United States Postal Service
and
National Postal Mail Handlers Union

Contract Interpretation Manual (CIM)

Version 5 June 2021

Introduction

This Contract Interpretation Manual (CIM), jointly prepared by the National Postal Mail Handlers Union and the United States Postal Service, represents a good faith effort to identify contractual issues on which the National parties are in agreement regarding interpretation and application of the parties' **2019** National Agreement. The CIM is referenced in the National Agreement between the parties at Article 15, Section .3E, which is reprinted below. (Note that actual language from the National Agreement, Memoranda of Understanding and Letters of Intent is shaded in gray throughout the CIM.)

> The parties have agreed to jointly develop and implement a Contract Interpretation Manual (CIM) within six (6) months after the effective date of the 1998 National Agreement. The CIM will set forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of this Agreement. It is not intended to add to, modify, or replace, in any respect, the language in the current Agreement; nor is it intended to modify in any way the rights, responsibilities, or benefits of the parties under the Agreement. However, production of the CIM demonstrates the mutual intent of the parties at the National level to encourage their representatives at all levels to reach resolution regarding issues about which the parties are in agreement and to encourage consistency in the application of the terms of the Agreement. For these reasons, the positions of the parties as set forth in the CIM shall be binding on the representatives of both parties in the resolution of disputes at the Local and Regional levels, and in the processing of grievances through Steps 1, 2 and 3 of the grievance-arbitration procedure. In addition, the positions of the parties as set forth in the CIM are binding on the arbitrator, in accordance with the provisions of Article 15.4A6, in any Regional level arbitration case in which the CIM is introduced. The CIM will be updated periodically to reflect any modifications to the parties' positions which may result from National level arbitration awards, Step 4 decisions, or other sources. The parties' representatives are encouraged to utilize the most recent version of the CIM at all times.

The parties agree that the CIM will be made available to their representatives who are responsible for handling disputes at the Local and Area/Regional levels and for processing grievances at Steps 1, 2 and 3 of the grievance-arbitration procedure in an effort to reach resolution regarding issues about which the parties are in agreement and to assure consistency and compliance with the terms of the National Agreement. The parties' agreement in this regard is designed to facilitate the resolution of grievances and to reduce grievance backlogs. Contract interpretations set forth in the CIM may be cited and, if cited, shall be applied to all pending and future cases at Steps 1, 2 and 3 of the grievance procedure, and in Regional arbitration; this includes cases initiated prior to the issuance of the CIM to the extent that the specific contractual or

handbook/manual language interpreted in the CIM was in effect at the time the case was initiated and has not subsequently been changed.

Preface

The interpretations contained in the CIM should be self-explanatory. As specified in Article 15, Section .3E of the National Agreement, the CIM is not intended to "add to, modify, or replace, in any respect" the language in the National Agreement. Additionally, the CIM is not intended to "modify in any way the rights, responsibilities, or benefits or the parties under the Agreement."

The positions of the parties contained in the CIM are binding on their representatives in the resolution of disputes at the Local and Area/Regional levels and in the processing of grievances at Steps 1, 2 and 3. The positions of the parties contained in the CIM are binding on the arbitrator in any Regional level arbitration case, regular or expedited, in which the CIM is introduced. If introduced in Regional level arbitration, the CIM will speak for itself and the parties' advocates will not seek testimony on the content of the document from the National parties.

The parties at the National level have committed to update the CIM periodically to reflect any modifications to their positions which may result from national arbitration awards, pre-arbitration settlements, Step 4 decisions, or other agreed upon sources. The parties at the Local and Area/Regional levels should assure that they are working with the most recent version of the CIM at all times and that they apply any revisions or modifications prospectively from the date of revision.

PREAMBLE

This Agreement (referred to as the **2019**"Mail Handlers National Agreement") is entered into by and between the United States Postal Service (the "Employer") and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO (the "Union").

The **2019** Mail Handlers National Agreement became effective, except as set forth in particular contract provisions or as noted in the CIM explanation of Article 39.2, on April 25, 2020.

ARTICLE 1
UNION RECOGNITION

Section 1.1 Recognition

The Employer recognizes the Union designated below as the exclusive bargaining representative of all employees in the bargaining unit for which the Union has been recognized and certified at the national level:

National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO.

The NPMHU is the exclusive bargaining agent representing mail handlers and mail handler assistants employed by the U.S. Postal Service. It has been so recognized in accordance with the terms of the Postal Reorganization Act (PRA) of 1970, which transformed the federal government agency known as the "Post Office Department" into an independent establishment of the Government of the United States, the "United States Postal Service." The PRA also granted bargaining-unit employees the right to bargain collectively with respect to "rates of pay, wages, hours of employment, or other conditions of employment."

As the exclusive bargaining representative for all mail handlers, the NPMHU is the only organization that is entitled to represent mail handlers in their collective bargaining relationship with the Postal Service.

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

APWU or American Postal Workers Union, AFL-CIO: clerks, maintenance, motor vehicle, mail equipment shops and material distribution center employees;

NALC or National Association of Letter Carriers, AFL-CIO: city letter carriers; and

NRLCA or National Rural Letter Carriers Association: rural letter carriers.

The NPMHU and the unions representing 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 bargained separately for its 1975-78 Agreement and all agreements thereafter. The NPMHU remained in a jointly-bargained National Agreement with the APWU and NALC covering the periods 1975-78 and 1978-81. Beginning in 1981, and continuing to this day, the NPMHU has bargained separately for its own National Agreement. The APWU and NALC continued to bargain together as the Joint Bargaining Committee in 1981, 1984, 1987, and 1990, but have bargained separately since 1994. Presently, therefore, the four major postal unions have separate National Agreements with the Postal Service.

Section 1.2 Exclusions

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

A Managerial and supervisory personnel;

B Professional employees;

C Employees engaged in personnel work in other than a purely non-confidential clerical capacity;

D Security guards as defined in Public Law 91-375, 1201(2);

E All Postal Inspection Service employees;

F Employees in the supplemental work force as defined in Article 7, **as previously defined in Article 7 of the 2016 National Agreement;**

G Rural Letter Carriers;

H City Letter Carriers;

I Maintenance Employees;

J Special Delivery Messengers;

K Motor Vehicle Employees;

L Postal Clerks;

M Mail Equipment Shop employees; or

N Mail Transport Equipment Centers and Supply Center employees.

This provision sets forth various postal employees who are excluded from or are not part of the bargaining unit represented by the NPMHU.

The supplemental work force**, which was previously defined in Article 7 of the 2016 National Agreement** as casual employees, are excluded from the bargaining unit. Additionally, managerial and supervisory personnel, employees exclusively represented by one of the other postal unions, and postal employees who work at the Mail Transport Equipment Centers are among those excluded from the bargaining unit.

Question: Are managers or supervisors members of the bargaining unit represented by the NPMHU?

Answer: No. However, mail handlers serving in a temporary supervisory position (204b) or in a supervisory training program are still considered to be craft employees and may continue to accrue seniority in the mail handler craft. The right of such employees and those detailed to EAS positions to bid on vacant duty assignments or to encumber their current duty assignment is governed by Article 12 (Section 12.3B12).

Question: Are postal employees still working at the Mail Transport Equipment Centers or Repair Centers (MTEC) represented by the NPMHU?

Answer: Yes. However, they are considered to be members of a separate bargaining unit, and therefore are not directly covered by the **2019** National Agreement between the NPMHU and the Postal Service. Rather, pursuant to the Memorandum of Understanding Mail Transport Equipment Centers/Repair Centers (MOU) that is contained in the 1998 National Agreement, the terms and conditions of employment for employees at the MTECs are governed by the Supplemental Agreement covering the MTECs (as specifically modified by the MOU) until all such postal facilities are closed and all employees are reassigned in accordance with the Memorandum of Understanding regarding reassignment from MTEC facilities.

Section 1.3 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, Postal Data 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 Transport Equipment Centers and Repair Centers.

Section 1.4 Definition

Subject to the foregoing sections, 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 1.2 and 1.3, all members of the regular workforce as defined in Article 7 (Section 7.1A),

including all full-time regular employees, part-time regular employees, part-time flexible employees**,** and mail handler assistants (MHAs) are members of the bargaining unit represented by the NPMHU. This includes postal employees at all present and subsequently acquired installations, facilities and operations of the Postal Service, wherever located.

Section 1.5 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:

A1 existing work assignment practices;

A2 manpower costs;

A3 avoidance of duplication of effort and "make work" assignments;

A4 effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis;

A5 the integral nature of all duties which comprise a normal duty assignment;

A6 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 shall consult with the NPMHU. Additionally, it contains standards that shall be used in assigning new positions to the appropriate unit and provides that the NPMHU will be promptly notified of the decision as to which bargaining unit a new position has been assigned. Any dispute regarding the assignment is grievable at the national level within 30 days from the date the union receives notification of the assignment.

In the Letter of Intent Re References to Union, Craft or Bargaining Unit, which is reprinted in the CIM after Article 39, the parties have agreed that the Postal Service will continue to inform the NPMHU of all new positions whether or not the positions are within the craft unit represented by the NPMHU.

Section 1.6 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:

A1 in an "emergency" which is defined to mean 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;

A2 for the purpose of training or instruction of employees;

A3 to assure the proper operation of equipment;

A4 to protect the safety of employees; or

A5 to protect the property of the USPS.

B In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 1.6A1 through 1.6A5 above or when the duties are included in the supervisor's position description.

(The preceding Article, Article 1, shall apply to Mail Handler Assistant employees.)

[See Memo, page 129]

Section 1.6A prohibits supervisors in offices with 100 or more bargaining unit employees from performing mail handler bargaining unit work, except for the reasons specifically enumerated. Section 1.6B provides that in offices with fewer than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work, except for the reasons specifically enumerated in Section 1.6A or when the duties are included in the supervisors' position description.

Question: Can an employee on a 204-b assignment perform bargaining unit work?

Answer: No**.** An employee serving as a temporary supervisor (204-b) is prohibited from performing bargaining unit work except to the extent otherwise provided in Section 1.6 and in the Memorandum of Understanding Re:

Overtime/Acting Supervisor (204B) Detailed EAS Position discussed under Article 8.

Question: What is the definition of "post office" for purposes of Article 1, Section 1.6?

Answer: The provisions of Section 1.6A as they relate to the proper definition of "post office" were arbitrated at the national level in case number AB-NAT-1009. In his award, Arbitrator Gamser rejected the Postal Service's position that there are stations and branches which act or function just like post offices. Arbitrator Gamser's award sustaining the grievance quoted a postal witness in a NLRB proceeding as follows:

"Post Office or postal installation is a mail processing and delivery activity under the head of a single manager. That could range from a single small Post Office to a large Post Office with several associated stations and branches which are responsible to the single manager or could include a large Post Office with many stations and branches, even over 100 stations and branches including related activities such as vehicles and motor facility or an air mail facility, all of which are part of that single postal installation."

Further, Arbitrator Gamser accepted the definition of an installation as defined in Article 38 of the 1973 National Agreement.

"...Installation. A main post office, airport mail facility, terminal or any similar organizational unit under the direction of one postal official, <u>together with stations, branches and other subordinate units.</u>" (Emphasis supplied)

Source: National Arbitration Award AB-NAT-1009, Arbitrator H. Gamser, dated June 8, 1974.

Question: How is it determined whether an office has 100 or more bargaining unit employees?

Answer: At the beginning of each Agreement period, a count is made of all employees represented by the APWU, NALC and NPMHU to determine which offices have 100 or more employees. The resultant list – which adds together employees in all three of these bargaining units – is effective for the life of the Agreement and does not change during the Agreement.

Question: How is "emergency" defined for purposes of this Section?

Answer: The definition of emergency found in Article 3 (Section 3.6) is used in this Section: "an unforeseen circumstance of a combination of circumstances which calls for immediate action in a situation which is not expected to be of a

recurring nature." Normally, an increase in mail volume is not, in and of itself, an emergency situation.

MEMORANDUM OF UNDERSTANDING

SUPERVISORS PERFORMING BARGAINING UNIT WORK

It is agreed between the U.S. Postal Service and the National Postal Mail Handlers Union, a Division of LIUNA, AFL-CIO, that where additional work hours would have been assigned to employees but for a violation of Article 1, Section 1.6.A of the **2019** National Agreement 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.

Question: What is the remedy when a supervisor performs bargaining unit work in violation of Section 1.6A?

Answer: Except where the time involved is de minimis, the employee(s) who would have been assigned the bargaining unit work will be paid at the applicable rate for the additional work hours that would have been assigned to the bargaining unit employee(s) but for the violation.

Question: Does a union representative have a basis for filing a grievance when he/she believes that a supervisor is performing bargaining unit work in violation of Section 1.6, where the work in question is properly assigned to another craft?

Answer: In keeping with the exclusions outlined in Section 1.2, in those circumstances in which there is no dispute that the work in question is properly assigned to another craft (e.g., the work is properly assigned to the clerk craft under the provisions of RI 399), the union representative would have no basis to file a grievance over the supervisor's performance of that work.

ARTICLE 2
NON-DISCRIMINATION AND CIVIL RIGHTS

Section 2.1 Statement of Principles

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 employees, as prohibited by the Rehabilitation Act of 1973 or the Vietnam Era Veterans Readjustment Act of 1974.

[See Memos, pages 129-132]

This article gives mail handlers the contractual right to object to and remedy alleged discrimination through the filing of a grievance.

In addition, 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 mail handler can begin this process by contacting an Equal Employment Opportunity (EEO) Counselor. The matter then can be pursued by filing a formal complaint, having a hearing, appealing to the U.S. Equal Opportunity Commission (EEOC), and ultimately appealing to federal court.

Section 2.1 also provides mail handlers the contractual right to object to and remedy, through the grievance and arbitration procedure set forth in Article 15, alleged violations of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Act of 1974. The USPS guidelines concerning reasonable accommodation are contained in Handbook EL-307, *Guidelines on Reasonable Accommodation*.

Question: May the Postal Service be required to reasonably accommodate an employee due to religious reasons?

Answer: The Postal Service has agreed that accommodations should be attempted for those employees who, because of their religious beliefs, may be prohibited from working or required to attend religious services. Such accommodations must be consistent with the National Agreement. Management is not required to provide accommodations that create an undue hardship on the Postal Service.

Source: Postmaster General policy letter of November 25, 1981.

Section 2.2 Committee

Non-Discrimination and Civil Rights are proper subjects for discussion at Labor-Management Committee meetings at the national, regional/area and local levels provided in Article 38.

Section 2.3 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.

This section provides bargaining unit employees the contractual right to grieve alleged discrimination. Section 2.3 provides that grievances may be filed directly to Step 2 of the grievance procedure.

Question: When and where can a grievance under Article 2 be filed?

Answer: Grievances arising under Article 2 may be filed at Step 2 of the grievance procedure within fourteen (14) days of when the employee or Union has first learned or may reasonably have been expected to have learned of the alleged discrimination.

Section 2.4 Dual Filing

The Union, at the national and local levels, will take affirmative steps to ensure that bargaining-unit employees are informed that they should not pursue essentially contractual matters simultaneously under the grievance and EEO processes.

The Union, at the national and local levels, will not encourage dual filing of grievances.

(The preceding Article, Article 2, shall apply to Mail Handler Assistant employees.)

Question: Can an employee file a grievance and EEO complaint simultaneously on the same issue?

Answer: Yes. The Union has agreed, however, to take affirmative steps to ensure that bargaining unit employees are informed that they should not pursue essentially contractual matters simultaneously under the grievance and EEO processes. The Union also has agreed, at both the National and Local levels, not to encourage dual filing.

Question: If an EEO complaint and a grievance are filed on the same issue, does the settlement of the EEO complaint automatically make the grievance moot?

Answer: No. If the grievance has moved past the Step 1 level, then the Union must be signatory to any settlement that would include a waiver of the grievance. Source: Step 4 Grievance H4N-3U-D 2506, dated April 15, 1987.

Question: Can an administrative EEO complaint be settled in a manner that is contrary to the provisions of the National Agreement?

Answer: No. EEO settlements may not take precedence over the language contained in the collective bargaining agreement.

Source: Step 4 Grievance H1C-3F-C 25743, dated December 6, 1985.

Question: Are employees entitled to compensation for time spent outside of normal working hours while testifying in an EEO hearing?

Answer: Yes. Witnesses whose presence at the EEO hearing is officially required will be in a duty status during a reasonable period of waiting time prior to their testimony at the hearing and during their actual testimony.

Source: Step 4 Grievance H1N-5G-C 15447, dated October 22, 1987.

MEMORANDUM OF UNDERSTANDING

REASONABLE ACCOMMODATION FOR THE DEAF AND HARD OF HEARING MANAGEMENT'S RESPONSIBILITY

Management has an obligation to reasonably accommodate impaired employees and applicants who request assistance in communication with or understanding others in work related situation, 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 and safety talks, CFS and Savings Bond Kickoff meetings.

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

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 and hard of hearing employee to understand various methods of communication and the ability of others to understand the deaf and 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 included:

a. Installation heads are authorized to pay for certified interpreters. Every effort will be made to provide certified interpreters when deemed necessary.

b. In some states, the Division of Vocational Rehabilitation (DVR) provides interpreters at no charge.

c. Volunteer interpreters or individuals skilled in signing may be obtained from the work force or from the community.

d. In some situations, written communications may be appropriate.

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

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

Management will provide the following assistance for deaf and 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 the deaf and hard of hearing with some frequency, will be opened or closed captioned.

b. Special telecommunications devices for the deaf and hard of hearing will be installed in all postal installations employing deaf and hard of hearing employees in the regular work force. These devices will be available to deaf and 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 telecommunication devices.

c. A visual alarm will be installed on all moving powered industrial equipment in all postal installations employing deaf and hard of hearing employees in the regular work force.

d. Visual fire alarms will be installed in all new postal installations (installations for which the U.S. Postal Service, as of the effective date of this agreement, has 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 area 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 to be installed, and installation of visual alarms at other than new postal installations 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.

This MOU 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

Workplace Free of Harassment

The National Postal Mail Handlers Union and the United States Postal Service are committed to providing employees with a safe, productive, and inclusive workplace. All employees must refrain from practicing or tolerating discrimination and harassment based on race, color, religion, sex, national origin, age, mental or physical disability, genetic information, uniformed (military) service, or in reprisal for an employee's complaint about or opposition to discrimination or participation in any process or proceeding designed to remedy discrimination. Employees who believe that they are victims of harassment should bring the situation to the attention of a supervisor, a manager, or the Manager of Human Resources.

To achieve a workplace free of harassment, the parties agree to establish at the National Level, a "Task Force on Preventing Harassment." The purpose of the Task Force is to explore the most effective methods to ensure employees are aware of Postal Service policies and procedures on harassment.

This Memorandum of Understanding may not be cited in the grievance process or used as the basis for a grievance. Nothing in this memorandum of Understanding affects the right of employees to file a grievance under Article 2 of the National Agreement.

This MOU reinforces the parties' commitment to providing employees with a safe, productive, and inclusive workplace free of discrimination and harassment. The parties have agreed to establish a Task Force to explore the most effective methods to ensure all employees are aware of Postal policies and procedures on harassment.

Question: Can a grievance be filed citing a violation of this MOU?

Answer: No, but nothing in this MOU affects the rights of employees to file a grievance under Article 2.

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

3.1 To direct employees of the Employer in the performance of official duties;

3.2 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;

3.3 To maintain the efficiency of the operations entrusted to it;

3.4 To determine the methods, means, and personnel by which such operations are to be conducted;

3.5 To prescribe a uniform dress to be worn by designated employees; and

3.6 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 Mail Handler Assistant employees.)

The USPS's "exclusive rights" under this article are basically the same as its statutory rights under the Postal Reorganization Act of 1970, as set forth in 39 U.S.C. § 1001(e). While postal management has the basic power to "manage" the United States Postal Service, Article 3 rights are not absolute. Rather, management must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of intent and memoranda of understanding. 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.

Section 3.6 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."

On a related note, Article 30 (Section 30.2, Item B) provides local parties the opportunity during Local Implementation to discuss and formulate "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."

Question: Do the management rights stated in Article 3 permit management to disregard the other provisions of the National Agreement?

Answer: No. Depending upon the circumstances, management's rights may be limited by other provisions of the National Agreement.

ARTICLE 4
TECHNOLOGICAL AND MECHANIZATION CHANGES

Both parties recognize the need for improvement of mail service.

Section 4.1 Advance Notice

The Union at the national level will be informed as far in advance as practicable, but no less than 30 days in advance, of implementation 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.

Section 4.2 Committee

There shall be established at the national level a Joint Technological and Mechanization Changes Committee composed of an equal number of representatives of management and the union. The Committee shall meet semiannually, or as necessary, from the conceptual stage onward, to discuss any issues concerning proposed technological and mechanization changes which may affect jobs, including new or changed jobs, which affect the wages, hours, or working conditions of the bargaining unit. For example, the Postal Service will keep the Union advised concerning any research and development programs (e.g., study on robotics) which may have an effect on the bargaining unit.

In addition, the Committee shall be informed of any new jobs created by technological or mechanization changes. Where present employees are capable of being trained to perform the new or changed jobs, the Committee will discuss the training opportunities and programs which will be available. These discussions may include the availability of training opportunities for self-development beyond the new or changed jobs.

Section 4.3 Resolution of Differences

Upon receiving notice of the changes, an attempt shall be made at the national level 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.

Under Section 4.1, the Union at the National level will be informed as far in advance as practicable, but no less than 30 days in advance, of the

implementation of technological or mechanization changes which affect jobs in the area of wages, hours or working conditions. For major new mechanization or equipment that will be purchased or installed, the Union at the National level will be informed no less than 90 days in advance.

Section 4.2 establishes a National-level Joint Technological and Mechanization Changes Committee composed of an equal number of representatives of Management and the Union. The Committee shall meet semi-annually to discuss issues concerning proposed technological and mechanization changes, including any research and development programs, that may have an effect on the NPMHU bargaining unit. The Committee also will discuss available training opportunities and programs when current employees are capable of being trained for the new or changed jobs.

Section 4.3 provides that, upon notice of changes as outlined above, the parties at the National level shall attempt to resolve any questions about the impact of the proposed changes on affected employees. Any unresolved questions may be submitted by the Union to arbitration; any such arbitration will be given priority in scheduling.

The provisions of Sections 4.1, 4.2, and 4.3 are administered and enforced by the parties at the National level. These provisions are not properly the subject of local grievances.

Section 4.4 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 saved grade 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.

Unlike Sections 4.1, 4.2 and 4.3, the contract language found in Section 4.4 is enforceable at the local level. Section 4.4 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. On the job training for any new job created by technological or mechanization changes shall not exceed 60 days, although certain specialized technical jobs may require

additional, off-site training. During training, the employees will maintain their pay rate.

In addition, Section 4.4 provides that if an employee's job is eliminated due to technological or mechanization changes and if the employee cannot be placed in a job of equal grade, the employee shall receive saved grade until such time as employee fails to bid or apply for a position in employee's 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 9.7) which contains a general provision requiring the Postal Service to continue the current salary rate protection program for the duration of this agreement. This includes not only the "saved grade" provisions found in Section 4.4 and described in ELM Section 421.53, but also the "protected rate" provisions found in ELM Section 421.51 and the "saved rate" provisions found in ELM Section 421.52. In addition, employees who qualify for "saved grade" will receive "saved grade" for an indefinite period of time subject to the conditions contained in Section 4.4.

Section 4.5 Local Notice

The installation head or his/her designee shall notify, and upon request meet with, the appropriate local union official, as far in advance as reasonably practicable, concerning the local deployment of any new automated or mechanized equipment, whether locally purchased or nationally deployed, that will have a significant impact on mail handler duty assignments within the installation.

The language of Section 4.5 deals with new automated or mechanized equipment that is either locally purchased or nationally deployed and that will have a significant impact on duty assignments. It requires advance notice to the appropriate local union official of the deployment of such equipment. If requested, the installation head or designee will meet with the union to discuss the deployment. While the notice must be made as far in advance as "reasonably practicable," no set time frame has been established.

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 Mail Handler Assistant employees.)

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.

Examples of prohibited actions include:

- Giving employees cash awards that were not negotiated.
- Implementing “pro-active” discipline programs without negotiating them with the union.

Source: National Arbitration Award H1M-NA-C 99, Arbitrator N. Zumas, dated May 11, 1987.

Management actions are not considered to be unilateral when they are covered by the National Agreement or when they are an exercise of rights that the parties have reserved to management as provided in Article 3. For example, management may decide to discontinue an installation and the agreement of the Union is not necessary because that right has been reserved to management in Articles 3 and 12. On the other hand, the reassignment of those employees affected by that decision must be made in accordance with Article 12 and any other applicable provisions of the Agreement. The manner in which such reassignments are made could be subject to a challenge through the grievance procedure as a violation of Article 12 but not necessarily as a violation of Article 5.

Question: What is an example of actions not prohibited under Article 5?

Answer: Changes in mail distribution systems that could potentially result in excessing. The arbitrator found that, under the provisions of Article 3 and Article 12, management could proceed without further collective bargaining.

Source: National Arbitration Award AC-NAT-3052, Arbitrator S. Garrett, dated April 25, 1977.

Question: Can management change breaks?

Response: Issues involving breaks are determined by local policy. Whether management altered a past practice can only be determined by full development of the specific fact circumstances involved.

Source: Step 4 Grievance H1M-5D-C 21062, dated October 15, 1984.

In 2014, in his award concerning the Lead Clerk position, National Arbitrator Shyam Das wrote:

> In sum, the NPMHU has established that the Postal Service unilaterally changed the terms and conditions of employment for Mail Handlers when it assigned the Lead Clerk position which it had negotiated with the APWU to provide oversight, direction and support to Mail Handlers, work that in the absence of a supervisor previously had been performed by Mail Handler Group Leaders. The Postal Service is ordered to restore the status quo and to bargain with the NPMHU over these matters.

Source: National Arbitration Award Q06M-6Q-C 12288977, Arbitrator S. Das, dated November 5, 2014.

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.

Source: National Arbitration Award H1N-5G-C 14964, Arbitrator N. Bernstein, dated March 11, 1987.

ARTICLE 6
LAYOFF AND REDUCTION IN FORCE

Section 6.1 General Principles

A 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.

A1 It is the intent of this provision to provide security to each such employee during his or her work lifetime.

A2 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.

B 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 Section 6.1A1 above on completion of six years of continuous service and having worked in at least 20 pay periods during each of the six years.

C 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 Section 6.1B 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:

[See Memo, page 132]

Section 6.2 Coverage

A 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 Section 6.2C below.

B Employees Subject to Involuntary Layoff or Force Reduction

Except as provided in Sections 6.2A and 6.2C, 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."

C Non-Protected Employees Achieving Protected Status

C1 A non-protected employee achieves protected status upon completion of six years of continuous service in the 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:

C1a 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.

C1b Time spent on paid annual leave or sick leave, as provided for in Article 10 of the Agreement.

C1c Leave without pay for performing Union business as provided for in Article 24 of the Agreement.

C1d 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.

C2 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.

C3 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.

C4 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.

Section 6.3 Preconditions for Implementation of Layoff and Reduction in Force

A The Union shall be notified at its 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 the basis for its conclusion that legitimate business reasons require the excessing and possible separation of employees.

B 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.

C 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 at the time of the 90-day notice.

D 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, **minimize the hours of Mail Handler Assistants,** and **minimize** 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.

E 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 an 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.

Section 6.4 Layoff and Reduction in Force

A Definition

The term “layoff" as used herein refers to the separation of non-protected, non-preference eligible employees in the regular work force because of lack of work or other legitimate, nondisciplinary 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.

B Order of Layoff

If an excess of employees exists at an installation after satisfaction of the preconditions set forth in Section 6.3 above, the Employer may lay off employees within their respective seniority units in inverse order of seniority as defined in the Agreement.

C 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.

D 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.

E Reduction in Force

If an excess of employees exists at an installation after satisfaction of the preconditions set forth in Section 6.3 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 at least 30 days prior to the reduction. The Union 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.

Section 6.5 Recall Rights

A 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.

B An employee reassigned from a losing installation pursuant to Section 6.3E 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.

Section 6.6 Protective Benefits

A 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.

B 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.

Section 6.7 Union Representation Rights

A The interpretation and application of the provisions of this Article shall be grievable under Article 15. Any such grievance may be introduced at the Regional/Area (i.e., Step 3) level and shall be subject to priority arbitration.

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

C 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.

Section 6.8 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 by that employee of protected status.

Article 6 governs layoff and reduction in force. A "layoff" is 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. A "reduction in force" refers to the separation or reduction in the grade of a non-protected, veterans' preference eligible employee in the regular work force because of lack of work or other legitimate, non-disciplinary reasons.

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. His initial award established the basic right of USPS management to lay off employees. The second award set forth the details of the current Article 6.

Source: Interest Arbitration Awards, Arbitrator James J. Healy, dated September 15, 1978, and February 26, 1979.

Section 6.1 provides lifetime protection against layoff or reduction in force for employees who were in the regular work force (i.e., full-time regular, part-time regular, and part-time flexible employees) on September 15, 1978. Employees with lifetime protection against layoff or reduction in force 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 rehired after any break in service or who transfer from one office to another or one craft to another.

Employees who enter the regular work force (defined in Article 7 as full-time regular, part-time regular, and part-time flexible employees) on or after September 16, 1978 – whether by hire, transfer, demotion, reassignment, reinstatement, or re-employment – are subject to layoff or reduction in force until they achieve "protected" status under Section 6.2C.

Section 6.2C provides that employees who did not have lifetime protection as of September 15, 1978 achieve protected status upon completion of six (6) years of continuous service in the regular work force. To receive credit, such employees must work at least one (1) hour or receive a call-in guarantee pursuant to Article 8, Section (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.

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 provided by law, court leave, certain time spent in military service covered by 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;

2. Time spent on paid annual leave or sick leave;

3. Time spent on leave without pay (LWOP) for performing Union business as provided for in Article 24 of the Agreement, and

4. Temporary details outside of the regular work force in which the employee's position of record remains in the regular work force.

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

In 1972, a grievance was advanced to Step 4 by the American Postal Workers Union regarding the non-scheduling of some part-time flexible employees at San Francisco, CA beginning in December, 1971. No meeting was held at the national level, but a decision was made to accept the validity of the grievance. Management's decision as to disposition was as follows:

> "Though the contract does not specify a minimum amount of scheduled time for part-time flexible employees, in order to meet the intent of Article VI, these employees are to be scheduled for a least four (4) hours per pay period. Consequently, 239 employees will be given 4 hours pay for any period they did not work after December 30, 1971, and must be scheduled for a minimum of 4 hours each pay period in the future."

A copy of the above disposition was sent to all Regional Employee Relations Directors by cover letter dated February 14, 1972. They were instructed that should similar grievances arise in their region, the matter should be handled in this manner.

For clarification, the part-time flexible employees were paid four (4) hours for each pay period in which they were not scheduled to work because the San Francisco, CA Post Office has more than 200 man years of employment. In offices with less than 200 man years of employment, part-time flexible employees are entitled to two (2) hours each pay period. See Article 8 (Section 8.8).

In a 1974 policy letter , Brian J. Gillespie, Director, Office of Programs and Policies provided the following position to Emmet Andrews, President, APWU

concerning a guarantee of two (2) or four (4) hours pay for part-time flexible employees who were not scheduled to work any hours during a pay period:

> "The Postal Service, in keeping with the intent of Article VI of the National Agreement, has taken the position that part-time flexible employees in offices with 200 or more man years of employment are to be scheduled to work a minimum of four (4) hours each pay period. Part-time flexible employees in those offices with less than 200 man years of employment are to be scheduled to work a minimum of two (2) hours each pay period.
>
> In those instances where the employees in question were not scheduled for duty during a pay period, they would be entitled to receive two or four hours pay whichever is applicable."

Source: Letter, Brian J. Gillespie, dated December 23, 1974.

Section 6.2C3 provides that, upon return, unprotected employees who leave the Postal Service and are rehired more than 30 calendar days later begin a new service period for purposes of attaining six years continuous service in order to attain protected status. If the employee returns within 30 days, Section 6.2C1 applies.

Section 6.2C4 provides that, if an employee leaves the regular work force and returns within two years from a position within the Postal Service, the employee will receive credit towards the six years of continuous service for the previously completed full anniversary year(s). For example, if an employee had completed five (5) years and six (6) months pursuant to Section 6.2C1 and was promoted to a non-bargaining unit position effective March 9, 1998, but returned to the bargaining unit effective February 6, 1999, the employee would continue credit for the five anniversary years but would lose the six months. The employee's new anniversary date would become February 6, 1994.

Article 6 also 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 at the regional level, 60 days notification of layoff to the affected employee, and posting of any available vacancies no less than 20 days prior to layoff. Section 6.7A provides that grievances regarding the interpretation or application of this article may be filed at Step 3 and shall be subject to priority arbitration.

It should be noted that "preference eligible" employees 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. Section 6.7C provides that preference eligible employees who exercise legal appeal rights under the Veterans' Preference Act thereby lose access to the grievance procedure beyond Step 3. Also, see Article 16, (Section 16.9).

MEMORANDUM OF UNDERSTANDING

ARTICLE 6 - LAYOFF PROTECTION

Each employee who is employed in the regular work force as of **September 20, 2019**, and who has not acquired the protection provided under Article 6 shall be protected henceforth against any involuntary layoff or force reduction during the term of this Agreement. It is the intent of this Memorandum of Understanding to provide job security to each such employee during the term of this Agreement; however, in the event Congress repeals or significantly relaxes the Private Express Statutes this Memorandum shall expire upon the enactment of such legislation. In addition, nothing in this Memorandum of Understanding shall diminish the rights of any bargaining-unit employees under Article 6.

Since this Memorandum of Understanding is being entered into on a non-precedential basis, it shall terminate for all purposes at midnight **September 20, 2022,** and may not be cited or used in any subsequent dispute resolution proceedings.

The Memorandum of Understanding, Article 6-Layoff Protection, which is reprinted above, provides layoff protection for the duration of the agreement to all employees in the regular workforce as of **September 20, 2019** who had not otherwise acquired the protection under Article 6. The Memorandum terminates for all purposes at midnight **September 20, 2022**, or at an earlier date in the event Congress repeals or significantly relaxes the Private Express Statutes. Protection otherwise provided under Article 6 is not affected by the termination of this Memorandum.

In a National Arbitration Award issued on August 1, 2012, Arbitrator S. Goldberg concluded that the Layoff Protection MOU negotiated as part of the 2010 National Agreement between the Postal Service and the American Postal Workers Union does not continue to apply to an employee who is transferred out of the APWU bargaining unit into another bargaining unit, such as the NPMHU bargaining unit. When employees leave a bargaining unit for another, they generally are covered by the contract in effect for the latter unit, not the former.

Source: National Arbitration Award Q06C-4Q-C 09250752, Arbitrator S. Goldberg, dated August 1, 2012**.**

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 7.1 Definition and Use

A Regular Work Force

The regular work force shall be comprised of two categories of employees which are as follows:

A1 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.

A2 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.

Section 7.1A establishes the employee categories within the mail handler craft by identifying and defining employees in the regular work force. The two categories contained in this definition are full-time and part-time; part-time is further divided into part-time regular and part-time flexible.

Full-time employees are guaranteed a regular schedule of five (5) eight (8) hour days in each service week. Service week is defined in Article 8 (Section 8.2A) as a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.

Part-time regular employees are assigned to regular schedules of less than forty (40) hours in a service week.

Part-time flexible employees are available to work flexible hours as assigned by management.

B Mail Handler Assistant Employees (MHAs)

1. The Mail Handler Assistant (MHA) employee work force shall be comprised of noncareer bargaining unit employees.

2. During the course of a service week, in postal installations with less than 200 man years of employment, the Employer will make every effort to ensure that qualified and available part-time flexible employees, if there are any in the installation, are utilized at the straight-time rate prior to assigning such work to MHAs, provided that the reporting guarantee for MHAs is met. This sentence also shall apply to larger installations during the limited period in which they continue to employ part-time flexible employees.

3. The total number of MHAs within **an installation** will not exceed 24.5% of the total number of career mail handlers in **the** installation**, except during the two (2) accounting periods per fiscal year identified as set forth below. The Employer shall notify the Union, at the national level and at the appropriate installation, of which two (2) accounting periods in each fiscal year during which it may exceed the 24.5% limitation in that installation; such notice will be provided at least six (6) months in advance of the beginning date of the affected accounting period(s).** The Employer will provide the Union at the National level with an accounting period report listing the number of MHAs at each installation and in each district. This report will be provided within fourteen (14) days of the close of the accounting period. In the event that the Employer exceeds the **24.5%** limitation by installation, a remedy, if any, will be determined by the individual facts and on a case-by-case basis.

4. Any non-NPMHU bargaining unit employee on light or limited duty in the mail handler craft or on a rehabilitation assignment in the mail handler craft who does not hold a bid assignment will not be counted as a career employee for the purpose of determining the number of MHAs who may be employed in the mail handler craft.

5. MHAs shall be hired from an appropriate register pursuant to such procedures as the Employer may establish. They will be hired for terms of 360 calendar days per appointment. Such employees have no daily or weekly work hour guarantees. MHAs will have a break in service of 5 days if reappointed. In addition, any MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay. MHAs at smaller installations will be guaranteed two (2) hours work or pay.

(The preceding Section, Article 7.1B, shall apply to Mail Handler Assistant employees.)

[See Memo, pages 132-145]

PART-TIME FLEXIBLE SCHEDULING PRIORITY:

Sections 7.1B further obligates management – in postal installations with less than 200 man years of employment – to provide part-time flexibles working at the straight-time rate with a priority in scheduling over MHAs, provided that the reporting guarantees for MHAs are met. This priority applies on a service week rather than daily basis and is limited to part-time flexibles who are qualified and available for the work in question. The forty (40) straight-time hours during the service week can be comprised of work, leave or a combination of work and leave. Thus, management does not necessarily violate the contract when, for example, it utilizes an MHA on a Monday when part-time flexibles are not scheduled. A violation would occur when that assignment prevents a part-time flexible employee who could have performed the work on Monday from attaining forty (40) straight-time hours during that service week.

SAPMG James V.P. Conway outlined the intent of this language:

> "This provision requires that the employer make every effort to ensure that qualified and available part-time employees with flexible schedules are given priority in work assignments over casual employees. Exceptions to this priority could occur, for example, (a) if both the part-time flexible and the casual employee are needed at the same time, (b) where the utilization of the part-time flexible required overtime on any given day or where it is projected that the part-time flexible will otherwise be scheduled for 40 hours during the service week, or (c) if the part-time flexible employee is not qualified or immediately available when the work is needed to be performed."

Source: Memorandum, SAPMG James V.P. Conway, dated June 22, 1976.

