-line. X-Routes will be posted for bid when vacant, as long as they remain full-time assignments. When an X-Route becomes vacant and is posted for bid, the bid notice will include the anticipated date of elimination.

When an X-Route is abolished, the full-time carrier assigned to that route will become an unassigned regular. He/she may, within 30 days, review the list of residual vacancies within his/her bidding area and use his/her seniority to exercise a preference for that assignment. This may be accomplished by a bid posting limited to unassigned full-time carriers displaced by abolishment of X-Routes or by other means agreed to locally between the parties. (The provisions of Article 41.3.0., where they have been incorporated in the local memorandum, will not be triggered by this process.)

The use of transitional employees in a unit where route adjustments are achieved under the X-Route concept will be in accordance with the relevant National Interest Arbitration Award and any subsequent agreement(s) between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO.

Date: September 17, 1992.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

It appears that, due to some differences in interpretation, there has been some lack of agreement between the parties locally on application of the January 16, 1992, Mittenthal Award on transitional employees (TE) in the Letter Carrier Craft. NALC and USPS have been meeting at the national level to resolve those differences and, with the exception of the PTF conversion issue that is presently awaiting national arbitration, we have reached accord regarding TE hire and utilization.

We anticipate that a joint TE booklet will be made available for reference in the next several weeks. In the meantime, the following information will serve to highlight areas of apparent disparity in interpretation where mutual understanding has now been reached.

Completion of the DSSA will be accomplished in accordance with existing instructions. It is in our joint interest to establish a credible baseline from which realistic projections can be made. Thus, every effort will be made to avoid any inflation of baseline hours or the baseline/projection difference. In that regard, the parties agree that line 27 of the DSSA represents the average weekly difference between the authorized hours (shown on line 26) and the actual weekly hours being used by the unit, expressed as a percentage of authorized hours (line 26).

DSSA - Union Review - Management will make available to the local union all relevant information on which calculations are based. Union representatives will be allowed reasonable time to review management calculations on DSSAs. Our intent is to resolve DSSA and TE issues via information sharing and discussion rather than conflict and confrontation.

TE Hire versus Baseline DSSA - For purposes of implementing Parts 1c (1)-(4) of the Award, TEs may be hired only after a unit's baseline and projection DSSAs have been completed and the difference between the two has established a ceiling for TE hours. If, at that point, existing staffing is insufficient to meet the weekly requirements demonstrated by the baseline DSSA, TEs may be employed without current attrition as a prerequisite. However, those TE hours will be offset against the established ceiling of hours. The parties agree that TEs may be used to cover only those residual vacancies withheld pursuant to Article 12 since September 3, 1991.

TE Hire versus Projected Attrition - Where it is anticipated that attrition will satisfy the projected difference in staffing for automation, TEs will be employed to backfill for attrition only after the unit or installation has entered the transition period (defined as that length of time needed for attrition to fulfill staffing reduction requirements). In such circumstances, attrition prior to the transition period will be fulfilled by career employees, with the exception of residual vacancies withheld for excessing (another craft or installation).

TE Use to Cover Opting - Whether TEs are hired as soon as vacancies occur or after opting takes place, it is agreed that there will be no pyramiding of any defined TE hire opportunity.

Held Pending Reversion - These positions must be posted. However, the residual vacancy that results from such posting will then be considered the held-pending-reversion vacancy. This vacancy will then be made available for opting as outlined in the award. When the original held-pending-reversion position is actually reverted, the carrier assigned to that position becomes an unassigned regular and is eligible to bid for any vacant duty assignment within his bid area.

Workhour Guarantees - While we recognize that TE scheduling is subject to a four-hour guarantee, local management has the responsibility to afford the PTF priority in scheduling workhours in accordance with the Mittenthal interest arbitration award.

TE Hire versus Excessing

A full-time letter carrier may not be excessed and the resulting vacancy filled by a TE, except where management can demonstrate that, as a result of legitimate operational changes, there is insufficient work to continue to support a full-time position. For example, management may not abolish a full-time router position and excess the full-time letter carrier and hire or assign one or more TEs to perform the work of the abolished position, unless management can demonstrate that the work cannot be performed on a full-time basis in compliance with the requirements of the National Agreement.

Disputes concerning the above, if unresolved in the grievance procedure, shall be placed at the head of the regional (other than removal) arbitration docket.

The foregoing matters have been agreed to and will be elaborated on in the joint booklet. However, the intent of this memorandum is to clarify some areas of potential disagreement, to avoid grievances and to jointly provide an expeditious way to achieve the service improvements and savings that the TE award makes possible.

Date: September 17, 1992.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

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 letter 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.

Date: September 17, 1992.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

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.

Date: September 17, 1992.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

RE: TRANSITIONAL EMPLOYEES/PART-TIME FLEXIBLE CONVERSIONS

1. All part-time flexibles (PTF's) currently on the rolls will be offered an opportunity to convert to full-time regular status by November 20, 1994. The conversion opportunity may be contingent on the PTF's agreement to move to an available full-time assignment during this period. However, it is the intent of the parties that any such requirement to change offices will not be utilized by management as a device to discourage conversions and that inconvenience and disruption to PTF's will be minimized.

   PTF's will be converted to available full-time assignments in their current installation. If insufficient full-time assignments are available to accommodate all PTF's in an installation, the remaining PTF's will be offered the opportunity to transfer to available full-time assignments within the commuting area, and the local union will

be provided a list of all such assignments. The local union representative will be responsible for ascertaining the preferences, by use of seniority, of the PTF's who decide to accept a conversion opportunity in another installation and for communicating that preference to management. If PTF's from different installations seek the same assignment in another installation, craft seniority will determine which PTF gets that conversion opportunity.

If the foregoing process does not result in the offer of a conversion to all PTF's in an installation, the Postal Service will identify other conversion opportunities, including assignments outside the commuting area, during the conversion period. Any decision by a PTF to transfer to another office under this agreement will be considered voluntary.

2. In lieu of the DSSA analysis provided in the January 16, 1992, NALC Transitional Employee (TE) arbitration award, the parties will use the impact formula contained in the September 21, 1992, Hempstead Memorandum of Understanding to determine the number of TE hours allowed in a delivery unit due to automation impact. All such TE's will be separated in a delivery unit when Delivery Point Sequencing (DPS) is on-line and operational.

3. The parties further agree that in offices (automation impacted or non-impacted) where the number of PTF conversions exceeds the number of TE's allowed under the above impact formula, additional TE's may be hired to replace such PTF attrition. All such TE's will be separated from the rolls by November 20, 1994.

4. All pending national grievances seeking conversion of PTF's will be resolved by offering the affected PTF's the opportunity to convert to full-time regular assignments on a priority basis pursuant to this agreement. This agreement is without prejudice to the positions of either party with respect to any interpretive issue.

5. The parties at the local level will meet to review the current TE complement and pending TE or PTF grievances as follows:

   - The meeting will occur after the joint training and during the local meeting on Hempstead issues;
   - The parties will attempt to resolve any pending grievances, including appropriate remedies for violations, if any. The Postal Service's liability, if any, will be limited to any TE hours in excess of that allowed by paragraphs 2 and 3 above which occurred prior to the date of this agreement;
   - If TE hours in a delivery unit exceed that allowed by paragraphs 2 and 3 above, management must, no later than 3/1/93, either: (1) relocate TE's to another delivery unit to stay within the allowable limits; or (2) reduce work hours per TE, so as to stay within the allowable limits; or (3) remove excess TE's from the rolls.

6. The parties herein express the desirability of affording future career employment opportunities to TE's. Consistent with that view, the parties agree to jointly explore the feasibility of such career opportunities, consistent with applicable law.

Date: December 21, 1992.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

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 two 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 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 curbline 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.

Date: March 21, 2000

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

It is hereby agreed by the U.S. Postal Service and the National Association or 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.

1. Effective November 18, 2000, all city letter carriers grade 5 will be upgraded and the pay differential of grade 6 carrier technicians shall be maintained in accordance with the procedures set forth in the attached Memorandum of Understanding.

2. The provisions of Article 35, Section 2, concerning the national joint EAP committee will be renewed for the remainder of the term of the 1998 National Agreement.

3. 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.

4. 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.

5. The 30-day period of local implementation specified in Article 30 and the Memorandum of Understanding Re: Local Implementation will commence on October 2, 2000.

6. 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.

Date: March 21, 2000

PRE-ARBITRATION SETTLEMENT Q94N-4Q-C-99022154 M-01444
JULY 30, 2001

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.

ARTICLE 42 ENERGY SHORTAGES

In the event of an energy crisis, the Employer shall make every reasonable attempt to secure a high priority from the appropriate Federal agency to obtain the fuel necessary for the satisfactory maintenance of postal operations. In such a case, or in the event of any serious widespread energy shortage, the Employer and the Union shall meet and discuss the problems and proposed solutions through the Labor-Management Committee provided in Article 17.

(The preceding Article, Article 42, shall apply to Transitional Employees.)

Energy shortages. This language was first added to the 1975-1978 National Agreement, following a national energy crisis during the early 1970s. It makes provision for the parties to discuss an energy crisis or shortage at the national Labor-Management Committee provided by Article 17, Section 5.

ARTICLE 43 SEPARABILITY AND DURATION

43.1 Section 1. Separability

Should any part of this Agreement or any provision contained herein be rendered or declared invalid by reason of any existing or subsequently enacted legislation or by a court of competent jurisdiction, such invalidation of such part or provision of this Agreement shall not invalidate the remaining portions of this Agreement, and they shall remain in full force and effect.

43.2 Section 2. Duration

Unless otherwise provided, this Agreement shall be effective **September 19, 1999**, and shall remain in full force and effect to and including 12 midnight November 20, **2001**, and unless either party desires to terminate or modify it, for successive annual periods. The party demanding such termination or modification must serve written notice of such intent to the other party, not less than 90 or more than 120 days before the expiration date of the Agreement.

(The preceding Article, Article 43, shall apply to Transitional Employees.)

Separability: Article 43, Section 1 guarantees that in case a part of the National Agreement is rendered or ruled invalid either by a court or by legislation, the remainder of the agreement will remain in effect.

Duration: Section 2 sets forth the Agreement's effective dates—September 19, 1999 through midnight November 20, 2001. The last National Agreement terminated on November 20, 1998 and its terms continued during the post-contractual impasse procedures of fact-finding and interest arbitration. The interest arbitration award setting the terms of this contract was issued on September 19, 1999.

The Agreement would continue in effect for additional one-year periods beyond November 20, 2001 if neither party gave the required notice of intent to terminate or modify it between 120 and 90 days prior to the expiration date. In the past the parties have always begun negotiations for a new multi-year National Agreement as the termination date of the current contract approached.

APPENDIX
NALC Transitional Employee
Arbitration Award

ARBITRATION PROCEEDINGS

UNITED STATES POSTAL SERVICE —and— NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	TRANSITIONAL EMPLOYEE NALC BARGAINING UNIT

OPINION AND AWARD

BOARD OF ARBITRATORS

RICHARD MITTENTHAL, Chairman

JOSEPH J. MAHON, JR., Board Member

BRUCE H. SIMON, Board Member

Washington, D.C.

January 16, 1992

BACKGROUND

On page 41 of the June 12, 1991, Interest Arbitration Award, the five member Panel had determined that a non-career bargaining unit employee classification should be established and be known as "transitional employees." Such transitional employees were to be employed to fill anticipated impacted positions as a result of automation. Pursuant to the June 12, 1991, Award, the parties were required to meet and resolve all other aspects pertaining to the transitional employee classification. In the event that no agreement was reached, the dispute was to be referred to this Panel for a final and binding decision.

Commencing in July of 1991, the parties met both formally and informally on numerous occasions with the intent of negotiating all other aspects pertaining to the transitional employee classification. Despite the efforts of the parties, these negotiations were not successful. On December 11, 1991, the negotiations terminated with the parties at impasse.

The record was opened on December 12, 1991, and the second day of hearing was held on January 3, 1992. The parties also met on December 30, 1991, January 2, 6 and 7, 1992, and the Panel met in executive session on January 3, 7, and 8, 1992. Representing

the Postal Service before the Board were Edward F. Ward, Jr., and Kevin B. Rachel of the Office of Labor Law of the Postal Service. The NALC was represented by Keith E. Secular, Esquire. Full opportunity was afforded the parties to introduce evidence, present testimony, and to provide oral argument.

The Panel has assumed jurisdiction over all economic and non-economic matters with respect to the transitional employee classification. All proposals of the parties not dealt with specifically by this Award were either withdrawn or have not been adopted by this Panel.

The Panel makes the following Award:

1. The following principles shall apply to transitional employees:

   a. The transitional work force will be comprised of non-career, bargaining unit employees.

   b. Transitional employees will be hired for terms not to exceed 359 calendar days and will have a break in service of at least 6 days between appointments.

   c. The parties agree transitional employees will only be utilized consistent with the following principles:

      (1) To cover the number of work hours which constitute the difference between the delivery unit baseline staffing analysis and the projected delivery unit staffing analysis as described in Part 2. (See Attachment A.)

      (2) To cover duty assignments held pending reversion due to automation.

      (3) To cover the vacancy created by a part-time flexible, reserve or unassigned letter carrier opting for the held pending reversion assignment or the subsequent vacancy created by multiple opts.

      (4) To cover part-time flexible attrition.

      (5) To cover, in addition to the hours determined in (1) above, residual vacancies withheld pursuant to Article 12.

   The term “held pending reversion” is a vacant duty assignment which is due to be eliminated as a result of automation. The term “residual vacancies” are those positions that remain vacant after the completion of the voluntary bidding process.

   d. Transitional employees who are covering duty assignments held pending reversion or residual vacancies withheld pursuant to Article 12 will not be displaced from these assignments for the purpose of utilizing a casual employee.

   e. The applicability of Article 7.3C is not decided herein and these provisions are without prejudice to the parties’ positions on this issue.

   f. Pursuant to 1.c.1. above, the use of transitional employees will be phased out within 90 days of when ABC is on line and cost effective in terms of bar coding goals in the specific five digit delivery unit. Transitional employees covering positions withheld for career employees will be retained until the reassigned employees, who may require training, qualify for their new duty assignment.

   g. The employer will make every effort to ensure that available part-time flexible employees are utilized at the straight time rate prior to assigning such work to transitional employees working in the same work location and on the same tour provided the reporting guarantee is met for transitional employees.

2. Baseline staffing will be determined in delivery units by completing a Delivery Service Staffing Analysis (DSSA) (see Attachment A). Once the DSSA has been completed, the baseline staffing hours are set. The delivery unit impact will be determined by revising the DSSA to reflect the projected future workload and

delivery unit automation savings, for advanced bar code delivery sequencing.

The difference between the two analyses will be the projected hourly impact for the delivery transition period. The projected DSSA will be reviewed and updated as appropriate or at least annually.

The acceptance by the parties of a methodology for implementing this item 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 on transitional employees.

3. A. Management will supply the local union and the appropriate National Business Agent with the following information, which will be used to establish the impact on the Letter Carrier Craft, determine the length of time for the transition period, and define the specific site(s) that will be impacted when utilizing transitional employees pursuant to 1.C.1-4.

    1. The DSSA baseline and a projected DSSA (see Attachment A).

    2. Delivery Unit Impact Statement (see Attachment B)

    3. Automation deployment schedule.

    4. Projected attrition for the letter carrier craft in the installation.

   B. On a quarterly basis, a listing of transitional employees by name and the job numbers on which these employees are working for positions withheld (see Attachment C1; Positions Withheld).

   C. On a quarterly basis, a listing of transitional employees by name and the job numbers on which these employees are working for positions held pending reversion (see Attachment C2; Positions Held Pending Reversion).

   D. On a quarterly basis, a listing of transitional employees by name who were assigned in accordance with l.c.3 and 4 above (see Attachment C3; Part-time Assignments).

4. A. Management will supply the local union and the appropriate National Business Agent with the following information when utilizing transitional employees pursuant to l.C.5.

    1. Site impact information;

    2. Deployment schedule, (i.e., type of equipment, date of deployment, specific site);

    3. Projected attrition for the installation by craft.

   B. Management will supply the local union with a listing of all positions withheld in the impacted installation, and update this list on a quarterly basis.

5. On a quarterly basis, management will review the current status of items 3 and 4 above and make any changes, as appropriate, in the number of positions being held pending reversion or withheld pursuant to Article 12, in the Letter Carrier Craft.

6. Regional Determination - Number of Withheld Vacancies:

    a. Within 7 days from the effective date of this Award, the parties at the regional level will meet to determine the number of vacancies withheld during the 90-day period preceding December 3, 1991.

    b. Solely for the purpose of applying this Award, withheld residual vacancies will be identified as those vacancies for which the union has received Article 12 notification at the regional level as being withheld for employees who may be

involuntarily reassigned outside the installation. In order to be considered a withheld vacancy, the union, at the local level, had to be advised of the specific vacancy withheld by assignment number. This requirement must be accomplished by posted notice, letter to the local union, or verbally. Verbal notification can be considered only if the local union official agrees that such verbal notification occurred.

c. Once the withheld residual vacancies are identified, management may use transitional employees to backfill withheld vacancies consistent with the provisions of this Award.

7. Reassignment of Career Employees Outside of a Section, Craft, or Installation:

   a. Prior to reassigning career employees outside of a section, the craft, or installation, management will offer impacted career employees, on a seniority basis, the opportunity to work any existing letter carrier craft transitional assignments within the installation.

   b. There will be no out-of-schedule pay provided to the impacted employees for these temporary assignments.

8. Layoff of Career Employees:

   a. Prior to laying off career employees, management will offer the impacted employees the opportunity to work any existing letter carrier craft transitional assignments within the installation.

   b. There will be no out-of-schedule pay provided to the impacted employees for these temporary assignments.

9. Article 15:

   Transitional employees will have access to the grievance procedure for those provisions which apply to transitional employees.

10. Transitional employees are temporary N.T.E. (not to exceed) employees who may be terminated at any time prior to completion of the 359-day term as provided in paragraph 11 or as otherwise required by this Award.

11. 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.