Arbitrator Gamser ruled that in the event those responsible for constructing the schedule for the service week consistently underestimate the work which will remain at the end of the week for part-time flexibles and do so with some regularity, so that the casuals are employed at the beginning or the middle of the service week and the part-time flexibles do not obtain a forty (40) hour week, this practice would constitute a violation of the contractual requirements. Regarding implementation of the award language, Arbitrator Gamser stated that the part-time flexibles had no right to consecutive days off, avoidance of split shifts or more than a reasonable rest period between shifts.

Source: National Arbitration Award AC-C 13148, Arbitrator H. Gamser, dated December 20, 1979.

MAIL HANDLER ASSISTANTS – MHAs

MHAs are non-career bargaining unit employees that are hired for terms of 360 calendar days. They are assigned DA Code 82-0.

Question: May an MHA be appointed to a term less than 360 days?

Answer: An MHA cannot be appointed to a term less than 360 days but MHAs may be separated during their term of appointment for lack of work at any time or in the case of removal for cause.

If reappointed after the 360-day term, MHAs will have a break in service of 5 days.

Question: Does the five-day break between MHA 360-day appointments refer to five calendar days or work days?

Answer: Five calendar days.

Question: Will MHAs be hired as Level 5 MHAs?

Answer: No.

NUMBER OF MHAs

The total number of MHAs that are employed within an installation cannot exceed **24.5%** of the total number of career mail handlers in that **installation. Installations are defined, for this purpose, "to include all facilities for which a mail handler career employee is entitled to bid, as provided under Article 12, Section .3C." See the Letter of Intent, USPS Installations, reprinted at the end of this Article.**

When calculating the total number of career employees in an installation for purposes of determining the numbers of MHAs that may be employed, MHAs are not counted in determining this number as they are non-career employees. In addition, the following are not included: Any non-NPMHU bargaining unit employee on a light or limited duty assignment in the mail handler craft or on a rehabilitation assignment in the mail handler craft who does not hold a bid assignment.

Additionally, management is permitted to exceed the percentage of **24.5%** in each installation in two (2) accounting periods in each fiscal year, so long as notice is provided to the union, at both the national and local levels, at least six

(6) months in advance of the beginning date of the affected accounting period(s). The parties have agreed that the local level notice will be made to the Local President having jurisdiction over the installation, who will then provide that information to the appropriate Branch President or other local Union official.

On the issue of exceeding MHA caps, the National parties have agreed that the percentage of MHA employees allowed within each installation is determined at the National level. Therefore, any agreements reached by the local parties to exceed MHA caps must have National level concurrence by both parties prior to implementation of said agreement. See Letter of Intent Re Mail Handler Assistants in Excess of Percentage Caps, page 133 of the National Agreement, discussed below.

REPORTS

The Union at the National level will be provided an accounting period report listing the number of mail handlers and MHAs at each installation. This report will be provided within fourteen days of the close of each accounting period.

The parties agree that the information that can be used by either party to prove compliance with or violation of Article 7.1B of the National Agreement is not limited to **these** negotiated reports provided the information is relevant and consistent with the provisions of Articles 17 and 31, the National Labor Relations Act, and any other applicable laws and regulations. Disputes about the relevance of information will be resolved in the grievance procedure, before the NLRB, or in any other appropriate forum.

Source: Step 4 Grievance B90M-1B-C 94052048, dated August 8, 2007.

Question: In determining MHA caps, is the number of MHAs "rounded" for percentage purposes?

Answer: No, under Article 7.1B3 of the 2019 National Agreement, the number of MHAs shall not exceed **24.5%** of the total number of career mail handlers in any installation.

Question: How will the installation cap on MHAs be enforced?

Answer: If the MHA cap is violated within an installation, the local union files a grievance within fourteen (14) days of the national union's receipt of the accounting period reports from the Postal Service.

LETTER OF INTENT

TRANSITION PERIOD

The **2019** National Agreement makes structural changes to the non-bargaining unit workforce and, therefore, creates a need for a transition period to implement the changes. The parties agree to a transition period not to exceed 120 days from the date of the union's ratification of the Agreement.

During the transition period, the number of casuals employed at any installation may be maintained at current levels or at **3.0%,** whichever is lower. An exception will be made for installations that have local agreements allowing temporary use of additional casuals; such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to **3.0**%. Any new non-career employees hired during the transition period will be MHAs. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% of the total number of career mail handler employees in a district and**26.5**% in any installation except as provided for in Article 7, Section 1B.

Unless otherwise noted above, all other contractual language in the 2016 National Agreement relating to casuals will continue to apply during the 120-day transition period. During the transition period, the parties will review and remove all contractual language relating to casuals from the National Agreement.

After 120 days from the date of the union's ratification of the Agreement, the language of Article 7, Section **1B3** concerning MHA hiring shall be in full force and effect.

Question: The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

Answer: The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casuals on the rolls of the mail handler craft is July 31, 2020.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Question: How will this transition period work?

Answer: During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements shall remain enforceable,

provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired doing this transition period will be an MHA. At no time during this transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Section 7.2 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:

A1 All available work within each separate craft by tour has been combined.

A2 Work of different crafts in the same wage level by tour has been combined.

B 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.

Section 7.2A recognizes that, normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and to provide necessary flexibility, Section 7.2A also provides that management may, combine duties from different crafts, occupational groups or levels to establish full-time duty assignments after it has satisfied, in sequential order as outlined hereunder, the conditions set forth in A1 and A2.

Section 7.2A1 requires, first, that all available work within each craft by tour be combined prior to combining work of different crafts. After that has been accomplished, Section 7.2A2 provides that management may combine work of different crafts in the same wage level by tour. After both of these prerequisites are satisfied, management may establish full-time duty assignments by combining work of different crafts, occupational groups and levels.

A combined full-time duty assignment created in accordance with the provisions of this section cannot include rural letter carrier duties. Only duties normally performed by bargaining unit employees covered by the NPMHU, APWU and NALC National Agreements may be combined. See further the Memorandum of Understanding, Cross Craft, reprinted at the end of this article.

Section 7.2B requires that advance notice of the reasons for combining full-time assignments within different crafts must be given to the affected unions at the local level.

C 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.

D During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

[See Memo, page 145]

Section 7.2C and D provide that management may assign employees across craft lines when certain conditions are met. The Memorandum of Understanding, Cross Craft, applies to these assignments as well.

Section 7.2C provides for assignment of an employee to work in another craft at the same wage level due to insufficient work in his/her own craft. This may affect a full-time, part-time regular or part-time flexible for whom there is “insufficient work” on a particular day to attain their respective work hour guarantees, as provided in Article 8 (Sections 8.1 and 8.8).

Section 7.2D permits assignment of an employee to perform work in the same wage level in another craft or occupational group during conditions of an exceptionally heavy workload in another craft or occupational group and a light workload in the employee’s own craft or occupational group.

In those circumstances where cross craft assignments are permitted under Article 7.2 C & D, employees from other crafts may not be assigned to work in lower wage levels in the Mail Handler Craft.

Source: National Pre Arbitration Settlement, Q84M-4Q-C 77002202, dated September 4, 2008.

Arbitrator Bloch ruled that management may not temporarily assign employees across crafts except in the restrictive circumstances outlined in Section 7.2C and D. He interpreted the provisions as follows:

> "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 needs 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 Section 7.2[C and D]. 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 face of pressing circumstances . . ."

Source: National Arbitration Award A8-W-0656, Arbitrator R. Bloch, dated March 10, 1982.

As a general proposition, in those circumstances under Section 7.2C and D in which a clear contractual violation is evidenced by the fact circumstances, a "make whole" remedy involving the payment at the appropriate rate to the available and qualified employee who had a contractual right to the work would be appropriate. Arbitrator Bloch awarded payment at the overtime rate based on the fact circumstances in the above case.

Question: Does withholding under Article 12 automatically provide the required justification to cross crafts or occupational groups under the terms of Section 7.2?

Answer: No. Withholding pursuant to Article 12 of the National Agreement does not automatically create a light or heavy workload in work assignments or a craft; nor does it provide license to indiscriminately cross crafts merely to maximize efficient personnel usage. In accordance with Section 7.2, it must be shown that there was "insufficient work" on a given occasion or, alternatively, that work was "exceptionally heavy" in one occupational group and light in another.

Source: Memorandum, SAPMG S. Cagnoli, dated December 4, 1991.

Question: May management work employees across craft lines without restriction in smaller offices, such as those with fewer than 100 employees?

Answer: No. The restrictions on management's right to work employees across craft lines found in Section 7.2 apply regardless of the size of the office.

Question: Does management's desire not to pay overtime constitute an acceptable basis for crossing crafts under Sections 7.2C or D?

Answer: No. The desire to avoid overtime is not, by itself, a contractually sound reason to cross crafts.

Source: National Arbitration Award A8-W-0656, Arbitrator R. Bloch, dated March 10, 1982.

Section 7.3 Employee Complements

There will be no Part-Time Flexible (PTF) employees working in the mail handler craft in installations which have 200 or more man years of employment.

The number of part-time regular mail handlers who may be employed in any period in a particular installation shall not exceed 6 percent of the total number of career employees in that installation covered by this Agreement.

In smaller installations with part-time flexible employees, 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. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week over a six-month period will demonstrate the need for converting the assignment to a full-time position.

[See Memo, page 146]

Whether or not an installation is classified as a 200 man year office is determined at the beginning of each contract term. That list of installations does not change during the term of that Agreement regardless of any increase or decrease in employee complement. The 200 man year threshold is determined by counting all of the crafts which bargained jointly in 1978; i.e., mail handler, clerk, motor vehicle, maintenance, and letter carrier.

Question: There will be no PTF Mail Handler employees in 200 or more man-year offices. What date will be used to determine the 200 man-year office? Will the designation of the office remain the same size office during the life of the National Agreement?

Answer: Normally, September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

The report listing all 200-man year offices under the current National Agreement is included in the CIM Resource Manual.

Question: How was the number of man years in an office calculated for purposes of this provision?

Answer: The total number of paid hours accumulated by career employees in an office during the 26 pay periods immediately preceding the term of the current agreement is divided by 2080 to obtain the number of man years. Note that the hours of any transitional employees in that office are excluded from the calculation.

Part-time regulars may be employed up to six percent (6%) of the total number of mail handler career employees in the installation. Scheduling of part-time regulars is covered in the Memorandum of Understanding, Part-time Regulars, reprinted at the end of this Article.

As outlined below, Section 7.3 contains additional provisions, applicable to smaller installations, which provide for the creation of full-time positions.

Section 7.3 also provides that “the Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work week schedules at all postal installations.”

Section 7.3 further provides that working a part-time flexible employee eight (8) hours within ten (10), on the same (5) days each week over a six-month period demonstrates the need to convert the assignment to a full-time position.

Time spent on approved annual leave does not constitute an interruption of the six-month period, except where the annual leave is used solely for purposes of rounding out the workweek when the employee otherwise would not have worked.

Source: Step 4 Grievance H7N-2A-C 2275, dated April 13, 1989.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL POSTAL MAIL HANDLERS UNION

Re: Mail Handler Assistant Employees

The following general principles concerning Mail Handler Assistant Employees (MHAs) shall apply:

1. General Principles

a. The MHA work force is comprised of noncareer, mail handler bargaining unit employees.

b. MHAs shall be hired for terms of 360 calendar days and will have a break in service of 5 days if reappointed.

c. Leave provisions for MHAs are included in Attachment A to this MOU**.**

d. For MHA percentage use allowances, see Article 7.1**B.**

e. The Postal Service will provide a report every four week reporting period with information needed to monitor compliance with the provisions above, i.e., the total number of career bargaining unit employees and MHAs in the mail handler craft by installation.

f. Effective November 23, 2019, the hourly rates for MHAs shall be as follows:

Hourly Rate: Level 4 at $16.55 and Level 5 at $17.43

Adjustments to these hourly rates shall be in accordance with Article

9.7. Should it be necessary for recruitment or retention of MHAs, the Postal Service may pay higher hourly rates, with the concurrence of the Union.

g. When the Postal Service hires new mail handler full-time career employees, MHAs within the installation will be converted to full-time regular career status to fill such vacancies based on their relative standing in the installation, which is determined by their original MHA appointment date in that **Effective with the second full pay period after bargaining unit ratification of the 2019 National Agreement and solely for the purposes of relative standing, all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation.** An MHA who does not accept the career opportunity will not lose his/her relative standing for future career opportunities.

2. Contract Provisions

Only the following articles and portions of articles of the National Agreement apply to MHAs as outlined below:

Article 1

Article 2

Article 3

Article 5

Article 7.1**B**

Article 8

HOURS OF WORK

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.

Section 3. Exceptions

* * * * *

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

Section 4. Overtime Work

* * * * *

G. Overtime Work for MHAs

MHAs shall be paid overtime for work performed in excess of **eight (8) hours on duty in any one service day or** forty (40) work hours in any one service week. Overtime pay for MHAs is to be paid at the rate of one and one-half (1-1/2) times the basic hourly straight time rate.

When an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing a MHA in excess of eight (8) work hours in a service day or forty (40) hours in a service week, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.

Section 7. Night Shift Differential

For time worked between the hours of 6:00 p.m. and 6:00 a.m., MHAs shall be paid additional compensation at the applicable flat dollar amount at each pay grade and step in accordance with the attached Table Four.

Section 8. Guarantees

D. Any MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay. MHAs at smaller installations will be guaranteed two (2) hours work or pay.

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.

Article 9
SALARIES AND WAGES

Section 7. Mail Handler Assistant Employees

In addition to the general increases provided in Article 9.1, MHAs will receive an increase of 1.0% annually**,** for a total of **2.1%** effective **November 23, 2019, 2.0%** effective **November 21, 2020, and 2.0%** effective **November 20, 2021.**

All percentage increases are applied to the wage rates in effect on **September 20, 2019.**

Article 10
LEAVE

Section 2. Leave Regulations

A. 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, other than MHAs, shall remain in effect for the life of this Agreement.

B. Career employees will be given preference over noncareer employees when scheduling annual leave. This preference will take into consideration that scheduling is done on a tour-by-tour basis and that employee skills are a determining factor in this decision.

C. Article 30 of the National Agreement and Local Memoranda of Understanding provisions do not apply to MHAs, except as specifically referenced in the **2019** National Agreement and as follows: During the local implementation period, the parties may agree to include provisions in the local memoranda of understanding to permit MHAs to apply for annual leave during choice vacation periods, as defined in Article 10 of the National Agreement. Granting leave under such provisions must be contingent upon the MHA having a leave balance of at least forty (40) hours.

Article 11
HOLIDAYS

* * * * *

Section 1. Holidays Observed

The following six (6) days shall be considered holidays for MHAs:

New Year's Day
Memorial Day

Independence Day
Labor Day
Thanksgiving Day
Christmas Day

* * * * *

Section 3. Payment

C. The number of hours of holiday leave pay for MHAs will be based on the following:

- 200 Man Year offices – 8 hours
- POSTPlan offices – 4 hours
- All other offices – 6 hours

MHAs who work on a holiday may, at their option, elect to have their annual leave balance credited with 6 or 8 hours (as applicable).

* * * * *

Section 6. Holiday Schedule

D. Mail Handler Assistant Employees

MHAs will be scheduled for work on a holiday or designated holiday after all full-time or part-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.

Article 14

Article 15

Article 16, to the extent specified below.

Article 17, Sections 2, 3, 4, 5, and 6

Article 18

Article 19
HANDBOOKS AND MANUALS

* * * * *

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 MHAs only to the extent consistent with other rights and characteristics of MHAs provided for in this Agreement. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to MHAs pursuant to the same standards and procedures found in Article 19 of this Agreement.

Article 20

Article 22

Article 23

Article 24

Article 27

Article 28

Article 31

Article 32

Article 34

Article 35

Article 36

Article 37.4

Article 39

Only the following Memoranda of Understanding from the **2019** National Agreement shall apply to MHAs:

Leave Sharing

LWOP In Lieu of SL/AL

Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations

Bereavement Leave

Interest on Back Pay

Processing of Post-Separation and Post-Removal Grievances

MHA Separations and Reappointments

One-Time MHA Conversion

Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler

Potential for Mail Handler Assistant PTF Opportunities

Filling of Residual Vacancies

PTFs in 200 Man Year Facilities Subject to Excessing

Purge of Warning Letters

Wounded Warrior Leave

Clarification of Regulations for National Day of Observance

Workplace Free of Harassment

3. Other Provisions

A. Article 15

1. The parties recognize that MHAs will have access to the grievance procedure for those provisions which the Board Award applies to MHAs.

2. Nothing herein will be construed as a waiver of the employer's obligation under the National Labor Relations Act. MHAs will not be discharged for exercising their rights under the grievance-arbitration procedure.

3. The separation of MHAs upon completion of their 360-day term and the decision to not reappoint MHAs to a new term are not grievable, except where it is alleged that the decision to not reappoint is pretextual. MHAs may be separated during their term of appointment for lack of work at any time. Such

separation is not grievable except where it is alleged that the separation is pretextual. Separations for lack of work shall be by inverse relative standing in the installation. MHAs separated for lack of work before the end of their term will be given preference for reappointment ahead of other MHAs with less relative seniority and ahead of other applicants who have not served as MHAs, provided that the need for hiring arises within twelve (12) months of their separation.

MHAs may be disciplined or removed within the term of their appointment for just cause and any such discipline or removal will be subject to the grievance arbitration procedure, provided that within the immediately preceding six months, the employee has completed ninety (90) work days, or has been employed for 120 calendar days (whichever comes first) of their initial appointment.

In the case of removal for cause within the term of an appointment, a MHA 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.

4. Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.

B. Article 25, Higher Level Pay

In the event a MHA is temporarily assigned to a higher level position, such employee will be paid at the higher level only for the time actually spent on such job. This language should not be construed to encourage the Postal Service to temporarily assign such employees to higher level positions. When the opportunity exists for higher level assignment, the principle of preference for career employees over MHAs should be utilized.

C. Health Insurance

After an initial appointment for a 360-day term and upon reappointment to another 360-day term, any eligible non-career MHA who wants to pay health premiums to participate in the Federal Employees Health (FEHB) Program on a pre-tax basis will be required to make an election to do so in accordance with applicable procedures. The total cost of health insurance is the responsibility of the non-career MHA except as provided below.

Beginning in Plan Year 2014, the Postal Service will make a bi-weekly contribution to the total premium for any MHA who wishes to participate in the USPS Non-career Health Care Plan (USPS Plan) equal to the greater of (a) $125, or (b) the minimum required by the Patient Protection and Affordable Care Act, and applicable regulations, for self-only. **The Postal Service will make a bi-weekly contribution equal to 65% of the total premium for any MHA who wishes to participate in the USPS Plan for either self plus one of family coverage during the MHA's initial year of non-career employment. After an MHA's first year of employment, the Postal Service will make a bi-weekly contribution equal to 75% of the total premium for either self plus one or family coverage.** Any MHA employee wishing to make their health care contribution on a pre-tax basis will be required to make an election to do so in accordance with applicable procedures. All MHAs will be eligible for the USPS Plan within a reasonable period from the date of hire and entry into a pay status, consistent with the requirements established under the Patient Protection and Affordable Care Act.

The Postal Service shall continue to provide the USPS Plan with self-only, self plus one, and family options for the duration of this Agreement.

If an eligible noncareer MHA elects to participate in the FEHB Program after an initial appointment for a 360-day term and upon reappointment to another 360-term, the Postal Service will make a contribution toward the total premium for any eligible MHA who selects the Mail Handler Benefit Plan (MHBP) Value Plan or MHBP Consumer Option. For self-only enrollment, this contribution shall be equal to, but no greater than, the dollar amount of the Postal Service's contribution toward self-only coverage for MHAs under the USPS Plan. For self plus one or family coverage, the contribution shall be equal to, but no greater than, the dollar value of 75% of the total premium for self plus one or family coverage under the USPS Plan.

D. MHA Career Opportunity

When the Postal Service determines in accordance with contractual provisions that it has needs to fill vacancies with new career employees, available and qualified MHAs will be converted to fill such vacancies based on their relative standing in the installation, which is determined by their initial MHA appointment date in that installation. **Effective with the second full pay period after bargaining-unit ratification of the 2019 National Agreement and solely for purposes of relative standing, all newly hired MHAs shall be deemed to have an initial MHA appointment on a Saturday, at the start of the pay period during which they began work in the installation**.

E. Retirement Savings Plan

The parties will explore the steps necessary for the establishment of 401(k)-type retirement savings plans and/or payroll allotments for Individual Retirement Accounts for MHAs. Alternatively, if the NPMHU establishes a 401(k) retirement savings plan for MHAs, the Postal Service agrees to implement the necessary steps for payroll deductions for this plan. The Postal Service will not be required to make any matching contributions as part of such plans.

ATTACHMENT A
MAIL HANDLER ASSISTANT EMPLOYEE (MHA) ANNUAL LEAVE PROVISIONS

I. GENERAL

A. Purpose. Annual leave is provided to MHAs for rest, recreation, emergency purposes, and illness or injury.

1. Accrual of Annual Leave. MHAs 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 MHA may receive a lump-sum payment for accumulated annual leave subject to the following condition:

B. A MHA 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 MHAs 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 MHA 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, MHAs 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. MHA Responsibilities. MHAs are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, MHAs 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 MHA. If a supervisor does not approve an application 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.

An MHA may request annual leave for a minimum of one hour and up to the number of hours the MHA is scheduled to work, but no more than eight hours in a service day or 40 hours in a service week.

Source: Letter to Area Managers, from Douglas A. Tulino, Vice President, Labor Relations, USPS, dated November 25, 2019.

Question: Are MHAs assigned a Postal Service Employee Identification Number (EIN) and Personal Identification Number (PIN)?

Answer: Yes.

Question: Do MHAs have access to LiteBlue?

Answer: Yes.

Question: What is the occupational code and designation activity code for MHAs?

Answer: The occupational code is 2315-0085 and designation activity code is 82-0.

Question: May MHAs hold dual appointments?

Answer: No.

Question: Will reinstatement-eligible former career employees and veterans eligible for direct career appointment under Veterans' Recruitment Appointment or because of their 30 percent or higher disability status be eligible for noncompetitive consideration for MHA employment?

Answer: Yes.

Question: If an MHA is reappointed to a new term, do they have to execute a new Standard Form 1187 to remain a member of the Union?

Answer: No. The union enrollment is active and appropriate withholding occurs if an MHA separates and returns to the same non-career MHA job within 180 days of the separation. The enrollment is also active if the MHA is promoted to a career mail handler bargaining unit position.

Question: Can MHAs access eReassign and bid on assignments?

Answer: No, only career bargaining employees can access eReassign for voluntary reassignment opportunities.

Question: What is the term of employment for MHAs?

Answer: MHAs will be hired for terms of 360 calendar days per appointment but may be separated during their term of appointment for lack of work at any time or in the case of removal for cause.

Question: Does the five day break between MHA 360 day appointments refer to five calendar or work days?

Answer: Five calendar days.

Question: May an MHA be appointed to a term of less than 360 days?

Answer: An MHA cannot be appointed to a term of less than 360 days but MHAs may be separated during their term of appointment for lack of work at any time or in the case of removal for cause.

Question: Can casuals be converted to MHAs?

Answer: No, not automatically. Former casuals **are** eligible to take the appropriate examination and, if reached during the competitive hiring process, are eligible to be hired as MHAs.

Source: 2019 – 2022 National Agreement Questions and Answers.

Question: Will MHAs be hired as Level 5 MHAs?

Answer: No.

MEMORANDUM OF UNDERSTANDING

MAIL HANDLER ASSISTANT (MHA) SEPARATIONS AND REAPPOINTMENTS

The parties recognize the Employer has historically provided qualified and available career employees with work at the straight time rate prior to assigning such work to non-career employees. MHAs, although non-career, have a career path. MHAs are separated for five days between appointments.

Separations of MHAs for lack of work before the end of their term shall be by inverse relative standing on the appropriate MHA roll and such separations are not grievable except where the separations are alleged to be pretextual. If an MHA is being considered for non-reappointment solely due to lack of work and one or more MHAs with lower relative standing are employed at the site, then the MHA with the lowest relative standing is to be separated and the MHA being considered for non-reappointment is to be reappointed.

MHAs separated for lack of work before the end of their term will be given reappointment ahead of other MHAs with less relative standing on the MHA roll provided the need for hiring arises within (1) year of the separation. MHAs who meet these conditions, will be offered the opportunity for reappointment in inverse order of their separation.

This MOU **governs** the separation and reappointment of MHAs by making clear that: (1) when there is a lack of work, casuals at the site will be separated, to the extent possible, prior to separating any MHAs and that such separations are not grievable except where the separations are alleged to be pretextual; (2) if an MHA is being considered for non-reappointment solely due to lack of work and one or more MHAs with lower relative standing are employed at the site, then the

MHA with the lowest relative standing is to be separated and the MHA being considered for non-reappointment is to be reappointed; and (3) if MHAs are separated for lack of work before the end of their term, such separations must be by inverse relative standing and separated MHAs will be given preference (for up to 12 months) for reappointment ahead of other MHAs with less relative standing or in inverse order of their separation.

MEMORANDUM OF UNDERSTANDING

ONE-TIME MHA CONVERSION

The U.S. Postal Service and the National Postal Mail Handlers Union, A Division of the Laborers' International Union of North America, AFL-CIO, agree to the following:

- All Mail Handler Assistants (MHAs) in 200 Man Year offices with a relative standing date prior to 2.5 years from the ratification date of the **2019** National Agreement shall be converted to career status.
- The conversion to career status will occur as soon as administratively practicable, but no later than sixty (60) days from the ratification date of the **2019** National Agreement.
- MHAs converted to career status under this **memorandum** will not be required to serve a probationary period provided they have successfully completed one 360-day term as a Mail Handler Assistant.

All MHAs in 200 or more man year installations who have over 2.5 years of service as of the ratification date of the **2019** National Agreement will be converted to career status as full-time employees. These conversions will be completed as soon as administratively practicable, but no later than 60 days after the ratification date for the **2019** National Agreement **(i.e., April 7, 2020).**

Question: Can an MHA decline a conversion to career status?

Answer: Yes. An MHA who does not accept a conversion to career status will not lose his/her relative standing for future career opportunities.

LETTER OF INTENT

USPS INSTALLATIONS

The parties agree that the Employer retains the right to add installations, consolidate installations, and discontinue installations in accordance with Article 12, and the reports will be adjusted to reflect such changes as soon as reasonably practicable thereafter. An installation for the purposes of this paragraph will be defined to include all facilities for which a mail handler career employee is entitled to bid, as provided under Article 12.3C.

Installations are defined to include all facilities for which a mail handler career employee is entitled to bid. Reports are not required for installations that do not have career mail handlers **or MHAs** on the rolls.

LETTER OF INTENT

MAIL HANDLER ASSISTANTS IN EXCESS OF PERCENTAGE CAPS

The parties acknowledge that there may be situations of limited duration that occur during the course of the year when the Employer needs to employ MHAs in excess of the cap for the total number of MHAs within a District or the cap for the total number of MHAs in an installation.

Any local or Area/Regional agreements to allow the employment of MHAs in excess of the percentage cap requires concurrence by the parties at the National level.

This Letter of Intent requires that any agreements reached locally or regionally to exceed the MHA cap otherwise in effect must be reviewed and approved by both parties at the National level.

MEMORANDUM OF UNDERSTANDING

CROSS CRAFT

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.

This Memorandum of Understanding provides that the crossing of craft lines applies only to those crafts which jointly negotiated the 1978 National Agreement; i.e., mail handler, clerk, motor vehicle, maintenance and letter carrier. Cross craft assignments may be made between those crafts in keeping with the provisions of Section 7.2. Rural carriers are not included.

John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue NW Suite 500
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiation of the 2006 National Agreement, we agreed to the following:

Article 7.1: Changes to Management Operating Data System (MODS) designations will not be relied upon to diminish management's requirements to provide information under Section 7.1B and the Letter of Intent re: PSDS-Operation Numbers Accounting Period Report or to affect changes in existing jurisdictional determinations.

Article 7.2 C, D: For purposes of Section 7.2C and D only, the parties agree that management may assign work between wage levels within the Mail Handler craft. When such action is taken, management will comply with the provisions of Article 25.

Article 7.2 A, D: The term "occupational group" does not apply when making assignments within the mail handler craft under the terms of this contract language.

The parties further agreed that these understandings would be incorporated into the CIM subsequent to negotiations.

Valerie E. Martin
Manager, Contract Administration NPMHU
U.S. Postal Service

The paragraph relating to Section 7.1 confirms that changes to MODS numbers will not be relied upon to diminish management's requirements to provide information under Section 7.1B and the cited Letter of Intent or to affect changes in existing jurisdictional determinations. The paragraph relating to Section 7.2 C and D confirms that management may assign work between wage levels when making assignments within the mail handler craft so long as the terms of Article 25 are complied with. The paragraph relating to Section 7.2 A and D confirms that the term "occupational group" does not apply when making assignments within the mail handler craft under those provisions.

Question: Is there a prohibition on cross wage level assignments (either from Level 4 to Level 5 or from Level 5 to Level 4) within the mail handler craft?

Answer: No. Cross wage level assignments within the mail handler craft are not prohibited.

Source: National Arbitration Award, C90C-1C-C 93018526, Arbitrator S. Das, dated September 7, 2004.

MEMORANDUM OF UNDERSTANDING

PART-TIME REGULARS

The parties hereby agree that the United States Postal Service will not hire or assign part-time regular Mail Handlers in lieu of or to the detriment of full-time regular or part-time flexible Mail Handlers. As a result of this agreement, it is not the intention of the United States Postal Service for their managers to modify their current scheduling policies and practices concerning bargaining unit employees, especially part-time flexible Mail Handlers. Part-time regular Mail Handlers are to be hired and given work assignments based on operational needs, such as meeting fluctuations in mail volume and mail flow, service delivery standards, and other operational deadlines, to accomplish work requirements.

It is understood that this agreement in no way requires the United States Postal Service to guarantee a specific or minimum number of work hours in a service week to part-time flexible Mail Handlers. In addition, this agreement does not require the United States Postal Service to guarantee a specific or minimum number of part-time flexible or full-time regular Mail Handler positions in particular installations or nationwide.

The parties further agree to establish a joint National study committee, to be composed of an equal number of members from each party, to explore issues and conditions created by the hiring and assignment of part-time regular Mail Handlers as a result of the modification of Article 7.3 with respect to the part-time regular category. This committee will study assignment practices and will periodically review the effects of the modification of Article 7.3 with respect to the part-time regular category on the Mail Handlers bargaining unit.

In addition to the language in Section 7.3 dealing with the allowable percentage of part-time regulars, this Memorandum of Understanding outlines the agreement that part-time regulars will not be hired in lieu of or to the detriment of full-time regulars or part-time flexibles. At the same time, this MOU does not guarantee part-time flexibles a specific or minimum number of work hours within a service week, nor does it guarantee a specific or minimum number of part-time flexible or full-time regular positions within a particular installation or nationwide.

Management is able to reduce a part-time regular’s scheduled hours of work on a permanent basis after hiring.

Source: National Arbitration Award H8T-2F-C 6605, Arbitrator R. Mittenthal, dated July 9, 1982.

However, the parties have agreed that part-time regulars are to be regularly scheduled during specific hours of duty and that their hours will be expanded beyond their fixed schedules only in emergency or unanticipated circumstances. Additionally, when it is necessary to permanently change their days of work or starting times, the provisions of Article 12 (Sections 12.3B4 and B6) will be applied.

Source: Memorandum of Understanding, dated September 22, 1988.

MEMORANDUM OF UNDERSTANDING

CONVERSION OF MAIL HANDLER CRAFT EMPLOYEES

It is hereby agreed by the United States Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, that the following procedures regarding the conversion of Mail Handler Craft employees will be followed:

Mail Handler Craft employees may provide written notice to local management indicating a desire to convert from a part-time regular schedule to a part-time flexible schedule; or a part-time flexible schedule to a part-time regular schedule; or a full-time regular schedule to a part-time regular schedule. The request will be filed in the employee's Official Personnel Folder (OPF). A copy will be provided to the personnel office for tracking purposes.

Prior to filling any residual Mail Handler Craft vacancy, management will select from requests for conversion before hiring new employees or selecting employees not in the Mail Handler Craft or employees from other postal installations. Management has the right to reject the next eligible senior employee but must show cause for doing so, and any such action is grievable by said employee.

Requests must be on file prior to the date of the vacancy.

If management receives more than one request to convert to a particular job category, the employee's seniority date from his/her current seniority roster shall be used to break any ties.

Each employee is permitted one opportunity to decline an offer. If an employee declines a second offer, no further consideration will be given during the life of the contract. Declinations must be submitted in writing and filed in the employee's OPF.

Employees converting to a part-time regular schedule or to a part-time flexible schedule will begin a new period of seniority.

All employees must meet the qualification standards established for the vacancy.

The Memorandum of Understanding applies to certain changes between the full-time, part-time regular, and part-time flexible categories within a particular installation.

The language in this MOU concerning career employees declining offers for conversions does not apply to MHAs declining conversion to career positions.

ARTICLE 8
HOURS OF WORK

Section 8.1 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.

Section 8.2 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 8.1 of this Article. As far as practicable the five days shall be consecutive days within the service week.

Service Week: Section 8.2A defines the "service week" of bargaining-unit employees as the calendar week beginning at 12:01 a.m. Saturday and ending 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, Section .3E and Article 30, Section .2, Item E. The "FLSA work week" also has a different definition; see the explanation under Section 8.4.

Service Day: Section 8.2B defines the "service day" for pay and overtime purposes. This definition is important for mail handlers who are 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.

Schedules of full-time employees: Taken together, Sections 8.1 and 8.2C provide that the work week for all full-time regular mail handlers (including unassigned regulars) consists of five service days, each consisting of eight (8) hours per day within ten (10) consecutive hours, and forty (40) hours per week. Additionally, in all offices with more than 100 full-time employees in the bargaining units the eight (8) hours per day must be within nine (9) consecutive hours.

Days off: The schedule of a full-time regular employee shall include fixed days off. Section 8.2C provides that as far as practicable the five (5) days shall be consecutive days within the service week.

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, whichever is applicable. This issue often arises in regard to the "5-minute leeway rule," which is contained in both the F-21 and F-22 Handbooks and is incorporated into the National Agreement through the provisions of Article 19. This rule applies to full-time and part-time regular employees. (It should be noted that part-time flexible employees and casuals are allowed the five-minute privilege for clocking purposes but are paid on the basis of their actual clock rings.) The Postal Service compensates the employee for *all time worked* at either the straight-time or the overtime rate, whichever is applicable. The five-minute leeway rule provides that each employee at installations with time recording devices is required to clock in and clock out on time. However, congestion at time clocks or other conditions can sometimes cause clock time to vary slightly from the established work schedule. Therefore, a deviation may be allowed from the scheduled time for each clock ring up to 0.08 hours (5 minutes) and the time should be adjusted for the conditions stated above. 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 scheduled work time unless, of course, the employee is assigned to work overtime. See Employee and Labor Relations Manual (ELM), Section 432.46.

Question: What is the work week for full-time regulars?

Answer: The work week for full-time regular employees is 40 hours per week, eight hours within ten consecutive hours, for smaller offices. For offices with more than 100 full-time bargaining-unit employees, the eight-hour workday must fall within nine consecutive hours.

Question: How is it determined whether an installation has more than 100 full-time bargaining unit employees?

Answer: At the beginning of a new collective bargaining agreement, the number of **f**ull-time employees in the bargaining units represented by the NPMHU, APWU and NALC are added together to determine whether there are more than 100 full-time employees in the installation.

Question: What is an employee's service week?

Answer: An employee's service week is the calendar week beginning at 12:01 a.m. Saturday and ending at 12:00 midnight the following Friday.

Question: What is the determining factor for establishing an employee's service day?

Answer: The service day is the calendar day on which the majority of the employee's work is scheduled. If the work schedule is evenly distributed over two calendar days, the service day is the day on which that employee's work schedule begins.

Question: What is the schedule of an employee who is converted to full-time status or otherwise becomes an unassigned regular?

Answer: If not assigned to a residual vacancy, an employee who is converted to full-time status or otherwise becomes an unassigned regular assumes as his/her regular work schedule the hours worked in the first week of the pay period in which the change to unassigned regular occurs. This schedule can only be changed by: the employee becoming a successful bidder under Article 12; the employee being assigned to a residual vacancy under Article 12; the employee making a voluntary request for a temporary change in schedule; or in keeping with the terms of Chapter 4, Section 434.6 of the Employee and Labor Relations Manual (ELM). See further the discussion under Section 8.4B.

Source: National Arbitration Award H1C-5F-C 1004/1007, Arbitrator H. Gamser, dated September 10, 1982; Employee and Labor Relations Manual (ELM) Chapter 4, Section 434.

Question: Can a full-time regular have a lunch period of longer than 30 minutes duration?

Answer: In accordance with the provisions of Article 12, duty assignments may be established or permanently changed to include a lunch period of 30 minutes or longer, provided there is no conflict with the provisions of Section 8.1 requiring eight hours within nine or ten consecutive hours, depending on the size of the office. Otherwise, the lunch period can be extended only as a result of a voluntary temporary schedule change request or in keeping with the provisions of Chapter 4, Section 434.6 of the ELM.

Section 8.3 Exceptions

Section 8.2C above shall not apply to part-time 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.

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

Work schedules of part-time employees: Section 8.3 makes clear that the normal work week defined by Section 8.2C above applies only to full-time employees and not part-time flexible, part-time regular employees, or MHAs who have no daily eight (8) hour or weekly (40 hour) guarantees. Moreover, the language in Article 7 (Section .1A2) which provides that part-time flexible employees "shall be available to work flexible hours as assigned by the Employer during the course of a service week," means that part-time flexible employees may be scheduled to work more or less than five (5) days per week and more or less than eight (8) hours per day.

Part-time flexible employees are not required to “stand-by” or remain at home for a call-in or to call the facility in order to determine whether or not their services are needed on a day when they have not been scheduled for duty. Local management should attempt to schedule part-time flexible employees in advance wherever possible. Should a supervisor be unable to contact an employee whose services are needed, the employee merely remains nonscheduled for that day.

Source: Step 4 Grievances NC-W-9013, dated November 25, 1977 and H8N-4B-C 26754/24748, dated September 30, 1982.

Except in emergency situations as determined by the Postmaster General (or designee), part-time flexible employees may not be required to work more than 12 hours in one service day. In addition, total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours.

Source: ELM Chapter 4, Section 432.32; Step 4 Grievances H4C-2U-C 807/1396, dated April 22, 1985.

Question: Is there a limit on the number of hours that MHAs may be required to work on a work day?

Answer: Yes, MHAs are covered by Section 432.32 of the Employee and Labor Relations Manual, which states:

"Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions."

The reference to scheduling part-time employees "in accordance with the above rules," as it relates to regular work schedules, applies only to part-time regular employees.