12. Leave provisions for transitional employees are included in Attachment D.

Attachments

DELIVERY SERVICE STAFFING ANALYSIS

UNIT:_____ AS OF AP_____ FY_____

				WEEKLY
1.	Number of Residential Routes M-Sa	_____	x 8 hours x 6 days	= _____
2.	Number of Routers M-F	_____	x 8 hours x 5 days	= _____
3.	Number of Routers Sa	_____	x 8 hours x 1 day	= _____
4.	Number of Mixed Business and Residential Routes M-F	_____	x 8 hours x 5 days	= _____
5.	Number of Mixed Business and Residential Routes Sa	_____	x 8 hours x 1 day	= _____
6.	Number of Business Routes M-F	_____	x 8 hours x 5 days	= _____
7.	Number of Business Routes Sa	_____	x 8 hours x 1 day	= _____
8.	Number of hours authorized on all Auxiliary Routes M-F	_____	x 5 days	= _____
9.	Number of hours authorized on all Auxiliary Routes Sa	_____	x 1 day	= _____
10.	Number of hours from Combination Routes authorized for letter delivery M-F	_____	x 6 days	= _____
11.	Number of hours from Combination Routes authorized for letter delivery Sa	_____	x 1 day	= _____
12.	Weekly total equals lines 1 thru 11			= _____
13.	Number of Full-Time Equivalent Letter Routes as of end of AP13, previous FY equals weekly total (line 12) _____ divided by 48 hours			= _____
14.	Number of Intra-City hours authorized M - F	_____	x 5 days	= _____
15.	Number of Intra-City hours authorized Sa	_____	x 1 day	= _____
16.	Number of Parcel Post hours authorized M-F	_____	x 5 days	= _____
17.	Number of Parcel Post hours authorized Sa	_____	x 1 day	= _____
18.	Number of Relay hours authorized M-F	_____	x 5 days	= _____
19.	Number of Relay hours authorized Sa	_____	x 1 day	= _____
20.	Number of Collection hours authorized M-F	_____	x 5 days	= _____
21.	Number of Collection hours authorized Sa	_____	x 1 day	= _____
22.	Number of Collection hours authorized Su	_____	x 1 day	= _____
23.	Number of Special Delivery hours used M-F	_____	x 5 days	= _____
24.	Number of Special Delivery hours usedSa	_____	x 1 day	= _____
25.	Number of Special Delivery hours used Su	_____	x 1 day	= _____
26.	Weekly Totals (Add Lines 12 + 14 thru 25)	_____		= _____
27.	Authorized % above base hours = _____% x weekly total (Line 26)			= _____
28.	Total required workhours per week (Add Lines 26 + 27)			= _____
29.	Target % of AL per week _____% x weekly total (Line 26) _____			= _____
30.	Target % of SL per week _____% x weekly total (Line 26) _____			= _____
31.	Target % of LWOP per week ____% x weekly total (Line 26) _____			= _____
32.	Subtotal (Add Lines 28 thru 31)			= _____
33.	Authorized % of OT per week_____% x weekly total (Line 26) _____			= _____
34.	Complement equivalent weekly hours (Line 32 minus Line 33)		=	
35.	Complement required (Line 34_____divided by 40 hours)		=	

Recognizing that some regular single-carrier routes require more than eight hours per day, line #27 is provided to credit those authorized additional hours above base (eight hours per day) incurred on a daily basis.

ATTACHMENT B

DELIVERY UNIT IMPACT STATEMENT

Zone Affected _____

A. Baseline weekly workhour DSSA baseline _____

Projected weekly workhour DSSA _____

Weekly savings-workhours _____

B. Casual

Average weekly hours worked by casuals in the City Delivery Craft _____

Proposed average weekly hours to be worked by casuals in the City Delivery Craft _____

Difference _____

Justify the need for remaining casual hours:

C. Part-Time Flexibles

Average weekly hours worked by PTFs in the City Delivery Craft _____

Proposed average weekly hours to be worked by PTFs in the City Carrier Craft _____

Difference _____

D. Impact on full-time employee's workhours

E. Full-time Regular Employees

How many full-time City Carrier positions are to be abolished and/or reverted? _____

F. Will there be any employee excessing? Yes No

G. Of the employees excess within the installation how many will be excessed within the

City Delivery Craft _____

Other Crafts _____

H. Will excessing out of the installation be required? Yes No
circle one

I. How many positions? _____

J. List the anticipated post offices and vacancies to which assignment will be made.

Facility	Assignment

K. Provide a narrative explaining the need for excessing.

L. Provide a narrative of your comments and future plans and any adjustments made as a result of deployment.

ATTACHMENT C1

Positions Withheld

Transitional Employee's Name	**Assignment Job Number**

ATTACHMENT C2

Positions Held Pending Reversion

Transitional Employee's Name	**Assignment Job Number**

ATTACHMENT C3

Part-Time Assignments

Transitional Employee's Name

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ATTACHMENT D

TRANSITIONAL EMPLOYEE ANNUAL LEAVE PROVISIONS:

I. GENERAL

A. Purpose. Annual leave is provided to transitional employees for rest, recreation, emergency purposes, and illness or injury.

1. Accrual of Annual Leave. Transitional employees earn annual leave based on the number of hours in which they are in a pay status in each pay period.

Rate of Accrual	Hours in Pay Status	Hours of Annual Leave Earned Per Pay Period
1 hour for each	20	1
unit of 20 hours	40	2
in pay status in	60	3
each pay period	80	4(max.)

2. Biweekly Crediting. Annual leave accrues and is credited in whole hours at the end of each biweekly pay period.

3. Payment For Accumulated Annual Leave. A separating transitional employee may receive a lump-sum payment for accumulated annual leave subject to the following condition:

a. A transitional employee whose separation is effective before the last Friday of a pay period does not receive credit or terminal leave payment for the leave that would have accrued during that pay period.

II. AUTHORIZING ANNUAL LEAVE

A. General. Except for emergencies, annual leave for transitional employees must be requested on Form 3971 and approved in advance by the appropriate supervisor.

B. Emergencies and Illness or Injury. An exception to the advance approval requirement is made for emergencies and illness or injury; however, in these situations, the transitional employee must notify appropriate postal authorities as soon as possible as to the emergency or illness/injury and the expected duration of the absence. As soon as possible after return to duty, transitional employees must submit Form 3971 and explain the reason for the emergency or illness/injury to their supervisor. Supervisors approve or disapprove the leave request. When the request is disapproved, the absence may be recorded as AWOL at the discretion of the supervisor as outlined in Section IV.B below.

III. UNSCHEDULED ABSENCE

A. Definition. Unscheduled absences are any absences from work that are not requested and approved in advance.

B. Transitional Employee Responsibilities. Transitional employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, transitional employees must provide acceptable evidence for absences when required.

IV. FORM 3971, REQUEST FOR, OR NOTIFICATION OF, ABSENCE

A. Purpose. Application for annual leave is made in writing, in duplicate, on Form 3971, Request for, or Notification of, Absence.

B. Approval/Disapproval. The supervisor is responsible for approving or disapproving application for annual leave by signing Form 3971, a copy of which is given to the transitional employee. If a supervisor does not approve an applica-

tion for leave, the disapproved block on Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the reasons for disapproval must be noted. AWOL determinations must be similarly noted.

The following articles and portions of articles of the National Agreement as they appear in bold face print below apply to transitional employees:

Article 1

Article 2

Article 3

Article 5

Article 7, as follows:

ARTICLE 7
EMPLOYEE CLASSIFICATION

Section 1. Definition and Use

*** * * * ***

D. Transitional Work Force—NALC

1. **The transitional work force shall be comprised of noncareer, bargaining unit employees utilized to fill vacated assignments as follows:**
   a. **Transitional employees may be used to cover duty assignments which are due to be eliminated by automation and residual vacancies withheld pursuant to Article 12.**
   b. **Transitional employees may be used to replace part-time attrition. Over the course of a pay period, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour, provided that the reporting guarantee for transitional employee is met.**
2. **Transitional employees shall be hired pursuant to such procedures as the Employer may establish. They will be hired for a term not to exceed 359 calendar days for each appointment. Transitional employees will have a break in service of at least 6 days between appointments.**

Article 8, as follows:

ARTICLE 8
HOURS OF WORK

Section 3. Exceptions

The above shall not apply to part-time employees and transitional employees. Part-time employees will be scheduled in accordance with the above rules, except they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week.

Transitional employees will be scheduled in accordance with Section 2, A and B, of this Article.

Section 4 A. B. C. E & F will apply.

Section 7 will apply.

Section 8.D.

In the Letter Carrier Craft, any transitional employee who is scheduled to work and who reports for work shall be guaranteed four (4) hours' work or pay.

Section 9 - will apply.

Article 9, as follows:

ARTICLE 9
SALARIES AND WAGES

Section 11. NALC Transitional Employees

During the term of the 1990 Agreement, NALC transitional employees' hourly rate will be as provided in this section.

A. Transitional employees hired during the life of this agreement will be hired at Level 5, Step A, part-time flexible employee base hourly rate.

B. Transitional employees will be paid at Step A of the part-time flexible employee base hourly rate of the position to which they are assigned.

Article 11, as follows:

ARTICLE 11
HOLIDAYS

Section 6. Holiday Schedule

D. Qualified transitional employees 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 nonvolunteers being scheduled to work a nonscheduled day or any full-time nonvolunteers 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.

Article 14

Article 15

Article 17 Sections 2, 6, and 7

Article 18

Article 19, as follows:

ARTICLE 19
HANDBOOKS AND MANUALS

New paragraph 3:

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 transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

Article 20

Article 22

Article 23

Article 24

Article 26, as follows:

ARTICLE 26
UNIFORMS AND WORK CLOTHES

Section 6. Transitional Employee - NALC

In the event that the Postal Service requires transitional employees to wear uniform items, the Postal Service, at its option, may provide such uniform items, which will be returned at the time of separation, or the transitional employee must purchase such uniform items. For each three months of service during the first term of appointment the transitional employee will be reimbursed up to 25 percent of the $229 uniform allowance. The transitional employee must document the cost of such purchases and have the immediate supervisor verify such expenditures in order to receive any pro rata reimbursement.

Article 27

Article 28

Article 31

Article 32

Article 34

Article 36

Article 42

Article 43

Only the following Memorandums of Understanding from the 1990 National Agreement shall apply to Transitional Employees:

Use of Privately Owned Vehicles
Leave Sharing
Interest on Back Pay
Processing Post-Removal Grievances

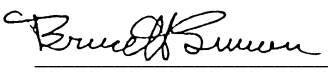
CONCLUSION

The foregoing represents the Award of the Panel. The Panel members understand and agree that their deliberations which resulted in this Award shall not be referred to in any manner for the purpose of interpreting the provisions of this Award and the resulting Agreement.

Dated this 16th day of January 1992.

Richard Mittenthal

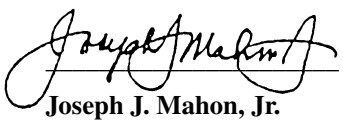
Chairman



Bruce H. Simon

Concurring in part and dissenting in part

(Partial dissents omitted)



Joseph J. Mahon, Jr.

Concurring in part and dissenting in part

ACRONYM GLOSSARY

204-b	Temporary Supervisory Position
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
APWU	American Postal Workers Union
ASM	Administrative Support Manual
BLS	Bureau of Labor Statistics
C.F.R.	Code of Federal Regulations
C.O.D.	Collect On Delivery
C-0000	NALC Arbitration System Citation
CAM	Contract Administration Manual
COLA	Cost-of-Living Adjustment
COP	Continuation of Pay
CPI-U	Consumer Price Index for All Urban Consumers
CPI-W	National Consumer Price Index,Urban Wage Earners and Clerical Workers
CSRS	Civil Service Retirement System
EAP	Employee Assistance Program
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
ELM	Employee and Labor Relations Manual
EWIA	Employee Workplace Intervention Analyst
FECA	Federal Employees Compensation Act
FEGLI	Federal Employees Group Life Insurance
FEHBP	Federal Employees Health Benefits Program
FERS	Federal Employees Retirement System
FLSA	Fair Labor Standards Act
FMLA	Family Medical Leave Act
FOH	Federal Occupational Health
FTF	Full-time Flexible
FTR	Full-time Regular
GSA	General Services Administration
IM	Investigative Memorandum
JCAM	Joint Contract Administration Manual
LMU	Local Memorandum of Understanding
LWOP	Leave Without Pay
M-0000	NALC Materials Reference System (MRS) Citation
MOU	Memorandum of Understanding
MSC	Management Sectional Center
MSPB	Merit Systems Protection Board
N.T.E.	Not to Exceed (date)
NALC	National Association of Letter Carriers
NLRB	National Labor Relations Board
NPMHU	National Postal Mail Handlers Union
NRLCA	National Rural Letter Carriers' Association
O.P.M.	Office of Personnel Management

ODL	Overtime Desired List
OF-346	Former Postal Drivers' License
OSHA	Occupational Safety and Health Act
OTDL	Overtime Desired List
OWCP	Office of Workers' Compensation Programs
PDC	Postal Data Center
PMG	Postmaster General
PRA	Postal Reorganization Act
PS	Postal Service
PTF	Part-time Flexible
PTR	Part-time Regular
RIF	Reduction In Force
SF	Standard Form
SF-46	Former Postal Drivers' License
T-6	Letter Carrier Technician
TCOLA	Territorial Cost of Living Adjustment
TE	Transitional Employee
U.S.C.	United States Code
USPS	United States Postal Service
VOMA	Vehicle Operations-Maintenance Assistant

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Notes

Notes

TRANSMITTAL LETTER NO. 1 JUNE 1998

Note on Acrobat Version, September 2000

Enclosed is the first *NALC Supplement* to the *Joint Contract Interpretation Manual* (JCAM). This supplement, dated June 1998 consists of the following material.

Subject	Page Numbers	Insert after JCAM page
Introduction	Pages 1-3	Introduction
Article 3.F	Pages 3-1A, 3-1B	3-1
Article 6	Page 6-7A	6-7
Article 7.1.B	Pages 7-2A, 7-2B	7-2
Article 10.2	Pages 10-2A —10.2C	10-2
Article 12.4.C	Pages 12-6A, 12.6B	12-6
Article 16.1		
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Defenses Discipline	Page 16-2A(7) — 16-2A(35)	16-2
Article 17.3	Pages 17-4A — 17-4H	17.4
Article 19	Pages 19-2A — 19-2C	19.2
Article 41		
41.1.A.2	Pages 41-2A — 41-2B	41.2
41.1.C.4	Pages 41-6A — 41-6B	41.6
41.3.A	Page 41-17A	41-18
41.3.S	Page 41-24A — 41-24B	41.24

This material may be filed in a separate binder or in a binder behind the JCAM. However, we strongly recommend that it be inserted into the JCAM. To facilitate this, the page numbering system indicates the appropriate placement. For example, the supplementary material on Article 12, Section 4.C should be inserted after page 12-6 in the JCAM. The material on Article 41, Section 1.C.4 should be inserted after page 41-6 in the JCAM, etc.

A copy of this and all future transmittal letters should be filed with the supplementary materials so that it will always be possible to verify that the most current material is being referenced.

INTRODUCTION

The National Association of Letter Carriers is proud to introduce this *NALC Supplement to the USPS-NALC Joint Contract Administration Manual*.

This publication, together with its companion *Joint Contract Administration Manual,* comprises the most comprehensive, understandable and useful guide to the National Agreement ever published. For the first time, NALC grievance enforcers are now able to turn to an authoritative source for an explanation of the entire contract. On every contractual topic in which the parties have arbitrated or settled important disputes, these publications summarize and explain how those resolutions have affected the contract's meaning.

NALC Supplement and *Joint CAM*

NALC grievance handlers need to understand the difference between the two publications, the *USPS-NALC Joint Contract Administration Manual*, or *JCAM*, and the *NALC Supplement to the JCAM*.

- ***JCAM.*** The *JCAM* contains the authoritative, agreed-upon interpretations of the National Agreement. The narrative text of the *JCAM* contains explanations of contract language and of important settlements and arbitration decisions. The National Association of Letter Carriers and the United States Postal Service have agreed at the national level that *this is the definitive interpretation of the contract*. Postal managers at all levels are required to follow the *JCAM's* interpretations of the contract, because USPS has agreed to every word of the book—it has agreed *not to dispute* what is written in it. NALC has agreed, as well, to be bound by the *JCAM's* provisions. In summary, both parties are bound at all levels by the *JCAM's* definitive contract interpretations, as are regional arbitrators.

- ***NALC Supplement.*** This is a *union-only supplement* to the *JCAM*. The supplement contains additional interpretive and advocacy material which was created solely by the National Association of Letter Carriers at the national level. The supplementary material was not authored jointly with the employer, nor has the Postal Service either approved or agreed to any of this material. Rather, it is entirely a union publication. The supplementary text states the union's positions on many issues on which NALC and USPS could not agree at the time the *JCAM* was created. It also contains materials intended to assist NALC representatives in their efforts to enforce the contract and represent letter carriers to the best of their abilities.

How to Use

NALC representatives should use both the *JCAM* and the *NALC Supplement* when researching a contractual issue. Taken together, these two pub-

lications provide an accessible and comprehensive guide to the meaning of the National Agreement.

Both the *JCAM* and the *NALC Supplement* are organized by National Agreement Article. The JCAM's separate article sections are numbered, for example, page 1-1, 1-2 and so forth for Article 1, and page 12-1, 12-2 and so on for Article 12. The *JCAM* contains all Articles of the entire National Agreement and some key National Memorandums of Understanding. (Some of the National MOUs printed in the National Agreement are not reprinted in the *JCAM*.) The *JCAM* has a very detailed subject index similar to the one in the National Agreement.

The *NALC Supplement* is also organized by article and its page numbers follow a similar scheme except that each page within a chapter has a letter rather than a number. For example, the pages under Article 17 are 17-4A, 17-4B and so forth. Since it is intended as a union-only *supplement* to the *JCAM,* it does not reprint all the National Agreement provisions.

Additional contractual materials. The *JCAM* and *NALC Supplement* contain a vast wealth of interpretive material explaining the National Agreement—so much that NALC contract enforcers will find answers to many of their contractual questions in these two books alone. However, there are additional NALC contractual materials which may be useful to grievance handlers in particular cases. These supplemental reference materials are now available to all NALC branches on CD-ROMs. They are:

- ***Materials Reference System (MRS).*** The MRS consists of hundreds of individual settlements of Step 4 (national-level) grievances, as well as many national prearbitration decisions, national memorandums of understanding, management letters and directives, plus additional materials judged to be useful to NALC contract enforcers. The MRS Summary and Index contains headnotes or "blurbs" summarizing each of these documents, and is organized by general subject area and indexed by detailed subject, by contract article and section, and by USPS handbook and manual provision. The MRS Summary and Index, plus all of the background documents comprising the full MRS, are available on CD-ROM from the NALC headquarters supply department. Documents in the MRS are indicated by an "M" number (for example M-00123) in both the *JCAM* and *NALC Supplement.*

- **Arbitration CD-ROMs.** NALC's headquarters files contain more than 17,000 national and regular regional arbitration decisions. These decisions have been scanned and are available as images on a set of CD-ROMs which may be purchased from NALC's supply department. The latest CD-ROM also contains a brand-new Windows-based database search program developed at NALC headquarters, which indexes the

entire arbitration CD-ROM collection. This technology is the same as that now used at NALC headquarters and National Business Agent offices. The arbitration CD-ROM collection is updated regularly to include new cases. Arbitration awards on the NALC Arbitration CD-ROMs are indicated by an "C" number (for example C-00123) in both the *JCAM* and *NALC Supplement.*

The Future

NALC is committed to making further improvements in the *NALC Supplement*, the *JCAM* and our additional contractual materials. It is our hope that these materials, plus their wide distribution into the hands of NALC activists, will help letter carriers enforce the contract consistently throughout the country. It is said that "knowledge is power." We hope these materials will help to increase our knowledge of the contract, and thus enhance the power of our collective bargaining agreement to aid and support all the letter carriers of our nation.

ARTICLE 3 MANAGEMENT RIGHTS

Link to JCAM

USPS' "exclusive rights" under this article 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 basic power to "manage" the United States Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, memoranda and other legal restrictions. Consequently, many of the management rights enumerated in Article 3 have been sharply circumscribed and limited by negotiated contract provisions. For example, Management's Article 3 right to "suspend, demote, discharge, or take other disciplinary action against" employees is restricted by the provisions of Articles 15 and 16.

Similarly, management's right to "hire, promote, transfer, assign, and retain employees in positions within the Postal Service" is limited not only by the seniority, posting and bidding provisions of Article 41, but also by the Joint Statements on Violence and Behavior in the Workplace. National Arbitrator Carlton Snow held in C-15629 that "the Joint Statements ... constitute a contractually enforceable agreement between the parties. Accordingly, the Union shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint Statement." Arbitrator Snow further specified that "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*"(emphasis added). NALC had requested in its brief a ruling that an arbitrator may grant, in an appropriate case of supervisory misconduct, an order that the supervisor no longer supervise letter carriers.

In the Prearbitration Settlement M-01316, F94N-4F-C 96032816, dated May 21 1998, the Postal Service acknowledged that pursuant to Article 3, the grievance arbitration procedure may be used to enforce applicable external laws. For further authority to enforce the Postal Service's legal obligations through the grievance procedure, see the discussion of National Arbitrator Bernstein's March 11, 1987 decision in C-06858, under Article 5 in the *Joint Contract Administration Manual*

Link to JCAM

3.F This provision gives management the right to take whatever actions may be necessary to carry out its mission in emergency situations. It provides a **three-part** definition of emergency situations. To be an emergency a situation must be:

1. "an unforeseen circumstance or a combination of circumstances"
2. "which calls for immediate action"
3. "in a situation which is not expected to be of a recurring nature."

Emergencies—local negotiations under Article 30. Article 30, Section B.3 gives NALC branches the right to negotiate, after completion of each National Agreement, a Local Memorandum of Understanding (LMU) which 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.

LMU provisions negotiated under Article 30.B.3 may cover, for example, management notice to NALC of its decision to curtail mail in an emergency, and restrictions on carrier travel when local authorities have advised the public not to travel.

Local negotiations in general and local bargaining about emergencies are explained in depth by the NALC publication *Local Negotiations.*

ARTICLE 6 NO LAYOFFS OR REDUCTION IN FORCE

Details of Service Requirement: The Joint Contract Administration Manual provides that for the purpose of the six-year requirement for no layoff protection, absence from work for any of the following four reasons is considered to be "work":

(1) To the extent required by law: (a) court leave, (b) certain time spent in military service covered Chapter 43 of Title 38, or time spent on continuation of pay (COP), leave without pay (LWOP) or on the OWCP rolls because of compensable injury on duty (Article 6.A.3(a)(1));

(2) Time spent on paid annual or sick leave (Article 6.A.3(a)(2));

(3) Time spent on leave without pay (LWOP) for performing union business as provided for in Article 24 of the Agreement (Article 6.A.3(a)(3); and

(4) Temporary details outside the regular workforce in which the employee's position of record remains in the regular force (Article 6.A.3(b)).

Link to JCAM

In addition, it is NALC's position that time spent on leave covered by the Family Medical Leave Act (FMLA) is considered "work" for the purpose of the six-year requirement. The Postal Service does not currently agree. In the unlikely event that layoffs ever occur and this issue arises, it should immediately be brought to the attention of the responsible National Business Agent.

ARTICLE 7 EMPLOYEE CLASSIFICATIONS

Article 7.1.B establishes the "supplemental work force," which consists of casual employees. Article 1.2 excludes casual employees from the bargaining unit represented by NALC, so casuals do not have the contractual protections enjoyed by career or transitional bargaining-unit employees. Casual employees receive much lower pay than career or transitional carriers and they receive no benefits. So management has an economic incentive to expand the casual workforce and the hours of casual employees, thus undermining the career workforce. NALC has negotiated Article 7.1.B to place limits on the hiring and use of these low-paid, no-benefit employees in the carrier craft.

Article 7.1.B.1-4 contains four separate limitations on the hiring and use of casual employees who perform letter carrier work.

Link to JCAM

7.1.B.1 **No use in lieu of full- or part-time employees.** Section 7.1.B.1 provides that casual employees may be hired as a *supplement* to the regular workforce but *not* in place of it. On August 6, 1992 NALC and USPS management at the national level agreed to the following language in settling a Step 4 grievance (M-01098):

> ... in accordance with Arbitrator Zumas' award in cases H1C-4K-C 27344/45 [C-00675, a national-level APWU award] the term "employed" means hired and not the manner in which the casuals are assigned (utilized).

So Article 7.1.B.1 limits management's *hiring* of casual employees "in lieu of" full- or part- time carriers, but this provision does not, like Article 7.1.B.2 (see below), speak to the *utilization* of casuals to the detriment of career employees after the casuals are hired. Regional arbitrators have found violations of Article 7.1.B.1 when, for example: management decided on the carrier complement required in an office and then filled positions by hiring casuals (C-13954, C-11108, C-11199, C-12960, C-12961, C-12962); management employed casual employees to perform custodial work, not as a limited term supplemental work force but rather in lieu of full- or part-time employees (C-11015); and management's only reason for limiting certain operations to Tour 2 was so that it could assign work to lower-paid casual employees (C-11024).

Link to JCAM

7.1.B.2 **PTF straight-time hours priority over casuals.** Article 7.1.B.2 obligates management to give part-time flexibles working at the straight-time rate a priority in scheduling over casual employees. This priority is not absolute: The employer's obligation may be fulfilled over the course of a "service week," and the part-time flexible employees must be "qualified and available." (A "service week" begins at 12:01 a.m. Saturday and ends at 12:00 midnight the following Friday. See Article 8.2.A.)

Service week: A successful grievance on this issue must show that management scheduled a casual for work which a PTF carrier could have performed instead, and that the PTF carrier worked less than 40 straight-time hours during the service week. Because the contract language addresses the *service week* rather than any specific day's assignment, management does not necessarily violate the contract by, for instance, using a casual on a Monday while PTFs are unscheduled. A violation occurs when that assignment causes a PTF who could have performed the Monday work to lose straight-time work hours during the service week. See National Arbitrator Howard Gamser's decision in C-00403.

Link to JCAM

7.1.B.3 **National 3.5 percent limit on casuals:** Section 7.1.B.3 restricts the number of casuals employed nationwide in the carrier craft to 3.5 percent of the total number of employees covered by the National Agreement, except during December.

The 3.5 percent limit is computed on a *nationwide* basis and does not apply to any particular postal facility or installation, where casuals may exceed 3.5 percent. NALC monitors the overall casual employee limit at its headquarters in Washington, D.C. However, NALC branches can help to enforce this provision by ensuring that casuals use the correct letter carrier Labor Distribution Code for their clock rings whenever they are worked in the letter carrier craft.

Casual employee crossing crafts is counted. Management may use a casual employee in more than one craft. If a casual originally hired in another craft (say, the clerk craft) crosses crafts to work in the city carrier craft even once, it is NALC's position that the casual is counted toward the 3.5 percent national casual limit during that USPS accounting period. (The USPS fiscal year is divided into 13 "Accounting Periods" of two pay periods—four weeks—each.)

Link to JCAM

7.1.B.4 **Limited employment terms:** Section 7.1.B.4 restricts individual casual employees who work in the carrier craft to two 90-day terms per year plus 21 days during the Christmas period.

It is NALC's position that a casual employee begins a 90-day term in the carrier craft when either of these two events occurs: (1) when a carrier casual or a casual with a dual craft designation—one of which is carrier—is first hired, whether or not the casual has actually performed work in the craft; or (2) when a casual hired in another craft crosses to the carrier craft and performs any amount of carrier work.

ARTICLE 10 LEAVE

Link to JCAM

10.2 **Acts of God:** Article 10, Section 2 provides that all of the leave provisions in Subchapter 510 of the Employee and Labor Relations Manual (ELM) remain in effect for the life of the Agreement and thus are enforceable through the grievance procedure. A frequent subject of disputes is the application of ELM Section 519.21 which authorizes management to grant administrative leave to employees prevented from working due to "Acts of God" This section reads:

519.21 **Acts of God**

519.211 **General**

Acts of God involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work.

519.212 **Authorizing Administrative Leave for Acts of God**

a. *Postmasters* and *Installation Heads*. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day.

b. *MSC* and *BMC* Managers. *MSC* and *BMC* managers may authorize administrative leave beyond 1 day, but not to exceed a total of 3 days for their installation and those reporting to it.

c. *Field Division General Managers/ Postmasters*. Field Division General Managers/Postmasters may approve administrative leave for periods up to and in excess of 3 days for their installation and those reporting to it.

519.213 **Determining the Cause of Absence**

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 for duty.

519.214 **Early Dismissal Due to Acts of God**

When employees are dismissed from duty before the normal completion of their duty due to an "Act of God", the following applies:

a. Full-Time Employees are entitled to credit for hours worked plus enough administrative leave to complete their tour of duty. This combination of work and leave is not to exceed 8 hours in any 1 day.

b. Part-Time Regular Employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled hours of duty. This combination of work and leave is not to exceed 8 hours in any 1 day.

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 workhours, 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.

519.215 **Employees Prevented From Reporting**
Employees scheduled to report who are prevented from reporting or, who after reporting, are prevented from working by an "Act of God" may be excused as follows:

a. Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed 8 hours.

b Part-time flexible employees receive administrative leave, subject to the 8-hour limitation, for their scheduled workhours, as provided in 519.214c.

519.216 **Employees on Annual Leave**
Employees on annual leave, sick leave, or LWOP remain in such status. They are not entitled to administrative leave.

In popular usage the term "Act of God" is often used for any event, such as being struck by lightning, over which an individual has no control. This is not the sense in which the term is used in the postal service. Rather, ELM Section 519.211, specifies three criteria which must be met before administrative leave may be granted for "Acts of God".

- The "Act of God" must involve a community disaster such as fire, flood, or storms.
- The disaster must be general, rather than personal, in scope and impact.
- It must prevent groups of employees from working or reporting to work.

Finally, ELM Section 519.213 provides that it is up the Postmaster or other appropriate postal officials 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.

ELM Section 519.212 identifies the postal officials who authorize/approve administrative for "Acts of God", and how much may be approved at each organizational level. These postal officials are authorized to approve such leave when the employees meet all the criteria for an "Act of God".

Early dismissal: When employees are dismissed from duty before the normal completion of their duty due to an "Act of God", employees **are entitled** to receive administrative leave in accordance with the provisions

of ELM 519.214. Unlike cases involving employees prevented from reporting to work due to an "Act of God", when employees are dismissed from duty before the normal completion of their duty, the granting of administrative leave is non-discretionary.

Authorizing officials should apply the provisions of ELM 519 in a straightforward and equitable manner. When the criteria for granting administrative leave have clearly been met, it should be granted. Unfortunately, this does not always happen and administrative leave is often denied for arbitrary or capricious reasons. NALC has taken almost two hundred such cases to regional arbitration. Arbitrators routinely sustain NALC cases and grant the administrative leave. Supporting cases for specific fact patterns may be located in the NALC CD ROM Arbitration System by searching under the subject "Acts of God".

ARTICLE 12 PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

Link to JCAM

12.4.C Comparative Work Hour Reports

This section provides that, 60 days after employees are excessed out of an installation, the National Union may request a comparative work hour report of the losing installation. Since the contract requires that Comparative Work Hour Reports must be requested at the national level, the office of the NALC Vice President should be contacted whenever a report is required. Your request for the report sent to NALC Headquarters should ask for:

- Total Work Hours—for the 30 days prior to excessing and the 30 days after excessing has occurred.
- Straight time hours—used by all letter carriers, broken down by full-time regulars, full-time flexibles, part-time regulars, part-time flexibles, transitional employees and casuals.
- Overtime hours— used by all letter carriers, broken down by full- time regulars, full-time flexibles, part-time regulars, part-time flexibles, transitional employees and casuals.
- The carrier complement—30 days prior to excessing and 30 days after the excessing occurred.

Please provide the following information when making the request to NALC Headquarters.

- The losing installation
- The gaining installation
- The date excessing occurred
- The number of employees excessed
- The craft to which employees were excessed
- The number of carriers who elected to become PTF's and remain at the installation

The information contained in a Comparative Work Hour Report can be used for to strengthen the union's position in an existing excessing grievance, or it may be an independent factual basis for the initial filing of a grievance.

Situations where a comparative work hour report is used to reinforce the union's stated position in an existing grievance are an exception to the gen-

eral principle that new facts may not be introduced for the first time in arbitration. The reason for this are twofold. First, because the National Agreement specifically requires that the Union wait sixty days before it may request the report, thus it may have been unavailable at the time of a grievance filing. Second because, although the Postal Service is permitted a reasonable amount of time to prepare the report, the Union is not be held hostage to any delay by the Postal Service.

A comparative work hour report may be used to provide the factual basis for the initial filing of an excessing grievance or a grievance concerning retreat rights. For example, even if excessing was not initially grieved, the report may be used as the basis of a grievance seeking to activate an employee's retreat rights.

ARTICLE 16 DISCIPLINE PROCEDURE

Link to JCAM

16.1 Section 1. Principles

Just Cause Principle

The principle set forth in Article 16, Section 1 that—any discipline must be for "just cause" is one of the most important features of the National Agreement (and any collective bargaining agreement). This fundamental job security provision establishes a standard of fairness that must apply to any discipline or discharge of an employee.

Simply put, the "just cause" provision forces management to come up with a fair and provable justification for the discipline it imposes on letter carriers. So just cause is a powerful check on the "employment-at-will" nature of non-union workplaces, where an employee may be fired for no reason or for almost any reason at all.

Two Writings

Two helpful writings on just cause have been reproduced below:

- **The Seven Tests of Just Cause.** This brilliant, seminal writing of Arbitrator Carroll R. Daugherty summarized, for the first time in clear and well-organized form, the central teachings of arbitrators on the subject of just cause. It first appeared as an Appendix to Arbitrator Daugherty's decision in *Enterprise Wire Company and Enterprise Independent Union*, Volume 46 Labor Arbitration Reports p. 359 (1966). Almost all labor arbitrators are familiar with the "Seven Tests," which have been quoted, argued and written about by innumerable advocates, arbitrators and scholars. The just cause criteria the Postal Service has agreed to on pages 16-1 and 16-2 of the JCAM are loosely based on this award.

- **Defenses to Discipline.** NALC has previously published a compendium of arguments for NALC representatives to use in challenging unfair discipline. This material, revised and reprinted below, summarizes and gives arbitration case references for all of the main arguments that NALC grievance representatives use in arguing that discipline was not for just cause. It highlights technical or procedural challenges to discipline, including those set out by specific rules in the National Agreement—for example, the "review and concur" requirement of Article 16.8.

THE SEVEN TESTS OF JUST CAUSE

Appendix to Arbitrator Daugherty's decision in *Enterprise Wire Company and Enterprise Independent Union*, Volume 46 Labor Arbitration Reports p. 359 (1966).

Tests Applicable For Learning Whether Employer Had Just And Proper Cause For Disciplining an Employee

Few if any union-management agreements contain a definition of "just cause." Nevertheless, over the years the opinions of arbitrators in innumerable discipline cases have developed a sort of "common law" definition thereof. This definition consists of a set of guide lines or criteria that are to be applied to the facts of any one case, and said criteria are set forth below in the form of questions.

A "no" answer to any one or more of the following questions normally signifies that just and proper cause did not exist. In other words, such "no" means that the employer's disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable, or discriminatory action to such an extent that said decision constituted an abuse of managerial discretion warranting the arbitrator to substitute his judgment for that of the employer.

The answers to the questions in any particular case are to be found in the evidence presented to the arbitrator at the hearing thereon. Frequently, of course, the facts are such that the guide lines cannot be applied with precision. Moreover, occasionally, in some particular case an arbitrator may find one or more "no" answers so weak and the other, "yes" answers so strong that he may properly, without any "political" or spineless intent to "split the difference" between the opposing positions of the parties, find that the correct decisions to "chastize" both the company and the disciplined employee by decreasing but not nullifying the degree of discipline imposed by the company - e.g., by reinstating a discharged employee without back pay.