Source: Memorandum of Interpretation, dated November 4, 1971.

Part-time regulars are assigned to regular schedules, with specific hours of duty, consisting of less than eight (8) hours in a service day and less than forty (40) hours in a service week. Regardless of the hours of their regular schedule, they do not earn overtime until they work more than eight (8) hours in a day or more than forty (40) hours in a week and they are not entitled to out-of-schedule premium.

Question: Can part-time regular employees be assigned a regular schedule consisting of eight hours in a day and 40 hours in a week?

Answer: No. Part-time regulars are assigned a regular schedule consisting of less than eight hours in a day and less than 40 hours in a week.

The scheduled hours of a part-time regular may be permanently changed, in accordance with operational needs.

Source: National Arbitration Award H8T-2F-C 6605, Arbitrator R. Mittenthal, dated July 9, 1982.

Unless expanding or reducing the scheduled hours of a part-time regular also involves a change in starting time greater than one hour or a change in the scheduled days of work, there is no requirement to post the duty assignment as a result of such change.

Question: Can the hours of part-time regular employees be expanded on a temporary or day-to-day basis?

Answer: Part-time regular hours may be temporarily expanded beyond their fixed schedules only in emergency or unanticipated circumstances.

Source: Pre-arbitration Settlement H4M-5L-C 15002, et al. and Memorandum of Understanding, dated September 22, 1988.

Question: How may the scheduled day(s) off and/or starting times of a part-time regular assignment be changed?

Answer: When it is necessary that the fixed scheduled day(s) of work or the starting times for a part-time regular assignment be permanently changed, the provisions of Article 12 (Sections 3.B4 and 3.B6) will be followed.

Source: Memorandum of Understanding, dated September 22, 1988.

Section 8.4 Overtime Work

A Overtime pay is to be paid at the rate of one and one-half (1 1/2) times the base hourly straight time rate.

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.

Postal overtime: All career bargaining unit employees are paid postal overtime for time spent in a pay status in excess of eight (8) hours in a service day and/or in excess of forty (40) hours in a service week. Hours "in a 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 (1 ½) times the base straight-time hourly 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. While this rate is slightly less than one and one-half (1 ½) times the part-time flexible base straight-time hourly rate, it 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 11.7)

Source: Step 4 Grievances H4M-4J-C 12563, dated August 3, 1990, and NC-C-8760, dated December 21, 1977 (cited in Step 4 Grievance A00M-1A-C 05094042, dated March 14, 2014).

FLSA overtime: Totally independent of the contract are those provisions of the Fair Labor Standards Act governing overtime for all non-exempt employees who *actually work more than forty (40) hours* during the employee's FLSA work week. The *FLSA overtime rate* is one and one-half (1 ½) times the employee's "regular rate" of pay for all hours of actual work in excess of forty (40) hours in the FLSA work week. "Regular Rate" of pay is defined in the ELM as follows:

443.21 **Regular Rate**

443.211 **Definitions**

An employee's *regular rate of pay* is defined as *all remuneration for employment* received during an FLSA workweek divided by the hours that the employee actually worked.

443.212 **Inclusions**

All remuneration for employment includes:

a. Total base straight time pay, including COLA, for work performed.

b. Total straight time pay differential for higher level work performed.

c. Total TCOLA paid for hours actually worked.

d. Total night differential paid.

e. Total premium paid for work performed on a Sunday.

f. Total base straight time pay, including COLA, for work performed on a holiday.

g. Total base straight time pay, including COLA, of a city letter carrier covering those hours not worked between the seventh and eighth hour of a regular scheduled day (7:01 rule). See 432.53.

h. Total pay received for steward's duty time, in accordance with the applicable collective-bargaining agreement.

i. Total meeting and training time pay.

j. Total pay for travel time.

k. Total straight time pay during scheduled tour and/or scheduled

overtime spent waiting for or receiving medical attention (see 432.72).

l. Total pay for time that computer programmer and systems analyst employees are required to carry an electronic pager.

443.213 **Exclusions**

All remuneration for employment excludes:

a. Pay for time not worked, such as annual leave, sick leave, holiday leave pay, guaranteed time not worked, etc.

b. The 50 percent overtime pay premium for work in excess of 8 hours in a day or 40 hours in a week.

c. The 100 percent premium paid for penalty overtime.

d. The 50 percent premium paid for work outside of an employee's schedule or for emergency rescheduling.

e. The 50 percent premium paid for work performed on Christmas day.

f. TCOLA paid for leave hours and other time not worked.

g. That portion of the higher level pay differential paid on leave hours and other time not worked.

h. The 50 percent holiday scheduling premium paid under the provisions of the Holiday Settlement Agreement.

i. That portion of the basic straight time pay of a part-time flexible employee paid in lieu of holiday leave pay.

443.214 **Exclusions Not Creditable**

The exclusions listed above in subsection 443.213(a), (f), (g), and (i) are not creditable toward FLSA overtime compensation that is due.

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.

Out-of-Schedule Premium: Section 8.4B refers to the out-of-schedule premium provisions contained in Section 434.6 of the ELM. Section 434.6 provides 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 work day or work week when employees work on a temporary schedule at the request of management. Only full-time employees may receive out-of-schedule pay.

However, an employee does not receive out-of-schedule pay when the employee's schedule is changed to provide limited or light duty, when the employee is attending a recognized training session that is a planned, prepared, and coordinated program or course, when the employee is allowed to make up time due to tardiness in reporting for duty, or when the assignment is made to accommodate a request for intermittent leave or a reduced work schedule for family care or the serious health problem of the employee. Further exceptions are outlined in ELM Chapter 4, Section 434.622.

In a National Award, Arbitrator Gamser ruled that the exclusion of limited or light duty assignments from the requirement to pay out-of-schedule premium does not give management the unbridled right to make such an out-of-schedule assignment when the disabled employee could be offered a work opportunity during the hours of his or her regular tour.

Source: National Arbitration Award N8-NA-0003, Arbitrator H. Gamser, dated March 12, 1980.

Rules for out-of-schedule: 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; 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 his/her regular schedule or receive pay in-lieu thereof, 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 eight (8) hours per service day or forty (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 eight (8) hours per service day or forty (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	Out-of-Schedule Premium Hours	Straight Time Hours	Overtime Hours
1*	8:00 am-4:30pm	8	0	8	0
2	6:00 am-2:30pm	8	2	6	0
3	6:00 am-3:30pm	9	1	7	1
4	6:00 am-4:30pm	10	0	8	2

* Original, Permanent schedule

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. for an eight (8) hour workday. The employee receives eight (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 Example 2, the employee works the revised schedule's hours only, and receives two hours of out-of-schedule premium for the hours 6:00 a.m.-8:00 a.m., which were worked outside of and instead of the regular schedule.

- **Example 3.** The employee works the revised schedule plus one (1) additional hour. The employee receives one (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 (2) hours of postal overtime are paid but no out-of-schedule premium, because the employee has worked his or her full, permanent schedule.

Weekly schedule example: The out-of-schedule premium also applies to scheduled days as well as scheduled workhours. For example, an employee's regular schedule is Monday through Friday and the employee is given timely notice of a temporary schedule change to Sunday through Thursday with the same daily work hours. The employee works eight (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 their 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 forty (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 H. Gamser held in National Arbitration Award AB-C 341, dated July 27, 1975, that management could not be relieved of the obligation to pay out-of-schedule premium by informing employee who volunteered for higher level assignments that such assignments would be considered to be "at the request of the employee."

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

3. Management and the employee's shop steward or other union representative agree to the change and both sign the Form 3189.

Question: Can management temporarily change the work schedule of an unassigned regular employee?

Answer: Yes. But unless the change was due to the conditions outlined in ELM Chapter 4, Section 434.622, the employee would receive out-of-schedule premium.

Question: Is management required to give the unassigned regular employee advance notice of the temporary schedule change?

Answer: Yes. In keeping with ELM Chapter 4, Section 434.612, notice must be given to full-time employees by the Wednesday of the preceding service week. If such notice is not given, the full-time employees are entitled to work their regular schedules. Any hours worked in addition to those schedules are not worked "instead of" those regularly scheduled hours and would, therefore, be paid as overtime hours worked.

Source: National Arbitration Award H1C-5F-C 1004/1007, Arbitrator H. Gamser, dated September 10, 1982; ELM Chapter 4, Section 434.612.

Additionally, an employee whose service as an acting supervisor (204b) involves working a schedule different from his/her regular work schedule is entitled to out-of-schedule premium during the period of the detail as temporary supervisor.

Source: National Arbitration Award A8-W-939, et al., Arbitrator R. Mittenthal, dated January 27, 1982.

C 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.

Because Section 8.4C prohibits the "pyramiding" or adding together of overtime and premium rates, it generally results in a "ceiling" on contract overtime of one and one-half (1 ½) times the employee's basic rate, the overtime rate, which is the highest premium pay rate. However, night-shift differential (Section 8.7) is added to overtime premium rates because the night-shift differential is not a "premium" for the purpose of this section. See further the table in ELM Chapter 4, Section 434.8 regarding the pyramiding of premiums.

D The parties to this Agreement recognize that sustained and excessive levels of overtime, particularly where it is being worked by non-volunteers, are not ultimately beneficial to the Postal Service or the employees. The subject of sustained and excessive overtime, where it is being worked by non-volunteers, is a proper topic for discussion at Local and Regional/Area Labor Management Committee meetings. The parties will meet to discuss particular problem areas and to identify appropriate avenues of resolution. In addition, any disputes on this subject may be processed through the Grievance-Arbitration procedure in accordance with Article 15.

See the provisions of Article 38 for a discussion of scheduling Labor-Management Committee meetings.

E Overtime Work for MHAs

MHAs shall be paid overtime for work performed in excess of **eight (8) hours on duty in any one service day or** forty (40) work hours in any one service week. Overtime pay for MHAs is to be paid at the rate of one and one-half (1-1/2) times the basic hourly straight time rate.

When an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing an MHA in excess of eight (8) work hours in a service day or forty (40) hours in a service week, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.

The National Agreement now provides that MHAs are paid overtime for work performed in excess of eight (8) hours on duty in any one service day or in excess of forty (40) hours in any one service week. The overtime provision covering overtime after eight hours per day became effective on May 9, 2020.

Source: 2019-2022 National Agreement Questions & Answers

Question: If an MHA used 8 hours of A/L on Saturday and worked 40 hours Sunday through Friday in the same week, would the MHA receive 8 hours of overtime pay?

Answer: No.

Question: Does the Fair Labor Standards Act consider leave hours as work hours for MHAs?

Answer: No.

Section 8.5 Overtime Assignments

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

A Two weeks (i.e., 14 calendar days) prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an “Overtime Desired" list. Every full-time regular employee shall have the opportunity to put his/her name on the “Overtime Desired" list, even though he/she may be on leave during the signing up period for that quarter.

> Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation, **or a mail handler who bids or is reassigned during a calendar quarter to a duty assignment in a different facility, in a different section or on a different tour** may place their names on the "Overtime Desired" list within the two weeks (i.e., 14 calendar days) following the date upon which they are converted**,** transferred, or reassigned to full-time **(whether or not the mail handler was on the OTDL for the losing facility, section, or tour).** Said placement on the list shall be effective on the next calendar day.
>
> Employees on the "Overtime Desired" list from the previous quarter shall have their names automatically placed on the list for the next quarter, and their names shall remain on the list unless they provide the Employer with written notice of their desire to remove their names from the list.

The first opportunity for all overtime goes to full-time regulars who have signed the Overtime Desired List (OTDL). Overtime is assigned to available, qualified employees on the OTDL prior to using part-time flexibles or casuals on overtime.

Only full-time regular employees may sign the OTDL. Part-time regular, part-time flexible, and MHAs are excluded from signing the OTDL. However, whenever an employee is converted to full-time, or transferred or reassigned into an installation or into the Mail Handler craft within an installation, **or whenever a mail handler bids or is reassigned during a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour,** that employee has a one-time opportunity to add his/her name to the OTDL for a period of fourteen (14) calendar days following the date on which he/she was converted**,** transferred, or reassigned. This rule applies **whether or not the mail handler was on the OTDL for the losing facility, section, or tour.**

Employees wishing to remain on the "Overtime Desired" list do not have to sign the list every quarter. Once an employee's name is on the list, it remains on the list until the employee takes action, in writing, to remove it. If that request to remove his/her name is made during other than the two-week sign-up period, the procedures in the fourth Q & A hereunder continue to apply. If the employee thereafter decided to place his/her name back on the "Overtime Desired" list, he/she would need to sign the list during the two weeks prior to the start of a subsequent calendar quarter.

Question: Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

Answer: Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation, or a mail handler that bids or is

reassigned during the calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour, may place their names on the "Overtime Desired" list within two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section, or tour. Placement on the list shall be effective on the next calendar day.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Question: Is an employee who is on light or limited duty permitted to sign the OTDL?

Answer: Yes. The employee will be selected within the normal rotation so long as the work needed falls within his/her medical restrictions. For example, an employee with restrictions of "no lifting over five pounds" would normally not be eligible for overtime work on the outbound docks.

Source: Letter to All Affected Representatives, September, 1987, and Step 4 Grievance H4N-5B-C 9731, dated July 11, 1986.

Question: Is an employee who has been on military leave permitted to sign the OTDL after the start of the calendar quarter?

Answer: Yes. A mail handler on military leave at the time when full-time employees places their names on the OTDL may place his/her name on the OTDL upon return to work.

Source: Step 4 Grievance H4N-1K-C 41588, dated April 8, 1988.

Question: When a mail handler bids during a calendar quarter to a duty assignment on a different tour, may he/she sign the OTDL for the gaining tour?

Answer: Yes, if the mail handler was on the OTDL for the losing tour and the Local Memorandum of Understanding does not provide otherwise.

Source: Step 4 Grievances H1C-1E-C 41245/42949, dated August 7, 1985.

Question: Under what circumstances is a mail handler allowed to remove his/her name from the OTDL during the course of a calendar quarter?

Answer: The mail handler's request to have his/her name removed from the OTDL should be honored provided that the request is made prior to the date on which the scheduling of overtime that the employee would otherwise be required

to work occurs. Furthermore, that employee cannot subsequently place his/her name back on the OTDL for the remainder of that calendar quarter.

Source: Letters NPMHU to USPS, dated May 30, 1989, and USPS to NPMHU, dated June 20, 1989.

Question: May management unilaterally remove an employee's name from the OTDL if the employee refuses to work overtime when requested?

Answer: No. However, employees on the OTDL are required to work overtime except as provided for in Section 8.5E.

Source: Pre-arbitration Settlement H4N-5K-C 4489, dated September 13, 1988.

B Lists will be established by section and/or tour in accordance with Article 30, Local Implementation.

The subject of whether the OTDL is established "by section and/or tour" may be addressed pursuant to the provisions of Article 30 (Section 30.2, Item L.) One of three alternatives may be selected during local implementation:

By section within a tour; or

By tour; or

By section within a tour, and tour.

Note that if the last alternative is selected, management has the right to select employees on the section OTDL who have volunteered to work beyond twelve (12) hours prior to selecting employees from the tour OTDL.

Source: Pre-arbitration Settlement H4M-NA-C 75, dated December 4, 1987.

C When during the quarter the need for overtime arises, full-time regular employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis. Those absent, or on leave shall be passed over. In addition, employees whose guarantee exceeds the overtime requirement shall be passed over (e.g., an employee on a nonscheduled day would not be called in to perform 2 hours of overtime work); unless such guarantee is modified by the provisions of Section 8.8 concerning early release. Full-time regular employees on the "Overtime Desired" list may be required to work up to twelve (12) hours in a day. In addition, at the discretion of the Employer, "Overtime Desired" list employees may volunteer to work beyond twelve (12) hours in a day.

When management determines that overtime is needed, the first opportunity for such overtime goes to qualified and available employees possessing the necessary skills who have signed the OTDL. Although not all inclusive, the following examples may be useful in understanding the intent of the parties:

1. 20 mail handlers are needed for two hours overtime, from 3:00 p.m. to 5:00 p.m., at the end of Tour II at the BMC. Only ten mail handlers have signed the OTDL and all are available and qualified for the needed work. Under this circumstance, management must assign the ten mail handlers on the OTDL and then may assign ten mail handlers not on the list. If management determines that an additional two hours of overtime for ten mail handlers is needed, from 5:00 p.m. to 7:00 p.m., the ten mail handlers from the OTDL who are working must be assigned that additional overtime. This will not be considered an additional overtime opportunity within the rotation outlined in Section 8.5C.

2. The P&DC has multiple ending times on Tour II; e.g., 3:00 p.m. and 4:00 p.m. 20 mail handlers are needed for two hours overtime at 3:00 p.m. Again, ten available and qualified mail handlers are on the OTDL and management selects an additional ten mail handlers not on the list. At 4:00 p.m., ten more qualified mail handlers on the OTDL become available at the end of their tour. These ten OTDL mail handlers would be kept for one hour of overtime, from 4:00 p.m. to 5:00 p.m., and the ten mail handlers not on the OTDL would be released.

Source: Letter to All Affected Representatives, September, 1987.

The OTDL is applied on a rotational basis, beginning each calendar quarter. Where the employee's guarantee (see Section 8.8) exceeds the amount of overtime required, the employee may, with the concurrence of the union and the approval of management, waive that guarantee.

Employees on the OTDL are considered to be "available" for overtime if they are on duty at the time that the selection of employees for overtime is made, and if they are eligible to work overtime during the time period in which the overtime work is needed; those absent or on leave are passed over. Note that exceptions to this rule may occur only where provided for in the Local Memorandum of Understanding, in other local agreements, or by past practice.

Source: Step 4 Grievance H7M-4A-C 488/489, dated April 8, 1988.

Normally, employees who are absent or on leave are not required or considered available to work overtime. However, if employees on the OTDL so desire, they may advise their supervisor in writing of their availability to work a nonscheduled

day that is in conjunction with or part of a period of approved leave.

Source: Step 4 Grievance B90M-1B-C 95062381, dated October 15, 1997.

The Memorandum of Understanding Improper By-Pass Overtime, reprinted at the end of this Article, provides procedures for the settlement of disputes regarding situations in which an employee on the OTDL is bypassed for either another employee on the OTDL or for an employee not on the OTDL.

Employees signing the OTDL may be required to work up to twelve (12) hours in a service day and up to seven (7) days in a service week. Additionally, they may volunteer to work beyond twelve (12) hours in a day. Scheduling of overtime beyond 12 hours should be administered in keeping with the seniority principles of Section 8.5C and in a non-discriminatory manner. A volunteer who works beyond 12 hours is not considered to have exercised another opportunity within the OTDL rotation.

Source: Letter to All Affected Representatives, dated September, 1987; Step 4 Grievance H7M-1F-C 20892, dated January 24, 1990; Pre-arbitration Settlement B90M-1B-C 95006557, dated August 14, 1998.

Question: Is the OTDL used for holiday scheduling?

Answer: No. The OTDL is not used when preparing the holiday schedule required by Article 11 (Section 11.6.) If the need for additional full-time employees to work the holiday is determined subsequent to the posting of the holiday schedule, recourse to the OTDL would be appropriate.

Source: National Arbitration Award H8C-5D-C 14577, Arbitrator R. Mittenthal, dated April 15, 1983.

Question: Is an employee entitled to work their duty assignment when called in to work on their nonscheduled day?

Answer: No. There is no entitlement of an employee to work their duty assignment on a day which is not one of the five (5) regular work days specified for that particular duty assignment, unless currently-existing language in the Local Memorandum of Understanding provides otherwise.

Source: Step 4 Grievance A8-N-0003, dated July 19, 1978.

One purpose of the OTDL is to excuse full-time employees not wishing to work overtime from having to work overtime. However, if the OTDL does not provide sufficient qualified full-time regulars for required overtime, then the provisions of Section 8.5D, discussed below, permit management to require other employees to work overtime to the extent needed.

D If the voluntary “Overtime Desired" list does not provide sufficient available and qualified people, the Employer shall assign other employees to the extent needed. When assigning such employees, the Employer shall first utilize qualified and available full-time employees, in order of seniority, who have volunteered to work the required overtime after their scheduled tour for that day only or who have volunteered to work their nonscheduled day(s). Employees shall volunteer for overtime assignments after their scheduled tour for that day only by signing their name and indicating their seniority date, within the first two (2) hours of their scheduled tour of duty, on a daily “Full-Time Volunteer" list maintained in each work section on the workroom floor. The daily “Full-Time Volunteer" list shall be applied in a manner consistent with the application of the “Overtime Desired" list within the installation. Employees shall volunteer for overtime assignments on their nonscheduled days by signing their name and indicating their nonscheduled days and their seniority date on a Full-Time Volunteer list that is posted in each work section at the beginning of the service week (i.e., on Saturday) and must be signed by Tuesday of the service week prior to that being volunteered for. Such full-time employee volunteers shall work the required overtime, as directed by management. The Employer shall have the discretion to limit these volunteer employees from working beyond ten (10) hours in a day. There shall not be any penalty for errors by the Employer in applying either of these "Full-Time Volunteer" lists.

If additional employees are still needed after application of the above, the Employer shall assign other employees as needed. To the extent practicable, an effort will be made to schedule available (on duty at the time that the selection of employees for overtime is made) and qualified Mail Handler Assistants and/or part-time flexible employees for such overtime work prior to requiring full-time employees not on the "Overtime Desired" list or "Full-Time Volunteer" lists to work such overtime. If qualified full-time regular employees not on the "Overtime Desired" list or either of the volunteer lists are required to work overtime, it shall be on a rotating basis with the first opportunity assigned to the junior employee.

If the OTDL does not provide sufficient employees to work the needed overtime, management may utilize other employees to accomplish the work needed within the “operational window.” For example, if management determines that the need exists for 20 mail handlers to work two hours overtime and only ten are available from the OTDL, management may assign other mail handlers as required to meet the two-hour operational requirement.

In such cases, management must first utilize the Full-time Volunteer Lists (FTVL) posted in each section on the workroom floor.

Full-time regular employees who are not on the OTDL may sign the Daily FTVL during the first two (2) hours of their tour of duty on each scheduled work day. The Daily FTVL is utilized if the OTDL does not provide sufficient employees to work overtime after the tour of duty on a particular day. It does not carry over from one day to the next. The Daily FTVL is applied in the same fashion as the OTDL. If the OTDL is established by section, the Daily FTVL is applied by section. If the OTDL is established by section and tour, the Daily FTVL is first applied in each section and then merged to create a tour-wide list for that particular day.

The Nonscheduled Day (NSD) FTVL applies to overtime needed on an employee's nonscheduled day(s). Full-time regular employees not on the OTDL may sign the NSD FTVL by the Tuesday of the service week prior to that in which the overtime will be worked. (The sign-up sheet is posted in all work sections each Saturday.)

Employees who sign the FTVLs are required to work the overtime as directed by management. Employees are selected from the FTVLs in order of seniority, without any rotation. Such employees may be limited to working no more than ten (10) hours in a day. There is no penalty for errors in the application of either of the FTVLs.

If additional employees are needed to work the overtime after the FTVL is exhausted, management may assign other employees. Every effort should be made to first assign available and qualified Mail Handler Assistants and/or part-time flexible employees prior to assigning full-time regulars not on any of the lists.

Source: Letter to All Affected Representatives, dated September 1987, and Step 4 Grievances H7M-4K-C 23326 et al., dated June 1, 1992.

Qualified MHAs also should be included when assigning overtime prior to assigning full-time mail handlers who are not on the overtime desired lists.

If management determines that it is necessary to assign full-time regular employees not on the OTDL or the FTVL, such employees shall be assigned on a rotating basis starting with the junior employee. The juniority rotation of employees not on the OTDL begins anew each calendar quarter, concurrent with the revisions to the OTDL.

Source: Pre-arbitration Settlement H1M-2F-C 18272, dated August 14, 1985.

E Exceptions to .5C and .5D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

This language is intended to serve as a guideline for local management when considering excusing individual employees from overtime work because of "exceptional" situations.

Consequently, the four examples listed in the parentheses are merely illustrative of the kinds of situations in which management should give full consideration to excusing an employee(s) from overtime. However, as Arbitrator Sylvester Garrett has held in National Award NC-C 7933, dated January 8, 1979, Section 8.5E "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'."

In denying a grievance which challenged the use of Form 3971 when an employee sought to be excused from scheduled overtime due to illness, Arbitrator R. Bloch ruled:

> The use of the form in question in these particular circumstances does not fall squarely within the purpose for which the form was designed. From a purely technical standpoint, the employee is not requesting sick leave when he or she leaves, unexpectedly, from an overtime assignment. . . But neither may it be said that the use of the form for record keeping purposes is either unreasonable or prohibited by the labor agreement.

Source: National Arbitration Award H1M-3W-C 29228, Arbitrator R. Bloch, dated September 5, 1985.

F Excluding December, only in an emergency situation will a full-time regular employee not on the "Overtime Desired" list be required to work over ten (10) hours in a day or over six (6) days in a week.

[See Memos, pages 147-148]

The limitations set forth in this section apply to full-time regular employees who are not on the OTDL.

Source: Step 4 Grievance H4M-3U-C 6982, dated May 30, 1986.

The month of December and emergency situations are the only exceptions to the work hour limits provided by this section for full-time regular employees not on the OTDL.

Both work and paid leave hours are "work" for the purposes of administration of Section 8.5F.

Section 8.6 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 Sunday premium payment.

An employee who works on a Sunday or any work period that falls partly on a Sunday, receives Sunday premium pay that is an extra twenty-five (25) percent of the base hourly straight-time rate. Sunday premium is in addition to the employee's regular straight-time rate of pay.

The "no pyramiding" provisions of Section 8.4C apply to Sunday premium. If it appears that Sunday premium and overtime would be applicable for the same hours worked, the employee would be compensated at the higher (overtime) of the two rates.

A grievance over whether employees were being properly compensated for Sunday premium when they took leave for a portion of the scheduled work day was mutually settled as follows:

1. An employee who is scheduled to work where a portion of the work hours overlaps to Sunday will be paid Sunday premium for actual work hours.

2. In the same circumstance, an employee who takes leave for that portion of the work day that is actually Sunday will receive Sunday premium for actual hours worked.

3. An employee will not receive Sunday premium for those hours for which leave has been taken.

Source: Pre-arbitration Settlement H8C-4B-C 22242, dated January 25, 1983.

Question: If an employee's scheduled tour begins on Saturday and ends on Sunday, and the employee works the Saturday hours but takes leave for the Sunday hours, does the employee receive Sunday premium for the hours actually worked on Saturday?

Answer: Yes. Under the definition of Sunday premium, an employee who has a scheduled tour, any part of which includes Sunday, is entitled to Sunday premium for the hours actually worked in that schedule, even though the employee may not work that portion of the tour that falls on the calendar day of Sunday.

Source: Step 4 Grievance H8C-2M-C 10215, dated January 27, 1983.

However, for an 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, the Sunday premium to which the employee is normally entitled is continued while the employee is in a continuation of pay (COP) status, on military leave, or on court leave or while the employee is rescheduled due to a compensable disability in lieu of placement in a COP status. Furthermore, where an arbitration award or settlement specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, such employee meeting the above criteria shall be paid Sunday premium. (This settlement is retroactive to Pay Period 10, 2000).

Source: Pre-arbitration Settlement Q98M-4Q-C 00103887, dated March 17, 2004.

An eligible employee who is scheduled by management to work and does work on a nonovertime basis on a Sunday, even if the employee was scheduled on Sunday pursuant to a request for a temporary schedule change for personal convenience, is entitled to Sunday premium pay under Article 8.6 of the National Agreement.

Source: National Arbitration Award I90C-1I-C 910325156 & H7C-4S-C 29885, Arbitrator S. Das, dated April 15, 2005.

An employee who is on administrative leave is not entitled to Sunday Premium pay for hours he or she would have otherwise worked on a Sunday. However, employees who are released on administrative leave before the normal completion of their tour of duty due to an “Act of God” shall receive Sunday Premium Pay for the time that they receive administrative leave.

Source: National Arbitration Award Q06C-4Q-C 08058827, Arbitrator Linda Byars, dated August 24, 2010; Step 4 Settlement, Q98M-4Q-C 00274228, dated August 19, 2014.

Absent an operational justification, employee schedules will not be established or posted “solely to avoid the payment of Sunday Premium.”

Source: Step 4 Settlement, Unnumbered, dated March 12, 1975.

Section 8.7 Night Shift Differential

For time worked between the hours of 6:00 p.m. and 6:00 a.m. employees shall be paid additional compensation at the applicable flat dollar amount at each pay grade and step in accordance with Tables Three and Four, attached.

(See Memo, page 149)

MEMORANDUM OF UNDERSTANDING

NIGHT SHIFT DIFFERENTIAL

Effective May 9, 2020, the flat dollar amount at each pay grade and step for night shift differential in Tables Three and Four shall be increased by an amount equal to 2% of the flat dollar amount for the grade and step in effect on September 20, 2019.

Effective May 8, 2021, the flat dollar amount at each pay grade and step for night shift differential in Tables Three and Four shall be increased by an amount equal to 2% of the flat dollar amount for the grade and step in effect on May 9, 2020

Effective May 7, 2022, the flat dollar amount at each pay grade and step for night shift differential in Tables Three and Four shall be increased by an amount equal to 2% of the flat dollar amount for the grade and step in effect on May 8, 2021.

Night shift differential is extra compensation, over and above the employee's base straight time rate of pay, for all hours worked between 6:00 p.m. and 6:00 a.m. Compensation is paid as a fixed dollar amount based on the level and step of the employee's base hourly straight time rate. The rates are set forth in the table**s** published in the National Agreement.

The "no pyramiding" provisions of Section 8.4C do not apply to the night shift differential because the night-shift differential is not considered a "premium" under that section. Night shift differential would be paid in addition to overtime or Sunday premium pay.

Source: ELM Chapter 4, Exhibit 438.52

Employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave.

Source: National Arbitration Award J90M-1J-C 95047374, Arbitrator P. Parkinson, dated December 8, 2000.

Question: Do MHAs receive Night Differential or Sunday Premium?

Answer: MHAs receive night differential as defined in Article 8.7 of the National Agreement. MHAs do not receive Sunday Premium pay.

Source: 2011 - 2016 National Agreement Questions & Answers

Section 8.8 Guarantees

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. 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. This guarantee will be waived if the employee, with the concurrence of the Union and approval of Management, requests to be released early. 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 man years 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.

Any MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay. MHAs at smaller installations will be guaranteed two (2) hours work or pay.

The first two (2) sentences of this section apply to full-time regular and part-time regular employees. When these categories of employees are called in outside of their regular work schedule on a regularly-scheduled workday, they are guaranteed four (4) 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 regularly scheduled shift.

A full-time regular called in on a non-scheduled day is guaranteed eight (8) hours of work (or pay in lieu thereof). If the employee voluntarily requests to be released early and the union concurs, management may approve such early release. This guarantee also applies on a holiday or designated holiday.

On any calendar day, including holidays, an MHA who is scheduled to work and who reports to work in an installation with 200 or more man years of employment shall be guaranteed four (4) hours of work or pay; MHAs at smaller installations are guaranteed two (2) hours work or pay.

Management will not solicit employees to work less than their guarantees, including not making such solicitations in place of seeking employees who would work their full guarantees.

Source: Step 4 Grievances NC-C-12644, dated October 31, 1978, and NC-S-12640, dated November 20, 1978.

Question: When can the eight-hour guarantee be waived by the employee?

Answer: The eight-hour guarantee can be waived by the voluntary request of the employee with the concurrence of the union and the approval of management.

Question: What is the minimum number of hours that a part-time flexible, part-time regular employee, or MHA can be scheduled or requested to work in a service day?

Answer: In facilities with 200 or more man years of employment, the guarantee is four hours. In all other facilities, the guarantee is two hours.

Question: Can a part-time flexible employee be returned to work on the same day without incurring another guarantee period?

Answer: Yes. When a part-time flexible is notified prior to clocking out that he/she should return within two hours, this is considered a "split shift" and no new guarantee applies.

However, when a part-time flexible employee is notified prior to clocking out that he/she should return after two hours, that 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.

Also, all part-time flexible employees who complete their assignment, clock out and leave the premises, regardless of the interval between shifts, are guaranteed four hours of work or pay if called back to work. This guarantee is also applicable to any size office.

Source: Step 4 Grievance H8N-1N-C 23559, dated January 27, 1982.

Section 8.9 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.

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.

Article 30 (Section 30.2A) provides that the local parties may discuss the need for "additional or longer wash-up periods" during local implementation.

(The preceding sections, Articles 8.2, 8.3, 8.4, 8.5, 8.7, 8.8, and 8.9, shall apply to Mail Handler Assistant employees to the extent provided in the MOU Re: Mail Handler Assistant employees or in this Article.)

MEMORANDUM OF UNDERSTANDING

IMPROPER BY-PASS OVERTIME

1. When, for any reason, an employee on the "Overtime Desired" list who has the necessary skills and who is available is improperly passed over and another employee on the list is selected for overtime work out of rotation, the following shall apply:

   a. An employee who was passed over shall, within ninety (90) days of the date the error is discovered, be given a similar make-up overtime opportunity for which he has the necessary skills.

   b. Should no similar make-up overtime opportunity present itself within ninety (90) days subsequent to the discovery of the missed opportunity, the employee who was passed over shall be compensated at the overtime rate for a period equal to the opportunity missed.

2. When, for any reason, an employee on the "Overtime Desired" list who has the necessary skills and who is available is improperly passed over and another employee not on the list is selected for overtime work, the employee who was passed over shall be paid for an equal number of hours at the overtime rate for the opportunity missed.

3. When a question arises as to the proper administration of the "Overtime Desired" list at the local level, a Mail Handler steward may have access to appropriate overtime records.

This MOU provides specific guidance for resolving disputes regarding the bypassing of OTDL employees for other employees on the OTDL or for employees not on the OTDL.

Note that, for purposes of Paragraph 2 of the MOU, PTFs and MHAs are also considered to be "another employee."

Source: Letter to All Affected Representatives, September, 1987.

Question: What is the remedy if an employee on the OTDL is improperly bypassed?

Answer: If the OTDL employee is improperly bypassed and another employee on the OTDL is selected out of rotation, the bypassed employee is provided a similar make-up opportunity within 90 days of when the error is discovered; if no similar make-up opportunity is available within that 90 days, the employee is compensated at the overtime rate for a period equal to the opportunity missed.

If the OTDL employee is improperly bypassed for another employee not on the OTDL, the bypassed employee will be paid at the overtime rate for the number of hours equal to the opportunity missed.

MEMORANDUM OF UNDERSTANDING

OVERTIME/ACTING SUPERVISOR (204B) DETAILED EAS POSITION

The parties agree to the following regarding the scheduling of an employee detailed as an acting supervisor (204b) or detailed to an EAS position:

1. A craft employee working as an acting supervisor (204b) or in a detailed EAS position is ineligible to work overtime at the beginning or end of his/her tour on any given day during the term of the detail, unless all available bargaining-unit employees on the "Overtime Desired" list are utilized. If the 204b employee or employee detailed to an EAS position is on the "Overtime Desired" list, he/she may be scheduled for overtime after all of the available employees on the "Overtime Desired" list are utilized. If the 204b or detailed EAS employee is not on the "Overtime Desired" list, then he/she will be scheduled according to Article 8.5.D of the National Agreement after all available bargaining unit employees on the "Overtime Desired" list are utilized.

2. A craft employee working as an acting supervisor (204b) or detailed to an EAS position is eligible to be considered for an overtime assignment on his/her non-scheduled day(s) immediately following the termination of his/her 204b or EAS detail in accordance with Article 8.5 of the National Agreement, unless the mail handler is to continue on a 204b or EAS assignment into the service week following the termination of his/her present 204b or EAS assignment. If that occurs, the 204b or detailed EAS employee would be ineligible for the overtime unless all available bargaining unit employees on the "Overtime Desired" list are first utilized for that non-scheduled day overtime.

This MOU outlines those situations in which a craft employee serving as an acting supervisor (204b) or in another EAS position may be eligible to, or may be required to, work overtime.

Paragraph 1 of the MOU provides that all available employees on the appropriate OTDL will be utilized on overtime before the 204b or detailed EAS employee can

be permitted or required to work overtime before or after his/her tour of duty on any day of the detail period.

Paragraph 2 of the MOU makes a distinction dependent on whether or not the employee's 204b or EAS detail will continue into the following service week. In those circumstances in which the 204b or EAS detail will continue into the employee's following service week, that employee cannot work non-scheduled day overtime until after all available employees on the OTDL are utilized.

These MOU provisions apply to mail handlers on 204b details as acting supervisors or detailed to other EAS positions whether or not those mail handlers are otherwise on the OTDL. If the mail handler on 204b or EAS detail is on the OTDL, his/her scheduling would be governed by Section 8.5C after all OTDL mail handlers have been utilized. If the mail handler on 204b or EAS detail is not on the OTDL, his/her scheduling would be governed by Section 8.5D after all OTDL mail handlers have been utilized.

ARTICLE 9
SALARIES AND WAGES

Section 9.1 Basic Annual Salary

Employees with career appointments before February 15, 2013 shall be paid and earn step increases according to the rates and waiting periods described in Section 9.2A and outlined in Table One.

Employees with career appointments on or after February 15, 2013 shall be paid and earn step increases according to the rates and waiting periods described in Section 9.2B and outlined in Table Two.

The basic annual salary schedule, with proportional application to hourly rate employees, for all grades and steps for those employees covered under the terms and conditions of this Agreement shall be increased as follows:

Effective November 23, 2019 – the basic annual salary for each grade and step of Table One and Table Two shall be increased by an amount equal to 1.1% of the basic annual salary for the grade and step in effect on September 20, 2019.

Effective November 21, 2020 – the basic annual salary for each grade and step of Table One and Table Two shall be increased by an amount equal to 1.0% of the basic annual salary for the grade and step in effect on September 20, 2019.

Effective November 20, 2021 – the basic annual salary for each grade and step of Table One and Table Two shall be increased by an amount equal to 1.0% of the basic annual salary for the grade and step in effect on September 20, 2019.

(See Memo, page 149)

General wage increase: Section 9.1 provides for **three** general wage increases during the **three years of the 2019 National A**greement. The wage increases are **1.1% effective on November 23, 2019, 1.0% effective on November 21, 2020, and 1.0% effective on November 20, 2021**.

PTFs: The "proportional application to hourly rate employees" means that part-time flexible Mail Handler employees, who are paid on an hourly basis and have no guaranteed annual salaries, receive general wage increases of **1.1%, 1.0%, and 1.0%** in their hourly rates.

MEMORANDUM OF UNDERSTANDING

PAY SCHEDULE ADJUSTMENT

The parties hereby agree that, effective November 20, 2021, the basic annual salary schedule (Tables One and Two) in effect on September 20, 2019 with proportional application to hourly rate employees, for those employees covered under the terms and conditions of this Agreement, shall be adjusted upward by an amount equal to 0.8% of the appropriate September 20, 2019 salary schedule.