It should be clearly understood also that the criteria set forth below are to be applied to the employer's conduct in making his disciplinary decision before same has been processed through the grievance procedure to arbitration. Any question as to whether the employer has properly fulfilled the contractual requirements of said procedure is entirely separate from the question of whether he fulfilled the "common law" requirements of just cause before the discipline was "grieved."

Sometimes, although very rarely, a union-management agreement contains a provision limiting the scope of the arbitrator's inquiry into the question of

just cause. For example, one such provision seen by this arbitrator says that "the only question the arbitrator is to determine shall be whether the employee is or is not guilty of the act or acts resulting in his discharge." Under the latter contractual statement an arbitrator might well have to confine his attention to Question No. 5 below—or at most to Questions Nos. 3,4, and 5. But absent any such restriction in an agreement, a consideration of the evidence on all seven Questions (and their accompanying Notes) is not only proper but necessary.

The Questions

1. **Did the company give to the employee forewarning or foreknowledge of the possible or probably disciplinary consequences of the employee's conduct?**

Note 1: Said forewarning or foreknowledge may properly have been given orally by management or in writing through the medium of typed or printed sheets or books of shop rules and of penalties for violation thereof.

Note 2: There must have been actual oral or written communication of the rules and penalties to the employee.

Note 3: A finding of lack of such communication does not in all cases require a "no" answer to Question No. 1. This is because certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of the property of the company or of fellow employees are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

Note 4: Absent any contractual prohibition or restriction, the company has the right unilaterally to promulgate reasonable rules and give reasonable orders; and same need not have been negotiated with the union.

2. **Was the company's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the company's business and (b) the performance that the company might properly expect of the employee?**

Note 1: If an employee believes that said rule or order is unreasonable, he must nevertheless obey same (in which case he may file a grievance there over) unless he sincerely feels that to obey the rule or order would seriously and immediately jeopardize his personal safety and/or integrity. Given a

firm finding to the latter effect, the employee may properly be said to have had justification for his disobedience.

3. Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

Note 1: This is the employee's "day in court" principle. An employee has the right to know with reasonable precision the offense with which he is being charged and to defend his behavior.

Note 2: The company's investigation must normally be made before its disciplinary decision is made. If the company fails to do so, its failure may not normally be excused on the ground that the employee will get his day in court through the grievance procedure after the exaction of discipline. By that time there has usually been too much hardening of positions. In a very real sense the company is obligated to conduct itself like a trial court.

Note 3: There may of course be circumstances under which management must react immediately to the employee's behavior. In such cases the normally proper action is to suspend the employee pending investigation, with the understanding that (a) the final disciplinary decision will be made after the investigation and (b) if the employee is found innocent after the investigation, he will be restored to his job with full pay for time lost.

Note 4: The company's investigation should include an inquiry into possible justification for the employee's alleged rule violation.

4. Was the company's investigation conducted fairly and objectively?

Note 1: At said investigation, the management official may be both "prosecutor" and "judge" but he may not also be a witness against the employee.

Note 2: It is essential for some higher, detached management official to assume and conscientiously perform the judicial role, giving the commonly accepted meaning to that term in his attitude and conduct.

Note 3: In some disputes between an employee and a management person there are not witnesses to an incident other than the two immediate participants. In such cases it is particularly important that the management "judge" question the management participant rigorously and thoroughly, just as an actual third party would.

5. At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

Note 1: It is not required that the evidence be conclusive or "beyond all reasonable doubt." But the evidence must be truly substantial and not flimsy.

Note 2: The management "judge" should actively search out witnesses and evidence, not just passively take what participants or "volunteer" witnesses tell him.

Note 3: When the testimony of opposing witnesses at the arbitration hearing is irreconcilably in conflict, an arbitrator seldom has any means for resolving the contradictions. His task is then to determine whether the management "judge" originally had reasonable grounds for believing the evidence presented to him by his own people.

6. Has the company applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?

Note 1: A "no" answer to this question requires a finding of discrimination and warrants negation or modification of the discipline imposed.

Note 2: If the company has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, the company may avoid a finding of discrimination by telling all employees beforehand of its intent to enforce hereafter all rules as written.

7. Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?

Note 1: A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past. (There is no rule as to what number of previous offenses constitutes a "good" a "fair," or a "bad" record. Reasonable judgment thereon must be used.)

Note 2: An employee's record of previous offenses may never be used to discover whether he was guilty of the immediate or latest one. The only proper use of his record is to help determine the severity of discipline once he has properly been found guilty of the immediate offense.

Note 3: Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating" among them in the administration of discipline for said offense. Thus, if employee A's record is significantly better than those of employees B,C, and D, the company may properly give a lighter punishment than it gives the others for the same offense; and this does not constitute true discrimination.

Note 4: Suppose that the record of the arbitration hearing established firm "yes" answers to all the first six questions. Suppose further that the proven offense of the accused employee was a serious one, such as drunkenness on the job; but the employee's record had been previously unblemished over a long, continuous period of employment with the company. Should the company be held arbitrary and unreasonable if it decided to discharge such an employee? The answer depends on all the circumstances. But, as one of the country's oldest arbitration agencies, the National Railroad Adjustment Board, has pointed out repeatedly in innumerable decisions on discharge cases, leniency is the prerogative of the employer rather than of the arbitrator, and the latter is not supposed to substitute his judgment in this area for that of the company unless there is compelling evidence that the company abused its discretion. This is the rule, even though an arbitrator, if he had been the original"trial judge," might have imposed a lesser penalty. Actually the arbitrator may be said in an important sense to act as an appellate tribunal whose function is to discover whether the decision of the trial tribunal (the employer) was within the bounds of reasonableness above set forth.—In general, the penalty of dismissal for a really serious first offense does not in itself warrant a finding of company unreasonableness.

DEFENSES TO DISCIPLINE

Publication Note: NALC first published this material as a booklet entitled *Defenses to Discipline*. The booklet has been updated and is reprinted here.

INTRODUCTION

Just Cause

Each year, management takes disciplinary action—letters of warning, suspensions and removals—against thousands of letter carriers. In some cases, the disciplined letter carrier accepts the punishment as having been warranted and does not dispute the action taken by management. In many cases, however, the letter carrier does not accept management's sanction, and files a grievance. Most of the time such grievances are resolved amicably in the grievance procedure, but in some cases the NALC and management are unable to reach agreement, and the grievance is appealed to arbitration.

At the core of discussions concerning discipline—in grievance meetings or in arbitration hearings alike—is whether the discipline was for just cause. The requirement that discipline must be for just cause is established in Article 16, Section 1 of the National Agreement between the NALC and the Postal Service. Other than simply stating the requirement, however, Article 16 does not define just cause. Thus, it is for the parties to determine and define just cause on a case-by-case basis.

To some extent, just cause must remain undefined and undefinable, because each case in which discipline is imposed is in some ways unique and different from all other cases.

To a certain extent, however, just cause has been defined. Every working day, NALC arbitrates nine or ten discipline grievances—more than 2,100 discipline grievances in 1997 alone, and more than 27,000 such grievances since the inception of the NALC/USPS grievance-arbitration procedure in 1972. In each of these grievances, the arbitrator has faced the issue of just cause. And for each grievance, the arbitrator has written a decision and award explaining the reasons for finding the contested discipline to be either for just cause or not for just cause. From those decisions in which the NALC's grievance was denied, it is possible to glean a practical definition of just cause. From those decisions in which NALC's grievance was sustained in whole or in part, it is possible to find a practical definition of what is not for just cause, and, further, it is possible to distill those defenses to discipline which have compelled arbitrators to rule that discipline was without proper cause. This booklet is about those defenses.

DEFENSES TO DISCIPLINE

The Four Categories of Defenses

Almost always, the grievant and the NALC assert that there are mistakes or inaccuracies in management's case in one or more of four categories: (1) technical objections unrelated to the merits of the case; (2) disputes about whether grievant's conduct, if proven, would constitute a valid basis for the imposition of discipline; (3) claims that management cannot prove its fact allegations or that management has omitted some vital acts; and (4) claims that, because of mitigating circumstances, the discipline imposed is too harsh.

(1) The first of these, technical objections, includes assertions that discipline was issued untimely, that discipline was issued by the wrong person, or that management failed to follow certain other required procedures. Defenses in this category do not even touch upon the merits of the discipline. By using a technical defense, the NALC is in effect saying to the arbitrator: "In order to resolve this dispute, it is not necessary to consider management's claim that grievant engaged in misconduct, because the way in which management imposed the discipline was so improper that no discipline should be allowed."

(2) The second category, disputes about whether a valid basis for discipline has been charged, includes situations in which a letter carrier has been disciplined for accident-proneness, failure to meet casing standards, or absenteeism resulting from a compensable injury. The claim made by this defense is that no valid rule proscribes grievant's conduct. By using this defense, the NALC is in effect saying to the arbitrator: "Even assuming that grievant acted as charged, nothing has happened which properly gives rise to discipline."

(3) The third category, disputes about the accuracy or completeness of the alleged facts, may take any of several forms. The NALC may simply sit back, in effect saying: "We deny that grievant acted as you charge, it is management's burden in disciplinary matters to prove its version of the facts, and the evidence offered by management is insufficient to meet that burden." Or the NALC may take a more active stance, saying: "The grievant did not act as charged, and the evidence offered to that effect by NALC is more credible than the evidence offered by management to the contrary." Finally, NALC may assert that while grievant did act as charged, management improperly failed to notice some relevant facts, such as that grievant was provoked by another.

(4) The fourth category includes assertions that the discipline imposed is seen as too harsh when all of the circumstances are considered. Included

are claims that grievant's misconduct was unintentional, and that insufficient consideration was given to grievant's long service. These "mitigation" defenses are a variant of the third category, in that the NALC here also alleges that management's facts are incomplete. The difference between them is that those in the third category, when successful, usually result in the complete recision of discipline, while with the mitigation defenses NALC is usually conceding that some discipline was warranted, and the argument is about how much.

State Multiple Defenses Separately and Alternatively

The NALC will often try more than one of the above categories in a single case—and sometimes will use all of them. When multiple defenses are used they should be stated separately and argued in the order in which they are presented above. Thus, the summary of argument of the grievance of a letter carrier with 32 years of service charged two months after the fact with discarding deliverable mail might be as follows:

1. The discipline should be disallowed as untimely.
2. Even if the discipline was not untimely, the discipline should be disallowed because management failed to prove that grievant acted as charged.
3. Even assuming that grievant acted as charged, the discipline imposed is too harsh given grievant's 32 years of discipline-free employment.

A series of arguments stated separately and alternatively ("even if", "even assuming"), as above, gives the arbitrator the maximum number of hooks upon which to hang his or her hat. If two of the arguments are found totally unmeritorious, prevailing on whichever remains means at least a partial win.

Using Defenses to Discipline

The remainder of this booklet is divided into four sections, one for each of the categories of defenses described above. For each of the defenses, there is a "Case Examples" section providing one or more quotes from arbitrations in which the defense was employed. Each defense also has a "Supporting Cases" section which lists cases in which the defense was employed, showing the NALC Computer Arbitration Number for each case, as well as the name of the arbitrator and the date of the decision.

Stewards may use *Defenses to Discipline* as a starting point for the investigation of potential discipline grievances. The described defenses should be used as a checklist, and the steward should explore carefully the possible

availability of each defense. Representatives who discuss discipline grievances at various steps of the grievance procedure can use their familiarity with the defenses to help focus grievance discussions on those points which are most likely to determine the final outcome. Arbitration advocates can use the cited material and listed cases as a starting point to pull together arbitration precedent in support of the arguments they will make to an arbitrator.

A Final Caveat

There are two fundamental truths in arbitration: 1) No two cases are exactly alike, and 2) Different arbitrators rule differently. Taken together, this means that finding a previous winning case very similar to the one with which you're concerned does not guarantee a win. Finding such a case is a big plus, but it's not the end of the game.

SECTION 1
TECHNICAL DEFENSES
UNRELATED TO THE MERITS OF THE DISCIPLINE

Many arbitrators have found principles of procedural due process to be implied by the just cause standard. The examples of technical defenses in this section illustrate ways in which arbitrators have applied these principles in USPS cases.

When technical defenses are used, NALC turns the tables and takes the initiative. Management, who started the whole business by making an accusation of misconduct, finds the finger pointed back at it. Because technical defenses are exhilarating, there is an unfortunate temptation to try to use them in every case, even where not quite justified. This temptation should be resisted, because overuse blunts their sharp effect, and erodes credibility.

Moreover, NALC representatives should note that in the vast majority of disciplinary grievances, the outcome is dependent on the central facts and merits of the discipline—whether the grievant acted as charged, the severity of the infraction, mitigating factors and the grievant's disciplinary record, if any. Although some discipline is so flawed procedurally that it can be overturned on that basis alone, NALC representatives should be careful not to expect this in every case, or even in most cases.

Technical Defense No. 1
Discipline was not timely issued.

When management discovers a letter carrier's misconduct, it must initiate discipline in a timely manner. If management does not do so, it waives whatever rights it may have to impose discipline.

It is not clear exactly where the line is drawn between timely and untimely discipline. A letter of warning for a one-minute extension of a break issued thirty years after the event would obviously be untimely. However, a removal two weeks after mail was discarded might be found timely, particularly where management spent the two week period investigating to make certain that it had all the facts before it acted to impose discipline.

Case Examples

In the usual grievance a delay in presenting charges can mean the loss of evidence to the aggrieved. Memories fade with the passage of time, witnesses become difficult to locate so as to reconstruct the events in question, a photograph of the scene taken weeks later may be inaccurate as to the conditions that prevailed on the date of occurrence. In my opinion a delay of 47 days in presenting a letter of charges is too long and I find that the Employer has violated Article 16 of the National Agreement. **(C-01261)**

* * *

The Postal Service urges that there is no statute of limitations in the agreement as to when a charge must be brought. That argument misses the point, however, which is that the grievant must be given a meaningful opportunity to respond to and defend against the charges. In this case, given the nature of the offense—the failure to withdraw a piece of mail from the departure case—and the volume of mail normally handled by the grievant, the grievant did not have such an opportunity when he was not given any indication of the offense until almost one month later. **(C-01458)**

* * *

It is a fundamental principle in law as well as contract arbitration that a party possessed of certain rights must not let them lie fallow, but must act upon them promptly. The agreement in this case gives management the right to discipline and/or discharge for just cause. The Postal Service took the position that grievant had on August 3, 1976, committed an offense which might be the subject of discipline. An investigation was begun which was not terminated until January 28, 1977....In the intervening six months, grievant continued on the job. While an employee has no need or right to expect to be kept advised of an investigation, unless a contract holds otherwise, he does have the right to expect that the result of the investigation or the charge under consideration will be promptly communicated. If he has committed an offense worthy of punishment by his employer he must know it promptly after the wrongdoing. This is part of due process or fairness in the employment setting—an unsettled charge must not be kept pending unduly long. Insofar as the action of August 3, 1976, is grounds for discipline, the arbitrator concludes that for the Postal Service to have waited six months to finalize the offense into discipline is unreasonable and contrary to the degree of promptness which is an employee's due. **(C-1504)**

Supporting Cases

C-00033, Arbitrator McConnell, September 17, 1981
C-00036, Arbitrator Rentfro, February 14, 1979
C-00289, Arbitrator Kotin, April 20, 1982
C-00516, Arbitrator Dolson, November 8, 1984
C-01261, Arbitrator Schedler, June 3, 1982
C-01458, Arbitrator Dobranski, September 2, 1982
C-01504, Arbitrator Krimsly, January 18, 1978
C-01516, Arbitrator Holly, March 6, 1978
C-03607, Arbitrator Stephens, June 20, 1983
C-03808, Arbitrator Gentile, June 30, 1983
C-06647, Arbitrator Sobel, November 17, 1986
C-07106, Arbitrator Howard, May 8, 1987
C-15110, Arbitrator Jacobs, January 28, 1996
C-17613, Arbitrator Powell, December 16, 1997
C-18103, Arbitrator Walt, March 11, 1998

Technical Defense No. 2
Discipline was ordered by higher management, rather than by the grievant's immediate supervisor.

The decision whether to impose discipline, and the decision as to the degree of discipline to be imposed, should be made by the letter carrier's immediate supervisor. While higher authority may advise, if asked, it is improper for officials above the immediate supervisor to initiate discipline or to override the immediate supervisor's recommendation as to extent of penalty.

Case Example

The decision to discharge grievant was not made at the local level; it was made by labor relations officers at the MSC. It is clear that (grievant's immediate supervisor) exercised no independent judgment. When she signed the disciplinary notices, she was allowing instructions. The evidence does not even suggest that she had or believed she had authority to do anything contrary to MSC directions. She was told that grievant "had to be removed," and from then on the decision was no longer hers.

The agreement requires discipline to be proposed by lower-level supervision and concurred in by higher-level authority. The requirement was omitted in this instance. **(C-04679)**

Supporting Cases

C-00396, Arbitrator Howard, June 23, 1976
C-00908, Arbitrator Caraway, September 8, 1986
C-04282, Arbitrator Zumas, April 19, 1984
C-04674, Arbitrator Zumas, February 8, 1985

C-04679, Arbitrator Dworkin, January 12, 1985
C-05250, Arbitrator Giles, November 12, 1985
C-06012, Arbitrator Nolan, March 6, 1983
C-06658, Arbitrator LeWinter, November 21, 1986
C-09873, Arbitrator Rentfro, February 23, 1990
C-11504, Arbitrator Johnston, December 17, 1991
C-15025, Arbitrator Stephens, December 18, 1995
C-16090, Arbitrator Shea, November 21, 1996

Technical Defense No. 3
Management's grievance representative lacked authority to settle the grievance.

Article 15 specifically confers upon management's grievance representatives full authority to resolve any grievance. Where it can be demonstrated that management's representative lacked authority, discipline has sometimes been overturned. (This defense is closely related to Technical Defense No. 2 above. Where higher management has initiated discipline, it is presumed that subordinate supervisors lack authority to settle.)