In addition, effective November 20, 2021, MHAs will receive a similar upward wage adjustment equal to 0.8% applied to the MHA Schedule wage rates in place on September 20, 2019.

Question: When can salary checks be issued to employees?

Answer: Salary checks generally are distributed on the date printed on the salary check. However, provided that they are available at the employee's pay location, salary checks and earnings statements can be distributed on a date other than the salary check date under the following conditions:

1. After local banks close on Thursday, to employees whose regular tour of duty ends after local banks close on Friday; or

2. At the end of the employee's tour on Thursday, to those employees who are not scheduled for duty on a Friday payday or are scheduled for leave on a Friday payday; or

3. When Friday is a national holiday and Thursday is a payday, at the end of an employee's tour on Wednesday for those employees meeting either condition 1 or condition 2 above.

Source: F-1 Handbook, Section 822.1; Letter from T. Valenti, USPS, to W. Flynn, NPMHU, dated August 28, 1998.

Question: Can an employee have his or her salary check deposited directly to a financial institution?

Answer: Yes. The Postal Service honors employee requests to forward all or part of their salaries for credit to their accounts at financial organizations. The employee needs to complete and submit Form 1199-A, Direct Deposit.

Source: F-1 Handbook, Section 822.4

Question: How do employees who utilize direct deposit obtain their earnings statements?

Answer: The Earnings Statement – Net to Bank for an employee who has direct deposit (net to bank) is mailed to the employee's address of record. Each employee is responsible to ensure that his or her address of record information is correct. Employees may update their current mailing address by submitting PS Form 1216, Employee's Current Mailing Address, to their Human Resources office.

Source: Postal Bulletin 22044, dated February 22, 2001.

Question: Can an employee request to have his or her salary check mailed to a home or forwarding address?

Answer: Yes, under certain conditions. Employees may complete Form 3077 to request forwarding of salary checks when the employee is on leave or on temporary detail away from his or her regular installation. Such requests may cover the period of leave or detail.

Source: F-1 Handbook, Section 822.3

Section 9.2 Step Progression

A. Table One – Career Appointments Before February 15, 2013

The step progression for the Mail Handler Salary Schedule on Table One shall be as follows:

Grades 4,5		Waiting Period
From Step	To Step	(in weeks)
AA	A	88
A	B	88
B	C	88
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
O	P	24

Grades 6		Waiting Period
From Step	To Step	(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
O	P	24\

B. Table Two – Career Appointments On or After the Effective Date of the Award, February 15, 2013

The step progression for the Mail Handler Salary Schedule on Table Two shall be as follows:

Grades 4, 5 From Step	To Step	Waiting Period (in weeks)
BB	AA	52
AA	A	52
A	B	52
B	C	52
C	D	52
D	E	52
E	F	52
F	G	52
G	H	52
H	I	52
I	J	52

J	K	52
K	L	52
L	M	52
M	N	52
N	O	52
O	P	52

Question: For career appointments before February 15, 2013, what is the total length of time required to advance from Step AA to Step P?

Answer: Under normal circumstances, 740 weeks.

Question: For career appointments on or after February 15, 2013, what is the total length of time to advance from Step BB to Step P?

Answer: Under normal circumstances, 884 weeks.

Question: Can management deny a periodic step increase because of unsatisfactory performance?

Answer: No. The parties have agreed that periodic step increases will not be withheld for reason of unsatisfactory performance.

Source: Memorandum of Understanding Re. Step Increase Unsatisfactory Performance

Question: How does leave without pay (LWOP) affect periodic step increases?

Answer: When an employee has been on LWOP for 13 weeks or more during the waiting period for a periodic step increase, the scheduled date for that employee's next step increase will be deferred. The length of the deferral period is based on the number of weeks, beyond 13 weeks, that the employee has been on LWOP. However, the time that an employee is carried in an LWOP status for military furlough, official union business or while on the rolls of the Office of Workers' Compensation Programs is exempt from this provision. Also, only whole days of LWOP are counted for step deferral purposes; a day on which an employee works part of the day and uses LWOP in lieu of annual or sick leave for the remainder of the day does not count.

Source: Employee and Labor Relations Manual Chapter 4, Sections 423 and 422.33

Question: Is there a requirement to provide advance notice to an employee whose step increase is to be withheld due to leave without pay usage?

Answer: Yes. Current instructions require written advance notice when an employee's step increase is to be withheld. Note that in the grievance referenced as the source document, the employee's step increase was reinstated retroactively to the due date.

Source: Step 4 Grievance H4C-3W-C 37256, dated October 23, 1987.

On the question whether a Level 4, Step 0 employee who is detailed to a Level 5, Step N duty assignment is entitled to be advanced to Level 5, Step 0 after spending the requisite waiting period (24 weeks) at Step N, the parties have agreed that once an employee who has been detailed to Level 5, Step N spends 24 continuous weeks in the higher level assignment, the employee is entitled to be advanced to Level 5, Step 0.

Source: Step 4 Grievance A00M-1A-C 05085524, dated January 21, 2011.

On the question whether a Level 5, Step O employee who bids to a lower level duty assignment (Level 4) should subsequently be paid Level 5, Step O when he/she is temporarily detailed to a higher level duty assignment, the parties have agreed that the employee must be paid at the Level 5, Step O pay rate.

Source: Step 4 Grievance C00M-1C-C 04147342, dated May 27, 2010.

Section 9.3 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 July **2019** and is referred to herein as the "Base Index."

B. Effective Dates of Adjustment

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

- the second full pay period after the release of the **January 2020** Index

- the second full pay period after the release of the **July 2020** Index

- the second full pay period after the release of the **January 2021** Index

- the second full pay period after the release of the **July 2021** Index

- the second full pay period after the release of the **January 2022** Index

- the second full pay period after the release of the **July 2022** Index

C The basic salary schedule provided for in Table One and Step P of Table Two of 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 **January 2020** to **July 2020** is 1.2 points, pay scales for employees i**n Table One and Step P of Table Two of** 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**.** Step BB through O in the basic salary schedules provided for in Table Two of this Agreement shall receive COLAs calculated using the formula in this paragraph, adjusted proportionally as reflected in Table Two.

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 9.4.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 9.3B provides for **six** cost-of-living adjustments, also known as COLA payments, during the life of the **2019** National Agreement.

The Consumer Price Index: COLA payments vary based on changes in the Consumer Price Index as defined in Section 9.3A1. The Postal Service and the NPMHU use the Consumer Price Index for Urban Wage Earners and Clerical

Workers, CPI-W, which is published by the Bureau of Labor Statistics on a monthly basis.

The CPI-W 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.

Base Period Index: Section 9.3A2 establishes July **2019** as the base period used to calculate future COLA payments. The CPI-W (1967=100) for July **2019** is **745.376.** Section 9.3B sets the time for each COLA payment. COLA payments under the **2019** agreement will likely be effective in March and September.

COLA Formula: Section 9.3C states the formula on which COLA payments are based, namely, one cent per hour for each full 0.4 change in the CPI-W.

Section 9.3C also specifies that each COLA payment shall become a permanent part of basic salary.

Potential CPI Change: Section 9.3F ensures continuity of the COLA provisions should the BLS decide to discontinue the CPI-W (1967=100) during the **2019** agreement. Should that happen, the parties will use instead the CPI-W (1982-84=100), which measures price changes the same way but with a base period of 1982-84=100. In addition the COLA formula detailed at Section 9.3C would be changed to ensure that NPMHU employees receive COLA payments equal to what they would have received under the CPI-W (1967=100).

Different CPI bases: Although the 1982-84 CPI-W series produces the same percentage increase as the 1967 series, the resulting COLA payment using the 0.4 formula would be less under the 1982-84 series than under the 1967 series. Therefore, the 0.4 formula would require modification to produce the same COLA payment as under the 1967 series.

Question: Is the cost-of-living adjustment (COLA) included in the mail handler basic salary schedule?

Answer: Yes. COLA payments are added to the employee's basic pay on the effective dates listed in Section 9.3B.

Section 9.4 Application of Salary Rates

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

Section 9.5 Granting Step Increases

Except as provided in this Article, the Employer will continue the program on granting step increases for the duration of this Agreement.

Section 9.6 Protected Salary Rates

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

B Employees who qualify for “saved grade" will receive “saved grade" for an indefinite period of time subject to the conditions contained in Article 4.4.

[See Memo, page 150]

Salary rate retention: Section 9.6 specifically continues in effect the three salary rate retention provisions contained in Employee and Labor Relations Manual (ELM), Section 421.5 as follows:

1. Protected rate: 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 provided the requirements of ELM, Section 421.511 are met.

2. Saved rate: An employee receives permanent “saved rate” salary protection when management gives him/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. (ELM, Section 421.52)

3. Saved grade: Article 4 (Section 4.4) and ELM Section 421.53 both provide 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.

Below is a reprint of the above referenced provisions of the ELM.

421.5 **Rate Retention Provisions**

421.51 **Protected Rate**

421.511 **Explanation**

An individual employee who is assigned to a lower grade position has a protected rate (i.e., continues to be paid the salary he or she received in the previous higher grade position, as detailed in

421.512, below, augmented by any general increases granted (see also 422.13), for a specified period of 2 calendar years provided all of the following conditions are satisfied:

a. The employee is serving under a career appointment.

b. Reduction in salary standing is not disciplinary (for personal cause) or voluntary (at the request of the employee).

c. The employee served for 2 continuous years immediately preceding the effective date of reduction in a position with a salary standing higher than that to which reduced.

d. Salary in the higher salary standing was not derived from a temporary appointment or temporary assignment.

e. Reduction in salary standing is not caused by a reduction in force due to lack of funds imposed on the Postal Service by outside authority or curtailment of work. For this purpose, curtailment of work does not include reduction in revenue unit category of any post office or reduction in route mileage on a rural route.

f. Employee's performance of work was satisfactory at all times during such period of 2 calendar years.

421.512 **Rate Determination**

The basic salary of an employee entitled to a protected rate is the *lowest* of the following:

a. The employee's basic salary at the time of reduction.

b. An amount that is 25 percent more than the maximum basic salary for the new grade (i.e., the grade to which reduced).

c. The basic salary in the *lowest* salary standing that the employee held during the 2 years immediately preceding reduction in salary standing, augmented by each step increase he or she would have earned in such salary standing.

Note: For rural carriers serving evaluated routes, the existing basic salary includes additional heavy duty compensation up to 40 hours.

421.513 **Duration**

An employee who is entitled to a protected rate retains the protected rate, augmented by general increases, for 2 calendar years from the effective date of the protected rate. If, before the 2 years expires, the employee is again reduced in salary standing, the following applies:

a. A new protected rate period of 2 calendar years begins.

b. The new protected rate is redetermined according to the rule in 421.512 in relation to the salary standing following the latest reduction.

421.514 **Termination**

Rate protection ceases at the beginning of the pay period following a determination that an employee is no longer entitled to protection for any one of the following reasons:

a. A break in service of 1 workday or more.

b. Reduction to a lower salary standing (1) for disciplinary reasons or (2) at employee's own request.

c. Promotion or other advancement of employee to a higher grade or salary range in the same schedule, or to a position with a higher than equivalent grade in another schedule, above the protected rate.

d. Compensation of the employee is changed for any reason, other than by a general increase, to a basic salary equal to or higher than the protected rate.

421.515 **Effect on Other Compensation**

Rate protection affects other compensation as follows:

a. *Promotion Rules*. In applying the promotion rules, the former basic salary is the basic salary the employee would have received except for the protected rate.

b. *Rural Routes*. Equipment maintenance allowances on rural routes are paid in relation to the documented route to which the carrier is assigned.

421.516 **Documentation**

Form 50, *Notification of Personnel Action*, is used to notify an employee who is changed to a lower grade or salary standing of entitlement to rate retention. It contains a reference under the remarks section to 421.5 as authority for the amount and duration of the rate retention. The Form 50 also is used to notify an employee of the expiration of a rate retention status.

421.517 **Step Increases**

An employee with a protected rate continues to receive step increases in the grade to which the employee is reduced. However, under no circumstances can receipt of these step increases cause the employee's salary to exceed the maximum step of the lower grade.

421.52 **Saved Rate**

421.521 **Explanation**

Employees with a saved rate will continue to be paid the salary they received in the previous higher grade position, augmented by any general increases occurring while the saved rate is in effect. A saved rate differs from a protected rate in that it continues for an indefinite period, subject to the conditions explained below (see 421.522 through 421.526) and occurs in several different circumstances, as follows:

a. An employee is given 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 position under the same job description. In this case, saved rate means that the employee continues to receive the salary of the higher grade position.

b. Management action effects a general increase that, when added to an employee's salary, produces a salary above the maximum rate for the grade. In this case, *saved rate* means that the amount of the general increase is added to the employee's salary and the employee continues to receive the new salary even though it is above the maximum for the grade.

421.522 **Red-Circle Amount**

The *red-circle amount* is the dollar portion of an employee's salary that is in excess of the maximum salary of the grade. An employee continues to receive a red-circle amount as long as he or she is in saved rate status. Note the following:

a. Red-circle amount results from saved rate only. It does *not* result from protected rate.

b. If an employee who receives a red-circle amount (under section C, Special Rule, Pay System for Employees, covered by the collective bargaining agreement of November 18, 1970) is subsequently promoted and later returned to the former position, the red-circle amount is restored.

421.523 **Duration**

Employees retain the saved rate for as long as they hold a position in the same or higher grade for which the maximum schedule rate is below the saved rate.

421.524 **Termination**

Saved rate is terminated for any of the following reasons:

a. A break in service of 1 workday or more.

b. Demotion or voluntary reduction.

c. Promotion resulting in a salary equal to or above the saved rate.

421.525 **Effect on Promotion**

If the employee has a saved rate due to assignment to a lower grade position and is assigned to a different position, the

assignment is not a promotion for purposes of pay adjustment, unless the assignment is to a position with a grade higher than the grade on which the saved rate was established.

421.526 **Documentation**

Form 50, *Notification of Personnel Action*, is used to notify an employee of a saved rate status.

421.53 **Saved Grade**

421.531 **Explanation**

Saved grade provisions can be invoked only in accordance with the applicable collective bargaining agreement. Decisions to disapprove saved grade are subject to review through the grievance and arbitration process. Saved grade must be approved by area Human Resources managers or their designees. Saved grade applies to all bargaining unit employees *except* the following:

a. Employees in Operating Services Division at Headquarters and the Merrifield Engineering Support Center (APWU) (see 427.2).

b. Employees under the National Postal Professional Nurses' (NPPN) Agreement (see 425).

c. Employees under the Fraternal Order of Police, National Labor Council (FOP-NLC) Agreement (see 428).

421.532 **Duration and Termination**

The saved grade will be in effect for an indefinite period of time subject to the conditions below:

a. To continue to receive a saved grade, an employee must bid or apply for all vacant jobs in the saved grade for which she or he is qualified.

b. If the employee fails to bid or apply, the employee loses the saved grade status immediately.

c. The Information Service Centers collective bargaining agreement requires that, in order to retain the saved grade, employees bid or

apply for reassignment to their former grade or to any position at a grade between that of their former grade and present grade.

421.533 **Step Increases**

An employee with a saved grade continues to receive step increases in the saved grade. However, under no circumstances, can these step increases exceed the maximum step of the saved grade (see 421.45b).

Question: If a mail handler is involuntarily reassigned to a lower level position as a result of automation or technological and mechanization changes, what salary does that employee receive while in the lower level position?

Answer: The employee would receive rate protection in the form of saved grade until such time as he or she failed to bid or apply for a position in the employee's former wage level.

Question: If an employee who is already assigned to a lower level position and is still in the protected rate period voluntarily bids on a position in that same lower grade, does that employee lose his or her protected status?

Answer: No. A voluntary bid under these circumstances is not considered a voluntary reduction to a lower salary standing at the employee's request.

Source: Pre-arbitration Settlements H1C-5D-C 8540, dated August 4, 1983, and H1N-1J-C 18920, dated April 4, 1985.

The parties at the National Level signed a May 13, 2014 pre-arbitration settlement stating as follows:

The issue in [these] grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 420, *Wage Administration Policy for Bargaining Unit Employees* are fair, reasonable and equitable.

After reviewing this matter, we agree to resolve this grievance based on the following:

422.325 Reductions in Grade
a. ***

b. Step and Next Step Date Assignment for Bargaining Unit to Bargaining Unit Reductions in Grade within or into the mail handler rate schedule (RSC M). Assignments are made as follows:

1. To Former Lower Grade. The employee is assigned to the step and next step date as if service had been uninterrupted in the lower grade since the last time held.
2. To New Lower Grade. The employee is assigned to the step and next step date in the lower grade as if all postal service had been in the lower grade.

The Postal Service will modify the ELM, Section 422.325 to incorporate the above principle in accordance with Article 19 of the collective bargaining agreement.

Source: Pre-arbitration Settlement Q00M-6Q-C 06280834, dated May 13, 2014.

MEMORANDUM OF UNDERSTANDING

PROMOTION PAY ANOMALY

In recognition of the need to correct the promotion pay anomaly contained in the current salary schedule, the Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, agree to meet and to continue their discussions with respect to this matter with the ultimate goal of correcting the promotion pay anomaly by creating a new salary schedule and related administrative rules as soon as practicable.

The new salary schedule will contain the following features:

- Uniform waiting periods by grade resulting in a shorter cumulative period to reach the top of a grade as compared to the current salary schedule.
- Uniform step increase amounts by grade.

In recognition of the administrative burdens in processing employee pay changes (promotions, higher level pay, repromotions, change to lower level, etc.) to the extent practical, the parties agree that the Postal Service will implement new and simplified administrative rules to be set forth in the Employee and Labor Relations Manual as soon as practicable.

Question: What is meant by the term "promotion pay anomaly"?

Answer: The term "promotion pay anomaly" refers to the situation where employees who have been promoted to higher grades in Steps A, B, or C earn less than similarly tenured employees who have not been promoted but receive a step increase in the lower grade. The resulting difference in earnings is called the "promotion pay anomaly."

Question: Is there a procedure in place to correct this anomaly?

Answer: Yes. The parties at the National level have agreed to a settlement that provides lump-sum monetary payments to eligible employees on a quarterly basis. Affected employees are notified by means of a notation (ABC Lump Sum Included) on their earnings statement. However, an employee who has questions about whether he or she should be included may contact his or her personnel office or union representative.

In a Memorandum of Understanding dated February 6, 1991, the parties at the National level agreed as follows: "Effective November 21, 1990, employees who have been promoted from Steps A, B, or C and who have been reassigned to their former grade will be placed in the step they would have been in, with credit toward their next step increase, as if all service had been in the original grade. However, such employees who are subsequently repromoted will be placed in the steps they would have attained, with credit toward their next step increase, as if they had remained continuously in the higher grade since the original promotion."

In that same MOU, the Postal Service and the Union agreed to the following principle: "No employee will, as a consequence of a promotion, at any time be compensated less than that employee would have earned if the employee had not been promoted but had, instead, merely advanced in step increments in that employee's grade as a result of fulfilling the waiting time requirements necessary for step increases. This includes affected employees who are or were promoted to a higher grade and subsequently reassigned to their former grade."

Source: MOU between USPS and NPMHU, dated February 6, 1991.

Question: Have the parties implemented the MOU Re Promotion Pay Anomaly that appears in the National Agreement and is reprinted above by agreeing to a new salary schedule and related administrative rules to correct the promotion pay anomaly?

Answer: No. As of the date that this document was produced, the promotion pay anomaly continues to affect certain employees, although, as noted above, those affected employees receive compensatory payments on a quarterly basis.

Section 9.7 Mail Handler Assistant Employees

In addition to the general increases provided in Section 9.1 above, MHAs will receive an increase of 1.0% annually, for a total of 2.1% effective November 23, 2019, 2.0% effective November 21, 2020, and 2.0% effective November 20, 2021.
All percentage increases are applied to the wage rates in effect on September 20, 2019.

[See Memo, page 134]

ARTICLE 10
LEAVE

This article contains the National Agreement's general provisions concerning the leave program. Article 10 guarantees continuation of the leave program (Sections 10.1 and 10.2), outlines the national program for the use of annual leave through vacation planning (Sections 10.3, 10.4 and 10.5), provides for sick leave (Section 10.6) and states certain additional leave rules concerning minimum leave charges and leave without pay (LWOP) (Section 10.6).

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

- **ELM, Subchapter 510.** Section 10.2 specifically incorporates the Employee and Labor Relations Manual (ELM), Subchapter 510. Subchapter 510, Sections 511-519 contain the specific regulations controlling leave for career bargaining unit employees.

- **Local Memorandum of Understanding.** Normally, the important features of bargaining unit employees' leave are governed by the local memorandum of understanding, which is created and subsequently modified as a result of local implementation pursuant to Article 30 of the National Agreement.

- **Federal law**. The Family and Medical Leave Act (FMLA) is a federal law that entitles eligible employees time off to care for a new child, for a seriously ill family member, for an employee's serious medical problems**,** and for qualifying exigencies and military caregiver leave. The detailed regulations governing the FMLA are found in the federal law and in the Code of Federal Regulations (29 C.F.R. Part 825). The Postal Service's policy concerning FMLA may also be found in ELM Section 515.

This material explains the main provisions of Article 10, summarizes other important leave rules and references 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.

Section 10.1 Funding

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

Section 10.2 Leave Regulations

A. 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, other than MHAs, shall remain in effect for the life of this Agreement.

B. Career employees will be given preference over noncareer employees when scheduling annual leave. This preference will take into consideration that scheduling is done on a tour-by-tour basis and that employee skills are a determining factor in this decision.

C. Article 30 of the National Agreement and Local Memoranda of Understanding provisions do not apply to MHAs, except as specifically referenced in the **2019** National Agreement and as follows: During the local implementation period**, if properly raised in accordance with Article 30,** the parties **will discuss whether** to include provisions in the local memoranda of understanding to permit MHAs to apply for annual leave during choice vacation periods, as defined in Article 10 of the National Agreement. Granting leave under such provisions must be contingent upon the MHA having a leave balance of at least forty (40) hours.

[See Memos, pages 151-158]

(The preceding section, Article 10.2, shall apply to Mail Handler Assistant employees.)

Continuation of Leave Program: Sections 10.1 and 10.2 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
Absence for Family Care or Serious Health Condition of Employee- Section 515
Court Leave - Section 516
Military Leave - Section 517
Holiday Leave - Section 518
Administrative Leave - Section 519
Wounded Warrior Leave

Within the above sections there may be distinctions defined for full-time regular, part-time regular, and part-time flexible bargaining unit employees and for non-bargaining unit employees.

Annual Leave: Annual leave is used for vacation and other paid absences. 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.

In 2015, the NPMHU intervened in an NALC national arbitration hearing concerning the right of former Mail Handler Assistants (MHAs) to use annual leave following their conversion to full-time. National Arbitrator Shyam Das wrote:

"Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or take annual leave."

Source: National Arbitration Award Q11N-4Q-C 14239951, Arbitrator Shyam Das dated July 2, 2015.

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.

Bargaining unit employees typically use annual leave in three ways:

1. By applying in advance, normally based on seniority, for vacation time as specified in this article and in the local memorandum of understanding.

2. Other requests for annual leave as desired throughout the year.

3. Emergency annual leave taken for emergencies.

Question: How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

Answer: This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary or improper. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Annual leave accrual—full-time employees: Full-time employees earn annual leave as set forth in ELM, Section 512.311, which is reprinted 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 full 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 Year*. Full-time career employees are credited at the beginning of the leave 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. ELM, Section 512.312.b provides that part-time flexibles 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	Years of 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.[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.)1
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.

ATTACHMENT A
MAIL HANDLER ASSISTANT EMPLOYEE (MHA) ANNUAL LEAVE PROVISIONS

I. GENERAL

A. Purpose. Annual leave is provided to MHAs for rest, recreation, emergency purposes, and illness or injury.

1. Accrual of Annual Leave. MHAs 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 Earned Per Pay Period	Hours of Annual Leave
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 MHA may receive a lump-sum payment for accumulated annual leave subject to the following condition:

B. A MHA 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 MHAs 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 MHA 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, MHAs 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. MHA Responsibilities. MHAs are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, MHAs 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 MHA. If a supervisor does not approve an application 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.

Question: May an MHA carry over accumulated annual leave when converted to a career employee?

Answer: No, currently there are no provisions requiring the Postal Service to allow MHAs to carry over accumulated annual leave upon conversion to a career position.

Source: Step 4 Grievance E11M-1E-C 14017686, dated February 8, 2016.

Question: Do part-time regular employees earn annual leave for hours worked in excess of their schedule?

Answer: Part-time regular employees are entitled to additional leave hours, based on their leave category, for each 20, 13, or 10 hours of work in excess of their schedule, provided that no more leave is credited to the part-time employee than could be earned in the same leave year by a full-time employee.

Source: Employee and Labor Relations Manual (ELM), Chapter 5, Section 512.312.

Time worked as a casual or temporary employee on or after January 1, 1977 does not count for purposes of determining the rate of annual leave accrual.

Source: Step 4 Grievance A8-C 0520, dated February 1, 1980.

Time worked as an MHA does not count for purposes of determining the rate of annual leave accrual.

An MHA may request annual leave for a minimum of one hour and up to the number of hours the MHA is scheduled to work, but no more than eight hours in a service day or 40 hours in a service week.

Source: Doug Tulino, Vice President Labor Relations, USPS, memorandum to Area Managers, Human Resources and Labor Relations, November 25, 2019.

Section 10.3 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.

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, Local Implementation, provides the vehicle for establishing the local leave program. In fact, of the 20 items available for local implementation, 10 involve the creation of a local leave plan.

The local memorandum of understanding usually provides a method for the selection of annual leave for the “choice vacation period” and “other than choice vacation period.” Normally, choice vacation periods, or weeks, are approved based on seniority and “other than choice” is based on first come, first served. Article 30 (Section 30.2) Items C, D, E, F, G, H, I, J, K, and R, pertain to the local leave program. Local implementation is normally conducted shortly after each National Agreement is finalized.

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

A bargaining unit employee may carry over up to 440 hours (55 days) of accumulated annual leave from one leave year to the next. The Memorandum of Understanding on Annual Leave Carryover is printed in the National Agreement. Although the memorandum refers to the 1990 National Agreement, it was renewed as part of the **2019** National Agreement. Any leave remaining beyond the maximum carryover is forfeited by the employee at the beginning of the new leave year.

Supervisors should exercise care to assure that bargaining unit employees do not have to forfeit any part of their annual leave. Supervisors and stewards should encourage bargaining unit employees to be aware of their leave balances to assure that an employee does not end up with excess annual leave.

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.

The duration of the choice vacation period must be of sufficient length to allow bargaining unit employees to request the maximum leave available to them pursuant to Section 10.3D. When addressing Article 30 (Section 30.2) during local implementation consideration must be given to Items E through H and R which formulate the total choice vacation period plan.

The duration of the choice vacation period should largely be determined by the percentage of employees who are to receive choice vacation period leave each week, since Section 10.3 of the National Agreement provides each employee with the opportunity to select 10 to 15 days (2 or 3 weeks) of choice vacation period leave.

D Annual leave shall be granted as follows:

D1 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.

D2 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.

Section 10.3D1 establishes that those employees who have less than three years of creditable service will be granted a maximum of 10 continuous days of annual leave during the choice vacation period. Section 10.3D2 establishes that those employee's with more than three years of creditable service will be granted a maximum of 15 continuous days of annual leave for their choice vacation period selection(s).

Part-time flexible employees: Part-time flexible employees may apply for choice vacation period(s) only if they have already been credited with annual leave at the time the application process is closed (ELM, Section 512.61(b)).

D3 The subject of whether an employee may at the employee'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.

Under Article 30 (Section 30.2 Item F), a local memorandum of understanding can determine whether the maximum number of days of continuous annual leave for choice vacation period selection will be requested as a single unit of either 10 or 15 continuous days or as two separate units of either five or 10 continuous days, so long as the total does not exceed the amount to which the individual employee is entitled under Sections .3D1 and D2. For instance, an employee who has 15 days may request 10 continuous days of annual leave in May and five continuous days in August.

D4 The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

This section should be read in conjunction with Section 10.3A and 4C and with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item K.) It establishes that employees may request annual leave in addition to their selection(s) for choice vacation period(s) (See Section 10.4C).

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.

This section establishes that the first day of an employee's choice vacation period(s) shall start on the first day of the employee's basic work week. Exceptions may be granted when the employee, the NPMHU representative and the Employer agree. This section should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item E) which states that the local parties can determine the beginning day of an employee's choice vacation period selection(s). Where the local memorandum of understanding provides that the employee's choice vacation period selection(s) begins on a day other than the first day of an employee's basic work week, the local memorandum of understanding is controlling.

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.

This section provides that if an employee serves on jury duty, or 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. However, that employee cannot deprive any other employee of their first choice of scheduled vacation. The provisions of this section should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Items G and R.) Those items provide for a determination to be made as to 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.)

Section 10.4 Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

A The Employer shall, no later than November 1, 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.

The provisions of this section should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item J.) The local installation head must notify all employees of when the new leave year will begin. Where local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item J) provide for another date and means of notifying employees, the local memorandum of understanding is controlling.

Question: Does the beginning of the new leave year necessarily coincide with the beginning of Pay Period 1?

Answer: No. An employee cannot determine to which leave year a request for leave will be charged merely by viewing his/her pay stub.

Source: Step 4 Grievance H1C-4B-C 17039, dated November 10, 1983.

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

B1 Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount expected to be taken in the current year.

B2 Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).

B3 Provide official notice to each employee of the vacation schedule approved for each employee.

Section 10.4B2 and 3 should be read in conjunction with any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Items C and I) which should provide for the following: (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.

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.

The provisions of this section should be read in conjunction with Sections 10.3A and 10.3D4 and any applicable local memorandum of understanding provisions pursuant to Article 30 (Section 30.2, Item K.) A local memorandum of understanding may specify rules governing other requests for annual leave (other than for the choice vacation period). For example, a bargaining unit employee

may win tickets to a Stanley Cup playoff game and request leave to attend. A local memorandum of understanding might specify that such leave requests must be made prior to the Wednesday preceding the week for which the employee is requesting leave. It also might specify how long management has to reply to such requests.

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

Question: Under what circumstances can management cancel previously approved annual leave?

Answer: Employees who have annual leave approved are entitled to such annual leave except in emergency situations.

Source: Step 4 Grievances H1N-5D-C 19202/19204, dated June 15, 1984.

Question: Can a PTF's previously granted annual leave be unilaterally changed to a non-scheduled day solely to avoid the payment of overtime by making the PTF available for an additional day of work at the straight-time rate?

Answer: No.

Source: Step 4 Grievance H1C-5K-C 24208, dated March 5, 1985.

Question: Under what circumstances can an employee cancel annual leave that has already been approved?

Answer: While not contractually obligated to do so, management should give reasonable consideration to requests for annual leave cancellation, unless otherwise provided in the Local Memorandum of Understanding.

Source: Step 4 Grievance H8N-5C-C 18666, dated September 8, 1981.

Question: May employees volunteer to work on non-scheduled days that are in conjunction with approved annual leave?

Answer: Normally, employees who are absent are not required nor considered available to work overtime. However, if an employee on the Overtime Desired List so desires, that employee may advise his/her supervisor in writing of his/her availability to work a non-scheduled day that is in conjunction with or part of approved annual leave.

Source: Step 4 Grievance B90M-1B-C 95062381, dated October 15, 1997.

Section 10.5 Implementation of the Leave Program

A If, at the end of the local implementation period provided for in this Agreement, the local parties have not reached agreement on the length of the choice vacation period, the choice vacation period will be 23 consecutive weeks commencing on the last Saturday in April unless the local parties agree to another starting date. The 23 weeks shall include military leave and union leave for conventions and conferences. The method of selecting vacations shall be determined locally.

This automatic selection applies where a Local Memorandum of Understanding (LMOU) does not exist or does not contain language designating the duration of the choice vacation period. Where the choice vacation period is defined in the LMOU, disputes regarding its duration that arise during subsequent local implementation periods would be resolved in keeping with Article 30.

B The vacation sign up list, after the initial sign up period, shall be maintained at a location accessible to employees.

C After the initial sign up period is completed and vacant weeks still exist on the vacation sign up list, requests for any of these vacant weeks shall be handled as follows:

C1 The installation head will honor all requests for vacant weeks which are submitted no less than seven (7) days in advance of the leave period.

C2 The installation head will make every effort to grant requests for vacant weeks submitted less than seven (7) days in advance of the leave period.

Question: Must management honor an employee's request under Section 10.5C for additional annual leave during the choice vacation period after the vacation list has been posted and the employee has been approved for his/her full leave entitlement provided in Sections 10.3D1 and D2?

Answer: The parties agree that Section 10.5C applies to requests for annual leave in full week increments made by an employee after the initial sign-up period is completed and vacant weeks still exist on the vacation sign-up list, even if the requesting employee has been approved for his/her full leave entitlement provided in Sections 10.3D1 and D2.

Source: Pre-arbitration Settlement D90M-1D-C 95008277, dated February 23, 1999.

D The installation head's policy in handling requests for emergency leave shall be made known to all employees and the Union. The installation head will consider each such request on the merits of the individual situation. The

installation head shall post on the bulletin board the appropriate phone number to call by tour when an emergency arises.

Emergency Annual Leave: In an emergency a bargaining unit employee 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 employee must submit PS Form 3971 and explain the reason for the absence to the supervisor as soon as possible (ELM, Section 512.412)

Section 10.6 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 Employees becoming ill while on annual leave may have leave charged to sick leave upon request.

D Unit Charges for Sick Leave and Annual Leave shall be in minimum units of one hundredth of an hour (.01).

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

F 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.

[See Memos, pages 157-158]

Section 10.6 provides for the continuation of the sick leave program, whose detailed regulations are contained in ELM, Part 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.” A limited amount of sick leave (up to 80 hours) also may be used to provide for the medical needs of a family member. For specific details, see the MOU Re: Sick Leave for Dependent Care reproduced at the end of this article and ELM, Section 515.

Question: May an employee use sick leave during the probationary period?

Answer: Yes. A probationary employee may use sick leave that he/she has earned.

Question: Are part-time flexible employees guaranteed eight hours of sick leave in a day in which they call in sick?

Answer: No. A part-time flexible employee is not guaranteed a set number of hours of sick leave any time requested, but should be paid the number of hours the employee was realistically scheduled to work or would reasonably have been expected to work on a given day.

Source: ELM Chapter 5, Section 513.42

Question: May management implement a local tardiness and sick leave policy?

Answer: Yes. However, any local attendance program cannot be inconsistent with ELM 510. Additionally, any disciplinary action which results from a local attendance policy must meet the just cause provisions of Article 16 of the National Agreement.

Source: Step 4 Grievances H1N-5D-C 14783/14785, dated December 18, 1983.

Question: May local management implement a policy whereby employees are disciplined for using sick leave in excess of a set percentage of their scheduled work hours?

Answer: No. The parties agree that discipline for failure to maintain a satisfactory attendance record or for excessive absenteeism must be determined on a case-by-case basis in light of all the relevant evidence and circumstances. Any rule setting a fixed amount or percentage of sick leave usage after which discipline is automatically issued is inconsistent with the National Agreement and applicable handbooks and manuals. Local management will issue no new rules or policies regarding discipline for failure to maintain a satisfactory attendance record or excessive absenteeism that are inconsistent with the National Agreement and applicable handbooks and manuals.

Source: Step 4 Grievance A8-NA-0840, dated January 5, 1981, and Step 4 Grievance G06M-1G-D 11079627, dated January 16, 2013.

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).

Question: Do MHAs earn sick leave?

Answer: No.

Sick leave use: Bargaining unit employees apply for sick leave, either in advance or after returning to work, by submitting a PS Form 3971. When an employee has an unexpected need for sick leave, he or she must notify the appropriate supervisor 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 PS Form 3971 (ELM, Section 513.332).

Question: Can management require employees to complete PS Form 3971 prior to clocking in?

Answer: No. The parties have agreed that completion of PS Form 3971 "upon returning to duty," as stated in ELM Section 513.332, means while the employee is on-the-clock.

Source: Step 4 Grievance H1C-3W-C 48121, dated September 3, 1985.

Sick leave is paid at the employee's regular straight-time rate, and limited to maximums of eight hours per day, 40 hours per week and 80 hours 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, Section 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

General provisions are as follows:

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 one day.

(2) 40 hours in any one 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 is 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 that is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

Question: If a part-time flexible employee is scheduled to work and calls in sick, may their day off be changed and no sick leave be paid?

Answer: No. If the part-time flexible employee is scheduled and calls in sick, then sick leave is paid based on the number of hours the part-time flexible employee would have worked. If the part-time flexible employee has already been credited with 40 hours or more of paid service, then sick leave may not be granted for the rest of the service week.

Source: ELM Chapter 5, Section 513.421.

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.” See also Section 10.6C.

Question: Can a disabled veteran be disciplined for using sick leave while receiving treatment at a VA hospital?

Answer: The parties agree that Executive Order 5396, dated July 3, 1930, applies to the Postal Service and that absences meeting the requirements of that decree cannot be used as a basis for discipline. Granting of leave under the Executive Order is contingent upon the veteran providing prior notice of the times of absences that are required for medical treatment.

Source: Step 4 Grievance H4N-4F-C 11641, dated October 28, 1988.

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 PS 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). See also Section 10.6B.

Question: Must management pay an employee for all time spent to undergo a fitness for duty exam at the employer's request or can charging such time to an employee's annual leave constitute such payment?

Answer: Time spent by an employee waiting for and receiving such medical attention at the direction of the employer constitutes hours worked. Therefore, employees shall be carried in an official duty pay status for all such time involved.

Source: Step 4 Grievance A8-E-0477, dated January 30, 1980.

Medical certification: ELM, Sections 513.361 and 513.362 establish three rules:

a. For absences of more than three days, i.e., three scheduled work days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave; 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."

A number of disputes have occurred when a supervisor required an employee, who was not on restricted sick leave, to provide medical documentation for an illness or injury of three days or less. It is understood that the supervisor's request for medical documentation cannot be arbitrary, capricious, or unreasonable.

In a 2007 National-level Step 4 agreement, the parties addressed whether the use of the "Deems Desirable Option" in the RMD/eRMS, violates the National Agreement, Chapter 510 of the ELM and various Step 4 agreements. The parties agreed as follows: "[I]f a supervisor determines that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the Postal Service it must be made on a case by case basis, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious or unreasonable."

Source: Step 4 Grievance A00M-1A-C 06143989, dated May 3, 2007.

A blanket management order requiring medical documentation or other acceptable evidence of incapacity to work from all employees who call-in on a particular day, regardless of individual circumstances, goes beyond the intent of Part 513.361 of the Employee & Labor Relations Manual and should not be used.

Source: Step 4 Grievance H1C-1N-C-1301, dated April 19, 1982.

Question: Does a medical unit nurse have the authority to require an employee to provide medical documentation prior to returning to work?

Answer: No, however a medical unit nurse may recommend to a supervisor that he or she require an employee to submit medical documentation when such documentation is deemed necessary to protect the interests of the Postal Service.

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 "some responsible supervisor has knowledge of the employee's continuing situation" (ELM, Section 513.363).

Question: Can medical documentation provided by a naturopath be presented to substantiate a need for sick leave?

Answer: Yes. Acceptable medical documentation must be furnished by the employee's attending physician or other attending practitioner. A naturopath is considered to be an attending practitioner.

Source: Step 4 Grievance H1N-5D-C 29943, dated June 18, 1985.

A licensed chiropractor performing within the scope of his/her practice is also considered to be an attending practitioner.

Question: Do the requirements of ELM Section 513.364 mean that the medical documentation itself must be generated by the doctor?

Answer: No. The ELM contains no prohibition against the submission of pre-printed forms; however, it is understood that any medical documentation or other acceptable evidence submitted must meet the requirements set forth in the ELM.

Source: Step 4 Grievance H4C-3A-C 15991, dated December 19, 1986.

Question: Must the signature of the doctor or attending practitioner appear on the medical certificate?

Answer: No. Rubber stamped and/or facsimile signatures are acceptable. Additionally, an authorized staff member, including a nurse, may complete and sign a document under instruction from the attending physician or practitioner. These forms of documentation may be subject to verification on a case-by-case basis.

Source: Step 4 Grievances H1C-3T-C 40742, dated May 2, 1985, and H1C-NA-C 113, dated September 6, 1984.

Question: Must the medical documentation cover the entire period of the absence?

Answer: The parties have agreed that normally the medical documentation should cover the entire period. However, supervisors may accept proof other than medical documentation if it supports approval of the sick leave application.

Source: Step 4 Grievance H1C-3W-C 22219, dated September 14, 1983.

Question: What information should be included in medical documentation?

Answer: The documentation should include an explanation of the nature of the employee's illness or injury sufficient to indicate that the employee was or will be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation. Medical information that includes a

diagnosis and a medical prognosis is not necessary to approve leave. If medical documentation containing a diagnosis and/or medical prognosis is received by a supervisor, it must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806.

Source: Memorandum from National Medical Director D.H. Reid III, dated June 22, 1995.

Question: How should management handle review of medical documentation submitted by an employee returning to duty after an extended absence due to illness?
Answer: 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 documentation on the same day that it is submitted. Normally, the employee will be returned to work on his/her next workday provided that adequate medical documentation is submitted within sufficient time for review. The reasonableness of the employer's delay in returning such an employee to duty beyond his/her next workday is subject to the grievance-arbitration procedure on a case-by-case basis.

Source: Step 4 Grievances H4C-4A-C 34162/34163, dated December 16, 1987.

The parties at the National Level signed a February 10, 2014 pre-arbitration settlement stating as follows:

"The current ELM 865 language does not negate management's obligation under the MOU on Return to Duty when returning an employee to duty after an absence for medical reasons.

"The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis."

Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.

Question: Is it mandatory for an employee to provide FMLA documentation within 15 days of the receipt of the request?

Answer: Yes, unless it is not practicable under the particular facts and circumstances.

Question: In order to qualify as a serious health condition, under the provisions of ELM 515.2.i.(2)(a), does the employee have to have treatment two or more times by a health care provider within 30 days of the first day of incapacity?

Answer: Yes, unless extenuating circumstances prevent the employee from a follow-up visit occurring within 30 days of the first day of incapacity. At the same time, other provisions of ELM 515.2(i) include other means to show a serious health condition.

Question: Are employees always required to submit complete and sufficient medical certification to establish a serious health condition as defined under the FMLA?

Answer: Yes, but this responsibility is not triggered until the employee receives a request for certification from the Postal Service.

Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.

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 513.39.

Question: May management create a list of employees who are required to provide medical documentation for all unscheduled absences in lieu of utilizing the restricted sick leave procedures found in ELM, Section 513.39?

Answer: No. A "call-in" list of employees that are automatically required to provide medical documentation for all unscheduled absences, even though the employees are not on restricted sick leave, should be abolished.

Source: Pre-arbitration Settlement H1C-3D-C 37622, dated June 3, 1985.

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: This Memorandum of Understanding enables a bargaining unit employee to use earned sick leave for a new purpose: caring for an ailing family member.

An employee's right to Sick Leave for Dependent Care is separate and different from the right to leave under the Family and Medical Leave Act of 1993. Sick Leave for Dependent Care is a benefit established by the Memorandum of Understanding; FMLA is a federal law affecting almost all employers and employees in this nation. Still, while there are important differences, there are certain similarities. For instance, the definitions of son, daughter, spouse and parent used for Sick Leave for Dependent Care are the same as the FMLA definitions. An employee may take time off to care for the same person under both Sick Leave for Dependent Care and FMLA.

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 two (2) to three (3) hours of sick leave for a doctor's appointment and who returns to work and clocks in after two (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 PS Form 3971. If the request for 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 administrative discretion. There are certain exceptions concerning disabled veterans, military reservists, members of the National Guard, and employees who request and are entitled to time off under the Family and Medical Leave Act (FMLA), as outlined in ELM, Section 515, Absence for Family Care or Serious Health Condition of Employee. See ELM, Section 514.22 for more information.

An employee may use LWOP in lieu of sick or annual when the employee requests and is entitled to time off under ELM 515 or the FMLA.

Source: Pre-arbitration Settlement C90C-4Q-C 95048663, dated April 20, 1999.

The Memorandum of Understanding Re: LWOP in Lieu of SL/AL, reprinted at the end of this article, establishes that an employee need not exhaust annual leave and/or sick leave before requesting leave without pay. See ELM, Exhibit 514.4(d).

Question: Can an employee's use of LWOP impact their ability to earn annual and/or sick leave?

Answer: Yes. Employees who are on LWOP for a period, or periods, totaling 80 hours (the normal number of workhours in one pay period) during a leave year have their leave credits reduced by the amount of leave earned in one pay period. There is an exception for employees in leave category 6 who are not on

LWOP for the entire year and whose accumulated LWOP reaches 80 hours in the last pay period in the leave year; these employees have their leave balance reduced by only six hours, even if they earn 10 hours during that pay period.

Source: ELM Chapter 5, Section 514.24.

Military Leave: ELM Section 517 contains provisions regarding authorized absence from duty granted to eligible employees who are members of the National Guard or Reservists of the armed forces.

Question: Are only full-time employees eligible for military leave?

Answer: No. Full-time career employees are granted up to 15 days of military leave per fiscal year and part-time employees are granted one (1) hour of military leave for each 26 hours in a pay status in the preceding fiscal year.

Source: ELM Chapter 5, Section 517.41.

Question: Are MHAs eligible for military leave?

Answer: No. MHAs are permitted to be absent but are not eligible for paid military leave.

Source: ELM Chapter 5, Section 517.22.

Question: Can full-time employees take more than 15 days of military leave within a particular fiscal year?

Answer: Yes. Employees are allowed, if they have official orders for training or responsibilities beyond the 15 days, to take annual leave or LWOP at their discretion for the amount of time necessary.

Source: ELM Chapter 5, Section 517.61.

Administrative Leave: Administrative Leave is governed by the provisions of Section 519 of the 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 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.”

Question: Are MHAs eligible for Blood Donor Leave?

Answer: No.

National Arbitrator Parkinson has ruled that "employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave."

Source: National Arbitration Award J90M-1J-C 95047374, Arbitrator P. Parkinson, dated December 8, 2000.

Question: What is an "Act of God?"

Answer: "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 and must prevent groups of employees from working or reporting for work.

Source: ELM Chapter 5, Section 519.211.

Question: How much administrative leave does an employee receive if released from work before the normal completion of his/her tour of duty as a result of an "Act of God?"

Answer: Full-time and part-time regular employees are credited for the hours worked, plus enough administrative leave to complete their scheduled hours of duty. The total cannot exceed eight hours in any one service day.

Part-time flexible employees are credited for the hours worked, plus enough administrative leave to complete their scheduled work hours. The total cannot exceed eight hours in any one service day. If there is a question as the scheduled work hours, the part-time flexible is entitled to the greater of: the number of hours worked on the same service day in the previous service week; the number of hours scheduled to work; or the number of hours guaranteed under the National Agreement.

Source: ELM Chapter 5, Section 519.214.

Continuation of Pay: Under the provisions of the Postal Reorganization Act, 39 U.S.C. §1005(c), all employees of the Postal Service are covered by the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101 et seq.

Court Leave: The following is a reprint of the definition of Court Leave contained in the ELM, Section 516.121:

> *Court leave* is the authorized absence from work status (without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a

judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve as a juror, as a witness in a nonofficial capacity on behalf of a state or local government, or as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. The court or judicial proceeding may be located in the District of Columbia, a state, territory, or possession of the United States, including the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.

Before deciding whether an employee is entitled to court leave, management must first determine whether the employee will be in official duty status. Under ELM, Section 516.11, employees are on official duty status, and not on court leave, when serving as a witness on behalf of the United States or District of Columbia governments in an official or nonofficial capacity or when serving as a witness in their official capacity on behalf of a state or local government or a private party.

Source: ELM Chapter 5, Sections 516.11 and 516.51.

Question: Is an employee performing official duty when subpoenaed by the National Labor Relations Board to testify as a witness in any capacity?

Answer: Such an employee is performing official duty during the period in which they are summoned to testify or produce official records on behalf of the National Labor Relations Board, which is an agency of the United States. This position applies regardless of whether the testimony is favorable to, adverse to, or unrelated to the Postal Service.

Source: Step 4 Grievance A8-W-0046, dated August 28, 1979.

National Arbitrator Gamser, in a case decided in October, 1980, found that the parties in Philadelphia had agreed that the language in the ELM permitted employees to change their days off so as to have their temporary work schedule coincide with their days in court and their non-scheduled days coincide with the days in the week on which they were not required to be in court. He further ruled that management did not have the right to make any unilateral change in the consistent past practice given evidence of the accepted interpretation of those provisions of the ELM without following the procedure outlined in the second paragraph of Article 19 in order to effectuate such a change.

Source: National Arbitration Award N8-E 0088, Arbitrator H. Gamser, dated October 3, 1980.

The following cases were settled in pre-arbitration citing Arbitrator Gamser's award in N8-E 0088:

A8-N-0383/N8C-1J-C 3922 decision dated October 30, 1981.
H8C-4F-C 24183 decision dated October 30, 1981.
A8-W-0641/W8C-5F-C 8400 decision dated November 10, 1981.
A8W-0300/W8C-5F-C 4670 decision dated November 10, 1981.

The question in these grievances was whether or not management violated Article 10 of the National Agreement by not allowing an employee to voluntarily change his work schedule to coincide with the days the employee was required to be in court under the circumstances that would make him eligible for court leave.

The parties mutually agreed, in accord with Arbitrator Gamser's decision , that where it is established in an appropriate proceeding that management of an installation has consistently interpreted the provisions of the ELM and the related provisions of any earlier manual, regulation, or the Federal Personnel Manual, to allow employees to change their work days, as well as their work hours, to coincide with the court circumstances above, management must continue such practice or revert to such practice until and unless a change in the provisions of the ELM is made pursuant to the procedure in Article 19 of the National Agreement.

Question: Are part-time flexible employees entitled to court leave?

Answer: Yes, under the conditions defined in the Memorandum of Understanding Re. Part-time Flexible Court Leave, reprinted hereunder.

Question: Are MHAs entitled to court leave?

Answer: No. MHAs are not entitled to court leave and must use either annual leave or LWOP to cover the period of absence from postal duties for court service.

Source: ELM Chapter 5, Section 516.22

For many years, the NPMHU and the Postal Service have had ongoing discussions about the application of changing regulations issued by the U.S. Department of Labor under the Family and Medical Leave Act.

Regulations issued on February 25, 2015 and reprinted at 80 Fed. Reg. 9,989 (Feb. 25, 2015) revised the definition of "spouse" to include all legally married spouses as recognized under State law for purposes of marriage in the State where the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This regulation therefore expands the availability of FMLA leave to legally married same-sex spouses regardless of the State in which they reside.

In addition, new FMLA leave entitlements for military families were included in the National Defense Authorization Acts for Fiscal Years 2008 and 2010, which created two new categories of leave: qualifying exigency leave and military caregiver leave. Employees are entitled to up to 26 weeks of leave in a single 12-month period to care for covered service members who suffer a serious injury or illness in the line of duty while on active duty. Employees are also entitled to 12 weeks of FMLA leave for a qualifying exigency arising out of the fact that a military member is on covered active duty or is called to covered active duty status. The final regulations implementing these two statutes can be found at 73 Fed. Reg. 67,934 (Nov. 17, 2008) and 78 Fed. Reg. 8,834 (Feb. 6, 2013). The Postal Service's policy concerning FMLA, including military caregiver and qualifying exigency leave, may also be found in ELM § 515.

Leave under the Family and Medical Leave Act: The Family and Medical Leave Act of 1993 (FMLA) is a law that entitles eligible employees to an accumulative total of up to 12 workweeks of job-protected absence within a Postal Service leave year (or 26 workweeks in a single 12-month period for military caregiver leave) for one or more of the following:

- The birth of the 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., 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.

- To care for covered service members who suffer a serious injury or illness in the line of duty while on active duty, as defined in the FMLA regulations and ELM § 515.

- For a qualifying exigency arising out of the fact that a military member is on covered active duty or is called to covered active duty status, as defined in the FMLA regulations and ELM § 515.

For the purposes of the FMLA, the following definitions apply:

A parent is defined as a biological parent or an individual who stands *in loco parentis.* Someone may stand *in loco parentis* if he or she acts as a parent toward a son or daughter, with day to day responsibilities to care for or financially support a child, or a person who had such responsibility for the employee when the employee was a child.

A spouse is defined as all legally married spouses as recognized under State law for purposes of marriage in the State where the marriage was entered into or, in the cases of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State, including same-sex or common law marriage in States where it is recognized.

The Postal Service will recognize same-sex spouses who have legally married in a jurisdiction that permitted same-sex marriages, regardless of where they currently live or work, for purposes of family member definitions under Postal Service relocation and leave programs.

Source: Letter from Manager, Policy and Programs, Alan S Moore dated July 10, 2013.

A son or daughter is defined as biological, adopted, foster, *in loco parentis* (defined above under definition of parent), legal ward or step child under the age of 18; or a child 18 or over who has a disability as defined under the Americans with Disabilities Act or Rehabilitation Act and the disability makes the person incapable of self-care, regardless of when the disability commenced.

Disability under the Americans with Disabilities Act or Rehabilitation Act is defined as an impairment which substantially limits a major life activity. A major life activity does not include things like cooking or cleaning, but instead, the more fundamental and basic activities central to a person's life: e.g., seeing, breathing, hearing, eating, walking, standing, speaking and learning. The operation of a major bodily function is also considered a major life activity, for example, the operation of one's immune, circulatory, reproductive, digestive, bowel, brain, neurological and/or respiratory system. An individual must be (or have been) substantially limited in performing a major life activity as compared to most people in the general population in order to have a disability. Determining whether an impairment "substantially limits" an individual from performing a major

life activity requires an individualized assessment comparing the person's ability to perform a major life activity as compared to most other people in the general population. This includes consideration of the nature and severity of the impairment, its duration, and permanent or long term impact of the impairment. An impairment with only minor or moderate effects will not constitute a disability. However, the effects of an impairment expected to last six months or less can still be substantially limiting if sufficiently severe. Furthermore, conditions which are episodic or in remission are disabilities if they would substantially limit a major life activity.

"Incapable of self-care" is the need for assistance or supervision to provide daily care in 3 or more "activities of daily living": grooming, bathing, eating, hygiene, cooking, cleaning, paying bills, using a phone or post office, and shopping.

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. Management has the right to ask employees about the circumstances of their condition in order to determine whether absences may be protected under the FMLA and/or whether absences are for a condition which requires the ELM's return to work procedures.

Qualifying exigency leave. The Postal Service must grant an eligible employee up to 12 workweeks of FMLA leave during the 12-month FMLA leave period for qualifying exigencies that arise out of the fact that the employee's spouse, son, daughter, or parent, who is a member of the Regular Armed Forces, National Guard, Reserves, or a retired member of the Regular Armed Forces or Reserves, is under a call or order to covered active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country. For those military members in the National Guard or Reserves, the call to active duty must also be in support of a contingency operation.

For purposes of qualifying exigency leave, the 12-month period is the postal leave year that the Postal Service has established for the other categories of FMLA leave. Qualifying exigencies that may arise out of the covered military member's covered active duty or call to covered active duty include:

- Short Notice Deployment
- Post-deployment activities
- Military event or related activity
- Counseling

- Childcare and school activity
- Rest and recuperation
- Financial or legal arrangements
- Parental care
- Additional activities arising from the call to duty (provided the employer and employee agree that the leave qualifies as an exigency and agree on the timing and duration of the leave).

Military caregiver leave. The Postal Service must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered service member or covered veteran with a serious injury or illness up to a total of 26 workweeks of leave during a single 12-month period to care for the covered service member or covered veteran. While the 12-month period for every other category of FMLA leave coincides with the postal leave year, the 12-month period for military caregiver leave begins on the date that the eligible employee first takes military caregiver leave.

A "covered service member" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness. A "serious injury or illness" is one incurred by a service member in the line of duty while on active duty that may cause the service member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty that were aggravated by service in the line of duty on active duty.

A "covered veteran" is a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and:

- served in the Armed Forces (including a member of the National Guard or Reserves);
- was discharged or released under conditions other than dishonorable;
- was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

For covered veterans, a "serious injury or illness" is an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or one that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is:

I. a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; *or*

2. a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the rating is based at least in part on the condition for which caregiver leave is needed; *or*

3. a physical or mental condition that substantially impairs the veteran's ability to work due to the condition, or would do so absent treatment; *or*

4. an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Any *one* of these definitions meets the FMLA's definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

The FMLA has created several separate definitions of family members for both categories of military family leave.

Son or daughter, for the purposes of qualifying exigency leave, means the employee's biological, adopted, foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis,* who is on covered active duty or call to covered active duty status, and who is of any age.

Son or daughter of a covered service member, for purposes of military caregiver leave, is the service member's biological, adopted or foster child, stepchild, legal ward, or a child for whom the service member stood *in loco parentis,* and who is of any age.

Parent of a covered service member, for purposes of military caregiver is a covered service member's biological, adoptive, step or foster parent, or any other individual who stood *in loco parentis* to the covered service member.

Next of kin of a covered service member, for purposes of military caregiver leave is the nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has

specifically designated in writing another blood relative as his/her nearest blood relative for purposes of military caregiver leave under FMLA.

Eligibility Requirements: Any career or non-career employees who meet the eligibility requirements may take FMLA leave if they meet the eligibility requirements at the time the leave starts; that is, the employee must have been employed by the Postal Service for at least 12 months (this time does not have to be consecutive, but generally must have been worked within the past seven years) and the employee must have completed at least 1,250 work hours during the 12-month period immediately preceding the date the leave starts.

The 1,250 work hours includes overtime, but excludes any paid or unpaid absence, except for absences due to military service. LWOP, including union LWOP, does not count toward the 1,250 work hour eligibility requirement. However, authorized steward time on the clock, during the course of the employee's regular schedule, is credited toward the required 1,250 hours for FMLA eligibility. Union LWOP does not count toward the 1,250 workhour eligibility requirement.

Source: Letter, A.J. Vegliante, Manager, Contract Administration, dated December 12, 1995.

Question: Are MHAs eligible for FMLA protected leave?

Answer: Yes, MHAs who meet eligibility requirements – employment with the USPS for an accumulated total of 12 months over the past 7 years (including any prior career or non-career service) and have worked a minimum of 1,250 hours (including any prior career and non-career service) during the 12 month period immediately preceding the date the leave begins – are eligible for FMLA protected leave.

Military Service. The Postal Service will credit any period of military service as follows:

- Each month served performing military service counts as a month actively employed by the employer for the purpose of determining the 12 months of employment requirement.

- The hours that would have been worked for the employer, based on the employee's work schedule prior to the military service, are added to any hours actually worked during the previous 12-month period to determine if the employee meets the 1,250 work hour requirement. The hours the employee would have worked will be calculated in the same manner as back pay calculation, found in Section 436 of the Employee and Labor Relations Manual (ELM).

Calculating the 1,250 work hour eligibility - per condition, per leave year.

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

The 1,250 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 1,250 work hour requirement.

If an employee has a different FMLA qualifying condition during the leave year, the employee must meet the 1,250 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 (or 26-week entitlement in the case of military caregiver leave).

However, if the employee is unable to meet the 1,250 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 qualifying condition.

The 1,250 work hour eligibility requirement must be re-calculated at the commencement of each subsequent and separate qualifying condition for which the employee needs leave, in order to determine eligibility for each condition in each leave year.

Source: Step 4 Grievance C98M-1C-C 99211556, dated October 2, 2001; Memorandum from D.A. Tulino, Manager, Labor Relations Policies and Programs, dated November 14, 2000.

The 1,250 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 necessarily mean that the employee is required to re-certify the condition. The certification from the previous leave year remains valid for the duration indicated by the health care provider, unless management requires a new leave year certification in accordance with the provisions of the statute or regulations.

Question: Are employees automatically required to provide certification for their serious health conditions every year?

Answer: No. Employees are not automatically required to provide certification every leave year for a serious health condition. However, if an employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year, then the Postal Service may require the employee to provide a new medical certification in conjunction with an absence in the new leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 29 CFR Section 825.307, including second and third opinions.

Question: Are LWOP hours converted to paid hours as a result of a grievance settlement or arbitration decision returning an employee to duty counted towards the 1,250 hours eligibility criteria for the FMLA?

Answer: Yes. When an employee is awarded back pay accompanied by equitable remedies (i.e., full back pay with seniority and benefits, or a "make whole" remedy), the hours the employee would have worked if not for the action that resulted in the back pay period are counted as work hours for the 1,250 work hour eligibility requirement under the FMLA.

Source: Step 4 Grievance I98M-1I-C 00089905, dated August 15, 2002.

Employee Rights: The Postal Service leave year begins with the first full pay period in a calendar year and ends with the start of the next leave 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. Eligible employees who take FMLA protected leave for a covered service member who has incurred a serious injury or illness are entitled to 26 workweeks of annual leave, sick leave, LWOP or a combination of these, depending on the situation. An employee may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employee (policies to comply with the Family and Medical Leave Act). 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 foreseeable intermittent or reduced leave in a way that will not unduly disrupt workplace operations. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee.

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 5 business days of learning of the employee's need for leave, whether the employee is eligible for FMLA leave and whether 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 requirement is met by providing the employee a copy of the PS Form 3971.

Under the federal statute and regulations, an employee may request or the employer may require the substitution of paid leave for the 12 or 26 workweeks (12 or 26 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. However, under Postal Service policy, an employee may use LWOP for an FMLA-covered absence.

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. If the need for leave is foreseeable but the employee does not learn of the need for leave 30 days beforehand, notify management as soon as practicable, generally the same day the employee learns of the need for leave or the next business day.

- When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. Employees should notify management as soon as practicable. Leave requests should be submitted via PS Form 3971, Request for or Notification of Absence.

- 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.

Question: Is it mandatory for an employee to provide FMLA documentation within 15 days of the receipt of the request?

Answer: Yes, unless it is not practicable under the particular facts and circumstances.

Source: Attachment to Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.

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 employee refuses to complete a PS Form 3971, Request for or Notification of Absence, upon his or her return.

In answer to whether management can require "supporting documentation" for an absence of three days or less in order for an employee's absence to be protected under the FMLA, the parties agreed that:

> The Postal Service may require an employee's leave to be supported by an FMLA medical certification, unless waived by management, in order for the absence to be protected. When an employee uses leave due to a condition already supported by an FMLA certification, the employee is not required to provide another certification in order for the absence to be FMLA protected.
>
> We further agree that the documentation requirements for leave for an absence of three days or less are found in Section 513.361 of the Employee and Labor Relations Manual which states in pertinent part that:
>
> > For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the

employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

Source: Pre-arbitration Settlement Q98N-4Q-C 01090839, dated February 19, 2003.

Return to work after an FMLA absence: The current USPS policy is set forth in ELM Section 865.

Ordinarily, an employee may submit a simple statement from his or her health care provider substantiating the employee's ability to return to work. However, where the employee has been on FMLA leave due to his or her own medical condition, the USPS may require the employee to submit a detailed medical clearance where management has a reasonable belief, based on reliable and objective evidence, that the employee may not be able to perform the essential functions of his/her position, or the employee may pose a direct threat to the health or safety of him/herself or others due to that medical condition. The reasonableness of the Service in delaying an employee's return beyond his/her scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

In making the decision whether to require documentation in order to clear the employee's return to work, management must consider the essential functions of the employee's job, the nature of the medical condition or procedure involved, and any other reliable and objective information in order to make an individualized assessment whether there is a reason to require the return-to-work documentation.

When management is considering requesting return-to-work documentation, management should also seek guidance from the occupational health nurse administrator, occupational health nurse, and/or Postal Service physician regarding the return-to-work decision. After consideration of the medical information, the employee's working conditions, and any other pertinent information, management is to make the decision to clear the employee's return. Medical personnel consult with management but do not have authority to clear the employee to return to duty.

In cases of occupational illness or injury, the employee will be returned to work upon certification from the treating physician, and the medical report will be reviewed by a Postal Service physician as soon as possible thereafter.

Sources: ELM Section 865.1; MOU Re Return to Duty; Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.

FMLA Designation. When an employee requests leave, the employee may, but need not, ask for the absence to be covered by FMLA. Rather, it is the supervisor's responsibility to recognize when leave may qualify as leave protected by the FMLA. In those cases, the manager or supervisor should designate the leave as FMLA pending. The employee will receive further information from the Postal Service Human Resources Shared Services Center (HRSSC) concerning his or her eligibility, rights and responsibilities; whether additional documentation is required in order to designate the leave as FMLA; and whether the absence is covered under the FMLA.

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

Question: Are the provisions of ELM Section 515 enforceable through the grievance-arbitration procedure?

Answer: Yes.

Source: Pre-arbitration Settlement F90N-4F-D 95043198, dated February 26, 1997.

Question: Should managers retain records containing medical records including a prognosis or diagnosis that might be generated under the procedures under the FMLA?

Answer: Management may maintain WH 380 or other certifications from health care providers that do not contain restricted medical information. Documents containing diagnosis or prognosis must be returned to the employee, destroyed, or, in accordance with the notice in the June, 2000 Federal Register, maintained separately in a locked file cabinet by the FMLA coordinator in accordance with the Postal Service's Privacy Act System of Records, USPS 170.020.

Source: Letters from A.J. Vegliante, Manager, Contract Administration (APWU/NPMHU), dated September 12, 1996 and D.A. Tulino, Manager, Labor Relations Policies and Programs, dated June 6, 2000.

Question: What forms should be used to request or support FMLA leave?

Answer: Documentation to substantiate leave under the FMLA is acceptable in any format including a form created by the union, as long as it provides the information as required by the FMLA.

Source: National Arbitration Award Q06C-4Q-C 11001666 & Q06C-4Q-C 11008239, Arbitrator S. Das, dated April 18, 2012.

A series of jointly-agreed to questions and answers interpreting the Family and Medical Leave Act can be found at the end of this article.

RMD/eRMS: In a Pre-arbitration settlement concerning the issue of whether the Resource Management Database (RMD) or its web-based counterpart, the enterprise Resource Management System (eRMS), violates the National Agreement, the parties agreed as follows:

> The eRMS will be the web-based version of RMD, located on the Postal Service intranet. The eRMS will have the same functional characteristics as RMD.
>
> The RMD/eRMS is a computer program. It does not constitute a new rule, regulation or policy, nor does it change or modify existing leave and attendance rules and regulations. Local policies, developed pursuant to these programs, shall not be implemented if they are in conflict with the National Agreement or with applicable manuals and handbooks.
>
> When requested in accordance with Articles 17.3 and 31.3, relevant RMD/eRMS records will be provided to the Union representative.
>
> The RMD/eRMS was developed to automate leave management, provide a centralized database for leave related data and ensure compliance with various leave rules and regulations, including the FMLA, Sick Leave for Dependent Care Memorandum of Understanding and the Americans with Disabilities Act. The RMD/eRMS records may be used by both parties to support/dispute contentions raised in attendance-related actions.
>
> When requested, the locally set business rule, which triggers a supervisor's review of an employee's leave record, will be shared with the NPMHU Local President or his/her designee.
>
> It remains management's responsibility to consider only those elements of past record in disciplinary actions that comply with Article 16.10 of the National Agreement. The RMD/eRMS may track all current discipline; however, it must reflect the final settlement/decision reached in the Article 15 Grievance-Arbitration Procedure.
>
> An employee's written request to have discipline removed from their record, pursuant to Article 16.10 of the National Agreement, shall also serve as the request to remove the record of discipline from RMD/eRMS.
>
> Supervisor notes of discussions pursuant to Article 16.2 are not to be entered in the "supervisor's notes" section of RMD/eRMS.

RMD/eRMS users must comply with the Privacy Act, as well as handbooks, manuals and published regulations relating to leave and attendance.

RMD/eRMS security meets or exceeds security requirements mandated by AS-818.

It is understood that no function performed by RMD/eRMS now or in the future may violate the NPMHU National Agreement.

Source: Step 4 Grievance Q98M-4Q-C 01113690, dated January 23, 2003.

In a 2005 arbitration award, National Arbitrator Das has dealt with three issues related to the FMLA:

1. Arbitrator Das ruled that, in applying ELM Section 513.332 in the context of the RMD process, Attendance Control Supervisors may ask questions in the RMD/eRMS process that are necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury or for a condition that requires return-to-work procedures; Das also ruled, however, that the Postal Service may not otherwise require employees to describe the nature of their illness/injury. The Findings set forth in this Das Award should be reviewed for more details concerning these issues.

2. Noting that the Employer was permitted to require that a third medical opinion be obtained by the employee in cases where there was a difference between the original and second medical opinions, Arbitrator Das determined that the Postal Service had to rescind a process that required the employee to provide notification within a set time period that he/she did not accept the second medical opinion and wanted a third opinion; under this rejected process, if no such notification was provided, the second medical opinion would have been binding on the employee.

3. Finally, dealing with circumstances where the employee is absent for more than three days for a condition previously certified as a serious health condition requiring intermittent leave, Arbitrator Das ruled that the Postal Service was permitted to require compliance with ELM 513.362 (requiring “medical documentation or other acceptable evidence of incapacity for work”) if an employee seeks to substitute paid sick leave (or annual leave in lieu of sick leave) for unpaid FMLA leave.

Source: National Arbitration Award Q00C-4Q-C 03126482, Arbitrator S. Das, dated January 28, 2005.

Arbitrators have the authority to interpret and apply statutory law, including the Family and Medical Leave Act, when necessary to their decision in a pending grievance.

Source: Step 4 Grievance C06M-1C-C 10158799, dated February 12, 2013 (citing National Arbitration Award Q98N-4Q-C 01090839, Arbitrator D. Nolan, dated April 28, 2002).

MEMORANDUM OF UNDERSTANDING

ANNUAL LEAVE CARRY-OVER

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 1991 to leave year 1992.

(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 an employee covered by the NPMHU 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

ANNUAL LEAVE EXCHANGE OPTION

The parties agree that mail handler career employees will be allowed to sell back a maximum of forty (40) hours of annual leave prior to the beginning of the leave year provided the following two criteria are met:

1) The employee must be at the maximum leave carry over ceiling at the start of the leave year, and

2) The employee must have used fewer than 75 sick leave hours in the leave year immediately preceding the year for which the leave is being exchanged.

This MOU and the Annual Leave Exchange Option shall apply to part-time flexible employees effective upon ratification of the National Agreement.

This Memorandum of Understanding expires **September 20, 2022**.

MEMORANDUM OF UNDERSTANDING

LEAVE SHARING

The Postal Service will continue a Leave Sharing Program during the term of the **2019** National Agreement under which career postal employees are able to donate annual leave from their earned annual leave account to another career postal employee. 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 including pregnancy **or must need leave to care for a child born to or placed for adoption with the employee within the twelve months prior to taking leave** 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 purpose other than pay and legally required payroll deductions, employees using donated leave will be subject to regulations applicable to employees in LWOP status and will not earn any type of leave while using donated leave.

Donated leave may be carried over from one leave year to the next without limitation. Donated leave not actually used remains in the recipient's account (i.e. is not restored to donors). Such residual donated leave at any time may be applied against negative leave balances caused by a medical exigency. At separation, any remaining donated leave balance will be paid in a lump sum.

(The preceding MOU, Leave Sharing, shall apply to Mail Handler Assistant employees.)

Question: What is the Leave Sharing Program?

Answer: The Leave Sharing Program was first established under the 1990 National Agreement in order to permit a career postal employee to donate annual leave from his/her earned annual leave account to another career postal employee. The employees also must meet the eligibility criteria set forth in the above MOU. The 2006 National Agreement eliminated the prior restriction that donations could only be made to employees who were family members or who worked within the same geographic area served by a postal district.

When agreeing to this change in the Leave Sharing Program, the parties also agreed to a letter stating as follows:

> During negotiations over the terms of the 2006 National Agreement between the National Postal Mail Handlers Union and the U.S. Postal Service, the parties reached the following understanding with regard to the changes made to the Leave Sharing Memorandum of Understanding.
>
> The parties agree that the change to the first paragraph of this Memorandum of Understanding, deleting the geographic restriction on the Leave Sharing Program, is not intended to add the administrative burden of additional postings outside of the jurisdictional boundaries of the district to the Leave Sharing Program Coordinator.

While new language in the Leave Sharing MOU eliminated prior geographic limitations on donations, management is not required to advertise requests for leave donation beyond the geographic area served by the district in which the employee requesting the donation works.

Question: Does the MOU on Leave Sharing apply to MHAs?

Answer: Yes.

MEMORANDUM OF UNDERSTANDING

LWOP IN LIEU OF SL/AL

It is hereby agreed by the U.S. Postal Service and the National Postal Mail Handlers Union that:

1. As provided for in the Employee and Labor Relations Manual (ELM) Exhibit 514.4(d), an employee need not exhaust annual leave and/or sick leave before requesting leave without pay.

2. As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

3. Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employees (policies to comply with the Family and Medical Leave Act)

4. In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. We further agree that this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

(The preceding MOU, LWOP in Lieu of SL/AL, shall apply to Mail Handler Assistant employees.)

Question: May an employee who is on extended absence and who wishes to continue eligibility for health and life insurance benefits and protections under Article 6 use sick leave and/or annual leave in conjunction with LWOP prior to exhausting his/her leave balance?

Answer: An employee who is on extended absence may use annual and/or sick leave in conjunction with LWOP prior to exhausting his/her leave balances, subject to approval of the leave in accordance with normal procedures. However, management is not obligated to approve such leave for the last hour of an employee's scheduled workday prior to and/or the first hour of an employee's scheduled workday after a holiday.

Source: Step 4 Grievance H7C-NA-C 9, dated May 4, 1988.

Question: Should use of this MOU result in increased leave usage?

Answer: It is not the intent of this MOU to increase leave usage (i.e., approved time off.) Moreover, it is not the intent that every or all instances of approved leave be changed to LWOP, thus allowing an employee to accumulate a leave balance that would create a "use or lose" situation.

Source: MOU dated August 1, 1991.

Question: Does the MOU on LWOP in Lieu of SL/AL apply to MHAs?

Answer: Yes.

MEMORANDUM OF UNDERSTANDING

SICK LEAVE FOR DEPENDENT CARE

During the term of the **2019** National Agreement, sick leave may be used by an employee to give care or otherwise attend to a family member having an illness, injury or other condition which, if an employee had such condition, would justify the use of sick leave by the 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.

MEMORANDUM OF UNDERSTANDING

PART-TIME FLEXIBLE 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 516.31.

2. 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 that 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.

3. If eligibility is established is established under paragraph 2, 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.

4. 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.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL POSTAL MAIL HANDLERS UNION

Re: Bereavement Leave

NPMHU represented employees may use a total of up to three workdays of annual leave, sick leave or leave without pay, to make arrangements necessitated by the death of a family member or attend the funeral of a family member. Authorization of leave beyond three workdays is subject to the conditions and requirements of Article 10 of the National Agreement, Subsection 510 of the Employee and Labor Relations Manual and the applicable local memorandum of understanding provisions.

Definition of Family Member. "Family member" is defined as a:

(a) Son or daughter – a biological or adopted child, stepchild, daughter-in-law or son-in-law;

(b) Spouse;

(c) Parent- mother, father, mother-in-law, or father-in-law;

(d) Sibling – brother, sister, brother-in-law or sister-in-law; or

(e) Grandparent.

Use of Sick Leave. The use of sick leave for bereavement purposes will be charged to sick leave for dependent care.

Documentation. Documentation evidencing the death of the employee's family member is required only when the supervisor deems documentation desirable for the protection of the interest of the Postal Service.

(The preceding MOU, Bereavement Leave, shall apply to Mail Handler Assistant employees.)

Mail handlers may use up to three days of annual leave, sick leave or LWOP to make arrangements necessitated by the death of, or to attend the funeral of, a family member, as defined in the MOU. If sick leave is used, it is charged as Sick Leave for Dependent Care and counts against the 80 hours an employee may use during the leave year. Approval of leave requests beyond three days follows normal leave approval procedures. Documentation evidencing the death of the employee's family member can be required only when the supervisor deems it desirable for protection of Postal Service interests.

Question: How does the MOU on Bereavement Leave apply to MHAs?

Answer: MHAs do not earn sick leave and therefore may only request annual leave or leave without pay (LWOP) for bereavement purposes.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
NATIONAL POSTAL MAIL HANDLERS UNION

Re: Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations

The parties agree that the maximum administrative leave that can be granted per leave year to cover qualification and donation is limited to the following:

a) A full-time or part-time regular career employee is limited to:

(1) for bone marrow, up to 56 hours;
(2) for stem cells, up to 56 hours;
(3) for blood platelets, up to 56 hours; and
(4) for organs, up to 240 hours.

b) A part-time flexible or part time regular career employee or a Mail Handler Assistant employee may be granted leave up to the limits of 7 days for bone marrow, stem cells, or blood platelets, and up to the limit of 30 days for organs. The amount of leave that may be granted will be based on the employee's average daily work hours in the preceding 26 weeks, but not to exceed 8 hours per day.

(The preceding MOU, Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations, shall apply to Mail Handler Assistant employees.)