Case Example

> [B]oth Step 1(a) and (b) of Section 2 of Article XV entitled Grievance-Arbitration Procedure, are couched in express mandatory language. Specifically, Step 1(a) requires that any employee who feels aggrieved "must' discuss the grievance with his immediate supervisor within a designated time period. Step 1(b) provides in relevant part that in any such discussion"... the supervisor shall have authority to settle the grievance.
>
> "Proper compliance by management with these terms of the Agreement was, however, seemingly not achieved, for the record indicates that while the appropriate representatives met at Step 1, substantial doubt nevertheless exists as to the authority of the supervisor to settle the grievance. In this regard, the testimony demonstrates, as evidenced by the admission of the Postmaster under cross-examination, that he initiated the suspension, that the supervisor at Step 1 did not have the authority to settle the grievance without consulting him. This failure of management to comply with the prescribed language of Article XV, Section 2, Step 1(a) and (b) of the Agreement, which clearly bestows upon Grievant's supervisor the authority to settle the grievance, cannot properly be viewed as harmless error and non-prejudicial to the rights of the Grievant. To the contrary, in the considered judgment of the arbitrator, this failure goes to the very heart of the grievance process in that the Grievant is thereby denied the contractual right to have his grievance considered independently and objectively at the outset of the grievance procedure by his supervisor who is generally most familiar with his work record. Any removal of the supervisor's authority to settle the grievance, it seems to the Arbitrator, is violative of the letter and spirit of the Agreement and renders the Step 1 procedure little more than a charade. Accordingly, the Arbitrator finds the assertion by the Employer that the Grievant was not denied due process to be without persuasive merit. **(C-01469)**

Supporting Cases

C-01469, Arbitrator Britton, March 25, 1981
C-01944, Arbitrator Holly, May 20, 1980
C-04282, Arbitrator Zumas, April 19, 1984
C-06530, Arbitrator Williams, October 17, 1986
C-14907, Arbitrator Barker, November 10, 1995
C-15668, Arbitrator Vrana, July 29, 1996
C-17067, Arbitrator Britton, July 18, 1997
C-17854, Arbitrator Johnston, January 6, 1998
C-17884, Arbitrator Helburn, January 30, 1998
C-17897, Arbitrator Helburn, February 10, 1998

Technical Defense No. 4
Double Jeopardy

Management may not twice impose discipline for a single act of misconduct. Thus, to issue both a letter of warning and a seven-day suspension for the same roll-away accident would be improper. It is not improperly subjecting a letter carrier to double jeopardy, however, when a removal is issued for the same misconduct for which an emergency suspension or an indefinite suspension has been issued (unless the employee was returned to work after the suspension).

Case Example

> [B]y returning the grievant to work after the emergency suspension [USPS] implicitly mitigated the penalty to that encompassed by such suspension. Thus, the imposition of the discharge action, almost four weeks after the grievant returned to work, constituted a subsequent increase of or addition to the penalty for the same offense, an action which is violative of the due process rights of the grievant. Having implicitly set the penalty for the grievant's offense, the Service may not subsequently add to that penalty, thus subjecting the grievant to a form of 'double jeopardy. **(C-00095)**

Supporting Cases

C-00095, Arbitrator Howard, March 30, 1977
C-00398, Arbitrator Gamser, November 11, 1976
C-00541, Arbitrator DiLeone, December 27, 1984
C-04890, Arbitrator Howard, April 23, 1985
C-14305, Arbitrator Johnston, March 20, 1995

Technical Defense No. 5
Higher management failed to review and concur.

While it is up to the immediate supervisor to initiate disciplinary action (see Technical Defense No. 2, above), before a suspension or removal is imposed it must be reviewed and concurred in by higher-level management.

DEFENSES TO DISCIPLINE

Case Example

Concurrence is a specific and formal contract requirement to the issuance of a suspension or a discharge. It must occur before the issuance of the discipline and not afterwards. The requirement is not met merely because a superior agrees with the discipline. It must be demonstrated that he was requested to concur, and that he reviewed the matter in light of all the current information at the time of concurrence, and that he gave his consent to the issuance of discipline. While the contract does not require a writing to accomplish this, it is the employer's burden to demonstrate it occurred. **(C-05164)**

Supporting cases

C-00908, Arbitrator Caraway, September 8, 1986
C-01477, Arbitrator Holly, February 15, 1982
C-04156, Arbitrator Goldstein, February 22, 1984
C-05164, Arbitrator LeWinter, September 19, 1985
C-05685, Arbitrator LeWinter, January 27, 1986
C-06679, Arbitrator Carson, November 24, 1986
C-14481, Arbitrator Alsher, May 12, 1995
C-16568, Arbitrator Ames, January 10, 1997
C-17674, Arbitrator Johnston, December 22, 1997
C-18208, Arbitrator Hales, April 12, 1998

Technical Defense No. 6
Insufficient or defective charge.

Article 16 requires that management give a letter carrier a written notice of charges when imposing a suspension or a discharge. Implicit in this requirement is that the notice of charges describe and explain the basis for the discipline with sufficient specificity that the letter carrier may make a defense.

Case Example

A 'charge' in a disciplinary matter has a similar meaning to an indictment in a criminal matter before a grand jury. Basically, a 'charge' is an accusation in writing that claims that the individual named therein has committed an act or been guilty by omission, and such act or omission was a violation of shop rules or usual good behavior expected of an employee and punishable by discipline. A letter of charges is the foundation of going forward with discipline...No discipline can be sustained without a charge. For the instant grievance the removal letter merely related in narrative style the events that the Employer believed occurred on April 15, 1981. There was not a single sentence in the entire letter of removal that accused [grievant] of conduct contrary to the rules of the shop; therefore his discharge was without just cause. **(C-01233)**

Supporting Cases

C-01233, Arbitrator Schedler, April 1, 1982
C-01311, Arbitrator Levak, September 24, 1982

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C-06710, Arbitrator Williams, December 3, 1986
C-07106, Arbitrator Howard, May 8, 1987
C-15515, Arbitrator Axon, June 8, 1996

Technical Defense No. 7
Management failed to render a proper grievance decision.

Article 15 requires that management state certain information in its Step 2 and Step 3 grievance decisions. Failure by management to state that information has sometimes resulted in the overturning of the contested discipline.

Case Examples

[T]he failure of the employer to provide the contractually required 3rd Step decision letter deprived the Union of the benefit of a detailed statement of the reasons for the denial. While it is evident that the Union's representative knew what the Employer's 3rd Step representative had said during the meeting, he was deprived of the final analysis of the Employer's representative's reasoning in reaching the decision. Hence, the grievance process was frustrated by these procedural errors and those frustrations operated to the detriment of the Grievant....As a consequence, the [Union's] motion is granted, and the case will not be considered on its merits. **(C-01477)**

* * *

The parties to the National Agreement are bound to comply with its clear and unambiguous procedural provisions designed to insure that due process is accorded to employees charged with disciplinary offenses. Arbitrators are likewise bound to enforce these agreed-upon procedures and sustain grievances where the failure to do so prejudices the rights of the grievant. I am convinced that the failure in this case to provide the Union with the reasons for the decision at the third step was prejudicial to the Grievant and denied him due process. Accordingly, the procedural error forms a sufficient cause to sustain the grievance without consideration on its merits. **(C-01833)**

* * *

The Postmaster's failure to timely issue a Step 2 decision made it progressively more difficult for the Union to present and prove its case. For example, the Postmaster failed to timely give the Union a detailed statement of his reason(s) for denying the grievance. As a result, when the Union appealed the case to Step 3, it was still unclear about Management's allegations against Grievant. Management's failure to communicate with the Union made it difficult for the Union to fashion a defense for Grievant. Further, by failing to timely issue a written Step 2 decision, Management deprived the Union of its right to file complete additions and corrections under Article 15.2 Step 2(g). Moreover, without a Step 2 decision, it was difficult for the Step 3 official to prepare for and present the Union's case at Step 3.

The Union was indisputably prejudiced by Management's failure to render a Step 2 decision. Accordingly, I conclude that Management also violated Article 15.2 Step 2(f) of the National Agreement. **(C-16747)**

Supporting Cases

C-01477, Arbitrator Holly, February 15, 1982
C-01833, Arbitrator Foster, March 12, 1982
C-06647, Arbitrator Sobel, November 17, 1986
C-16747, Arbitrator Vrana, May 5, 1997

Technical Defense No. 8
Management failed to properly investigate before imposing discipline.

Before the decision to impose discipline is made, management must conduct a full, fair and impartial investigation, including giving the letter carrier an opportunity to respond to the charges.

Case Examples

It has been said that the real heart of procedural due process is not even a question of the employee's guilt or innocence; it is how the company goes about arriving at its decision. When the decision is to impose a penalty as severe as discharge, care must be taken that all the relevant facts and evidence are considered. Discharge without a complete investigation or without affording the employee an opportunity to be heard falls short of minimum standards.

The reasons why due process requires that an investigation be made into all the relevant facts and circumstances, including the employee's explanation, before disciplinary action is taken are several. If this is not done, the employer risks nondisclosure of essential elements of the case. A thorough investigation reduces the likelihood of impulsive and arbitrary decisions by management and permits deliberate, informed judgment to prevail. By giving the grievant an opportunity to present his side of the story and point out mitigating factors raises the possibility that the employer would have been dissuaded from discharging him the in the first place. The same evidence presented prior to decision may have a more important effect than when offered at the grievance level. This is so simply because it is human nature to stick to and defend a decision already made. This reluctance to reconsider, even in the light of new information, is more pronounced in labor-management relations because the employer has an additional institutional interest to 'stand firm' and defend the authority of the supervisory personnel who made the decision to discharge. **(C-01030)**

* * *

Due process in discharge cases demands that the employee be given the opportunity to explain, if possible, the misconduct with which she is charged. This explanation should be sought before a decision is reached and positions are frozen. The only opportunity for explanation afforded the Grievant before the decision to discharge was an abortive interview with two Postal Inspectors, with whom she refused to speak.
Her reluctance to discuss the matter with the Inspectors is understandable. Suddenly faced with a reading of her Miranda rights by two strangers, she feared criminal prosecution for whatever it was she was being charged with. It is quite another thing for her supervisor or someone in labor relations to talk to her about it, point out the discrepancies found in the certificates previously accepted, and ask for any explanation she might have for the apparent alterations.

The Inspectors were doing their job. It was primarily aimed at garnering evidence to support the charge of submitting falsified medical certification When they confirmed the charge to their own satisfaction, they tendered the case back to Postal Service supervision for final action. Supervision's function is different than that of the Inspection Service. At this point it became supervision's responsibility to confront Grievant in an effort to ascertain if she had any explanation for the altered certificates, especially in light of their initial acceptance some six months earlier. This kind of investigation was not undertaken until after minds were made up and the Union served notice that it was grieving the discharge. **(C-00036)**

Supporting Cases

C-00036, Arbitrator Rentfro, February 14, 1979
C-00053, Arbitrator McAllister, June 10, 1983
C-01030, Arbitrator Rentfro, April 9, 1979
C-01405, Arbitrator DiLeone, June 23, 1981
C-05073, Arbitrator Gentile, August 27, 1985
C-05204, Arbitrator Rentfro, October 1, 1985
C-05424, Arbitrator McConnell, January 10, 1986
C-13895, Arbitrator Shea, September 6, 1994
C-15556, Arbitrator Shea, June 26, 1996

Technical Defense No. 9
Improper citation of "past elements"

It is improper for management to cite discussions as past elements in support of another disciplinary charge. It is also improper to cite discipline which has been grieved but not finally settled or adjudicated as a past element. When these are cited, arbitrators sometimes order the present discipline rescinded or modified.

Case Example

The Employer's case is further flawed by the fact that it is Violative of that portion of Article XVI of the National Agreement which provides, '... such discussions may not be cited as an element of a prior adverse record in any subsequent disciplinary action against an employee,...' The Notice of Removal cites two such discussions as elements of the Grievant's past record.

These procedural defects cannot be overlooked as being insignificant. They are of serious concern because they are in violation of both the letter and spirit of the National Agreement, and importantly they deprived the Grievant of his right to due process. In the absence of due process the grievance must be sustained without any consideration of its substantive merits. **(C-01944)**

Supporting Cases

C-00584, Arbitrator Levak, October 26, 1982
C-01944, Arbitrator Holly, May 20, 1980
C-01983, Arbitrator Holly, August 6, 1981
C-03541, Arbitrator Hardin, May 11, 1983
C-03910, Arbitrator Fasser, June 18, 1977
C-04335, Arbitrator Hardin, June 7, 1984
C-04401, Arbitrator Williams, July 16, 1984
C-06907, Arbitrator Nolan, March 29, 1987
C-14470, Arbitrator McAllister, May 17, 1995
C-17750, Arbitrator Duda, November 13, 1997

Technical Defense No. 10
Management refused to disclose information to the Union (including claims that information was hidden.).

Management must disclose to NALC all relevant information concerning the discipline.

Case Example

> The testimony in the record clearly proves that the management representative at the Step 2-A hearing did not make [the postal inspector's investigative summary] available to the Step 2 Union representative, whether or not he asked for it. While the record is contradictory as to whether such material was requested by the Union's Step 2-A representative, management has the burden to prove that it had 'just cause' for the grievant's discharge, and concomitant with that 'burden of proof' was the requirement that it made available to the Step 2-A Union representative all of the pertinent material it had in its possession upon which it based its discharge decision. This it simply did not do. **(C-00308)**

Supporting Cases

C-00090, Arbitrator Willingham, December 11, 1972
C-00308, Arbitrator Dash, May 17, 1974
C-04273, Arbitrator Williams, May 2, 1984
C-06658, Arbitrator LeWinter, November 21, 1986

SECTION TWO
DISPUTES WHETHER GRIEVANT'S CONDUCT, IF PROVEN, WOULD CONSTITUTE A PROPER BASIS FOR THE IMPOSITION OF DISCIPLINE

All letter carrier behavior may conceptually be divided into two categories: 1) behavior for which no discipline may be imposed, and 2) misconduct for which discipline may be imposed. Examples of behavior for which discipline may not be imposed include finishing one's route on time every day, or taking lunch at an authorized location. Examples of misconduct for which discipline may ordinarily be imposed include stealing from the mail, or assaulting a supervisor.

Sometimes management crosses the line between these categories and issues discipline for behavior which may not be properly characterized as misconduct, either because the behavior violates no rule, or because the rule which is violated is invalid. When this happens, the discipline should be disallowed.

While this is a dramatic defense, it is inapplicable to most disciplinary actions—decisions directly addressing this defense count for fewer than .01% of NALC's discipline arbitrations.

Although the opportunities to employ this defense are infrequent, it is the only proper defense in certain recurring situations. For example, management sometimes disciplines employees simply for failure to meet the "18 and 8" standard. Such a charge does not form a valid basis for the imposition of discipline, because NALC and USPS have jointly agreed that failure to meet that standard, by itself, is not disciplinable misconduct. In such situations, the NALC representative handling the grievance must look behind the charge and ask "what is the rule implied by the charge?"

Where the charge is failure to meet standard, the rule implied is that failure to meet standard, by itself, is disciplinable misconduct. But such failure is not misconduct, and this defense, therefore, should be employed. In other kinds of cases, a valid rule will be found to be implied. For example, in a discharge for fighting the rule implied by the charge is that fighting is disciplinable misconduct, a valid rule. And because a valid rule was found, this defense could not appropriately be used.

Case Examples

> [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 inabilities 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-01311)**

* * *

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 the 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-01191)**

* * *

[The Employer cannot discipline an employee for absences which are legitimately caused by the physical incapacity of an employee up to at least the point where that employee exhausts his/her accumulated sick leave benefits. To hold otherwise would make it possible for the employer to say to an incapacitated employee, 'although you have accumulated sick leave available, you cannot use it because to do so would make your attendance unsatisfactory.' Certainly, such a conclusion is not in accord with either the intent or spirit of the negotiated Sick Leave benefits. **(C-00599)**

* * *

[I]t is the arbitrator's considered opinion that to remove the grievant for absence caused by an injury suffered while on duty and one which he had no control over and from which he appears to have fully recovered, would be punitive in nature rather than corrective. **(C-04024)**

Supporting Cases

C-01191, Arbitrator Goldstein, July 6, 1982
C-01311, Arbitrator Levak, September 24, 1982
C-04024, Arbitrator Parkinson, December 29, 1983
C-04163, Arbitrator Larney, December 28, 1983
C-00599, Arbitrator Holly, August 2, 1978

SECTION THREE
DISPUTES ABOUT THE CORRECTNESS OR COMPLETENESS OF THE FACTS USED TO JUSTIFY THE DISCIPLINE.

This defense may be divided into two major categories.

The first category—management failed to prove that grievant acted as charged—is a defense that is available in every discipline case. This is so

because whenever management issues discipline, it assumes the burden of proving that the grievant acted in such a way as to provide cause for discipline. To meet this burden, management must come forward with probative evidence sufficient to convince the arbitrator that the misconduct with which the grievant has been charged actually occurred. The union does not bear a corresponding burden—it does not have to prove that the grievant did not act as charged. Instead, the union's job is to poke holes in the proofs offered by management.

This is not to say that the union should waive its opportunity to present its side of the case. If the union can prove through its own presentation of evidence that the grievant did not act as charged, so much the better.]

The second category—grievant may have acted as charged, but was provoked by another—is an affirmative defense. If the union employs this defense, it bears the burden of proving that provocation occurred. Thus, for example, if a letter carrier punches a supervisor, the union must prove that the supervisor first attacked the letter carrier, and that the letter carrier was merely defending him—or herself.

Defense on the Merits No. 1
Management failed to prove Grievant acted as charged.

Before any discipline will be allowed, management must prove that the letter carrier actually engaged in the misconduct with which charged. Management's proof must be in the form of evidence. Arguments, assumptions, guesses, conjectures, allegations or speculations are not evidence. Testimony of a witness who has personal and direct knowledge is evidence, as may be photographs or fingerprints.

The arbitrator's primary function in a typical discipline case is to weigh the evidence, to determine whether the evidence is sufficient to conclude that management has met its burden of proof. In performing this function the arbitrator must decide the weight, if any, to be given hearsay or circumstantial evidence; and if witnesses have given testimony which is contradictory, the arbitrator must decide whose testimony is to be credited, and whose discounted. The decisions listed under "Supporting Cases" below, illustrate the ways in which arbitrators deal with these kinds of problems.