The amount of administrative leave that a mail handler may be granted to qualify for and donate the designated items is adjusted, as reflected in the MOU. The maximum leave amounts are stated in hours, rather than days.

Whether full-time regular mail handler employees have the right to receive administrative leave in minimum 8-hour increments for donating blood platelets was decided at the National level by Arbitrator Shyam Das.

> The provisions in ELM Section 519.42 and the MOU on Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet, and Organ Donations does not grant employees the right to a minimum 8 hours of administrative leave for such donations.

Source: National Arbitration Award B06M-1B-C 11135186, Arbitrator S. Das, dated September 26, 2014.

Question: Are MHAs entitled to administrative leave for bone marrow, stem cell, blood platelet, and organ donations?

Answer: Yes.

MEMORANDUM OF UNDERSTANDING

RETURN TO DUTY

The parties affirm 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 scheduled tour of duty or the date stated in the medical documentation, provided that adequate medical documentation is submitted within sufficient time for review and that a decision is made to return the employee to duty.

2. The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

This MOU provides guidelines for review of medical certification to assist in prompt return to duty of an employee who has been on extended absences due to illness, when it is determined that the employee will be returned to duty.

The parties at the National Level signed a February 10, 2014 pre-arbitration settlement stating as follows:

> "The current ELM 865 language does not negate management's obligation under the MOU on Return to Duty when returning an employee to duty after an absence for medical reasons.
>
> "The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis."

Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.

In a recent National Arbitration Award, Arbitrator Shyam Das rejected the Postal Service's attempt to mandate the use of certain forms issued by the U.S. Department of Labor when an employee requests FMLA leave. His decision stated as follows:

> Significantly, there has been no change in the FMLA or the related DOL regulations that would necessitate mandatory use of the WH-380. On the contrary, under current DOL regulations, use of the WH-380 by an employer is optional. Because unilaterally changing ELM 510 to mandate use of previously optional WH-380 forms violated Article 10.2.A of the National Agreement and the [CIM], there is no need here to decide whether the Postal Service's action in requiring use of the WH-380 also violated the FMLA, as the Union contends. Accordingly, the Postal Service is directed to cease and desist from requiring employees to submit FMLA medical certifications using only the WH-380 forms.

Source: National Arbitration Award Q06C-4Q-C 11001666 & Q06C-4Q-C 11008239, Arbitrator S. Das, dated April 18, 2012.

The NPMHU and the Postal Service have agreed upon the following series of questions and answers to help interpret the Family and Medical Leave Act:

Question: What is the Family and Medical Leave Act of 1993?

Answer: In general, the Act entitles eligible employees to be absent for up to 12 workweeks per year for the birth or adoption of a child; to care for a spouse, son,

daughter, or parent with a serious health condition; or when unable to work because of a serious health condition without loss of their job or health benefits. The FMLA does not provide more annual or sick leave than that which is already provided to Postal Service employees.

Source: 29 CFR Section 825.100.

Question: Which employees are eligible?

Answer: Employees who have been employed by the Postal Service for at least one year and who have worked at least 1,250 hours during the previous 12 months are eligible.

Sources: 29 CFR Section 825.110; ELM 444.22.

Question: Do COP, OWCP, military leave and court leave count toward eligibility requirements under the FMLA?

Answer: COP, OWCP, court leave, and absences for military service count toward the 12-month eligibility requirement. However, except as provided hereafter for military leave, none of the times mentioned count toward the 1,250 hours worked eligibility requirement. The hours that would have been worked for the employer, based on the employee's work schedule prior to the military service, are added to any hours actually worked during the previous 12-month period to determine if the employee meets the 1,250 work hour requirement.

Sources: 29 CFR Section 825.110, ELM 444.22 and Letter from D.A. Tulino, Manager, Labor Relations Policies and Programs, dated September 25, 2002.

Question: If both spouses work for the Postal Service, does the USPS let both take up to 12 workweeks each of protected absences under FMLA each leave year?

Answer: Yes.

Source: ELM 515.4

Question: Can an employee who is separated or divorced take a protected absence under the FMLA to care for a spouse or ex-spouse with a serious health condition?

Answer: For an employee to take such leave, the couple must be legally married.

Source: 29 CFR Section 825.113

Question: My mother-in-law who lives with me is ill and requires my care. Does management have to approve my leave as a covered condition?

Answer: No, the FMLA only provides protected absences for covered conditions of a spouse, parent, son or daughter. Leave taken to care for anyone else would require approval under normal leave policies.

Source: 29 CFR Section 825.112

Question: My knee problem was diagnosed during an appointment with a health care provider. He ordered three months of physical therapy treatments. Are the visits and the treatments protected by the FMLA?

Answer: Yes, where properly documented as a serious health condition, the absence would qualify for FMLA protection since it involves a continuing treatment under the supervision of a health care provider. The health care provider is stating that lack of treatment would likely result in a period of incapacity of more than three days. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employer's operations.

Sources: 29 CFR Section 825.114(a)(2)(v); 29 CFR Section 825.117

Question: My wife's doctor said she needs almost total bed rest for the last two months of her pregnancy, and I need to stay home to care for our other children. Is this condition covered under the FMLA?

Answer: FMLA does not cover babysitting for the other children. However, where properly documented that the husband is needed to care for her, the wife's serious health condition would entitle the husband to a FMLA protected absence.

Source: 29 CFR Section 825.116

Question: If I use a midwife for both my prenatal care and the delivery of my child, would my pregnancy still be a condition covered under the FMLA?

Answer: Yes, pregnancy is a covered condition under the FMLA. Midwives are considered health care providers if they are authorized to practice under State law and are performing within the scope of their practice as defined under State law.

Sources: 29 CFR Section 825.118(b)(2); 29 CFR Section 825.118(c)

Question: An employee had a baby and took 6 weeks of leave during a period when she was not eligible under the FMLA. Now she is eligible, and the baby is

still less than a year old. Can she now take the 12 workweeks of protected absences under the FMLA?

Answer: Yes, only the time taken when eligible under the FMLA counts toward the 12 workweeks.

Source: 29 CFR Section 825.112

Question: Is an employee entitled to 12 workweeks of protected absences under the FMLA for placement or care of an adopted or foster child?

Answer: **Y**es, provided they have not used any of their 12 week entitlement during the leave year for another FMLA covered condition.

Sources: 29 CFR Section 825.112; 29 CFR Section 825.200; 29 CFR Section 825.201

Question: I took a week of protected leave under the FMLA to care for my baby who was born 2 months ago. Now I want to take the week of July 4th off to be with my baby. Since caring for my newborn is a condition covered under the FMLA, does my supervisor have to let me off for the week of July 4th?

Answer: Not necessarily. You are requesting time off for the birth and care of a child on an intermittent basis. Therefore, your request for the week of July 4th is subject to your supervisor's approval in accordance with current leave polices.

Source: 29 CFR Section 825.203

Question: May an employee take protected leave under the FMLA to look for child care?

Answer: No, unless the employee is otherwise covered by military caregiver rules. Of course, a supervisor may approve regular annual leave for such a purpose.

Source: 29 CFR Section 825.112

Question: An employee has a recurrent degenerative knee condition that qualifies as a serious health condition. The certification indicates his condition may "flare" up 1 to 2 days per month and render him incapacitated for duty. Consequently, the employee requests covered absences under the FMLA with little or no advance notice. Does this meet the criteria or intent of the intermittent leave entitlement under the FMLA?

Answer: Intermittent absences due to a chronic condition which incapacitates an employee are covered by the FMLA.

Sources: 29 CFR Section 825.114; 29 CFR Section 825.117; 29 CFR Section 825.203; 29 CFR Section 825.204

Question: Is treatment for substance abuse covered under the FMLA?

Answer: Yes, if certified by the health care provider as a serious health condition. Absence because of the employee's use of the substance, rather than for treatment, does not qualify as a covered condition under the FMLA.

Sources: 29 CFR Section 825.114(d); 29 CFR Section 825.112(g)

Question: Can the flu be considered a serious health condition under the FMLA?

Answer: Yes, if it complies with the definition of a serious health condition under the FMLA.

Source: 29 CFR Section 825.114(c)

Question: If my child is sick, can I now take sick leave to care for him?

Answer: Yes, under the National Agreement-Memorandum of Understanding on Sick Leave for Dependent Care, employees may use up to 80 hours of their earned sick leave to care for a spouse, parent, son or daughter. Sick leave for Dependent Care is only protected under the FMLA when the illness qualifies as a serious health condition under the FMLA.

Sources: Memorandum of Understanding Re Sick Leave for Dependent Care; ELM 515.2

Question: How do I apply for leave under the FMLA?

Answer: Submit a form PS 3971, Request for or Notification of Absence, with the supporting documentation. Leave under the FMLA is not a separate category or type of leave. You may request annual leave, sick leave or LWOP for your absence under the FMLA. Just as in the past, in an emergency situation a phone call, telegram, etc. will suffice until it is possible for you to submit the necessary paperwork.

Sources: 29 CFR Section 825.302; 29 CFR Section 825.303; ELM 510

Question: Do I have to mention the Family Medical Leave Act when I request time off for a covered condition?

Answer: No. However, an employee must explain the reasons for the absence and give enough information to allow the employer to determine that the leave qualifies for FMLA protection. If the employee fails to explain the reasons, the leave may not be protected under the FMLA.

Sources: 29 CFR Section 825.208; 29 CFR Section 825.302; 29 CFR Section 825.303

Question: Do I have to use all of my annual leave balance before I can take LWOP for a condition covered under the FMLA?

Answer: No, you need not exhaust annual leave and/or sick leave before requesting leave without pay. The use of leave, paid or unpaid, is subject to management's approval consistent with the handbooks, manuals, the National Agreement and the FMLA.

Source: 29 CFR Section 825.207

Question: Can I take more than 12 workweeks of leave during a postal leave year?

Answer: Twelve workweeks is the maximum amount of protected leave which must be granted for the covered conditions under the FMLA. After being off for the workweeks described, an employee may request leave under current leave policies, but that time would not be protected under the FMLA. Approval for such non-FMLA leave will be subject to the terms and conditions of current policies.

Sources: 29 CFR Section 825.200; ELM 510

Question: Do the 12 workweeks of FMLA protected leave have to be continuous?

Answer: No, the leave may be taken intermittently or on a reduced schedule basis as long as taking it in that manner is medically necessary. When leave is taken because of the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the supervisor agrees.

Sources: 29 CFR Section 825.203; 29 CFR Section 825.204

Question: How will I know if the requested leave counts as part of the 12 workweek entitlement under the Family and Medical Leave Act?

Answer: The supervisor should provide you a copy of the Form 3971. If the leave is approved as one of the covered conditions, the approving official will check the "Approved, FMLA" block on the Form 3971.

Sources: 29 CFR Section 825.301; ELM 515

Question: If the employee does not request FMLA protection for an absence that meets the definition of a covered condition under the FMLA, must the supervisor designate the absence as FMLA protected leave?

Answer: Yes, if the employee provides sufficient information for the supervisor to be able to designate it as FMLA protected leave.

Source: 29 CFR Section 825.208

Question: If an employee is absent on sick leave and, while absent is diagnosed as having a serious health condition, will his entire absence be protected under the FMLA?

Answer: Yes, if the employee provides the supervisor with the necessary information about the serious health condition within two days of returning to work.

Source: 29 CFR Section 825.208(d), (e)

Question: Is the employer's approval required for an employee to use intermittent leave or work a reduced schedule if the employee, spouse, child or parent has a serious health condition?

Answer: The absence must be allowed provided proper medical certification and notice is provided. However, in foreseeable cases, the employee must attempt to schedule the absences so as not to disrupt the employer's operation. The employee may be assigned to an alternative position with equivalent pay and benefits that better accommodates the intermittent or reduced leave schedule, in accordance with National Agreement.

Sources: 29 CFR Section 825.203; 29 CFR Section 825.204

Question: If an employee requests leave for a condition covered under the FMLA, what information should the supervisor provide to the employee?

Answer: A supervisor should provide the following information:

Whether the employee is eligible or when the employee will be eligible.
Whether the leave will be designated as FMLA protected.
A copy of PS Form 3971 stating the type of leave and whether the approval is pending documentation.

Source: 29 CFR Section 825.301

Question: What certification is required for employees requesting leave protected under the FMLA because of the birth or placement of a son or daughter, and in order to care for such son or daughter after birth or placement?

Answer: That the employee is the parent and the date of birth or placement of this son or daughter. No medical certification is required.

Source: 29 CFR Section 825.113(d)

Question: Is recertification required for each absence when a health care provider has certified that the employee is receiving continuing treatment?

Answer: Excluding pregnancy, chronic conditions, and permanent/long-term conditions, recertification is not required for the duration of treatment or period of incapacity specified by the health care provider, unless:

-- the employee requests an extension of leave
-- circumstances have changed significantly from the original request
-- the employer receives information that casts doubt upon the continuing validity of the certification
-- the absence is for a different condition or reason

Source: 29 CFR Section 825.308

Question: What can an employer do if he or she questions the adequacy of medical certification that includes all the required information?

Answer: With the employee's permission, a health care provider representing the Postal Service may contact the employee's health care provider to clarify the medical certification. Also, the Postal Service may require the employee to obtain a second opinion at the employer's expense.

Source: 29 CFR 825.307

Question: Is advance notice required for employees' use of protected leave under FMLA?

Answer: An employee must provide the Postal Service at least 30 days advance notice if the need for the leave is foreseeable. When the need for leave is not foreseeable, an employee should give notice to the Postal Service as soon as practicable by telephone, fax or other electronic means.

Sources: 29 CFR Section 825.302; 29 CFR Section 825.303

Question: Can a supervisor have a blanket policy that requires recertification every 30 days for all employees requesting FMLA protection for absences related to pregnancy, chronic conditions, and permanent/long-term conditions?

Answer: No. On a case by case basis, the supervisor may require recertification of such conditions on a reasonable basis, but not more often than every 30 days and only in connection with an absence related to the condition. The supervisor may require recertification in less than 30 days when:

-- circumstances in the previous certification have changed
-- the supervisor receives information that casts doubt upon the employee's stated reason for the absence

Source: 29 CFR Section 825.308(a)

Question: May an employee be removed, disciplined, or placed on restricted sick leave as a result of protected absences under the FMLA?

Answer: No.

Source: 29 CFR Section 825.220

Question: Some Local Memoranda of Understanding (LMOUs) allow for daily percentages off on leave. Will that affect those who need protected leave under the FMLA?

Answer: No, leave percentages do not affect the rights of employees to be absent under the FMLA. LMOU language will determine whether FMLA absences count towards the percentages.

Question: Can an employee file an EEO complaint related to FMLA?

Answer: Yes, but only on the grounds that the FMLA was applied in a discriminatory manner.

Source: 29 CFR Section 825.702

Question: Can a step increase be deferred as a result of LWOP used under the FMLA?

Answer: **Y**es, if an employee has used 13 weeks of LWOP during a step increase waiting period, then the step increase can be deferred. The Family and Medical Leave Act does not require accrual of any rights or benefits during the period of leave taken under the FMLA.

Source: 29 CFR Section 825.209(h)

Question: My last chance agreement states that if I have more than 4 unscheduled absences within the next six months, I can be removed from the

Postal Service. Will an absence protected under the FMLA count as an absence for the purposes of my last chance agreement?

Answer: No.

Source: 29 CFR Section 825.220

Question: While absences for conditions covered by the FMLA cannot be cited as a basis for discipline, can they be discussed in periodic absence reviews concerning the importance of regular attendance?

Answer: Yes.

Question: Can the employee be separated after he or she has exhausted leave protected under the FMLA but is still unable to return to work?

Answer: Once leave protected under the FMLA has been exhausted, the employee's failure or inability to return to work should be treated as any other failure or inability to return to work (i.e., as any other absence).

Sources: 29 CFR Section 825.309; 29 CFR Section 825.312.

MEMORANDUM OF UNDERSTANDING

TASK FORCE ON SICK LEAVE

The parties agree to establish at the national level a "Task Force on Sick Leave – Incentives". The Task Force will explore available opportunities for the parties to determine if there are alternative options available to employees with regard to the utilization of sick leave.

Nothing in this memorandum is intended to negate or alter the applicable requirements of this national agreement or be inconsistent with obligations under law.

MEMORANDUM OF UNDERSTANDING

WOUNDED WARRIOR LEAVE

The parties agree that MHAs shall be covered by the **instructions** written by the Postal Service under the Wounded Warrior Federal Leave Act of 2015.

This MOU was intended to implement the Wounded Warrior Federal Leave Act of 2015, which grants veterans with a 30% disability with up to 104 hours of leave during their first year of employment. When this MOU was first signed, it

guaranteed that MHAs would be covered by the regulations then being developed by the Postal Service. In the interim, the regulations have been written, and the National Office has reviewed and approved most aspects of these regulations. They took effect on November 5, 2016.

MEMORANDUM OF UNDERSTANDING

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 Posta Service will participate in a National Day of Observance (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 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 to 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. **MHAs 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 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.**

Question: Are MHAs entitled to administrative leave for a National Day of Observance?

Answer: No, MHAs only receive pay for actual work hours performed on the National Day of Observance.

ARTICLE 11
HOLIDAYS

Section 11.1 Holidays Observed

The following ten (10) days shall be considered holidays for full-time and part-time regular schedule employees, hereinafter referred to in this Article as “employees":

New Year's Day
Martin Luther King, Jr.'s Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans' Day
Thanksgiving Day
Christmas Day

The following six (6) days shall be considered holidays for MHAs:

New Year’s Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Section 11.2 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 is working or on approved paid leave is considered to be “in a pay status,” and therefore eligible for holiday leave pay.

Among career employees, only full-time and part-time regular employees receive holiday leave pay. Part-time flexible employees do not. Instead, as explained under Section 11.7, part-time flexible employees are paid at a slightly higher straight-time hourly rate to compensate them for not receiving paid holidays.

Question: Do MHAs receive holiday pay?

Answer: MHAs only receive holiday pay for the six holidays specified in Article 11.1 - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Question: Can an employee on extended absence use annual or sick leave to ensure eligibility for holiday leave pay?

Answer: An employee who is on extended absence may use annual and/or sick leave in conjunction with leave without pay (LWOP) prior to exhausting his or her leave balances, subject to the approval of the leave in accordance with normal procedures. For example, an employee on extended LWOP to conduct union business may utilize annual or sick leave during a pay period, for purposes that include continuing eligibility for health and life insurance benefits and/or protections under Article 6. However, management is not obligated to approve such leave for the last hour of an employee's scheduled workday prior to and/or the first hour of an employee's scheduled workday after a holiday.

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. Determination of this issue is based on the fact circumstances involved.

Source: Step 4 Grievance B00M-1B-C 06008265, dated November 20, 2009.

It is inappropriate for an employee in an extended LWOP status to manipulate the utilization of paid leave for the purpose of obtaining a paid holiday. For example, it would be inappropriate for an employee on extended LWOP to request annual or sick leave for the last hour prior to or the first hour following his/her holiday in order to obtain holiday pay. Nonetheless, management should not deny a paid leave request from an employee in an extended LWOP status solely because it provides entitlement to a paid holiday.

Source: Step 4 Grievance H7C-NA-C 9, dated May 4, 1988; Pre-arbitration Settlement H7C-NA-C 83, dated October 29, 1993.

Question: Is an employee using "donated leave" entitled to holiday leave pay?

Answer: No. For purposes other than pay and legally required payroll deductions, employees using "donated leave" are subject to the regulations applicable to employees in LWOP status.

Source: Memorandum of Understanding Re: Leave Sharing.

Section 11.3 Payment

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. In addition, as provided for in Section 4 below, employees who work their holiday may, at their option, elect to have their annual leave balance credited with up to eight (8) hours of annual leave in lieu of holiday leave pay.

An eligible employee receives holiday leave pay for the number of hours equal to the employee's regular daily work schedule, not to exceed (8) hours. Thus, full-time employees receive eight (8) hours of holiday leave 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 leave pay only if the holiday falls on a regularly scheduled workday.

Source: Employee and Labor Relations Manual (ELM) Chapter 4, Sections 434.412a and .422.

B Holiday pay is in lieu of other paid leave to which an employee might otherwise be entitled on the employee's holiday.

Except as discussed under Section 11.4, holiday leave pay "replaces" other approved paid leave that 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.

Question: May an employee combine annual or sick leave with holiday leave pay in order to receive additional compensation?

Answer: No. Holiday leave pay is in lieu of other paid leave to which an employee might otherwise be entitled on a holiday.

Source: ELM 434.412.

C The number of hours of holiday leave pay for MHAs will be based on the following:

- 200 Man Year offices – 8 hours
- POSTPlan offices – 4 hours
- All other offices – 6 hours

MHAs who work on a holiday may, at their option, elect to have their annual leave balance credited with 4, 6, or 8 hours (as applicable).

Section 11.4 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, employees who work their holiday may, at their option, elect to have their annual leave balance credited with up to eight (8) hours of annual leave or receive holiday pay to which the employee is entitled as above described at Section 3A.

B An employee required to work on Christmas shall be paid one and one-half (1½) times the base hourly straight time rate for each hour worked. In addition, employees who work their holiday may, at their option, elect to have their annual leave balance credited with up to eight (8) hours of annual leave or receive holiday pay to which the employee is entitled as above described at Section 3A.

C Deferred holiday leave credited as annual leave, in accordance with Section 4.A or 4.B above, will be subject to all applicable rules for requesting and scheduling annual leave and shall be combined with annual leave and counted as annual leave for purposes of annual leave carryover.

An eligible employee who works on a holiday (except Christmas Day) or day designated as a holiday will be paid at the basic hourly straight-time rate for all hours worked, up to eight (8). This is in addition to the holiday leave pay that the employee is entitled to receive. Overtime is paid for work in excess of eight (8) hours.

Source: ELM Chapter 4, Section 434.53a,b.

Question: Who is eligible to receive holiday worked pay?

Answer: Full-time and part-time regular employees are eligible to receive holiday worked pay and Christmas worked pay. Part-time flexible employees are eligible to receive Christmas worked pay if they perform work on December 25**.** MHAs are only eligible for holiday worked pay for the six holidays specified in Section 11.1.

Source: ELM Chapter 4, Sections 434.52.

The issue in this grievance is whether part-time (PTF) employees are entitled to Christmas worked-pay for hours worked on December 24 or December 26.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. PTF employees are eligible for Christmas-worked pay for hours worked on December 25 only.

Source: Step 4 E00M-1E-C 07087183, dated March 25, 2010.

Full-time and part-time regular employees who are required to work on Christmas day or their designated Christmas holiday are paid an additional 50% of their basic hourly straight time rate for each hour worked up to eight hours of Christmas worked pay, in addition to their authorized holiday leave pay and holiday worked pay. Part-time flexibles receive an additional 50% Christmas worked pay for hours actually worked on Christmas Day, December 25.

Source: ELM Chapter 4, Sections 434.52 and .53b.

Question: Are MHAs entitled to Christmas worked pay for hours worked on Christmas Day, December 25?

Answer: No.

Question: Are eligible employees who work any part of December 25 entitled to Christmas worked pay?

Answer: Christmas worked pay is paid only when the eligible employee is required to work their Christmas holiday or their designated Christmas holiday. It is not paid for work performed on December 25, unless that date is the employee's holiday. As a specific exception to this rule, part-time flexibles receive Christmas worked pay only if they actually work on December 25.

Source: ELM Chapter 4, Sections 434.51 and 52.

Question: Will an employee who reports prior to midnight on Christmas Day for a service day of December 26 receive Christmas worked pay for the time between the beginning of that tour of duty and midnight Christmas Day?

Answer: No. In this situation, the employee is reporting to work for his or her December 26 service day.

Source: Step 4 Grievance H1C-3W-C 4572, dated July 2, 1982.

Eligible full-time and part-time regular mail handlers have the option to receive holiday leave pay or a future day of annual leave, if they work any part of their holiday or designated holiday; this option applies whether the employee volunteers or is mandated to work. If a mail handler elects annual leave in lieu of holiday pay, appropriate payment for the hours actually worked on the holiday or designated holiday will continue to be paid. Holiday leave hours will not be paid and his/her annual leave balance will be appropriately adjusted by the number of holiday leave hours to which he/she is entitled (up to eight hours). That annual leave will become available for use in accordance with local leave usage policy and procedures as early as the following pay period.

Deferred holiday leave is combined with other annual leave credited to the employee and is, therefore, subject to loss if the employee has more than the maximum leave carryover at the end of the leave year.

Also, if the employee elects annual leave in lieu of holiday leave pay and seeks to work only part of the holiday or designated holiday, the employee must also concurrently request paid or unpaid leave to account for the remainder of the day. The supervisor retains authority based on local leave policy and procedures to approve or disapprove requests for partial holiday work and for paid or unpaid leave.

Question: Does it make any difference how many hours an employee works on the holiday?

Answer: No. Contractually eligible employees are granted the new annual leave option if they work on their holiday or designated holiday, regardless of the number of hours worked.

Question: What happens if a Full-time Regular employee works his/her entire shift on a holiday or designated holiday, and chooses to exercise his/her option to receive annual leave?

Answer: The employee will receive eight hours of holiday worked pay, for the hours actually worked, and a credit of eight hours to his/her annual leave balance, instead of receiving 16 hours of pay for working on the holiday. In other words, the employee is giving up eight hours of holiday leave pay, but will get eight hours of annual leave.

Question: If the employee does not work a full day on the holiday or designated holiday, must the employee take leave for the remainder of his/her day?

Answer: If an employee elects annual leave in lieu of holiday leave pay and requests to work only part of the holiday, the employee must request some type of paid or unpaid leave (e.g., annual, sick or LWOP) to account for the remainder of the day. For example, if the employee works for five hours, he/she would have to take three hours of leave. Supervisors may refuse employees' requests to work only part of their holiday. The supervisor would also exercise normal discretion to approve or disapprove a leave request for the remainder of that day based on local leave policy and procedure. If an employee works a partial holiday because management requires it, guaranteed time, with few exceptions, may be appropriate for the remainder of the day.

Question: May mail handlers who do not work any part of their holiday or designated holiday elect annual leave in lieu of holiday leave pay?

Answer: No. Only mail handlers who work at least some part of their holiday or designated holiday are eligible for this new annual leave option.

Section 11.5 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.

When a holiday falls on the employee's non-scheduled day, the first scheduled workday preceding the holiday is designated as his/her holiday. An exception occurs when the holiday falls on Sunday and Sunday is also the employee's non-scheduled day, as explained in the first example hereunder.

Examples:

1. If a holiday falls on Sunday and the employees' non-work days are Saturday and Sunday, the employees' designated holiday would be Monday. If the non-work days are Sunday and Monday, the employees' designated holiday would be Saturday. If the non-work days are Saturday and Friday, the employees' holiday would be Sunday since Sunday is a work day.

2. If the holiday falls on Saturday and the employees' non-work days are Saturday and Sunday, the employees' designated holiday would be Friday. If the employees' non-work days are Saturday and Friday, the employees' designated holiday would be Thursday. If the employees' non-work days are Sunday and Monday, the employees' holiday would be Saturday since Saturday is a work day.

Section 11.6 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 twelve noon (i.e., 12:00 p.m.) on the Tuesday preceding the service week in which the holiday falls. 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.

B Employees shall be selected to work on a holiday within each category in the following order:

B1 All available and qualified part-time flexible employees, even if overtime is required.

B2 Full and part-time regular employees, in order of seniority who have volunteered to work on the holiday or the day designated as their holiday when such day is part of their regular work schedule. These employees would be paid at the applicable straight time rate.

B3 MHAs, as specified below in Subsection D.

B4 Full-time and part-time regular employees, in order of seniority, who have volunteered to work on a holiday or day designated as a holiday whose schedule does not include that day as a scheduled workday. Full-time employees would be paid at the applicable overtime rate.

B5 Full-time and part-time regular employees in inverse order of seniority who have not volunteered to work on the holiday or day designated as a holiday when such day is part of their regular work schedule. These employees would be paid at the applicable straight time rate.

B6 Full-time and part-time regular employees in inverse order of seniority who have not volunteered to work on the holiday or day designated as a holiday and would be working on what otherwise would be their non-scheduled workday. Full-time employees would be paid at the applicable overtime rate.

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 Mail Handler Assistant Employees

MHAs will be scheduled for work on a holiday or designated holiday after all full-time or part-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 non-scheduled day, the Local Memorandum of Understanding will apply.

[See Memo, page 159]

The provisions of Section 11.4A concerning straight-time pay for holiday work apply to all full-time employees whose holiday schedule is properly posted in accordance with this section.

Question: Does the holiday schedule have to be posted by a specific time of day?

Answer: Yes. The contract language requires that the holiday schedule be posted by twelve noon (i.e., 12:00 p.m.) on the Tuesday preceding the service week in which the holiday falls.

If the holiday schedule is not posted as of noon on the 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. In accordance with the Memorandum of Understanding Re. Holiday Scheduling, reprinted hereunder, that premium consists of an additional 50% of the basic hourly straight-time rate for all hours worked up to 8 hours.

However, ELM, Section 434.53c(2) provides that:

> 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) do not receive *holiday scheduling premium*.

National Arbitrator Fasser ruled on the appropriate remedy for violations of Section 11.6. He found that when an employee who volunteered to work on a holiday or designated holiday is erroneously not scheduled to work, "the appropriate remedy now is to compensate the overlooked holiday volunteer for the total hours of lost work."

Source: National Arbitration Award NCC-6085, Arbitrator P. Fasser, dated August 16, 1978.

The OTDL is not used when preparing the holiday schedule required by Article 11 (Section 11.6). If the need for additional full-time employees to work the holiday is determined subsequent to the posting of the holiday schedule, recourse to the OTDL would be appropriate.

Source: National Arbitration Award H8C-5D-C 14577, Arbitrator R. Mittenthal, dated April 15, 1983.

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.

Source: Step 4 Grievance N-E-2574(41V2), dated April 6, 1973.

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 Gamser ruled that the posting of a holiday schedule pursuant to the provisions of Section 11.6, and the terms of a settlement agreement between the USPS and the APWU, NALC and the Mail Handlers, made on March 4, 1974, does not constitute a guarantee until the employee reports as scheduled. Deleting the names of seven regular employees from the holiday schedule after the indicated mail volume showed that they could be spared and prior to the holiday itself, was not a contract violation. In other words, if for operational reasons an employee(s) is removed from the holiday schedule after the posting, the employee is not guaranteed holiday pay. However, management is to avoid "playing it safe" by overscheduling and then later releasing those employees not needed. As the arbitrator noted, "Management certainly would not have had the right to schedule all regulars and part-time regulars just to be sure that sufficient manpower was on hand on the holiday and then to delete all such names and only require casuals to work the holiday." He further noted that management has an obligation under Section 11.6 to "use as few regular and part-time regular employees as possible on a holiday and to allow them to be off from work on their regularly scheduled holidays."

Source: National Arbitration Award H8C-5D-C 15429, Arbitrator H. Gamser, dated October 25, 1982.

If management identifies the need for additional employees for holiday work after the holiday schedule has been posted, the overtime desired list is relied upon. In a national arbitration case, Arbitrator Mittenthal ruled that when management needed more employees for holiday work due to a change in conditions after the holiday schedule had been posted, the decision to schedule employees from the overtime desired list rather than utilizing holiday volunteers was proper and did not violate Section 11.6 of the National Agreement. Once the holiday schedule has been posted, volunteers have no preference over employees on the overtime desired list when management determines that additional employees are needed for holiday work.

Source: National Arbitration Award H8C-5D-C 14577, Arbitrator R. Mittenthal, dated April 15, 1983.

Question: Are full-time regular employees who volunteer for holiday period work considered to have volunteered for up to 12 hours on whatever day they are selected to work?

Answer: No. Employees are not considered to have volunteered for up to 12 hours of work. Scheduling of employees beyond eight hours is handled in keeping with the overtime provisions of Article 8.

Source: National Arbitration Award H4C-NA-C 21, Arbitrator R. Mittenthal, dated January 19, 1987.

Question: Can management assign individuals to work on a holiday or designated holiday because they are better qualified than another employee?

Answer: No. Management is required to follow the "pecking order" as set forth in Section 11.6, so long as the employee(s) are qualified to perform the needed duties; e.g., the employee possesses a Certificate of Vehicle Familiarization and Safe Operation if the duties involve the operation of powered equipment.

Source: Step 4 Grievance NB-S-1739, dated July 16, 1974.

Question: Can light or limited duty employees be scheduled for holiday work?

Answer: Light or limited duty employees can be scheduled for holiday work provided the work to be performed fits within their medical restrictions.

Source: Step 4 Grievances H1C-4F-C 2041, dated April 30, 1982, and H1C-4F-C 2430/2437, dated September 21, 1982.

Question: Does an employee who is scheduled to work his or her holiday or designated holiday and fails to do so receive holiday leave pay?

Answer: No, not usually. An employee who is scheduled to work his or her holiday or designated holiday and fails to do so will not receive holiday leave pay, as set forth in Section 11.6C above. However, if the absence was based on an extreme emergency and was excused by management, then the employee would receive holiday leave pay.

See further the Memorandum of Understanding Holiday Scheduling reprinted hereunder.

Section 11.7 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 (½) times the employee's regular straight time hourly rate for each hour worked up to eight (8) hours.

Both Sections 11.1 and 11.7 provide that part-time flexible employees do not receive holiday leave pay. Instead, Section 11.7 provides that the holiday leave pay 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 full-time and part-time regular employees at the same level and step. Under the provisions of Section 11.7, the straight-time hourly rate for a part-time flexible is computed by dividing the annual salary for a full-time regular at that level and step by 2,000 hours, rather than the 2,080 figure used to calculate the full-time regular's hourly rate. The difference of 80 hours is equivalent to a regular employee's pay for ten holidays.

MEMORANDUM OF UNDERSTANDING

HOLIDAY SCHEDULING

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to the following regarding the scheduling of holidays:

1. The Employer shall post a holiday schedule as set forth in Article 11, Section 6, of this Agreement.

2. A full-time regular employee whose holiday schedule is properly posted in accordance with Article 11, Section 6, and who works within the posted schedule shall be paid in accordance with Article 11, Sections 2, 3, and 4. It is further agreed that any change in an employee's required duties does not constitute a change in the posted schedule for purposes of this memorandum of understanding.

3. a. Except as provided in subparagraphs (b) and (c) of this paragraph, when the Employer fails to post in accordance with Article 11, Section 6, a full-time regular employee required to work on his/her holiday, or who volunteers to work on such holiday, shall be paid in accordance with Article 11, Sections 2, 3, and 4, and shall receive an additional fifty percent (50%) of the employee's base hourly straight-time rate for each hour worked up to eight hours.

   b. In the event that, subsequent to the Article 11, Section 6, posting period, an emergency situation attributable to an "Act(s) of God" arises which requires the use of manpower on that holiday in excess

of that posted pursuant to the Article 11, Section 6, full-time regular employees required to work in this circumstance(s) shall only be paid for such holiday work in accordance with Article 11, Sections 2, 3, and 4.

c. When a full-time regular employee scheduled to work on a holiday in accordance with the provisions of Article 11, Section 6, is unable to or fails to work on the holiday, the Employer may require another full-time regular employee to work such schedule and such replacement employee shall only be paid for such holiday work in accordance with Article 11, Sections 2, 3, and 4. The selection of such replacement employees shall be made in accordance with the terms of this Agreement.

d. A full-time regular employee required to work on a holiday which falls on the employee's regularly scheduled non-work day shall be paid at the normal overtime rate of one and one-half (1½) times the base hourly straight-time rate for work performed on such day. Such employee's entitlement to the holiday pay for the designated holiday shall be governed by the provisions of Article 11, Sections 2, 3, 5, and 6.

4. Hours worked on a holiday in excess of 8 hours shall be paid at the normal overtime rate of one and one-half (1½) times the base hourly straight time rate.

5. When a full-time regular employee works on his/her holiday, the employee will be guaranteed eight (8) hours of work or pay in lieu thereof, in addition to the holiday pay to which the employee is entitled under Article 11, Sections 2 and 3 language. This guarantee will be waived if the employee, with the concurrence of the Union and approval of Management, requests to be released early.

6. A schedule posted in accordance with Article 11, Section 6, shall be the full-time regular employee's schedule for that holiday. A full-time regular employee who works outside of the posted holiday schedule shall be paid at the rate of one and one-half (1½) times the base hourly straight-time rate for the hour(s) worked outside the employee's posted schedule.

7. In no event shall a full-time regular employee receive more than one and one-half (1½) times the base hourly straight-time rate for hours actually worked on the employee's holiday in addition to payments prescribed in Article 11, Section 3.

Question: If management requires the wrong employee to work on a holiday, what is the remedy for the employee who worked?

Answer: The employee would be compensated an additional 50% at the straight-time rate for all hours worked.

Question: What guarantee does a full-time regular employee have if he or she does work on his/her holiday or designated holiday?

Answer: Full-time employees who work on their holiday or designated holiday are guaranteed eight hours of work or pay in lieu thereof. The guarantee may be waived if requested by the employee, concurred in by the union and approved by management.

Question: Are full-time regular employees entitled to work the hours as posted in the holiday schedule?

Answer: Yes. In fact, employees are entitled and required to work the scheduled hours as posted even if those are not the hours of their regular schedule.

Source: National Arbitration Award H8C-5D-C 15429, Arbitrator H. Gamser, October 25, 1982.

Question: If a part-time flexible employee who is properly scheduled to work on a holiday fails to report and a full-time regular employee is called in, is the full-time regular employee compensated only at the straight-time rate?

Answer: No. When a full-time employee replaces a part-time flexible employee on a holiday, the full-time regular employee would receive an additional 50% for each hour worked up to eight hours. Note that the language of Section 3.c of the MOU applies in circumstances where a full-time regular employee replaces another full-time regular employee.

Source: Step 4 Grievance NC-C 4322, dated April 14, 1977.

ARTICLE 12
PRINCIPLES OF SENIORITY POSTING AND REASSIGNMENTS

Section 12.1 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.

Probationary Employees: Career employees serving their probationary period are members of the bargaining unit and have access to the grievance procedure on all matters pertaining to their employment except separation. Management has a right to separate probationary employees at any time during their probationary period without establishing "just cause". If separated during the probationary period, employees are not entitled to grieve the separation.

Furthermore, arbitrators have ruled on several occasions that grievances relating to the separation of probationary employees are not arbitrable.

A probationary employee who is separated during the probationary period is not entitled to access to the grievance-arbitration procedure in relation to that separation, even if claims of discrimination are alleged to be separate violations of Article 2 or Article 21. The union also has no right to pursue such a grievance on behalf of the probationary employee.

Source: National Arbitration Award H1C-4C-C 27352/27351, Arbitrator N. Zumas, dated September 23, 1985.

Neither the probationary employee nor the union has access to the grievance procedure in matters concerning an evaluation of work performance during the probationary period because the evaluation is a part of the decision to separate or not to separate the employee and grievances over separation of probationary employees are barred by Section 12.1A.