When you are preparing to make this defense in a case, you should also look at other discipline cases having the same charge. By doing so, you'll be able to identify the kind of evidentiary problems that may be specific to a certain charge. For example, the fact patterns found in falsification of employment application cases are quite similar to each other, but are quite

different from the fact patterns found in cases in which discarding deliverable mail is charged—and the methods used by arbitrators to resolve disputes of fact in the two kinds of cases is also quite different.

Case Examples

In industrial discipline, as in the criminal justice system, an employee is deemed to be innocent of charges against him until proved otherwise, and the burden of such proof lies with the employer in industrial discipline, as it does with the state under our criminal justice system. **(C-04891)**

* * *

Under these facts, I certainly have not given any weight to the denials of wrongdoing of the Grievant. I do not find him 'innocent of wrongdoing.' On the charge of improperly imbibing on duty and/or being intoxicated on the job, I hold merely that Management at hearing completely failed to prove its case. That is, after all, the burden assumed by it in discipline and discharge cases under the contract. **(C-04711)**

* * *

The best evidence that could have been presented as proof of management's statement of facts regarding July 10 was testimony from those individuals who were present when the events occurred. The Employer failed to present those witnesses, and the burden of going forward with such testimony cannot now be shifted to the Union. The grievant denied any wrongdoing at 604 Sunset on July 10, and there was no credible evidence to rebut his version of the facts. By failing to prove the events of the precipitating incident, the Employer has failed to set forth justification for terminating the grievant. **(C-04710)**

* * *

The evidence presented by the Postal Service is circumstantial in nature, however, it is noted that proof of guilt may be accomplished by the use of persuasive circumstantial evidence alone. This arbitrator requires that the evidence in support of disciplinary actions be clear and convincing. The burden of proof is, of course, upon the Postal Service.

There is no question that mail was discovered in a trash container on April 22, 1985, that the mail was addressed for the grievant's route and that she delivered the route that day. There are no witnesses who could establish that [the grievant] dumped the mail in the trash. There were also no witnesses who could establish that the grievant left the Postal Annex for her deliveries on the day with the recovered mail. More importantly, no motive was shown as to why [the grievant] would throw deliverable mail away, especially on her assigned route.

[I]t is my determination that the Postal Service has failed to clearly and convincingly prove that [the grievant] improperly and unlawfully disposed of canceled and deliverable mail. **(C-05396)**

Supporting Cases

C-01312, Arbitrator Eaton, September 23, 1982
C-01345, Arbitrator Eaton, June 8, 1982

C-01400, Arbitrator Epstein, July 25, 1980
C-01432, Arbitrator Aaron, December 13, 1976
C-02689, Arbitrator Schedler, December 20, 1985
C-03945, Arbitrator Bowles, November 7, 1983
C-04710, Arbitrator Snow, February 13, 1985
C-04711, Arbitrator Goldstein, March 11, 1985
C-04771, Arbitrator Schedler, April 2, 1985
C-04812, Arbitrator LeWinter, May 3, 1985
C-04891, Arbitrator Howard, April 23, 1985
C-04976, Arbitrator Williams, July 28,1985
C-05166, Arbitrator Goldstein, September 5,1985
C-05396, Arbitrator Parkinson, November 22, 1985

Defense on the Merits No. 2
Grievant may have acted as charged, but was provoked by another.

This is one of the only possible defenses to some forms of misconduct, including assaults on supervisors, customers, or other employees.

Case Examples

There is no question from this record but that grievant engaged in a 'cuss-fight' with a customer. The question is: does that fact serve as just cause for removal, or do the circumstances here—some already discussed and some not—tend to mitigate such a harsh penalty? The undersigned is of the opinion they do. He will briefly explain why he reaches this conclusion lest someone think he does not agree that such a 'cuss-fight' is 'unsatisfactory performance—conduct unbecoming a Postal employee'. It is, there is no question about that. But it is to be quickly added, provocation is a consideration that necessarily comes within the concept of just cause, which is the test to be applied here. **(C-05321)**

* * *

The evidence convincingly established that [the supervisor] well knew from his long relationship with the Grievant that he was not being threatened on May 30th and that the Grievant was no danger to himself or to others. It is apparent to the Arbitrator that [the supervisor] had learned to play the Grievant's emotions 'as a musician plays a violin.' Thus, not only did he provoke and cause the situation, he well knew that the Grievant's reaction was neither threatening, abusive nor potentially injurious. **(C-05873)**

* * *

The undersigned will not burden these sophisticated parties by giving them his understanding or definition of the 'just cause' concept as was intended by them when they put it in the National Agreement. He knows they know what it means. He believes they will not disagree with him however when he finds, as he does, that just cause is not present when a 9 year employee, who has a good work record as a letter carrier and is serving as station steward, is removed from the Postal Service because he refuses to stand still and take from the supervisor public criticism of his official efforts as a steward, with the supervisor all the while standing less than 2 feet away, vigorously shaking a pencil in the steward's face. This is not to also say that under such circumstances the steward is authorized to 'come out fighting.' He is not and any trained steward or sea-

soned employee, and the grievant was both, knows this. It is to say, however, that if a supervisor acts improperly toward an employee by publicly criticizing him and also violates the employee's right to be treated in a reasonable fashion, both such being found to have happened in this case, any subsequent overreaction on the part of the employee is subject to mitigation in direct proportion to the seriousness of the supervisor's breach of accepted practice and policy. **(C-04203)**

Supporting Cases

C-04203, Arbitrator Williams, March 28, 1984
C-04213, Arbitrator Williams, May 10, 1984
C-04478, Arbitrator Williams, June 14, 1984
C-04750, Arbitrator LeWinter, March 25, 1985
C-05138, Arbitrator Rentfro, September 3, 1985
C-05321, Arbitrator Williams, October 29, 1985
C-05242, Arbitrator Render, October 6, 1985
C-05873, Arbitrator Levak, March 11, 1986
C-06717, Arbitrator Goldstein, December 8, 1986
C-06782, Arbitrator Sobel, December 8, 1986
C-17699, Arbitrator Erbs, November 13, 1997

SECTION FOUR
ALLEGATIONS THAT, BECAUSE OF MITIGATING CIRCUMSTANCES, THE DISCIPLINE IMPOSED IS TOO HARSH, OR NO DISCIPLINE IS WARRANTED

The final group of defenses may be called the "mitigation" defenses. With them, the NALC in effect says "even assuming that the grievant's behavior constitutes misconduct, when all relevant factors are considered the amount of discipline imposed is excessive".

"Mitigation" should not be confused with "leniency". The mitigation defenses present a variety of factors which management should have considered when imposing discipline, and which an arbitrator will consider even if management didn't. Leniency—simply asking for another chance— is within the exclusive province of management, and will not be considered by any arbitrator.

Mitigation Defense No. 1
Grievant may have acted improperly, but did so as a result of lack of, or improper, training (including claims that the grievant "didn't know it was wrong").

A letter carrier should not be disciplined for violating a rule of which he or she was not aware. It should be noted, however, that employees are pre-

sumed to know the major rules of the shop. This defense, therefore, will not be useful where the grievant has assaulted a customer, or has intentionally discarded deliverable mail.

Case Examples

There remains the question whether [grievant's] surreptitious recording, though legal, nevertheless violated a Postal Service regulation of which [grievant] was, or should have been, aware. This question can be disposed of on the basis that, so far as this record shows, management never informed the grievant that the surreptitious recording of a conversation with a supervisor was forbidden. It suffices to recall that none of the grievant's supervisors knew of any Postal Service rule on the subject. Indeed, the only prior incident of surreptitious recording ever referred to at the hearing was an incident that management had condoned. Thus, assuming that the E&LR Manual does forbid what [grievant] did, there is no evidence that he had ever been so instructed, or otherwise should have known. If the postal Service wishes to punish its employees for lawful conduct, recording conversations in which they participate, then the Postal Service must take steps that will ensure that its employees are informed of the rule. **(C-01438)**

* * *

In most cases I am unimpressed with arguments about lack of knowledge or training in familiar areas of job assignments. It must be noted in the instant case that the Employer argued it was not plausible (sic) that no supervisor explained to the Grievant his obligations while on jury duty. However, no supervisor who gave any instructions to the Grievant was brought forward and the Grievant's testimony that the Postmaster's order was not posted at the Branch was uncontroverted.

I recognize that an argument can be advanced that the Grievant should have know there were rules and regulations for jury duty (as there are for virtually every aspect of employment in the Postal Service) and the Grievant should or could have when he visited the Main Post Office sought out such rules to insure he was aware of his obligations.

However, I do not feel the entire burden can be shifted to the Grievant and his failure to investigate what should have been communicated by supervision and therefore some question exists as to just what the Grievant can be reasonably held on notice as to his obligations. **(C-01272)**

* * *

...Grievant was, all circumstances considered, a quite unsophisticated employee in matters of this kind...He had never traveled for the Postal Service before. He had concededly received no formal training or instruction in the intricacies, such as they are, of filling out travel vouchers..

On this state of the record the Arbitrator concludes that the Postal Service itself is not without fault in the instant situation. Certainly, greater precaution should have been taken, especially in the case of a new and quite untutored employee, to insure that he be given some training or formal instruction to cope with his responsibilities in the matter of compensation for travel and the procedures incidental thereto. The Arbitrator, without condoning Grievant's conduct here, finds no basis for concluding that there was any conscious effort or intent by Grievant, to commit fraud on the Postal Service or to obtain illicit compensation. **(C-00112)**

Supporting Cases

C-00112, Arbitrator Cushman, November 8, 1979
C-01272, Arbitrator Leventhal, June 16, 1982
C-01438, Arbitrator Hardin, November 8, 1982
C-01786, Arbitrator Eaton, March 11, 1981
C-04563, Arbitrator Schedler, December 11, 1984
C-16511, Arbitrator Olson, March 2, 1997
C-16708, Arbitrator Britton, April 9, 1997

Mitigation Defense No. 2
Grievant has long prior service, good prior record, or both.

As a letter carrier works the job year after year, he or she establishes ever greater "property rights" to the job, and a letter carrier with substantial time on the job deserves a more moderate response to a transgression than does a new hire. This defense is most effective when the years of service have been relatively discipline-free.

Case Example

> Grievant has served this Employer for over [eight years without any demonstrated disciplinary penalty. I have, in the past, referred to this as a 'bank of good will'. In such instances of long, good service, it must be recognized that a single violation, even a serious one may occur without an assumption that [there has been] the destruction of the trust necessary to the continued employment relationship. Indeed, years of good, faithful service have many times been used and accepted as substantive evidence of lack of just cause for discharge. **(C-03587)**

Supporting Cases

C-02287, Arbitrator Walt, September 14, 1979
C-02386, Arbitrator Seitz, November 12, 1979
C-02871, Arbitrator Walt, November 20, 1979
C-03587, Arbitrator LeWinter, May 3, 1983
C-03863, Arbitrator Gentile, October 28, 1983
C-04275, Arbitrator Bowles, April 25, 1984
C-04570, Arbitrator Epstein, December 11, 1984
C-04644, Arbitrator Dash, February 21, 1985
C-05970, Arbitrator Seidman, December 31, 1985
C-06952, Arbitrator Howard, March 3, 1987
C-16572, Arbitrator Duda, March 12, 1997

Mitigation Defense No. 3
Grievant's misconduct was not intentional.

Unintentional misconduct (e.g., "negligence") is generally viewed as being less serious than intentional misconduct. Intent is an essential element of

almost all charges of misconduct, and it is clear that it is management's burden to prove that the grievant's acts were intentional.

Case Examples

The real question in the instant case thus reduces itself to this inquiry: Whether or not the Grievant's action on March 18, 1981, was a 'willful' and 'intentional' act?

After evaluating all of the evidence and the apparent candor of the Grievant when he testified, the Arbitrator reached the conclusion that the Grievant's act was that of 'carelessness' and 'gross negligence,' but not a 'willful' and 'intentional' act to circumvent or thwart the fundamental purpose of his job. Those factors which strongly influenced this conclusion in addition to the Grievant's apparent unblemished record with the Service and his own testimony which was given considerable weight, were these (1) the subject mail was placed openly in the Station's waste hamper, a location which demonstrated no reasonable attempt by the Grievant to conceal in a clandestine manner the fact that mail was being discarded; (2) the mail was left in sequential order in a type of 'bundle' state which would further highlight its presence and support the Grievant's 'fanning' statement; (3) the Grievant, when initially confronted with the mail in question did not attempt to conceal the fact that he was the responsible person, but that in his judgment, which was subsequently proven wrong, the mail was not deliverable, and (4) a goodly portion of the mail was in fact not deliverable. **(C-01721)**

* * *

[T]he essence of the dischargeable offense of falsification is the employees (sic) dishonesty that requires a finding of intentionally issuing a false statement, as distinguished from a reasonable mistake, in direct conflict with the necessary characteristic of a letter carrier that he must always be trustworthy. Thus, the critical question is not just whether the Grievant had in fact been fired, or forced to resign from a former job, but whether he misrepresented the known fact in order to be accepted for employment. In addressing this factual question, the employee must be presumed innocent with the Employer bearing the burden of rebuttal by clearly establishing fraudulent intent. **(C-01988)**

* * *

One element of assault is an intent on the part of the aggressor to hit or strike the other. In this case, the testimony of the victim, or the object of the assault, clearly indicates that the aggressor has no intent to hit him with the letters. Therefore, the Service has not established that an assault occurred. Since there was no assault, it is the Arbitrator's opinion that the Grievant cannot be discharged. **(C-03611)**

Supporting Cases

C-01062, Arbitrator Howard, August 14, 1975
C-01274, Arbitrator Goldstein, April 28, 1982
C-01298, Arbitrator Leventhal, September 16, 1982
C-01402, Arbitrator DiLeone, November 17, 1980
C-01424, Arbitrator Jones, November 20, 1978
C-01721, Arbitrator Gentile, November 10, 1981
C-01988, Arbitrator Foster, August 7, 1981

C-03611, Arbitrator Render, May 29, 1983
C-06483, Arbitrator LeWinter, September 20, 1986
C-15436, Arbitrator Dennis, May 24, 1996
C-17676, Arbitrator Bankston, September 2, 1997
C-18215, Arbitrator Hales, April 15, 1998

Mitigation Defense No. 4
Grievant was emotionally impaired.

This is a sub-category of Mitigation Defense No. 3 above. Here it is argued that grievant was emotionally impaired, and because of that impairment grievant's misconduct should be viewed as unintentional.

Case Examples

In August of 1977, [grievant] labored under severe stress and emotional tension, a condition sufficiently aggravated to require medical treatment. Indeed, he was granted sick leave for that very reason on three of the days that separated his conduct on August 23 from that of August 29 and August 30, 1977. After eight years of satisfactory employment with the Postal Service during which he won the praise and affection of many of the patrons on Route 901, [grievant] suddenly inundated the waste hamper with deliverable third class mail. If it had been his desire to dispose of that mail in order to reduce his delivery time he would have done so away from Station O. There clearly exists a different explanation for his conduct.

The distraught emotional condition of the grievant at the time in question is corroborated by his doctor and the probation officer who saw him on the day of his arraignment in the United States District Court. True enough, [grievant] told the Postal Inspectors he had disposed of some third class mail without malice and in court he entered a plea of guilty to the charge of obstruction of mail. In doing so, however, he explained that his conduct was the result of being "tired and weary". More precisely, he was reacting to an overwhelming emotional burden and not intentionally violating either the mail processing procedures at Station 0 or statutory law. He stands guilty of no more than negligence and the appropriate sanction should therefore have been a substantial disciplinary suspension rather than discharge. **(C-02362)**

* * *

It is, of course, the burden of the Union to raise and prove mental illness as a defense in the form of mitigating circumstances. The burden is on the Union to demonstrate by a preponderance of the evidence that, even though the Grievant is guilty of the charged offenses, he should be resolved of responsibility to some degree as a result of the mental disorder.

The Service is not prohibited from disciplining an employee who is a threat to other employees or who cannot perform the duties of his job, regardless of the fact that the employee's malfeasance or nonfeasance is the result of a mental illness or disorder. The Arbitrator does not agree with those who say such discipline is a breach of the just cause clause. The Service is not under the obligation to retain an employee who suffers from a mental disorder at all costs. The service has an obligation to operate efficiently, as well as the duty to protect the safety of its employees. On the other hand, when the service chooses to discipline an employee who it knows suffers from a mental disorder,

it does so at some risk. If the employee is a 'qualified handicapped individual' within the meaning of the Rehabilitation Act of 1973, the Service must be certain that it has reasonably accommodated the employee. The Service must also be prepared to face the contention that the discipline violates the employee's E.E.O. rights. The instant case does not involve either of those pieces of legislation. However, the Service must also be prepared to confront proof by the Union that the following factors exist:

(1) Proof that the medical disorder exists.
(2) Proof that the alleged offense was the result of the mental disorder.
(3) Proof through the best medical evidence that the employee is not a threat to other employees.
(4) Proof that the disorder does not disable the employee from regularly performing his duties.
(5) Proof through the best medical evidence that the employee's disorder is under control and that he ultimately will be rehabilitated.
(6) Proof that management failed to properly consider the alleged offense in light of the employee's disorder. **(C-03805)**

Supporting Cases

C-00077, Arbitrator Cohen, February 22, 1982
C-00274, Arbitrator Williams, May 18, 1983
C-00295, Arbitrator Feldman, February 3, 1978
C-00551, Arbitrator Dash, January 16, 1985
C-01200, Arbitrator Seidman, July 16, 1982
C-01365, Arbitrator Epstein, June 2, 1982
C-01916, Arbitrator Walt, September 30, 1981
C-01972, Arbitrator Levin, May 9, 1980
C-02362, Arbitrator Roberts, November 7, 1978
C-02375, Arbitrator Epstein, October 12, 1978
C-02677, Arbitrator Goldstein, December 18, 1982
C-03342, Arbitrator Dash, March 10, 1983
C-03805, Arbitrator Levak, September 22, 1983
C-04350, Arbitrator Gentile, June 30, 1984
C-04913, Arbitrator Walsh, April 8, 1985
C-05304, Arbitrator Carson, November 4, 1985
C-15644, Arbitrator Johnston, July 24, 1996
C-17324, Arbitrator Abernathy, September 16, 1997

Mitigation Defense No. 5
Grievant was impaired by drugs or alcohol (including claims that "alcoholism" was the cause of grievant's misconduct).

This is a sub-category of Mitigation Defense No. 3 above. Here it is argued that grievant was impaired by drugs or alcohol, and because of that impairment grievant's misconduct should be viewed as unintentional.

This defense is used more frequently than any other; only rarely, however, is it presented with the thoroughness of preparation required for a satisfactory result. If you determine that this defense may fit a case which you are preparing, carefully study the cases listed below, and make certain that you can match the elements essential for a win. If you can't, you may be better off concentrating your efforts on other defenses. (One arbitrator of NALC/USPS discipline cases was recently heard to ask, "What have you got when you sober up a drunken mail thief?" His answer: "A sober mail thief.")

Case Examples

What then are the factors which would allow an arbitrator to mitigate the offense committed by the alcoholic which led to his removal from the Postal Service to order that he be reinstated by the Postal Service. The decided cases rely on several factors; First, that the act was done while the grievant was an alcoholic and at the time the act was committed he was either drunk or under the influence of alcohol; Second, that the Grievant's prior work record is either relatively clear of disciplinary action or that all, or most, of the prior disciplinary actions occurred as the result of the grievant's alcoholism; Third, that the grievant is successfully participating in [PAR] and that participation has caused both his counselor and the officer in charge of the P.A.R. program to indicate that he is likely to be a successful candidate for rehabilitation; and Fourth, that the grievant has had a substantial length of Service with the Post Office, generally for a period of at least 10 years, with the likelihood of reinstatement increasing if the period of prior service is 20 years or more. **(C-01928)**

* * *

The element which must give pause in this dispute is none of the above, but the evidence concerning the cortisone medication which the Grievant was taking for an indisputably serious skin condition. Odd though it may seem to a layman the testimony is uncontradicted that a side effect of the Depomedrol injection—which can last up to two weeks—can be serious personality aberrations. It is true that Dr. Jensen could not testify positively that the Depomedrol caused the Grievant's actions. However, he could testify that the medication had been given, and that in some cases it can, and has, caused similar behavior.

"Absent this consideration. Removal would clearly be warranted. Its presence, however, taken together with the prior excellent record of the Grievant, does seem to indicate abnormal behavior which one would not expect to be repeated in the future. **(C-01237)**

* * * *

While the Service emphasizes the seriousness of the charge of delaying the mail, clearly the seriousness of the charge rests upon the intent and deliberation of the offender. The record makes clear that as a result of overindulgence in alcohol, the grievant was not in full possession of his senses on the day of the incident and really was not aware of what he was doing. His conduct cannot be regarded as a deliberate and intentional delaying of the mail. **(C-02849)**

Supporting Cases

C-00282, Arbitrator Zack, February 26, 1982
C-01237, Arbitrator Eaton, July 13, 1982
C-01565, Arbitrator Haber, July 30, 1976
C-01820, Arbitrator Zumas, January 12, 1981
C-01928, Arbitrator Seidman, February 22, 1982
C-02368, Arbitrator Howard, June 21, 1978
C-02371, Arbitrator Rentfro, January 27, 1979
C-02372, Arbitrator Moberly, March 20, 1978
C-02831, Arbitrator Dash, December 19, 1977
C-02846, Arbitrator Aaron, May 19, 1975
C-02849, Arbitrator Howard, March 19, 1975
C-06375, Arbitrator Rentfro, July 23, 1986
C-07057, Arbitrator Goldstein, April 16, 1987
C-07126, Arbitrator Eaton, May 15, 1987
C-12085, Arbitrator Taylor, June 11, 1992
C-17945, Arbitrator Olson, January 31, 1998

Mitigation Defense No. 6
Grievant was disparately treated.

Letter carriers who are similarly situated should receive the same discipline for the same misconduct. For example, if two letter carriers with no prior discipline extend their lunches by an hour, management might be able to justify giving each a letter of warning; in the same situation, management could not justify giving one a letter of warning, and firing the other.

Case Examples

Union witnesses testified to eight specific cases of deviation in which no more than a letter of warning was assessed. Management witnesses questioned only one of them and corroborated most of them. Included was one instance of deviation to go to the bathroom. However, there was not even a formal discussion of the deviation. In another, there was an employee with a terrible record who deviated and was playing video games. Yet, his ultimate discipline was a letter of warning. In fact, Management witnesses agreed that no one ever before had been terminated for deviation. In general, postal arbitrators would overturn discipline if only one example of disparate treatment was proved (in fact, several were referenced by the Union). Thus, it is abundantly clear that the disparate treatment in the subject case, standing alone, would call for reinstating the grievant with full back pay. **(C-04401)**

* * * *

The parties herein are well aware of the general rule that disparate treatment—unequal discipline for similar misconduct—is not looked upon with favor by any arbitrator. Unequal discipline imposed, even by a well meaning but somewhat disorganized employer, will consistently be overturned as discriminatory when appealed to arbitration. **(C-01760)**

Supporting Cases

C-01047, Arbitrator Holly, March 30, 1979
C-01760, Arbitrator Rentfro, June 25, 1980
C-01920, Arbitrator Gentile, September 30, 1981
C-01945, Arbitrator Scearce, June 23, 1980
C-02354, Arbitrator Caraway, July 5, 1978
C-02403, Arbitrator DiLeone, October 7, 1977
C-02801, Arbitrator Caraway, March 31, 1978
C-04401, Arbitrator Williams, July 16, 1984
C-04432, Arbitrator Williams, July 7, 1984
C-04518, Arbitrator Weisenfeld, December 21, 1984
C-05267, Arbitrator Seidman, November 4, 1985
C-16237, Arbitrator Hutt, December 31, 1996
C-16303, Arbitrator Abernathy, November 18, 1996
C-17453, Arbitrator Duda, October 12, 1997

Mitigation Defense No. 7
Rule Grievant broke was otherwise unenforced.

This is a variant of Mitigation Defense No. 6, above. If management routinely permits letter carriers to violate a rule, or routinely to follow a certain behavior, it may not suddenly impose discipline for violations without first announcing its intention to begin enforcing the rule, or to stop tolerating the behavior.

Case Examples

The core of this issue is the established past practice at the Pittsburgh Post Office of sometimes disposing of deliverable third class mail, however, contrary to postal regulations, and however, illegal it may have been. That practice existed, and it is of crucial consideration in this dispute.

When such a practice is condoned it is simply not fair that one or two employees bear the entire brunt of the correct, necessary, and entirely justifiable determination of management to bring such a practice to a halt. An employer has the right to enforce reasonable regulations, and the postal service in particular has an obligation to see that the mail is delivered. That is the reason for its existence.

Any employer has an obligation to inform employees clearly, without equivocation, and without the possibility of misunderstanding, when rules which have been ignored are to be enforced, and when wrongful practices which have been condoned are to cease. While the postal service has endeavored to show that it met these obligations in the present dispute, the proof falls short of making that showing. **(C-02803)**

* * * *

It is a basic tenet of labor management relations that prior to the imposition of discipline, an employee must be aware that the employer considers his actions or conduct violative of the labor agreement or existing rules and regulations and he must know of

the possibility that discipline may result. Where an employee believes his actions and conduct are justified and no indication has been given that persistence in that course of conduct can and probably will result in discipline, subsequently imposed sanctions must be set aside. **(C-01455)**

Supporting Cases

C-01448, Arbitrator Dworkin, November 8, 1982
C-01455, Arbitrator Walt, December 17, 1979
C-01875, Arbitrator DiLeone, April 11, 1979
C-02029, Arbitrator Warns, July 24, 1972
C-02803, Arbitrator Eaton, May 25, 1978
C-16426, Arbitrator King, January 15, 1997

Mitigation Defense No. 8
Management failed to follow principles of progressive discipline.

While management may dispense with minor forms of discipline for certain offenses which are normally dischargeable by themselves (e.g., theft of mail), for most types of misconduct, management must follow a corrective (and all arbitrators have read this to mean "progressive") pattern of disciplinary actions. This means that discharge must normally be preceded by one or more large suspensions, and that a large suspension must be preceded by one or more small suspensions, and so forth. When management fails to follow the progressive path, discipline will usually be disallowed or modified.

Case Examples

Grievant's supervisor was asked if he had considered a lesser penalty. He replied that he had, and had decided against it on the ground that he felt it would 'have no impact'.

The action of the supervisor in this regard is a violation of Article 16, Section 1, of the National Agreement. The first sentence of this Article states: 'In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.'

It has been held many times by other arbitrators that, for discipline to be corrective, it must be progressive.

This directive from the National Agreement is mandatory. It is not discretionary. Management does not have a choice as to whether it will issue corrective discipline or not. It must attempt to make discipline corrective. Here, Grievant's supervisor decided for reasons which appeared to him to be valid that corrective discipline would be useless. He does not, however, have that discretion. He must attempt to issue corrective discipline even though he believes that it will be no use. **(C-00557)**

* * * *

The progression of discipline upon which the discharge was based does not properly conform to the principles of progressive discipline that would warrant a dismissal.

DEFENSES TO DISCIPLINE

Progressive discipline means that each succeeding disciplinary measure is of a more severe degree so that an employee may know precisely where they stand in the progression. If supervision decides to issue a lesser degree of discipline than the last, the progression then begins again at that point. The previous disciplinary elements [in this case] are letters of warning. Even though there are earlier suspensions, the later letters of warning must be followed by further suspension if discipline is to properly progress to dismissal. **(C-01043)**

Supporting Cases

C-00060, Arbitrator Dash, May 18, 1979
C-00557, Arbitrator Cohen, January 4, 1985
C-00584, Arbitrator Levak, October 26, 1982
C-01043, Arbitrator Levin,
C-01974, Arbitrator Schedler, June 7, 1981
C-05902, Arbitrator Levak, April 7, 1986
C-06299, Arbitrator Levak, June 30, 1986
C-06894, Arbitrator Snow, February 27, 1987
C-13284, Arbitrator Parkinson, November 19, 1993
C-16602, Arbitrator McGown, March 29, 1997

ARTICLE 17 REPRESENTATION

Link to JCAM

17.3 Section 3. Rights of Stewards

Right to Information from Postal Inspectors
The JCAM notes on p. 17-4 that NALC shop stewards have the right to interview postal inspectors in connection with their investigation and adjustment of grievances.

This issue usually arises when the USPS Inspection Service investigates alleged misconduct and produces a report known as an investigative memorandum (IM). Then management issues discipline to a carrier based on evidence provided by the postal inspectors.

Postal inspectors sometimes act as if they are "above the law." Union representatives who try to interview postal inspectors often get the "Inspection Service brush-off." Secretive explanations are given for inspector stonewalling: an interview would improperly reveal police sources and methods, or an interview could compromise an ongoing investigation.

Inspectors also attempt in many cases to shield their notes from union examination. Union representatives often are refused inspectors' notes with an explanation that, "You have the IM. That's what management relied upon in issuing the discipline. That's all you need."

Just like any other manager. Postal inspectors are not, however, above the law—and that includes the law of the grievance procedure and arbitration. Rather, when they act as agents of management—most commonly in discipline cases—they are *no different from any other manager.*

For stewards and other union representatives, this means that postal inspectors may be interviewed as part of the investigation of a grievance or potential grievance. Postal inspectors have no special rights to avoid interviews with investigating union representatives.

Moreover, management may not use the investigative memorandum as a shield against further inquiry into the detailed facts of the Inspection Service's investigation. NALC representatives have the right to examine the facts that stand behind the investigative memorandum. So postal inspectors must be made available for interviews, and must answer all potentially relevant questions put to them by shop stewards and other union representatives.

NALC representatives also have the right to examine the notes made by postal inspectors during the course of their investigations. For instance, a steward as the right to obtain all notes made by postal inspectors during an investigation, including notes of interviews with witnesses. Furthermore, inspectors must reveal the names of people with whom they have spoken and what those people said even if this information has not been recorded in the IM or in notes. Any of these original sources may provide information which is helpful to a grievant although it was excluded from or "filtered" by the investigative memorandum.

Shops stewards may be surprised to learn that they have the right to interview postal inspectors. However, this right is well established in regional arbitration precedent and in grievance settlements at the national level.

Well-established rules. In C-07864, a 1987 case decided by regional Arbitrator Joseph F. Gentile, a letter carrier was discharged for allegedly removing marked quarters from test letters. Two postal inspectors had prepared the test mailing. NALC representatives attempted to interview the postal inspectors but were refused at each step of the grievance procedure. A second grievance filed to protest that refusal. During the discussion of the second grievance, the postmaster claimed that he had no jurisdiction over postal inspectors, and the Step 3 answer stated that Inspection Service investigative techniques "are not subject to automatic disclosure." The two grievances were combined for hearing.

Arbitrator Gentile agreed to hear the procedural issue first. The union argued that the Postal Service violated several sections of the National Agreement when it refused to make the postal inspectors available for the interview:

- Article 15, Section 2, Step 2(d) requires the employer to "make a full and detailed statement of facts and contractual provisions relied upon."

- Article 17, Section 3 states, "The . . . 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), supervisor and witnesses during working hours. Such request shall not be unreasonably denied."

- Article 31, Section 3 requires the Postal Service to supply the union with "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."

Arbitrator Gentile ruled that the Postal Service's refusal to make the inspectors available for an interview had violated the National Agreement. The arbitrator examined the circumstances surrounding the removal, noting that one inspector had stated in the investigative memorandum that he had recovered the two quarters during an interview with the grievant. Gentile ruled that the inspector "was clearly a percipient witness to the discovery of the two coins," and "a critical witness to the controlled mailing which triggered the interview." The arbitrator found that the postal inspectors possessed essential information in the case, justifying NALC's request for interviews:

> Absent the testimony of the two Postal Inspectors, the Service has no case. As argued by the NALC, this testimony is both material and pivotal to the processing of the grievance and to the ultimate outcome.

Arbitrator Gentile also cited a national-level Management Letter—M-00225, March 10, 1981—which stated as follows:

1. The Postal Service agrees that the steward who is processing and investigating a grievance shall not be unreasonably denied the opportunity to interview Postal Inspectors on appropriate occasions, e.g., with respect to any events actually observed by said inspectors and upon which it a disciplinary action was based.

2. The Postal Service and the NALC disagree as to whether in other circumstances such as those in the above-captioned case, the stewards it should be given the opportunity to interview the involved Inspector.

3. The parties agree that the above-captioned grievance will be withdrawn and that the disciplinary action taken against the employee in whose behalf of the stewards had requested in the interview will also be withdrawn. Additionally, the employee in question will be granted $25.00 assessed for the lost parcel. These withdrawals are non-precedential.

Soon after the Gentile case regional arbitrator Thomas F. Levak also ordered management to make a postal inspector available for a union interview. (C-10115, Interim Award, October 28, 1987.) His analysis bears reproduction here:

> First, the Arbitrator agrees with the analysis and conclusions of Arbitrator Gentile. The Service's failure to accord the Grievant the right to interview the two Postal Inspectors prior to the Steps 2 meeting constituted violations of the National Agreement articles 15.2, Steps 2(d), 17.3 and 31.2 *[now 31.3]*. Postal Inspectors constitute witnesses within the meaning of article 17.3 whenever oral or written statements of a Postal Inspector are relied upon by management, in whole or in part, in reaching a disciplinary decision.
>
> Since, in criminally-related cases, the Service ordinarily is entitled to utilize Postal Inspectors as their investigative agency, and is not obligated under due process considerations to conduct a separate, independent investigation, it necessarily follows that the Union is entitled to interviewed those investigated agents during the grievance process.

> Absent such a right, the Union would be left with nothing but a written investigative memorandum itself and a managerial disclaimer that, "I just relied on the investigative memorandum."
>
> It goes without saying that an investigative memorandum will never contain all of the observations and events discovered by the investigator, and that observations and events—and the manner in which such were observed or not observed—may be crucial to the Union's defense. The Union is entitled to question the Postal Inspectors on all their observations and also on the manner in which their surveillance was conducted, in order to determine whether it can be considered reliable.

Arbitrator Levak issued an interim award ordering USPS to make the inspector available for an NALC interview, retained jurisdiction and reconvened the case several weeks later for hearing on the merits of the removal. He also followed Arbitrator Gentile by awarding the grievant back pay from the date of his removal through the first hearing date.

When the hearing reconvened Arbitrator Levak learned that USPS had flouted his award by refusing to make the inspector available for an interview and refusing to provide NALC with a copy of the inspector's notes. Management argued that it had relied solely on the investigative memorandum in issuing the removal, which it had provided to the union.

In the final award (C-07610, November 3, 1987), the arbitrator dismissed the discipline and ordered the grievant reinstated with full back pay, without a hearing on the merits, because of the Postal Service's due process violations. Arbitrator Levak's reasoning lays out the core due process rights which management had violated:

> . . . The Arbitrator construes and interprets just cause to include the due process requirement that a removed grievant has 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 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, when 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.

Arbitrator Levak further noted that management was relying solely on the evidence supplied by the Postal Inspectors in the case, and had not conducted an independent investigation. If management had conducted its own, separate investigation, the arbitrator explained, he would have excluded the Inspection Service testimony and allowed management to try to prove its case through other evidence.

A recent case decided by regional Arbitrator George V. Eyraud (C-16455, March 1, 1997) has reaffirmed the principles set forth by Arbitrator Levak. In that case a letter carrier was removed for allegedly engaging in inappropriate conduct with a patron. NALC was denied an interview with the postal inspector who had interviewed the patron, and was told not to interview the complaining witness. Nor did management provide other documentation requested by the union in a grievance procedure.

Arbitrator Eyraud cited Arbitrator Levak in ruling that, "the Postal Inspectors were witnesses under article 17.3 and should have submitted to interview." He ruled that the various procedural defects in the case:

> ... amount to a denial of due process to the Grievant and all are violative of the Labor Agreement. Any one of the above enumerated violations might be fatal to the Removal of Grievant here. Certainly, in their totality, they amount to a lack of due process and render the removal of Grievant to be invalid and due to be set aside.