Source: National Arbitration Award H1C-5L-C 25010, Arbitrator N. Zumas, dated September 19, 1985.

Section 12.1A denies a probationary employee access to the grievance-arbitration procedure to challenge his/her separation on the grounds of alleged noncompliance by the Employer with the procedures governing the separation of probationary employees that are contained in Section 365.32 of the Employee and Labor Relations Manual. However, a dispute as to whether or not the Employer's action separating the employee occurred during his/her probationary

period is arbitrable because that is a precondition to the applicability of Section 12.1A.

Source: National Arbitration Award Q98C-4Q-C 99251456, Arbitrator S. Das, dated September 10, 2001.

Employees who were serving their probationary period at the time of entry into active duty in the military service and who met the probationary time period while serving on active duty are considered as having met the probationary time.

Source: Handbook EL-312, Section 775.1c.

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 16.1) requiring that non-probationary employees may only be disciplined for "just cause".

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.

A probationary employee does not have seniority. However, once the probationary period is satisfied, the employee's seniority is computed from the date of employment. (Also see Section 12.2E)

D When an employee who is separated from the Postal Service for any reason is re-hired, 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 12.2, if applicable.

E MHAs who successfully complete at least one 360-day term will not serve a probationary period when hired for a career appointment, provided such career appointment directly follows an MHA appointment.

MHAs who successfully complete at least one 360-day term will not serve a probationary period when hired for a career appointment provided such career appointment directly follows an MHA appointment.

In 2020, in a decision addressing the Postal Service's use of an MHA's disciplinary record after conversion to career, National Arbitrator Shyam Das concluded that "discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may not be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status." Only one narrow exception may exist to this new rule: where an MHA is subject to a notice of removal at the time the individual otherwise would be converted to a career position, that removal process might have to be completed before the employee is converted to career.

Source: National Arbitration Award B11M-1B-C 16189293 & J11M-1J-D 16441426, Arbitrator S. Das, dated October 14, 2020.

Section 12.2 Principles of Seniority

A Introduction

A1 The United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to the following seniority principles which replace all former rules, instructions, and practices.

A2 This Article will continue relative seniority standing properly established under past principles, rules and instructions and this Article shall be so applied. If an employee requests a correction of seniority standing, it is the responsibility of the requesting employee to identify and restate the specific instructions, rule, or practice in support of the request.

It is the responsibility of the employee who requests a correction in his/her seniority standing to identify the specific instruction, rule, or practice that supports the request.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO

Re: Article 12.1 – Probationary Period – Bidding

The parties agree to the following regarding bidding during a ninety calendar day probationary period:

Full-time career mail handlers who are serving a probationary period pursuant to Article 12.1 of the National Agreement and applicable memoranda of understanding are eligible to bid for vacant duty assignments in accordance with Article 12.3 of the National Agreement.

Seniority for full-time career mail handlers during their probationary period will be computed for the purpose of bidding pursuant to this agreement. This computation of such seniority does not create any additional obligation or entitlement for application of seniority not otherwise provided for in the National Agreement.

This MOU **allows** career employees to bid for vacant duty assignments under Article 12 during their 90-day probationary period.

B Coverage

These rules apply to full-time and part-time fixed schedule employees. No employee, solely by reason of this Section shall be displaced from an assignment which the employee gained in accord with former rules.

Seniority rules are sometimes changed as part of a new National Agreement. Such changes, however, do not cause displacement of an employee from a job assignment.

C Responsibility

The installation head is responsible for the day-to-day administration of seniority. Installation heads will post a seniority list of Mail Handlers on all official bulletin boards for that installation. The seniority list shall be corrected and brought up to date quarterly.

D Definitions

D1 Craft Group

A craft group is composed of those positions for which the Union has secured exclusive recognition at the national level.

D2 Seniority Standing

D2a Seniority for full-time employees is computed from the date of appointment in the craft and continues to accrue so long as service in the craft (regardless of level) and installation is uninterrupted, except as otherwise provided herein.

D2b Seniority for part-time fixed schedule employees is computed from the date of appointment in this category of the work force and continues to accrue so long as service in the craft and category and installation is uninterrupted.

This category of employees, also known as part-time regulars (PTR), have their own seniority standing within their PTR group. Part-time regulars do not compete with full-time regulars for bid assignments or with part-time flexibles for conversion to full-time.

MEMORANDUM OF UNDERSTANDING

RE: RELATIVE STANDING OF MAIL HANDLER ASSISTANTS AND SUBSEQUENT SENIORITY UPON CONVERSION TO CAREER MAIL HANDLER

As part of the Fishgold Interest Arbitration Award issued in February 2013, hiring under the 2011 National Agreement into the Mail Handler craft is through the non-career position of Mail Handler Assistants (MHAs). The parties have agreed to the following principles regarding (a) the determination of relative standing for MHAs hired on or after October 4, 2014; and (b) the determination of seniority for MHAs who are converted to career positions in the Mail Handler craft on or after October 4, 2014.

Once hired as an MHA, each MHA's relative standing as an MHA, and thus each MHA's eventual conversion to a career position in the Mail Handler craft, is established based on their initial MHA appointment date, **except that, effective with the second full pay period after the bargaining unit ratification of the 2019 National Agreement and solely for the purposes of relative standing, all newly hired MHAs shall be deemed to have an initial appointment date on a Saturday, at the start of the pay period during which they began work in the installation. The MHA may start working any day of that pay period as determined by the Employer.** Any ties among MHAs **in relative standing** who share the same initial appointment date in the same installation will be based on the following criteria (which represent a revised version of Section 12.2G8 of the National Agreement for these limited purposes):

G8 Except as otherwise specifically provided for in this MOU, when it is necessary to resolve a tie in relative standing or seniority between two or more newly hired Mail Handler craft employees, effective October 4, 2014 the following criteria shall apply in the order set forth below:

G8a Total continuous postal career service in the Mail Handler craft within the installation.

G8b Total postal career service in the Mail Handler craft within the installation.

G8c Total postal career service in the Mail Handler craft.

G8d Total postal career service within the installation.

G8e Total postal career service.

G8f Total Mail Handler Assistant service.

G8g Total postal non-career service.

G8h By the order ranked on the hiring list (as described in Handbook EL-312, Employment and Placement, Subchapter 43 part 436 and Subchapter 44).

MHAs will be converted to career positions in the Mail Handler craft in precisely the same order as the relative standing list. If more than one MHA is converted to career status on the same date in the same installation, seniority ranking will be based on their position on the MHA relative standing list.

The terms of this MOU are effective as of October 4, 2014, **except as specifically provided otherwise.** The MOU will be applied both to MHAs hired on or after October 4, 2014, and to MHAs who are converted to career positions in the Mail Handler craft on or after October 4, 2014. Issues relating to the relative standing of MHAs initially appointed on or before October 3, 2014 and/or the seniority of MHAs converted to career positions in the Mail Handler craft on or before October 3, 2014 shall be governed by previous rules and regulations, and any disputes on these matters will be withdrawn.

The previous Question and Answer Number 27 signed by the parties on August 7, 2013 is amended as follows:

27. How does management determine which MHA will be converted to career when an opportunity exists?

Answer: MHAs will be converted to career based upon their relative standing in the installation, which is determined in accordance with the MOU Re: Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler, effective October 4, 2014. Upon conversion to career, there will be no further adjustment to seniority for all Mail Handlers converted to career on the same date in the same installation, so their relative standing as MHAs will control their seniority as career Mail Handlers.

Any disputes arising under this MOU Re Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler, shall be referred to the Article 12 Task Force for resolution, or if necessary to arbitration at the Regional/Area or National level depending on whether the dispute presents a nationally interpretive dispute of general application.

This MOU reflects the parties 2014 settlement agreement governing the relative standing of MHAs It also governs the subsequent seniority of MHAs upon their conversion to career mail handler.

The installation head or designee shall provide a hard or electronic copy of the relative standing list to the local union representative of the installation upon request. The parties' intent is solely to ensure the requested information is provided, not to create a basis to seek other remedies.

The 2019 National Agreement has been amended to include that all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, the first day of the pay period during which they began work in the installation.

Question: When is this new language effective?

Answer: It is effective the second full pay period after ratification of the National Agreement, which means May 9, 2020.

Question: Do all MHAs start on the first Saturday of a pay period with this new language?

Answer: No, an MHA may start working on any day of the pay period as determined by the Employer.

D3 Duty Assignment

A duty assignment is a set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty.

D4 Preferred Duty Assignments

A preferred duty assignment is any assignment preferred by a full-time employee or a part-time fixed schedule employee within the employee's category.

It was not the intent of the parties who negotiated the National Agreement to have this contract language regarding Preferred Duty Assignments serve as a basis for allowing employees to select particular preferred duties (or tasks they

would like to perform) from among the duties in the preferred duty assignments that they are awarded through the bidding procedure. However, the parties are responsible for adhering to provisions contained in existing agreements reached between local union and management officials.

Source: Step 4 Grievance H8M-1E-C 15324, dated April 15, 1981.

There is no contractual requirement within the National Agreement to give a full-time regular employee his/her choice of work assignments within his/her bid.

Source: Step 4 Grievance H1M-5L-C 6488, dated December 30, 1982.

D5 Bid

A request submitted in writing, by telephone, or by computer to be assigned to a duty assignment by an employee eligible to bid on a vacancy or newly established duty assignment or a preferred assignment. Where telephone, computer, or other electronic bidding procedures are established, bids must be submitted by telephone**,** computer or other electronic methods as agreed to by the parties.

[See Letter, page 161]

The use of telephone, computer or other electronic bidding at an installation is the prerogative of the installation head. This provision of the Agreement does not mandate that telephone, computer or other electronic bidding be instituted at a particular installation. Where the installation head has implemented telephone, computer or other electronic bidding, however, it is mandatory that members of the Mail Handler craft use that system when submitting bids. Also see the Letter of Intent on this subject, which sets forth various rules governing the implementation of telephone bidding.

D6 Application

A written request by a full-time employee or part-time fixed schedule employee within the employee's respective category for consideration for an assignment for which the employee is not entitled to submit a bid.

This provision refers to those positions for which a mail handler is not entitled to bid, but rather for which he/she must apply. These include positions, if any, that are filled on a ‘best qualified’ basis (see Section 12.2H) and residual vacancies in the part-time fixed schedule category (see Section 12.3B2).

D7 Abolishment

A management decision to reduce the number of occupied duty assignment(s) in an established section and/or installation.

D8 Reversion

A management decision to reduce the number of duty assignment(s) in an installation when such duty assignment(s) is/are vacant.

A duty assignment is reverted if vacant or abolished if occupied.

D9 Residual Vacancy

A duty assignment that remains vacant after the completion of the voluntary bidding process.

E Relative Standing of Part-Time Flexibles

Part-time flexible employees and MHAs are placed on a part-time flexible or MHA roster, as appropriate, in the order of the date of their initial appointment in the installation. When changing such employees to full-time, they shall be taken in the order of their standing on the part-time flexible or the MHA roster.

These employees do not have seniority rights; however, their relative length of service shall be used for vacation scheduling and for purposes of conversion to full-time status.

When there is an opportunity for conversion to full-time status in an installation and that installation has both part-time flexible and MHA employees available for conversion, the PTFs will be converted to full-time regular prior to the conversion of the MHAs.

Question: Does relative standing earned as an MHA in one installation move with an MHA who is separated and is later employed in another installation?

Answer: No.

Question: If an MHA goes from one installation to another installation (gaining installation) on the same date as one or more MHAs are appointed in the gaining installation, is the previously appointed MHA placed above the newly appointed MHAs on the relative standing list?

Answer: All of these MHAs at first would be tied because they share the same initial appointment date in the gaining installation, but then any ties would be broken and relative standing would depend on an application of the MOU Re Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler, dated September 2014.

Question: Does changing between crafts alter MHA standing on the roll?

Answer: Yes.

Question: How does management determine which MHA to terminate during the term when there is a lack of work?

Answer: Separations for lack of work shall be by inverse relative standing in the installation.

Question: When needed, how does management determine which MHA to bring back to work if the MHAs were separated for lack of work?

Answer: Reappointment should be by relative standing from the previous appointment. MHAs separated for lack of work before the end of their term will be given preference for reappointment ahead of other MHAs with less relative standing and ahead of other applicants who have not served as MHAs, provided that the need for hiring arises within twelve (12) months of their separation.

Question: How does management determine which MHA will be converted to career when an opportunity exists?

Answer: MHAs will be converted to career based upon their relative standing in the installation, which is determined by their initial MHA appointment date in that installation. Any ties among MHAs who share the same initial appointment date in the same installation will be based on the MOU Re Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handler, dated September 22, 2014, as amended on September 30, 2014, which is controlling.

Question: Does an MHA's standing on a roll carry over into career appointment?

Answer: No. The time worked as an MHA does not carry over if an MHA attains career status. They begin their initial period of seniority when they attain career status.

F Changes in Which Seniority is Lost

Except as specifically provided elsewhere in this Agreement an employee begins a new period of seniority:

F1 When the change is at the employee's request:

F1a From one postal installation to another, the employee will begin a new period of seniority as a part-time flexible, if such status is available in the installation.

F1b From another craft to the Mail Handler craft, the employee will begin a new period of seniority as a part-time flexible, if such status is available in the installation.

The provisions of Sections 12.2F1a and F1b set forth the rule that employees will begin a new period of seniority as a part-time flexible employee, if such status is available in the installation, when the employee voluntarily moves to another postal installation or voluntarily moves from another craft to the Mail Handler craft.

F2 Upon reinstatement or reemployment.

F3 Upon transfer into the Postal Service.

G Changes in Which Seniority is Retained, Regained or Restored

G1 Reemployment After Disability Separation. On reinstatement or reemployment after separation caused by disability, retirement or resignation because of personal illness and the employee so stated in the employee's resignation and furnished satisfactory evidence for inclusion in the employee's personnel folder, the employee receives seniority credit for past service for time on the disability retirement or for illness if reinstated or reemployed in the same postal installation and craft and in the same or lower 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 retirement must be supported by notice of recovery from the Compensation Group, Office of Personnel Management, and in the case of resignation due to illness, by a statement from the applicant's attending physician or practitioner. When reinstatement is to the part-time flexible roster, standing on the roster shall be the same as if employment had not been interrupted by the separation.

On reinstatement or reemployment after separation caused by disability, retirement or resignation because of personal illness, the employee receives seniority credit for past service and for time on disability retirement or the period of illness provided that the following criteria are met:

- The employee stated in the resignation that the resignation was due to disability or illness and furnished satisfactory evidence for inclusion in his/her personnel folder.

- The employee is reinstated or reemployed in the same installation and craft and in the same or lower salary level from which originally separated.

- The application for reinstatement or reemployment is made within six months of the date of recovery.

- The date of recovery in the case of disability retirement is supported by notice of recovery from the Compensation Group, Office of Personnel Management; the date of recovery in the case of resignation due to illness is supported by a statement from the employee's attending physician or practitioner.

When reinstatement is to the part-time flexible roster, standing on that roster shall be the same as if employment had not been interrupted by the separation.

G2	Restoration. 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 the employee would have if not separated.

When an employee returns to the Mail Handler craft in the same installation under the conditions indicated above, they regain the seniority that they had at the time of separation and are also given seniority credit for the time that they were separated. In other words, they would be returned to the seniority list with the same seniority date that they originally had at the time of the separation.

A part time flexible would be returned to a position on the part-time flexible roll as if they had never separated. If all the part-time flexible employees above the employee on the PTF roll at the time of the employee's separation have since been converted to full-time, the employee would be placed at the top of the roll and would be converted to full-time at the next opportunity.

For further information regarding the specific rules governing employment restoration after military service, refer to Section 77 of Handbook EL-312.

G3	When an employee changes from another craft to the Mail Handler craft involuntarily, the employee will begin a new period of seniority.

Except as provided in the next paragraph, when an employee changes from another craft to the mail handler craft involuntarily, the employee begins a new period of seniority under Section 12.2G3. For example, if a full-time clerk had been involuntarily reassigned to the mail handler craft, under Section 12.6C5, effective October 1, 1990, that clerk would have been placed in the mail handler craft with a seniority date of October 1, 1990.

Sources: Letters, NPMHU to USPS, dated September 25, 1990, and USPS to NPMHU, dated October 16, 1990.

If an employee is reassigned to the Mail Handler craft pursuant to Article 13 of either the APWU or NALC National Agreement, the provisions of Article 13 (Section 13.6A and B) apply as appropriate.

G4	Reassignment and Return in 90 Days. Beginning on the effective date of the 2016 National Agreement, a Mail Handler who is voluntarily reassigned to another craft in the same installation with or without a change in grade level and who is subsequently voluntarily reassigned within 90 days back to the Mail Handler craft shall regain the seniority previously acquired as a Mail Handler, which shall not include the period of intervening employment in the other craft.

A mail handler who is reassigned voluntarily to another craft and voluntarily returns to the Mail Handler craft within the same installation within 90 days, regains the seniority previously attained as a Mail Handler, minus the period of the intervening employment in the other craft.

G5	Failure to Meet Qualification Standards. When an employee is returned to the Mail Handler craft for not being able to meet the qualification standards for a job in the same installation, the employee shall regain former Mail Handler seniority.

If an employee is returned to the Mail Handler craft due to failure to meet the qualification for a position in the same installation, the employee regains the seniority the employee had in the Mail Handler craft; that employee's seniority is not augmented by the intervening employment. However, should the employee fail to meet the qualification for a position in another installation and return to the Mail Handler craft in the former installation, the employee would begin a new period of seniority.

G6 **For purposes of excessing outside the installation, any** Mail Handler involuntarily moving from one postal installation to another postal installation shall have seniority established as of the employee's time in the Mail Handler craft **in the losing installation.**

This provision is somewhat misleading in that only full-time and part-time regular mail handlers are involuntarily reassigned from one installation to another in the Mail Handler craft with their seniority. If a part-time flexible employee is involuntarily reassigned from one installation to another in the Mail Handler craft pursuant to Section 12.6C7b, the employee is placed at the foot of the part-time flexible roll and does not regain his/her seniority until converted to full-time.

Question: What is the seniority of a Mail Handler when they are involuntarily reassigned outside of their installation?

Answer: Effective with the ratification of the National Agreement (April 7, 2020), any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Any senior employee in the same 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. Article 12.2G6 does not apply to senior in lieu of volunteers.

Source: Step 4 E11M-1E-C 13256828, dated June 27, 2014.

G7 An employee who left the bargaining unit on or after July 21, 1973 and returns to the bargaining unit:

G7a will begin a new period of seniority if the employee returns from a position outside the Postal Service; or

G7b will begin a new period of seniority if the employee returns from a non-bargaining unit position (i.e., a position outside of the bargaining units that were covered by the 1978 National Agreement) within the Postal Service, unless the employee returns within 2

years from the date the employee left the unit except as follows:

G7b1 An employee who left the craft and/or installation after the date of the issuance of the arbitration award determining the terms and conditions of the 1994 National Agreement, and returns to the craft and/or installation, will begin a new period of seniority unless the employee returns within 1 year from the date that the employee left the craft and/or installation.

G7b2 The seniority for an employee returning, within one year, under G7b1 above shall be established after reassignment as the seniority the employee had when he/she left minus seniority credit for service outside the craft and/or installation.

The provisions of Section 12.2G7 apply when an employee leaves the bargaining unit for a position outside of the Postal Service or for a position in a supervisory or managerial position within the Postal Service. These provisions have no application to a Mail Handler who leaves the bargaining unit for a position in another nationally-recognized bargaining unit within the Postal Service, such as those bargaining units represented by the APWU and NALC.

There are different seniority rules depending on the date on which the employee left the bargaining unit, as outlined hereunder.

Beginning April 25, 1996:

For employees who left the craft and/or installation after April 24, 1996 and later returned to the craft and/or installation, seniority is established as follows:

- An employee returning from a position outside the Postal Service would begin a new period of seniority.
- An employee returning from a non-bargaining unit position after one (1) year would begin a new period of seniority.
- An employee returning from a non-bargaining unit position within one (1) year would regain the seniority the employee had in the craft without credit for the time the employee spent in the non-bargaining unit position.

July 21, 1973 to April 24, 1996:

This provision provides the rules for establishing the seniority of employees who left the bargaining unit during the period from July 21, 1973 to April 24, 1996 and later returned to the same craft. They shall have seniority as specified in the 1990-1994 National Agreement which would be established as follows:

- An employee returning from a position outside the Postal Service would begin a new period of seniority.

- An employee returning from a non-bargaining unit position after two (2) years would begin a new period of seniority.

- An employee returning from a non-bargaining unit position within two (2) years would regain the seniority the employee had in the craft without credit for the time the employee spent in the non-bargaining unit position.

Prior to July 21, 1973:

While the current National Agreement is silent on situations where employees left the bargaining unit prior to July 21, 1973 and later returned to the same craft, the rules for establishing seniority for such employees were specified in the 1971-1973 National Agreement. Seniority would be established as follows:

- An employee returning from a position outside the Postal Service would begin a new period of seniority.

- An employee returning to the same craft would regain the seniority the employee had in the craft without credit for the time spent outside the craft.

Employees serving as temporary supervisors (204b) accumulate craft seniority during those periods in which they serve as temporary supervisors.

Source: National Arbitration Award N8-NA-0383, Arbitrator R. Mittenthal, dated April 23, 1981.

A former supervisor who left the Mail Handler craft and/or installation after April 24, 1996 and who returns to the craft more than one year after he/she accepted the promotion, has his/her seniority established one day junior to the seniority of the junior part-time flexible and is reassigned as a part-time flexible. (Note that, employees who left the craft on or before April 24, 1996, could retain their seniority, minus credit for service outside the craft or installation, if they returned within two years.)

Sources: Step 4 Grievance H4M-5C-C 17168, dated November 6, 1986, and National Arbitration Award H7N-4U-C 3766 et al, Arbitrator C. Snow, dated August 13, 1990.

G8 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 Mail Handler craft employees, the following criteria shall apply in the order set forth below:

G8a Total continuous postal career service in the Mail Handler craft within the installation.

This refers to all current service within the Mail Handler craft within the same installation without a break.

G8b Total postal career service in the Mail Handler craft within the installation.

This refers to all service in the Mail Handler craft within the same installation including any time in the craft that may have been accrued prior to leaving and then returning to the craft.

G8c Total postal career service in the Mail Handler craft.

This includes all time in the Mail handler craft including time in the Mail Handler craft in other installations.

G8d Total postal career service within the installation.

This includes all career service within the installation including career service outside of the Mail Handler craft.

G8e Total postal career service.

This includes all career Postal Service without regard to craft or installation.

G8f Total Federal service as shown in the service computation date.

The leave computation date, currently found in Box 14 of PS Form 50, is used to determine “total federal service.”

Source: Step 4 Grievance E98M-1I-C 00222755, dated January 23, 2003.

G8g Numerical by the last 3 or more numbers (using enough numbers to break the tie but not fewer than 3 numbers) of the employee's social security number, from the lowest to highest.

The employee with the lowest number is placed highest among the group to whom the tie-breaking process is being applied.

G9 Effective January 1, 2007, any Mail Handler who voluntarily transfers from one postal installation to another postal installation, and is subsequently accepted for voluntary transfer back to the original postal installation within one (1) year, shall have seniority established as the seniority that the employee had when she/he left the original installation minus credit for service for the time away from that installation.

Employees voluntarily transferring from one installation to another on or after January 1, 2007, and who subsequently are accepted for a voluntary transfer back to the original installation within one year, regain their seniority in the original installation minus the time spent away from that installation.

H All positions presently in the Mail Handler craft, including higher level positions, shall be filled by the senior qualified bidder meeting the qualification standards for the position, except that those positions which are presently designated best qualified shall be filled by the best qualified applicant.

H1 Key and Standard Positions Assigned to the Mail Handler Craft

H1a Key Position

Mail Handler, MH 4, KP 8

H1b Standard Positions

Group Leader Mail Handler, MH 5, SP1-33

Label Printing Technician, MH 5, SP2-578

Label Machine Operator, MH 4, SP2-579

*Laborer, Materials Handling, MH 3, SP1-11

Mail Handler Equipment Operator, MH 5, SP2-21

Mail Equipment Handler, MH 4, SP2-247

Mail Handler Technician, MH 5, SP2-498

Mail Processing Machine Operator,

MH 5, SP2-354

Mail Processing Machine Operator,
MH 5, SP2-470

Packer-Shipper, MH 4, SP2-581

*When the “Laborer, Materials Handling" position is authorized for the post office branch, it is delegated to the Mail Handler Craft. When authorized for the Maintenance Branch it is assigned to the Maintenance Craft.

Sack Sorting Machine Operator, MH 4, SP2-367

Sack Sorting Machine Operator, MH 5, SP2-438

Typist-Label Printing, MH 4, SP2-580

Computer Print Line Production Operator, MH 5, SP2-632

Mail Rewrapper, MH 4, SP2-9

H2 Individual Positions Assigned to the Mail Handler Craft: Group Leader Mail Handlers, MH 6, IP248-7, 2315-02, Group Leader Sack Sorter Machine Operator, MH 6, IP25-11-1, 2315-28, Mail Handler Leadman, MH 5, IP32-12-1, 2315-80.

When a duty assignment within an Individual Position (IP) becomes vacant, it should not be posted; rather, it should be reverted.

H3 All Mail Handler employees of Level MH-5 may bid for the position of Examination Specialist, SP2-188.

[See Letter, page 162]

Even though the position of Examination Specialist is a Clerk craft position, it is open to all qualified bidders, installation-wide, regardless of craft.

I Filling Positions Reevaluated as One of the Positions Reserved for Bidding by MH 4's, MH 5's and MH 6's.

I1 When an occupied level 4 or 5 position is upgraded on the basis of the present duties:

I1a The incumbent will remain in the upgraded job provided the incumbent has been in that job for more than one year.

I1b The job will be posted for bid in accordance with the Agreement if the incumbent has not been in the job for more than one year.

I2 When an occupied level 4 or 5 position is upgraded on the basis of duties which are added to the position:

I2a The incumbent will remain in the upgraded job provided the incumbent has been in that job for more than one year. The year of required incumbency in the job begins when the employee first begins working the assignment.

I2b The job will be posted for bid in accordance with the Agreement if the incumbent has not been in the job in accordance with .2I2a, above.

I3 When management places automatic equipment in an office and an employee is assigned to operate the equipment, the time the employee spends on this job before it is ranked established shall be counted as incumbency in the position for the purpose of being upgraded or assigned.

These provisions govern incumbency rights when the appropriate Postal authority (normally at the National level) reevaluates and upgrades a position based on the present duties of the position (I1) or based on duties that are added to the position (I2); all duty assignments within that position description are affected. It does not apply to the replacement or addition of an assignment when the new duty assignment requires an established position that is ranked at a higher grade. Such newly established duty assignments shall be posted for bid pursuant to Section 12.2B3.

Source: Step 4 Grievance B98M-1B-C 00022520, dated September 8, 2000.

If a position is reevaluated to a higher level, the lower level assignment that was upgraded would be considered abolished.

Section 12.3 Principles of Posting

A To insure a more efficient and stable work force, an employee may be designated a successful bidder no more than nine (9) times during the duration of this Agreement unless such bid:

A1 is to a job in a higher wage level;

A2 is due to elimination or reposting of the employee's duty assignment; or

A3 enables an employee to become assigned to a station closer to the employee's place of residence. It is the responsibility of the employee bidding to notify management that the employee is bidding "closer to home."

The period for counting bids under the **2019** National Agreement began on **September 21, 2019,** the day after expiration of the 2016 National Agreement.

Question: What is the timeframe for a career mail handler to use his or her successful 9 bids?

Answer: The 9 bids will be from the expiration of the previous contract **(September 21, 2019)** through the end of the current contract **(September 20, 2022**).

This provision provides that bargaining unit employees can be designated successful bidder no more than nine (9) times during the life of this contract. However, there are three (3) exceptions and the exceptions apply beginning with the first successful bid. For example, if the employee's second successful bid during the life of the Agreement was necessitated due to their assignment being reposted due to a schedule change, that bid would not count against the nine (9) successful bid limit and the employee would still be entitled to at least eight (8) more successful bids during the life of the Agreement.

Source: Step 4 Grievance H1C-3P-C 36488, dated April 3, 1986.

With regard to telephone bids, even when an employee has reached his or her successful bid limit, the telephone bidding system will allow bids to be entered. Those bids are flagged by the system as "ineligible."

As noted in the new contract language, it is the responsibility of the employee bidding to notify management that the employee is bidding "closer to home." Management then will change the bid(s) to "eligible." If the bidder is successful, the bidder will get his/her additional successful bid.

Management will routinely review job bidding reports prior to awarding the duty assignment to a successful bidder. Part of this process is to investigate the ineligible bids. There are other situations (e.g., when an employee's job is abolished) where the bid count also must be manually adjusted to make the bids eligible.

Source: Letter Re Implementation of Telephone Bidding System.

B In the Mail Handler Craft, Vacant Craft Duty Assignments Will Be Posted for Bid as Follows:

B1 Full-time and part-time fixed schedule employees will only bid for vacant assignments within their own category.

Only full-time employees may bid for full-time assignments and only part-time regular employees may bid for part-time regular assignments.

B2 Full-time employees may apply for residual vacancies in the part-time fixed schedule category, and selection from such applicants shall be based on senior employee meeting the qualification standards.

Under this provision, full-time regular mail handlers may apply for residual vacancies having a part-time fixed schedule. The senior full-time regular employee who meets the qualification standards will be selected. See further the MOU Re Conversion of Mail Handler Craft Employees on page **146** of the **2019** National Agreement.

The selected employee's seniority would be computed in accordance with Section 12.2D2b, which provides that seniority begins on the date of appointment as a part-time fixed schedule employee and continues to accrue as long as service in the craft, the part-time fixed schedule category, and the installation is uninterrupted.

Source: Downes Memorandum Re Part-Time Regular Mail Handlers, dated October 2, 1986.

B3 All vacant or newly established craft duty assignments shall be posted for employees eligible to bid. Vacant duty assignments will be posted within 28 days of the date the assignment becomes vacant unless a determination has been made that the position is to be reverted. If the vacant assignment is reverted, a notice shall be posted within that same 28 day period advising of the action taken and the reasons therefor. In addition, a copy of the notice shall be provided to the appropriate Union representative.

[See Letter, page 163 and Memo, page 165]

All vacant duty assignments must be posted for bid within 28 days, unless management determines that the position is to be reverted. This provision requires the Employer to provide the appropriate Union official with a copy of the

notice indicating that a bargaining unit assignment is being reverted. A separate Letter of Intent printed at page **163** of the **2019** National Agreement provides that the only remedy that the Union has relative to a failure to provide such notice is the preservation of the Union's right to grieve such reversion until such time as the Union receives the notice.

MEMORANDUM OF UNDERSTANDING

SECTION 12.3 PRINCIPLES OF POSTING

When either Article 12.3B4, B5 or B6 are applicable, requiring a bid to be reposted while the total number of bids in the section remains the same, an expedited selection process shall be applied. The duty assignment encumbered by the employees junior to the senior employee whose bid is reposted will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed.

The results of the above listed actions shall be effective at the beginning of the succeeding pay period.

The bid being reposted in accordance with Article 12.3B4, B5 or B6 will be posted for the installation and not included in the expedited selection process.

Question: What happens when changes are made by either Article 12.3B4 (change of fixed days of week), Article 12.3B5 (change in duties or change in principle assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

Answer: An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

This expedited selection process is implemented by salary levels.

Question: How would that expedited process work?

Answer: The full time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignment will be offered, in seniority order, to the employees remaining

in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

If an involuntary reassignment from the section occurs due to changes in bids covered under the MOU on Section 12.3 Principles of Posting, the contract requires that the parties start with the junior full-time regular employee in the same salary level, regardless whether or not the junior full-time assignment was the one being changed.

Question: Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principle assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

Answer: No, the bid will be posted installation wide and will not be part of the expedited selection process.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

B4 When it is necessary that fixed scheduled day(s) of work in the basic work week for a craft assignment be permanently changed, the affected assignment(s) shall be reposted. The change in work days shall not be effected until the job has been posted.

(See Memo, page 165)

The 2019 National Agreement contains new language requiring an expedited selection process when there is a change of fixed scheduled days of work, see the MOU on Section 12.3 Principles of Posting on page 165 of the Agreement and reprinted above.

The change in non-scheduled days will not actually take place until the assignment is actually posted for bid.

When it is necessary that the fixed scheduled day(s) of work in the basic work week for a part-time regular craft assignment be permanently changed, the provisions of Section 12.3B4 will be followed.

Source: Memorandum of Understanding, dated September 22, 1988.

B5 The determination of what constitutes a sufficient change of duties, or principal assignment area, to cause the duty assignment to be reposted shall be subject to local negotiations in accordance with local implementation provisions of this Agreement.
(See Memo, page 165)

The results of local implementation under this provision should not be inconsistent or in conflict with the provisions contained in Section 12.3B7 hereunder.

B6 No assignment will be posted because of change in starting time unless the change exceeds an hour. Any change in starting time that exceeds one (1) hour shall be posted for bid, except when there is a permanent change in starting time of more than one hour and up to and including four hours, the incumbent shall have the option to accept such new reporting time. If the incumbent does not accept the new reporting time, the assignment will be posted for bid.

A change in start time of an assignment exceeding four (4) hours will include cumulative changes within the life of this Agreement. Cumulative changes must be within four hours prior and four hours after the start time of the assignment on the ratification date of this Agreement.

When an assignment is posted for bid, the start time at the effective date of the bid will become the new point from which the cumulative changes are measured.

If the change in starting time is more than four hours, the incumbent does not have the option to accept a new starting time and the assignment must be posted for bid.

When it is necessary that the starting times in the basic work week for a part-time regular craft assignment be permanently changed, the provisions of Section 12.3B6 will be followed.

Source: Memorandum of Understanding, dated September 22, 1988.

Question: Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

Answer: Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

For example, if a start time on April 7, 2020 was 7:00 a.m., then a change to 9:00 may be kept by the incumbent, but another change to 12:00 p.m. would be outside of the four (4) hour rule, even though the most recent change was only three hours.

Another example would be a change of three (3) hours from 7:00 a.m. to 10:00 a.m., followed by a subsequent change of five (5) hours in the other direction to 5:00 a.m. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 a.m. remains inside four (4) hours or less from the original start time of 7:00 a.m.

Source: 2019 - 2022 National Agreement Questions and Answers, 5/22/2020.

B7 Change in duty assignment, as specified below, will require reposting:

B7a A 50% change in duties (actual duties performed).

B7b A change in principal assignment area which requires reporting to a different physical location; i.e., station, branch, facility annex, etc., except the incumbent shall have the option to accept the new assignment.

As an example of the application of Section 12.3B7b, assume that an annex facility is opened and certain assignments are transferred to the annex. The incumbents would have the option of accepting the newly located assignments if there is no requirement to repost subject to B4 (change of days), B6 (change of hours) or B7a (change in duties) above.

B8 Vacant full-time Mail Handler assignments shall be posted for a period of ten (l0) days.

B9 The installation head shall establish a method for handling multiple bidding on duty assignments which are simultaneously posted.

For paper bids, the method established by the installation head may include the use of Form 1717A, which allows an employee to list multiple bids on the same sheet in preferred order. For telephone bids, the current system allows the employee to indicate an order of preference when making multiple bids.

B10 An employee may withdraw a bid on a posted assignment, in writing or in the telephone or computerized bidding process, at any time before the closing time (hour and date) of the posting. Such withdrawal, to be official, shall be date stamped or processed by telephone or computer with confirmation.

Where telephone bidding is used, employees will withdraw their bid using the telephone system.

B11 An unassigned full-time employee may bid on full-time duty assignments posted for bid by employees in the Mail Handler craft. An unassigned full-time employee may be assigned to any vacant duty assignment. Such employee shall be given a choice if more than one vacant assignment is available. When the number of unassigned full-time employees exceeds the number of residual vacant duty assignments, the senior unassigned employee(s) may elect to remain unassigned provided that an unassigned regular making this election is not the only unassigned regular who can fill a higher-level position without promotion or is not the only unassigned regular qualified for a residual assignment. Part-time fixed schedule employees shall be treated similarly within their own category.

Except in cases where the installation is under withholding, if no qualified unassigned full-time regular employee is available to be assigned to the residual vacancy, the senior part-time flexible employee in the installation will be converted to full-time regular and assigned to this residual vacant duty assignment. This provision is applicable to residual vacancies remaining from any bid posting after June 1, 2007.

This provision governs the bidding rights and assignment procedures for unassigned regulars. If, for example, there are three residual vacancies and there are five unassigned employees, two of the unassigned employees may decline assignment to a residual vacancy as long as there is a junior unassigned employee that can be assigned to the vacant assignment. This election cannot be made if that junior employee would have to be promoted while the senior

employee would not or if the senior employee was qualified for the position and the junior employee was not.

The issues in these grievances are whether a light/limited duty employee can be assigned to a residual vacancy that he or she cannot physically perform.

The parties agree that an unassigned light/limited duty employee cannot be assigned to a residual vacancy unless the employee is able to perform the core functions of the position, with or without reasonable accommodation.

Source: Step 4 Grievances C00M-1C-C 05179842, C00M-1C-C 06002195, and K00M-1K-C 05016441, dated December 18, 2011.

Beginning with bid postings after June 1, 2007, and except for those installations that are under withholding, the senior part-time flexible employee will be converted to full-time regular and assigned to a remaining residual vacant duty assignment if there is no qualified unassigned full-time regular employee available to be assigned to that residual vacancy. The senior part-time flexible employee cannot refuse the conversion to full-time status, and the conversion should occur in the usual course, even in December.

MEMORANDUM OF UNDERSTANDING
FILLING OF RESIDUAL VACANCIES

The parties agree to apply the following procedures, during the term of the **2019** National Agreement, concerning filling of Mail Handler Craft residual vacant duty assignments not subject to withholding pursuant to Article 12.

In accordance with Article 12.3B3, all vacant duty assignments will be posted within 28 days of the date the assignment becomes vacant unless a determination has been made that the position is to be reverted. If that vacant duty assignment is posted, goes unbid, and becomes residual, that residual duty assignment will be filled in accordance with this Memorandum of Understanding.

If and when management decides to revert an assignment, a notice shall be posted within ten (10) days advising of the action taken and the reason(s) therefore. Assignments that are not reverted shall be filled in accordance with this MOU. The Postal Service at the National level shall provide the Union at the National level with reports, as they become available, listing the number of residual vacant assignments.

Under the terms of this MOU, residual duty assignments that are not subject to a proper withholding pursuant to Article 12 will be filled by assigning employees in the following order:

1. Unassigned regular mail handlers in the same installation.

2. Employees with mail handler retreat rights to the installation pursuant to Article 12.

3. Convert part-time flexible mail handlers within the installation to full-time regular, up to the number of residual vacancies.