The arbitrator sustained the grievance, ordering the Grievant reinstated and made whole.

National Settlement

A recent national-level settlement has reaffirmed the Postal Service's obligation to release postal inspectors' notes and tapes to NALC (M-01308, Prearb, July 14, 1997). It states:

> The issue in this grievance is whether management violated the National Agreement by failing to turn over requested postal inspection service notes and videotapes 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.
>
> In this case, it appears that the notes and tapes relied upon to prepare the investigative memorandum should have been made available to the union.

Advice. Stewards who handle cases involving postal inspectors should not shy away from requesting interviews with the inspectors and requesting copies of their investigative notes. If inspectors refuse to comply, the steward should file a separate grievance immediately to challenge the failure to provide the information.

Stewards must keep processing the main grievance in such a case, even though inspectors have attempted to obstruct the union's progress. Time limits continue to apply even though the union's investigation has been delayed.

When making arguments for the release of all potentially relevant inspector notes, tapes and so forth, NALC representatives should use the due process principles which Arbitrator Levak articulated so well. These principles are taken largely from the law of criminal procedure, which guarantees the accused powerful rights to obtain information from prosecutors. In general, there are three reasons why NALC has a right to obtain notes and other data underlying a postal inspector's investigation:

1. *The data may contain what criminal lawyers call "exculpatory" material*—that is, information which may tend to show the grievant is not guilty as charged (not culpable).

2. *The data may contain material which would tend to undermine the Postal Inspector's credibility if called to testify.* For instance, the notes may show that an inspector's interview of a key witness was very short, that the questions were poorly phrased, that the answers were poorly articulated, or any number of imaginable problems that a union advocate needs to know.

3. *The presence or absence of exculpatory material may assist NALC in determining whether or note to pursue a grievance.* As noted above, Articles 17 and 31 guarantee union representatives the right to information necessary to determine whether a valid grievance exists.

Finally, stewards should keep in mind that when postal inspectors supply the basis for discipline they are no different from any other management witness. Badges and guns notwithstanding, they have no right to withhold anything of potential value to a union representative developing a defense.

17.3 Section 3. Rights of Stewards

Employee's right to representation during Inspection Service interrogation. The last paragraph of Article 17, Section 3 (JCAM p. 17-3) provides:

> 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.

When an employee requests a steward's presence during an Inspection Service interrogation, the steward should be alert to potential issues of criminal liability. When an employee has been arrested for violation of a criminal law or when a criminal investigation has begun to focus on an employee as a suspect in a case, prior to any further interrogation the investigators must give inform the employee of his or her constitutional right

against self-incrimination and the right to counsel—known as the *Miranda* rights. The inspector(s) must inform the employee that:

1. He or she has the right to remain silent;

2. Anything he or she says can be used against him or her in court;

3. He or she has the right to talk to an attorney for advice before any questions are asked, and to have the attorney present during questioning;

4. If he or she cannot afford an attorney one will be appointed for him or her before any questioning, if desired; and

5. If he or she decides to answer questions without an attorney present, he will still have a right to stop answering at any time. He or she also has the right to stop answering at any time until he or she talks to an attorney.

An employee who has been informed properly of these *Miranda* rights and who understands them may knowingly, voluntarily waive them.

Once it becomes clear that an interrogation is criminal in nature and has focused on the employee as a suspect, a steward should advise the employee to assert *Miranda* rights and to remain silent until he or she obtains an attorney. The steward should continue to represent the employee during the interview and in any disciplinary action, should it be issued.

17.3 & 4 Section 3. Rights of Stewards, and Section 4. Payment of Stewards

Steward rights—activities included. The JCAM lists on p. 17-4 several settlements and arbitration decisions establishing that stewards have the right to engage in a broad range of activities related to the investigation and adjustment of grievances.

The list is not complete, of course, for there are so many imaginable steward activities related to grievance handling that they cannot all be listed. If an activity is reasonably related to the steward's job of investigating or adjustment a grievance, or to investigating a problem that may become a grievance, then a steward has a right to pursue the activity and a right to do so on the clock without unreasonable delay.

Right to steward time on the clock. Article 17.3 provides that management cannot "unreasonably deny" requests for paid grievance-handling time. In disputes over this imprecise language, numerous arbitrators have

enforced stewards' right to paid time to do their grievance-handling jobs. Delays of even several hours or outright refusals to grant steward time have been found to violate the contract. E.g., C-00204, Regional Arbitrator McAllister, July 5, 1984 (management improperly withheld steward release for six hours).

Weingarten rights. Because a steward cannot exercise *Weingarten* rights on an employee's behalf, and management is not required to warn an employee of his or her *Weingarten* rights (JCAM p. 17-6), stewards must take responsibility for educating letter carriers about their *Weingarten* rights. Carriers should be informed about the nature of these important rights, and instructed to assert them when they believe that an investigative interview initiated by management could lead to discipline.

Link to JCAM

17.6 Section 6. Union Participation in New Employee Orientation

In C-13571 (April 12, 1994), regional Arbitrator Epstein ruled that management had violated Article 17, Section 6 when it unilaterally reduced the union's new employee orientation time. The arbitrator upheld the union's right to continue its long practice of making two-hour presentations to new employees.

ARTICLE 19 HANDBOOKS AND MANUALS

Link to JCAM

When are Handbook and Manual Provisions Part of the Contract?

NALC shop stewards know to cite Article 19 in grievances involving violations of USPS handbook or manual provisions. This is because many of the provisions governing letter carrier wages, hours and working conditions are printed in USPS handbooks and manuals which are effectively part of the contract, but which are not printed in the National Agreement booklet.

Article 19 incorporates into the Agreement:

> Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions ...

Furthermore, the new NALC-USPS Joint Contact Administration Manual makes Article 19's meaning explicit:

> **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. (JCAM p. 19-1, (emphasis added)).

What's in, what's out? Although this language seems clear, problems sometimes occur because the Postal Service has published so many handbooks and manuals that few people are familiar with all of them. There are literally hundreds of thousands of pages of published handbooks, manuals, directives, instructions and guidelines on postal library shelves.

Article 19 does *not* encompass every single one of these handbooks, manuals and other documents—even where one purports to deal with wages, hours or working conditions. Which ones are, and are not, covered by Article 19?

First, only *national-level* USPS publications are covered by Article 19. So all of the local policies, Area directives, District guidelines and so forth are excluded.

Second, the national parties have long *agreed* that certain handbooks and manuals are covered by Article 19. Here are the ones most commonly cited:

ELM	Employee and Labor Relations Manual
F-15	Travel and Relocation
F-21	Time and Attendance
F-22	PSDS Time and Attendance
EL-301	Guidelines for Processing Personnel Actions
EL-311	Personnel Operations
M-39	Management of Delivery Services
M-41	City Delivery Carriers Duties and Responsibilities
ASM	Administrative Support Manual
DMM	Domestic Mail Manual
DMMT	Domestic Mail Manual Transition Book
POM	Postal Operations Manual

Note that the reference to the *Postal Service Manual* in Article 19 is obsolete. It has been replaced by the *Employee and Labor Relations Manual* (ELM).

Some publications are not covered, however. Problems can arise when management seeks to enforce one of those non-covered documents, and NALC argues that the purported "handbook" conflicts with the National Agreement, or simply has no standing as a contractual document. For instance, National Arbitrator Howard Gamser ruled in C-00937 (December 27, 1982) that the EL-501, *Supervisor's Guide to Attendance Improvement*, was not "a handbook having the force and effect of .. a document issued pursuant to Article 19."

Here is a short list of the most frequently encountered postal "handbooks" *not* covered by Article 19 (there are others, of course):

EL-501	Supervisor's Guide to Attendance Improvement
EL-921	Supervisor's Guide to Handling Grievances
EL-401	Supervisor's Guide to Scheduling and Premium Pay

Advice. NALC representatives may need to document their arguments that particular Handbook or Manual language is, or is not, covered by Article 19. The first source to cite is the Joint Contract Administration Manual language clarifying the meaning of Article 19. Second, for help with spe-

cific handbooks or manuals union representatives should consult the Index and Summary of the NALC Materials Reference System (MRS). That publication is indexed by subject, by contract article *and* by handbook or manual provision. So it is easy to locate long lists of national-level settlements in which the national parties have expressly agreed to enforce particular handbooks and manuals as though they were part of the National Agreement. The MRS also contains numerous national and regional-level arbitration cases in the same vein.

Although this issue usually arises when NALC seeks to enforce a handbook or manual provision, sometimes management attempts to introduce or enforce a document which has no contractual standing under Article 19. The Gamser award cited above should be used to counter such arguments. When questions arise concerning the status of a particular USPS headquarters publication, the National Business Agent should be contacted for assistance.

ARTICLE 41 LETTER CARRIER CRAFT

41.1.A.2 **Ban on Bidding:** Section 1.A.2 prohibits letter carriers temporarily detailed to supervisory positions from bidding on vacant letter carrier craft positions while so detailed. The contract specifically identifies 204b assignments as being such positions. However, the provisions of this section apply to **any** temporary position with supervisory duties, regardless of what acronym the postal service currently applies. Furthermore, it is NALC's position that while in a temporary supervisory position, an employee may not be assigned to a vacant duty assignment under the provisions of Article 41.1.A.7.

Link to JCAM

In C-04925 (H1N-4J-C 8187, March 19, 1985) National Arbitrator Aaron ruled that the prohibition against a 204b bidding on letter carrier craft duty assignments did not prohibit them from bidding on vacant VOMA assignments.

Four Month Rule: This section also provides a limit of 4 months of continuous time that a carrier so detailed may retain the duty assignment. The duty assignment of a carrier who has served as a 204b in excess of four months must be declared vacant and put up for bid. If the 204b returns to the craft, it is as an unassigned regular—i.e., without any rights to the former duty assignment.

National-level settlements and regional arbitration decisions have established that management may not return a 204b carrier to his or her bid position for short periods of time for the purpose of circumventing the intent of Article 41, Section 1.A.2. See, for example:

- M-00194, Step 4 Settlement, October 2, 1974 (total pattern of conduct indicated intent to violate Agreement).
- M-00011, Step 4 Settlement, October 27, 1977.
- C-05230, Regional Arbitrator Jacobowski, October 16, 1985 (204b's one-week return to craft did not break continuity of four-month period in supervisory status).
- C-13823, Regional Arbitrator Scearce, July 15, 1994 (arbitrator ordered bid assignment posted where 204b's return to craft just before four-month limit took effect was "too convenient" and a "pretextual attempt to avoid the application of Article 41, Section 1.A.2").

Additional supporting cases for specific fact patterns may be located in the NALC CD ROM Arbitration System by searching under the subject "204Bs".

Hold-Down Assignments: Unlike the case of full-time bid assignments, carriers in a temporary supervisory position can not retain hold-down assignments for up to four months. Rather, National Arbitrator Britton ruled in C-09187 (H4N-1W-C 34928, July 21, 1989) that the following rule applies:

> 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. (Emphasis added)

Bargaining Unit Work and Overtime: Letter carriers in a temporary supervisory status are prohibited from performing bargaining unit work, including overtime work. The prearbitration settlement M-00891 (H1N-5H-C 26031, January 12, 1989) provides that

> 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 supervisor 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.

Note that this national level settlement specifically establishes a monetary remedy for violations in such cases. Additional supporting material may be found in the NALC *Materials Reference System* (MRS).

ARTICLE 41 LETTER CARRIER CRAFT

41.1.C.4 The *Joint Contract Administration Manual* explains the application of Article 41, Section 1.C.4 to T-6 assignments as follows:

Link to JCAM

> The five routes on a T-6 carrier'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 of Understanding provisions* on this issue, management has discretion to move a T-6 off the assignment he or she is working in the regular rotation, to another route on the T-6's string. Management may *not* move the T-6 off the string entirely, unless "unanticipated circumstances" arise. It is *not* an "unanticipated circumstance" when the regular carrier, whose route the T-6 is working, comes in and works his or her non-scheduled day. (Emphasis added)

Management's limited right (see discussion below) to move a T-6 carrier to another route on the string derives from the September 1972 Rademacher/Blaisdell Memorandum continuing the T-6 Program (M-00283). The memorandum provided that "the T-6 will be required, as directed by local management, to perform **any and all** the duties set forth in the job description of carrier technician. The job description provided that a T-6 carrier "serves **any of the routes** in his group during the absence of the regular carrier" (emphasis added). See for example the March 1976 decision M-00380 and the April 27, 1979 decision M-00282 which were accepted by NALC.

One route per day: Even in installations where management's right to move a T-6 carrier is not restricted by past practice or LMU provisions, national level grievance settlements have established that T-6 carriers must be assigned to a specific route each day. For example, the Step 4 decisions M-00758 and M-00129 provide that a T-6 carrier may not be required to case several routes on a given day.

Extended assignment: Similarly, even in installations where management's right to move a T- 6 carrier is not restricted by past practice or LMU provisions, national level grievance settlements have established that T-6 carriers may not be required to remain on one route for an extended period of time (see the Step 4 decisions M-00277 and M-0000100).

Local Memorandums: The JCAM makes clear that management's limited right to move a T- 6 carrier to another route on the string is a subject for local negotiations and can be modified by Local Memorandum of Understanding provisions. The NALC publication *1996 Local Negotiations* (p. 39) explained the relationship between Article 41.1.C.4 and LMU provisions as follows:

> Article 41, Section 1.C.4 provides that carriers working a T-6 assignment may not be moved from the bid assignment unless "unanticipated circumstances" require it or

"unless the local agreement provides otherwise." This language does not describe what happens when a regular carrier works on a non-scheduled day—who bumps whom.

If the branch does *not negotiate any local memo language* in this area, then management may not move a T-6 carrier off his or her string (which is the T-6's bid assignment), because the regular carrier working on a non-scheduled day is not an "unanticipated circumstance." However, if another route on the string is vacant that day, it is within *management's discretion* whether or not to move the T-6 to the vacant route.

A local memo may change this arrangement, in one of three different ways. First, a local memo could remove management's discretion by providing that a carrier working on a non-scheduled day shall bump a T-6 carrier, but only to another vacant route on the T-6's string. Second, a provision could give the regular coming in on a non-scheduled day a stronger bumping right, by providing that he or she shall bump the T-6 off the route, and even off the string where there is no other vacancy on the string that day .

On the other hand, a local memo could provide that the regular working on a non-scheduled has no right to bump a T-6 off the route the T-6 was scheduled to work that day, under any circumstances. (Emphasis in original)

Past Practice: Local rules limiting management's right to move a T-6 carrier to another route on the string can be established not only by Local Memorandum of Understanding provisions but also by past practice. Many NALC branches have a binding past practice of T-6 carriers serving the routes on their string in a prescribed sequence corresponding with the scheduled days off of the regular carriers on the component routes. Rights established by past practice are enforceable just as are those established by express Local Memorandum provisions. Management attempts to unilaterally change a binding past practice can be successfully grieved.

ARTICLE 41 LETTER CARRIER CRAFT

41.3.A Section 3. Miscellaneous Provisions

Link to JCAM

A. The carrier may use stools while casing mail and performing other office duties, provided the use of such stools does not interfere with or affect efficiency and standard job performance.

It is NALC's position that the determination of whether the carrier's efficiency and standard job performance has been affected by use of a stool must be made in accordance with Section 141.2 of the M-39 Handbook, which provides for a special count.

ARTICLE 41 LETTER CARRIER CRAFT

41.3.S Special Route Examinations

Link to JCAM

The special route examination procedures reviewed in the *Joint Contract Administration Manual (JCAM)*, pages 41-21 through 41-24, are not a meaningless exercise. The M-39 Handbook requires not only that special inspections be conducted when warranted, 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.

Remedies: Arbitrators have 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. They 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 were ordered. Arbitrator Pribble, in C-05545, wrote 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.

There is more agreement among arbitrators that some monetary remedy is due in such cases, than there is upon the exact form such monetary remedies should take. 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.

All too often, the union has been 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 beyond his or her authority to grant, or otherwise inappropriate to remedy the specific violation. It is therefore advisable that all remedy requests include the additional catch-all phrase "or that the grievant be otherwise made whole."

Regional arbitration awards supporting the authority of arbitrators to grant monetary remedies in such cases include:

C-05545 Arbitrator Pribble	C4N-4J-C 6365	01-24-1986
C-06720 Arbitrator Grossman	N4N-1E-C 22422	12-16-1986
C-07229 Arbitrator Liebowitz	N4N-1K-C 33515	07-07-1987
C-07232 Arbitrator Grossman	N4N-4J-C 32218	08-06-1987
C-07536 Arbitrator Sirefman	N4N-1P-C 22802	11-09-1987
C-07630 Arbitrator Dilts	C4N-4J-C 30920	09-01-1987
C-07372 Arbitrator Stutz	N4N-1J-C 36001	08-22-1987
C-07569 Arbitrator Grossman	N4N-1F-C 30826	10-27-1987
C-07606 Arbitrator Grossman	N4N-1E-C 33973	11-27-1987
C-07613 Arbitrator Dennis	N4N-1G-C 35824	11-14-1987
C-08614 Arbitrator Render	W4N-5T-C 2960	12-03-1988
C-08727 Arbitrator Levak	W7N-5C-C 5445	03-10-1989
C-08792 Arbitrator Lange	W4N-5B-C 8594	03-21-1989
C-09327 Arbitrator Lange	W4N-5T-C 36919	08-23-1989
C-10071 Arb. Stoltenberg	E7N-2F-C 18778	06-21-1990
C-10474 Arbitrator Johnston	S7N-3C-C 28108	10-17-1991
C-10635 Arbitrator Roukis	N7N-1R-C32345	02-20-1991
C-10167 Arb. R.G. Williams	S7N-3F-C 26923	08-06-1991
C-15022 Arbitrator Jacobs	B90N-4B-C 95045915	2-17-1995
C-16681 Arbitrator Bennet	H94N-4H-C 96039061	04-30-1997
C-16522 Arbitrator Hales	W0M-5M-C 8963	03-19-1997
C-17352 Arbitrator Abernathy	E90N-4E-C 96008297	09-10-1997

Other supporting cases for specific fact patterns may be located in the NALC CD ROM Arbitration System by searching under the subject "Special Route Exams".