4. Convert part-time regulars within the installation who have requested in writing to become full-time, up to the number of residual vacancies remaining. Management has the right to reject the next eligible senior part-time regular employee but must show cause for doing so, and any such action is grievable by said employee.

5. Full time regular mail handler employees, by seniority, with priority consideration in eReassign.

6. All qualified bargaining unit applicants per the MOU Re: Transfers without priority consideration, on a first-in, first-out basis. These reassignment (transfer) requests will be made with the normal considerations contained in the MOU Re: Transfers. The number of career reassignments allowed under this paragraph including those in paragraph 5 above is limited to one in every four full-time opportunities filled in offices of 100 or more work years and one in every six full-time opportunities filled in offices of less than 100 work years.

However, concurrent with filling these vacancies through the MOU Re: Transfers, management shall convert Mail Handler Assistants (MHAs) within the installation to career status by relative standing. In order to expedite the process of filling vacancies, management may fill three of four full-time opportunities or five of six full-time opportunities, as applicable, without waiting for completion of the transfer process.

Each residual vacant duty assignment shall be filled as soon as practicable.

The use of MHAs will not invoke the provisions of Article 7.3 and/or the second paragraph of Article 12.3B11 of the National Agreement.

Employees moving between installations pursuant to the terms of this agreement are solely responsible for any and all costs related to relocation.

An employee accepting a voluntary reassignment (transfer) or a part-time regular converting to a full-time regular under this MOU will begin a new period of seniority.

This MOU is effective through the expiration of the **2019** National Agreement, unless extended by agreement of the parties or continuation of the **2019** National Agreement during impasse procedures.

This MOU is non-precedential and is reached without prejudice to the position of either party in this or any other matter. It may be cited only to enforce its terms.

Any disputes regarding application of this MOU will be sent to the Article 12 Task Force for resolution.

This MOU provides clear direction to local parties on how to fill vacant career Mail Handler jobs. In practice, the conversion should work as follows:

Once management makes a determination not to revert the position, management will confirm that there are no career employees (following the appropriate bidding process) to fill this vacancy, thereby creating a residual vacancy which is available to be filled by the following employees in this order:

- Unassigned regulars in the installation
- Mail Handlers with retreat rights that were excessed out
- Converting a PTF in an under 200 man year facility
- Converting a PTR requesting conversion to full-time status within his/her own installation
- Transferring an employee with a "priority" consideration for transfer in eReassign
- Transferring other career employees seeking transfer (in accordance with MOU on Transfers) – 1 in 4 for installations with 100+ man years, and 1 in 6 for smaller installations
- Converting MHAs to career (in concurrence with the eReassign process)

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
THE NATIONAL POSTAL MAIL HANDLERS UNION

Re: Demotion of EAS/Management Employees or Reinstatement of Former Employees into Mail Handler Craft

The parties agree that the Memorandum of Understanding, Re: Filling of Residual Vacancies between the Postal Service and the National Postal Mail Handler Union does not change current rules or practices on the demotion of EAS/management employees into the mail handler craft or the reinstatement of former employees into the mail handler craft. The parties further agree that the

National Agreement and the arbitration award issued by Carlton Snow on August 13, 1990 in Case No. H7N-4U-C 3766 shall govern status and seniority when an EAS/management employee is involuntarily or voluntarily placed in the mail handler craft.

If issues remain after any demotion or reassignment covered by this MOU, they will be referred to the Article 12 Task Force for discussion and possible resolution.

This MOU reaffirms management's right to demote an EAS employee or to reinstate a former employee into the mail handler craft without having to go through the steps of the MOU: Re Filling of Residual Vacancies. The employee's status and seniority will be in accordance with the arbitration award issued by Carlton Snow dated August 13, 1990.

B12 Mail Handlers temporarily detailed to a supervisory position (204b) or detailed to an EAS position may not bid on or be assigned to any vacant mail handler duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b or EAS detail and returning to their craft position. After returning to the craft position **for one (1) continuous pay period**, such employees may exercise their right to bid on vacant mail handler craft duty assignments.

The duty assignment of a full-time or part-time regular mail handler detailed to an EAS position or a supervisory position, including a supervisory training program, in excess of 120 consecutive days shall be declared vacant and shall be posted for bid in accordance with this Article. Under such circumstances, the employee shall not be eligible to re-bid the next posting of that assignment. Upon return to the craft, the mail handler will become an unassigned full-time or part-time regular mail handler with a fixed schedule. A mail handler temporarily detailed to an EAS position or a supervisory position will not return or be returned to the craft solely to circumvent the provisions of Section 12.3B12. An employee detailed to an EAS position or supervisory position must return to the craft for a minimum of one continuous pay period to prevent circumvention of the intent of this provision **and for purposes of bidding must complete this one (1) continuous pay period prior to submitting a bid**.

Form 1723, Notice of Assignment, shall be used in detailing mail handlers to temporary supervisor positions (204b) or EAS detailed positions. The Employer will provide the Union at the **installation**

level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

● A mail handler temporarily detailed to a supervisory or EAS position may voluntarily terminate the detail and return to his\her craft position;

● The contract specifically states that a mail handler "temporarily detailed to an EAS position or a supervisory position will not return or be returned to the craft solely to circumvent the provisions of Section 12.3B12." This provision prohibits such circumvention with regard to all of the provisions contained in Section 12.3B12;

● After returning to the craft position **for one continuous pay period,** the mail handler who was detailed may bid on **a vacant duty assignment. After returning to the craft position, a mail handler may** be assigned to a vacant mail handler duty assignment;

● The return to the craft position must last for a minimum of one (1) continuous pay period to prevent circumvention of Article 12.3B12;

● During that one (1) continuous pay period, the mail handler may take paid or unpaid leave, but in no event shall the mail handler be in a leave status the entire pay period;

● For bidding purposes, the **mail handler must complete this** one (1) continuous pay period prior to **submitting a bid;**

● If the mail handler's detail, including a supervisory training program, exceeds 120 consecutive days, the duty assignment of that full-time or part-time regular mail handler shall be declared vacant and shall be posted for bid;

● Should the employee's duty assignment be vacated after 120 consecutive days on an EAS or supervisory detail, then the mail handler is not eligible to re-bid the next posting of that assignment and the mail handler becomes an unassigned regular with a fixed schedule upon return to the craft;

● If the mail handler returns or is returned to the craft position, to avoid the duty assignment being declared vacant and being reposted, the one (1) continuous pay period must begin prior to the end of the 120 days.

Question: Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

Answer: No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one

continuous pay period before he or she may exercise the right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Question: Can an employee temporarily detailed to an EAS position, including a supervisory position (204b), whose duty assignment is vacated after working such detail in excess of 120 consecutive days, and who will become an unassigned regular upon return to the craft, be assigned to a residual vacancy while still temporarily detailed to the EAS or supervisory position?

Answer: No. In these circumstances, the employee may not be placed into the vacant residual duty assignment until he/she returns to the craft and becomes an unassigned mail handler employee.

Source: Step 4 Grievance C94M-4C-C 97008282, dated January 30, 1997.

The Employer is required to provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending times of all details of mail handlers to EAS positions or temporary supervisor (204b) positions. Such copies of Form 1723 should be provided to the Union in advance of the detail or a modification thereto.

Source: Step 4 Grievance H4N-4U-C 26041, dated May 22, 1987.

The beginning and ending dates of the EAS or 204b assignment contained in the Form 1723 are effective unless otherwise amended by a premature termination of the higher level assignment. Management may prematurely terminate an EAS or 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; otherwise, the form shall be provided to the union representative as soon as practicable after he/she becomes available.

Sources: Step 4 Grievances, Unnumbered, dated December 31, 1985 and Pre-arbitration Settlement H1N-5H-C 26031, dated January 12, 1989.

A mail handler in an EAS or a temporary supervisor (204b) detail may bid for the multi-craft position of Examination Specialist because that position is not a “vacant mail handler duty assignment” within the meaning of Section 12.3B12.

Source: National Arbitration Award H1N-4J-C 8187, Arbitrator B. Aaron, dated March 19, 1985.

C Place of Posting

The notice inviting bids for a craft assignment shall be posted on all official bulletin boards at the installation where the vacancy exists, including stations, branches and sections. Copies of the notice shall be given to the designated agent of the Union. When an absent employee has so requested in writing, stating the employee's mailing address, a copy of any notice inviting bids shall be mailed to the employee by the installation head. Posting and bidding for preferred duty assignments shall be installation-wide unless otherwise specified by local Agreement.

This posting requirement does not apply to the sectional bidding process set forth in Sections 12.6C4c and .6C4d3.

D Information on Notices Inviting Bids

Notices Inviting Bids shall include:

D1 The duty assignment (as defined in section 12.2D3, if applicable) by position title and number; e.g., key, standard, or individual position.

D2 PS or MH salary level and craft.

D3 Hours of duty (beginning, ending).

D4 The principal assignment area; e.g., section and/or location of activity.

D5 Qualification standards and occupational code number.

D6 Physical requirement(s) unusual to the specific assignment (heavy lifting, etc.).

D7 Invitation to employees to submit bids.

D8 The fixed schedule of days of work.

E Successful Bidder

E1 Within 10 days after the closing date of the posting (including December), the installation head shall post a notice stating the successful bidder and the bidder's seniority date. The senior qualified bidder meeting the qualification standards established for that position shall be designated the “successful bidder."

E2 The successful bidder must be placed in the new assignment within 15 days except in the month of December.

During the month of December, management may defer placing the successful bidder into the new assignment beyond 15 days.

An inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty." Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment.

Source: National Arbitration Award H1C-5K-C 24191, Arbitrator C. Snow, dated April 29, 1991.

E3 Normally, an employee shall work the duty assignment for which the employee has been designated the successful bidder. However, when an employee is moved off the employee's duty assignment, the employee shall not be replaced by another employee. For temporary reassignments not covered by Article 25, the movement of people outside the bid assignment area will be as follows:

E3a employees from other crafts performing work in accordance with Articles 7 or 13;

E3b MHAs

E3c part-time flexible employees;

E3d part-time regular employees;

E3e full-time regular Mail Handler employees;

E3fthe order of movement of full-time regular Mail Handler employees in .3E3**,** above shall be a subject for local negotiations; however, if an agreement is not reached at the local level, the matter will be referred to the Area Manager, Human Resources and the Regional Director, Mail Handlers Union for settlement.

When it becomes necessary to move an employee from their duty assignment, such move will be accomplished in accordance with Section 12.3E3.

Source: Step 4 Grievance H4M-2U-C 6165, dated November 10, 1987.

Employees from other crafts who may be performing work in accordance with the cross-craft provisions of Articles 7 or 13 must be moved off of their assignments before MHAs.

E4 Except as otherwise provided by this Agreement, no employee shall be allowed to displace or "bump" another employee properly holding a position or duty assignment.

(See Memos and Letters, pages 164 - 178)

Section 12.4 Definition of a Section

The Employer and the Union shall define sections in accordance with the local implementation provision of this Agreement. Such definition will be confined to one or more of the following:

A pay location;

B by floor;

C tour;

D job within an area;

E type of work;

F by branches or stations;

G the entire installation;

H incoming;

Ioutgoing.

Section 12.4 explains how a “section” may be defined in the Local Memorandum of Understanding provided for in Article 30.

Section 12.5 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 12.6 below.

A1 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 Union at the national level to fully advise the Union how it intends to implement the plan. If the Union believes such plan violates this Agreement, the matter may be grieved.

A2 Such plan shall include a meeting at the regional/area level **(which local level union representatives may attend)** in advance (as much as six months whenever possible) of the reassignments anticipated. The Employer will advise the Union, **at the Regional level,** based on the best estimates available at the time, of the anticipated impact; the numbers of employees affected; the locations to which they will be reassigned; and, in the case of a new installation, the anticipated complement by tour. The Union, at the Regional level, will be periodically updated by the Area should any of the information change due to more current data being available.

A3 When employees are excessed out of their installation, the Union at the regional level may request a comparative work hour report of the losing installation 60 days after the excessing of such employees.

A4 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.

B In order to minimize the impact on employees in the regular work force, the Employer agrees to separate to the extent possible, MHAs and 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, if such status is available in the installation**,** or of being reassigned to the gaining installation.

Section 12.5 sets forth certain principles of reassignments that are applicable to all excessing situations. Section 12.5A states the general rule, which is repeated in Section 12.6B1 below, that reassignments will be implemented so that dislocation and inconvenience to employees shall be kept to a minimum, consistent with the needs of the Postal Service, and that reassignments will be made in accordance with Section 12.5 and Section 12.6.

The provisions of Section 12.5 provide for the following:

- That dislocation and inconvenience to bargaining unit employees be kept to a minimum.

- That reassignments will be made in accordance with Sections 12.5 and 12.6.

- That where a major relocation of employees is planned, the parties must meet at the national level at least 90 days in advance of implementation of the plan.

- That an Area/Regional level meeting **(which local level union representatives may attend)** must also take place as much as six (6) months in advance, whenever possible, of the anticipated reassignments. The union**, at the Regional level,** is to be advised of the following:

    1. The anticipated impact by craft.

    2. The installations with available vacancies for the employees to be reassigned.

    3. Where a new installation is involved, the anticipated complement by tour and craft.

    4. The above information must be updated periodically and provided to the Union at the Area/Regional level.

- That where employees are involuntarily reassigned outside an installation, the union at the regional level may request a comparative work hour report 60 days after the excessing. The report provides a listing of all work hours used on a daily basis in the affected craft for the period of 30 days before and 30 days after the reassignments. If the report does not indicate that conditions warranted the reassignments, the retreat rights of the affected employees shall be activated. If the retreat rights are denied, the employees have the right to grieve.

- That in order to minimize the impact on employees, MHAs and casual employees working in the craft and installation will be separated to the extent possible prior to making involuntary reassignments.

- That full-time employees subject to involuntary reassignment have the option of reverting to part-time flexible**,** if such status is available in the installation**,** or of being reassigned to the gaining installation.

In a 2014 National Arbitration Award, Arbitrator Nolan concluded that the Postal Service is prohibited from reassigning a clerk craft employee into a full-time carrier

craft or mail handler craft position if that clerk employee does not meet the definition of full-time employee specified in the Postal Service's National Agreement with the gaining craft's union. In the specific case underlying this National Award, an employee who was a non-traditional full-time (NTFT) clerk did not work 8 hours per day or 40 hours per week, and therefore his reassignment into the city carrier craft was vacated.

Source: National Arbitration Award Q06N-4Q-C 12114440, Arbitrator D. Nolan, dated February 16, 2014.

Section 12.6 Reassignments

A Basic Principles and Reassignments

When it is proposed to:

A1 Discontinue an independent installation;

A2 Consolidate an independent installation (i.e., discontinue the independent identity of an installation by making it part of another and continuing independent installation);

A3 Transfer a classified station or classified branch to the jurisdiction of another installation or make an independent installation;

A4 Reassign within an installation employees excess to the needs of a section of that installation;

A5 Reduce the number of regular work force employees of an installation other than by attrition;

A6 Centralize mail processing and/or delivery installations; or

A7 Reduce the number of part-time flexibles other than by attrition; such actions shall be subject to the following principles and requirements.

Section 12.6A is no more than a "Table of Contents" for Section 12.6C. When excessing is required, the seven (7) parts of Section 12.6A should be reviewed to determine which part should be applied and then the corresponding part of Section 12.6C should be referred to for the specific procedures involved. For example, the procedures for Section 12.6A1 are found in Section 12.6C1; similar reference should be made for Sections 12.6A2 through A7. More often than not, if involuntary reassignments outside the installation are needed, Section 12.6C5, applies.

B Principles and Requirements

B1 Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

B2 The Vice President, 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. When positions are withheld, the local union may request on a quarterly basis, that local management review the continuing need for withholding such positions and management shall discuss with the union the results of such review. If and when local management learns that an installation is released, in whole or in part, from withholding, it shall notify the union.

B3 Except as otherwise provided by this Agreement, no employee shall be allowed to displace, or "bump" another employee, properly holding a position or duty assignment.

B4 Under Section 12.6A4, governing reassignments within an installation of the employees excess to the needs of the section, the Union at the local level shall be notified in advance (as much as 30 days whenever possible).

B5 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, and shall receive moving, mileage, per diem and reimbursement for movement of household goods, as appropriate, if legally payable, will be governed by the **applicable** standardized Government travel regulations, **currently** set forth in **Handbook F-15, Travel and Relocation.**

B6 The Regional Director for the NPMHU will receive at least 30 days notice for excessing outside of the installation that does not involve employee relocation. Such notice shall include a list of potential vacancies for reassignments. The impacted employees will receive the same notice at least 30 days in advance. Where employee relocation benefits are applicable the Regional Director for the NPMHU will receive at least 60 days notice for excessing outside of the installation. Such notice shall include a list of potential vacancies for reassignments. Impacted employees will receive the same notice at least 60 days in advance.

B7 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.

B8 Whenever changes in mail handling patterns are undertaken in a geographic area including one or more postal installations with resultant successive reassignments of Mail Handlers from those installations to one or more central installations, the reassignment of Mail Handlers shall be treated as details for the first 120 days for purposes of bidding only in order to prevent inequities in the seniority lists at the gaining installations. The 120 days is computed from the date of the first detail of a Mail Handler 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.

B9 Whenever in this Agreement provision is made for reassignments, it is understood that any full-time or part-time flexible employees reassigned must meet the qualification requirements of the position to which reassigned.

B10 It is understood that any employee entitled hereunder to a specific placement may exercise entitlement only if no other employee has a superior claim hereunder to the same position.

B10a Surplus U.S. Postal Service employees from non-mail processing and non mail delivery installations, area 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.

B10b Former full-time post office Mail Handlers who were reassigned to mail bag repair centers and depositories on or before July 1, 1956, and who since such reassignment have been continuously employed in the same center or depository and subsequent to March 31, 1965:

B10b1 When such an employee is declared excess and is returned to the Mail Handler craft in the same installation from which the employee was reassigned, seniority shall be the same as for continuous service in the craft and installation.

B10b2 Should such an employee who is not excess volunteer to be returned to the installation in place of a junior excess employee, seniority in the Mail Handler craft and installation will be that of the junior excess employee.

B10b3 If such an employee voluntarily transfers to the employee's former installation he/she shall begin a new period of seniority.

Section 12.6B provides the principles and requirements for making involuntary reassignments. Note that, while the contract language discussed below references full-time regular and part-time flexible employees, the provisions also apply to part-time regulars. They are as follows:

- Dislocation and inconvenience to full-time regular and part-time flexible employees shall be kept to a minimum consistent with the needs of the Postal Service.

- The Vice-President, Area Operations should give full consideration to withholding sufficient vacancies to accommodate affected employees who may be subject to involuntary reassignment within the Area. Periodic reviews should be made by local management to determine if there is a continuing need to withhold vacancies and the results of the review should be discussed with the local union.

  In a National Award, Arbitrator Gamser held as follows:

  > There is no question that Appendix A of the 1975 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.

Source: National Arbitration Award NC-E-16340, Arbitrator H. Gamser, dated December 7, 1979.

Length of withholding: There is no established contractual time limit on the length of time management may withhold residual positions. Rather, as Arbitrator Gamser noted in Case 16340 above, the parties must apply "a rule of reason based upon the facts and circumstances then existing." Whether management's actions are reasonable in a particular case depends on the full facts and circumstances in that case.

When positions are withheld, the local union may request, on a quarterly basis, that local management review the continuing need for withholding such positions and management shall discuss with the union the results of such review. In addition, when local management learns that an installation is released from withholding – in whole or in part – local management shall notify the Union.

Number of withheld positions: Management may not withhold more positions than are reasonably necessary to accommodate any planned excessing. Section 12.6B2 only authorizes management to withhold "sufficient full-time and part-time flexible 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. Again, each case must be examined based on the local facts and circumstances in that case. Generally, this involves calculating the number of positions that will be reduced and 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 local historical attrition data and the age composition of the employees. Installations with a high percentage of employees approaching retirement age can reasonably expect higher attrition than installations with a high percentage of younger employees. Thus, accurate projections require an examination of the local fact circumstances rather than mere application of a national average attrition rate.

- Section 12.6B3 provides that no employee may displace or bump another employee properly holding a position or duty assignment. The reassignment provisions contained in Section 12.6C do not violate Section 12.6B3 even

though junior full-time employees are involuntarily reassigned, and their duty assignments are reposted to the remaining senior full-time employees for placement through the bid or expedited selection procedures.

Provides that the Union at the Regional/ Area level will receive at least 30 days' notice for excessing outside the installation where employee relocation benefits are not applicable and will receive at least 60 days' notice for excessing outside the installation where employee relocation benefits are applicable. Both such notices shall include a list of potential vacancies for reassignment. Impacted mail handlers, and senior in lieu of volunteers, may be placed as unassigned regular mail handlers in the gaining installation. See Article 12.6C5b6 and the MOU Re Excessing Issues for exceptions concerning Level 5 veteran preference employees.

- National Arbitrator Garrett has ruled that such notice is meaningless "unless given prior to the event. One obvious purpose of giving notice is to provide opportunity for an involved Union to investigate the facts and make suggestions calculated to minimize 'dislocation and inconvenience to full-time or part-time flexible employees affected' . . .proper notice is not given . . . unless it provides an affected Union with a reasonable time period to investigate relevant facts and to discuss the matter with appropriate Management representatives before the proposed action becomes effective." Arbitrator Garrett also noted that while the Union, after notification, would have "reasonable opportunity to present facts and suggestions to the Service, there can be no obligation by the Service to engage in 'collective bargaining'" regarding the reassignments.

  Source: National Arbitration Award AC-NAT-3052, Arbitrator S. Garrett, dated April 25, 1977.

- Affected employees are entitled to an advance notice of not less than 60 days, if possible, before making involuntary details or reassignments from one installation to another that involves employee relocation. When involuntary reassignments are made, the affected employees are entitled to receive moving, mileage, per diem, and reimbursement for movement of household goods as appropriate if legally payable pursuant to the applicable handbook. Currently, the regulations are found in Handbook F-15-C, Relocation Policy—Bargaining Employees.

  In a case involving the failure of management to provide the 60-days advance notice to mail handlers excessed to the Des Moines BMC, Arbitrator Fasser ruled that "[t]he notices required . . . are substantive conditions. . . It is imperative that the notice requirements that are so carefully worked out at the bargaining table command the respect due them. . . The traumatic impact of the involuntary reassignment on the individual and his family embraces

countless variations and ramifications. The purpose of the notice is to minimize to the extent possible, that traumatic impact."

Source: National Arbitration Award MC-C-325, Arbitrator P. Fasser, dated December 8, 1976.

To qualify for relocation allowances, the distance between an employee's new duty station and his/her old residence must be at least 50 miles greater than the distance between the employee's old duty station and the old residence.

Source: Handbook F-15-C, Relocation Policy—Bargaining Employees.

In a 1979 National Award, Arbitrator Gamser concluded that employees who have been involuntarily reassigned are not entitled to additional relocation expenses when they voluntarily exercise retreat rights to return to their original facility.

Source: National Arbitration Award MC-N-1386, Arbitrator H. Gamser, dated August 25, 1979.

In a 2018 National Arbitration, Arbitrator Das concluded that a mail handler bargaining unit employee is not eligible for severance pay when he/she is involuntarily reassigned, per Article 12, outside his/her commuting area and chooses not to accept reassignment.

Source: National Arbitration Award E11M-1E-C 14375279 and J11M-1J-C 14310985, Arbitrator Shyam Das, dated January 16, 2019.

- Provides that an employee who volunteers for reassignment will begin a new period of seniority, except as provided for in Section 12.6.

- Provides that when involuntary reassignments are made due to centralized mail processing, the reassignments are treated as details for the first 120 days. The 120 days is computed from the date of the first detail of a mail handler to the central, consolidated, or new installation. This provision is effected only when Section 12.6C6 is applied.

  Arbitrator Gamser ruled that employees who have been involuntarily reassigned due to centralized mail processing are treated as on detail pursuant to Sections 12.6B7 and 12.6C6c, and thus they have no seniority rights for the entire detail period for bidding or for subsequent reassignments from the gaining installation.

  Source: National Arbitration Award A-NAT-2341, Arbitration H. Gamser, dated August 6, 1973.

- Provides that employees being reassigned must meet the qualification requirements of the position to which they are being reassigned.

- Provides that an employee entitled to specific placement pursuant to this Article may exercise such placement provided no other employee has a superior claim to the same duty assignment, such as seniority or incumbency, and is in fact entitled to exercise his or her claim for that position.

- Provides that surplus/excess employees from Headquarters, Area Offices, non-mail processing and non-mail delivery installations 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 except as provided in Section 12.6B10b.

- Light/Limited Duty Employees: When excessing occurs in a craft, either within the installation or to another installation, the sole criteria for selecting the employees to be excessed is seniority. Whether or not a member of the affected craft is recovering from either an on- or off-the-job injury would have no bearing on his/her being excessed.

  In the case of other craft employees who are temporarily assigned to the craft undergoing the excessing, they would have to be returned to their respective crafts, in accordance with the provisions of Article 13 (Section 13.4C):

  > 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.

  Source: Letter from P. Sgro, dated July 14, 2000.

- Occupational Group: The term “occupational group” does not apply to the Mail Handler craft, so Mail Handlers are reassigned on the basis of juniority only.

C Special Provisions on Reassignments

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

C1 Discontinuance of an Independent Installation

C1a 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:

C1b Involuntary reassignment of full-time employees with their seniority for duty assignments to vacancies in the same, higher or lower level in the same craft or occupational group in installations within 50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation, or in more distant installations, if after consultation with the Union, 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.

C1c Involuntary reassignment of full-time employees for whom consultation did not provide for placement under 12.6C1b above, in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level.

C1d Involuntary reassignment of part-time flexible employees with seniority in any part-time flexible vacancy in the same craft or occupational group at any installation within 50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation, or in more distant installations, if after consultation with the Union it is determined that it is necessary, the Postal Service will designate such installations for the reassignment of the part-time flexible employees.

C1e Involuntary reassignment of part-time flexible employees for whom consultation did not provide for placement under 12.6C1d, above in other crafts or occupational groups in which they meet minimum qualification at the same or lower level at the foot of existing part-time flexible roster at the receiving installation and begin a new period of seniority.

C1f 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, if such status is available in the installation, but shall for six months retain placement rights to full-time vacancies developing within that time within any installation within 50 miles of the discontinued installation, or

if necessary within 100 miles of the discontinued installation, or in more distant installations, if after consultation with the Union 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.

C1g 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.

Section 12.6C1 concerns reassignments resulting from the discontinuance of an installation. When an independent installation is discontinued, all full-time and part-time flexible employees are involuntarily reassigned to the postal positions in continuing installations to the maximum extent possible and in accordance with this section.

Involuntary reassignments of full-time employees, with their seniority, are made to vacancies in the same, higher or lower level in the same craft in installations, designated by the Postal Service, within 50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation. Reassignments to more distant installations are made only if necessary and only after consultation with the Union. If two or more vacancies are available at the same time in the gaining installation, first choice is given to the senior displaced employee.

The one hundred mile criterion is measured as the shortest actual driving distance between installations.

Source: Step 4 Grievance H7C-4K-C 28684, dated July 23, 1993.

If insufficient Mail Handler assignments are available, reassignments are made to positions in other crafts in the same or lower level for which the minimum qualifications are met. In these circumstances, seniority will be governed by the terms of the gaining craft's seniority provisions.

In a National level arbitration, Arbitrator Das ruled that the NALC MOU Re: Pay Consolidation from the 2016 National Agreement between the Postal Service and the NALC does not have any impact on cross craft assignments under Article 12.

Source: National Arbitration Award Q16N-4Q-C 18427350, dated November 5, 2019, Arbitrator Shyam Das.

MEMORANDUM OF UNDERSTANDING

"SAME OR LOWER" LEVEL

For purposes of implementing "same or lower" level or "same or lower" salary level under the National Agreement, in Articles 6, 12, and 13, the parties agree that MH Level 4 is the same level as PS Level 5 and that MH Level 5 is the same level as PS Level 6. Exhibit 418.1, Equivalent Grades, of the ELM and other ELM provisions, as necessary, will be amended accordingly.

Involuntary reassignments of part-time flexible employees, with their seniority, are made to part-time flexible vacancies in the same or lower level and in the same craft in installations, designated by the Postal Service, within 50 miles of the discontinued installation or if necessary within 100 miles of the discontinued installation. Again, reassignments to more distant installations are made only if necessary and only after consultation with the Union. If insufficient part-time flexible assignments are available in the Mail Handler craft, reassignments are made to positions in other crafts in the same or lower level for which the minimum qualifications are met. The part-time flexible employees reassigned to other crafts are placed at the foot of the existing part-time flexible roster in that craft and begin new periods of seniority.

Section 12.C1f provides that full-time employees for whom no full-time vacancies are available by the time that the installation is discontinued shall be changed to part-time flexible in the craft and reassigned as part-time flexibles**,** if such status is available in the installation. Such former full-time employees would retain placement rights for six months to full-time vacancies developing within that time in any installation within 50 miles of the discontinued installation, or if necessary within 100 miles of the discontinued installation. Reassignments to more distant installations, designated by the Postal Service, would require consultation with the Union. Please note, however, that this Section pre-dates and may be inconsistent with the no-layoff provisions of Article 6 and with statutory protections provided for certain Veterans Preference eligible employees.

Reassigned employees, both full-time and part-time flexible, are entitled to retreat rights if the discontinued installation is reestablished. Retreat rights are to vacancies in the same craft from which the employee was reassigned and are administered by seniority. Retreat rights are terminated if the excessed employee is informed of an appropriate available vacancy but nonetheless fails to accept that vacancy

C2 Consolidation of an Independent Installation

C2a 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.

C2b Where reassignments under 12.6C2a preceding, result in an excess of employees in the continuing installation, identification and placement of excess employees shall be accomplished by the continuing installation in accordance with the provisions of this Agreement covering such situations.

C2c 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.

Section 12.6C2 applies to those situations in which Management determines to discontinue the independent identity of an installation by making it part of another and continuing independent installation.

In such circumstances, each full-time and part-time flexible employee shall be involuntarily reassigned to the continuing installation without loss of seniority in the employee's craft. Where this action results in an excess of employees in the continuing installations, reassignment of excess employees from the continuing installation will be governed by the applicable provisions of Section 12.6. Reassigned employees, both full-time and part-time flexible, are entitled to retreat rights if the consolidated installation again becomes an independent installation. Retreat rights are to vacancies in the same craft from which the employee was reassigned and are administered by seniority. Retreat rights are terminated if the excessed employee is informed of an appropriate available vacancy but nonetheless fails to accept that vacancy

Note that Article 30 (Section 30.3C) provides for a new period of local implementation concerning the Local Memorandum of Understanding when installations are consolidated.

C3 Transfer of a Classified Station, Classified Branch or other Facility to the Jurisdiction of Another Installation or Made an Independent Installation

C3a When a classified station, classified branch or other facility 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, classified branch or other facility without loss of seniority, or remain with the installation from which the classified station, classified branch or other facility is being transferred.

C3b A realistic appraisal shall be made of the number of employees by crafts or occupations who will be needed in the station, branch or other facility after transfer, and potential vacancies within these requirements created by the unwillingness of employees to follow the station, branch or other facility to the new jurisdiction shall be posted for bid on an office-wide basis in the losing installation.

C3c If the postings provided in paragraph 12.6C3b preceding, do not result in sufficient employees to staff the transferred classified station, classified branch or other facility, 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, classified branch or other facility 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.

Section 12.6C3 applies when a facility is transferred from the jurisdiction of one installation to the jurisdiction of another installation or when the facility itself becomes an independent installation.

Full-time employees, who have bid assignments at the subject station or branch or other facility, may opt to retain their bid assignment and seniority in the gaining installation without loss of seniority or to remain in the losing installation as an unassigned regular. Once management has determined a realistic number of assignments needed at the facility after the transfer, any vacancies resulting from employees unwilling to move are to be posted for bid, office-wide, at the gaining installation. Should the posting not result in sufficient employees to staff the gaining installation, management may involuntarily reassign employees from the losing installation based on juniority by craft on an installation-wide basis.

Involuntarily reassigned employees are entitled to retreat rights to the first residual vacancy in the same craft in the installation from which reassigned. Retreat rights are administered by seniority. Retreat rights are terminated if the excessed employee is informed of an appropriate available vacancy but nonetheless fails to accept that vacancy

C4 Reassignment Within an Installation of Employees Excess to the Needs of a Section

C4a The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If no sections are established by local negotiations, the entire installation shall comprise the section.

The sections identified pursuant to Article 30, Section .2P in the local memorandum of understanding are used in implementing this provision. If sections are not identified in the local memorandum of understanding, the entire installation is considered the section and Section 12.6C4 has no application. If the entire installation is the section, mail handlers are moved within the installation not by the procedures of this section, but by the mechanisms of abolishment and subsequent posting and bidding or assignment under other provisions of Article 12.

C4b 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 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.

Before involuntarily reassigning full-time regular employees from a section, you should accomplish the following:

- identify the full-time duty assignments to be abolished; and
- identify the junior full-time employees to be reassigned; and
- identify the number of duty assignments in the section that are encumbered by the junior full-time employees but will remain following the reassignment of those junior employees. These duty assignments are to be posted for sectional bidding.

When making involuntary reassignments from a section, you start with the junior full-time regular employee in the same craft and in the same salary level regardless of whether or not the junior full-time employee's duty assignment was

abolished. The affected junior full-time employee(s) are reassigned with their seniority outside the section as unassigned full-time regular employees in the same craft and in the same salary level. The duty assignments, if any, vacated by the reassigned junior employees are to be posted for sectional bidding.

Remember the following:

- While designated as a steward or chief steward, an employee cannot be involuntarily reassigned to another tour, station, or branch of the installation, if there is a duty assignment in their category (full or part-time) for which they are qualified to work, as provided in Article 17 (Section 17.3C).

- Occupational group does not apply to the Mail Handler craft.

- When reassigning the junior full-time employees outside the section as unassigned full-time employees, they are entitled to schedules with fixed non-scheduled days off.

This provision also provides that, as an unassigned full-time employee, the reassigned junior employees may bid on vacancies for which they are otherwise eligible to bid. Should they not be successful in bidding, they may be assigned to residual vacancies pursuant to Section 12.3B11.

C4c	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.

This provision provides for retreat rights as well as sectional bidding. Sectional bidding is limited to employees in the same salary level as the vacancy. The residual vacancies are available for retreat rights. Those full-time employees who were involuntarily reassigned from the section must exercise retreat rights to the first available vacancy in the salary level or lose such rights. The right to retreat to a vacancy in a lower salary level is optional and failure to exercise this option does not terminate the employees' right to retreat to a vacancy in the same salary level.

The parties agree that when it is necessary that fixed scheduled day(s) of work in the basic work week for a craft assignment be permanently changed, including during periods of excessing to the needs of a section, the affected assignment(s) shall be reposted for all employees eligible to bid within the installation.

Source: Step 4 Grievance B00M-1B-C 03153176, dated January 7, 2010.

C4d When full-time duty assignment(s) in the same craft or occupational group and the same level in the section are to be abolished and the junior employee(s) from the Section are to be reassigned, the following shall apply:

C4d1 The appropriate duty assignment(s) shall be identified and abolished.

C4d2 The junior full-time employee(s) excess to the needs of the section shall be identified and reassigned.

C4d3 The duty assignment(s) encumbered by the employee(s) junior to the senior employee whose duty assignment is abolished will be offered, in seniority order, and in an expedited selection process, to the employee(s) remaining in the section beginning with the senior employee whose duty assignment was abolished. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed.

C4d4 The results of the above-listed actions shall be effective at the beginning of the succeeding pay period.

The provisions of Section 12.6C4d were first added to the National Agreement in 1993. Their purpose is to protect the schedule of a senior employee whose job may be abolished, while also expediting the selection process. If there is a need to abolish a full-time duty assignment in a section which would result in the excessing of the junior employee, there will be expedited bidding by the employees within the section, limited to the senior employee whose assignment was abolished and all employees junior to that employee. Those employees will select from among the duty assignments remaining in the section that are encumbered by employees junior to that senior employee whose duty assignment was abolished.

C5 Reduction in the Number of Employees in an Installation Other Than by Attrition

The title of this provision ("C5 Reduction in the Number of Employees in an Installation Other Than by Attrition") is somewhat misleading, since reassignments within the installation across craft lines is the required first step. The true application is not for a reduction of the overall number of employees in an installation, but for a reduction in the number of employees in a craft or occupational group in the same salary level in an installation other than by attrition.

C5a 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:

This provision provides for the reassignment of excess employees from one craft to another to effect a reduction in employee complement more quickly than can be accomplished by employee attrition.

C5a1 Shall determine by craft and occupational group the number of excess employees;

This provision provides for the enumeration of excess employees by craft and occupational group. While not stated, this effort must reflect the salary level, since identification of employees to be excessed is based on salary level as well as craft and occupational group. Again the term occupational group does not apply to the mail handler craft.

C5a2 Shall, to the extent possible, minimize the impact on regular work force employees by separation of all MHAs;

This provision requires management to minimize the impact on regular work force employees by separating MHAs to the extent possible. This provision does not require the automatic separation of all casuals and all MHAs prior to reassigning an excess employee across craft lines. It does require management to minimize the impact as much as possible, but there may be occasions where management will not be able to do so. Remember that Section 12.5B provides in part the following:

> In order to minimize the impact on employees in the regular workforce the employer agrees to separate, to the extent possible, MHAs working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation.

Incorporating an agreement reached by the parties in a recent National Arbitration, Arbitrator Snow held that the language in Section 12.6C5a2 means

that "[a]ll casuals must be removed if it will minimize the impact on regular workforce employees. The Employer must eliminate all casuals to the extent that it will minimize the impact on the regular workforce."

Source: National Arbitration Award H0C-NA-C 12, Arbitrator C. Snow, dated July 27, 2001.

The provision for "separation of all casuals" applies to casuals in the affected or losing craft, and not to casuals in other crafts.

Source: National Arbitration Award Q94N-4Q-C 99052344, Arbitrator S Das, dated November 11, 2009.

C5a3	Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours;

This provision requires management, to the extent possible, to minimize the impact on full-time duty assignments by reducing part-time flexible hours prior to excessing full-time regular employees.

C5a4	Shall identify as excess the necessary number of junior full-time employees in the 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 in the same or lower level. Before resorting to reassignment to other installations pursuant to C5b, any senior employee(s) identified as excess who meet(s) the minimum qualifications for vacant assignments in other crafts and who volunteer(s) to remain in the installation in other crafts shall be assigned in lieu of junior employees who are identified as excess.
C5a5	The employee shall be returned at the first opportunity to the craft from which reassigned.

Section 12.6C5a5 mandates that an employee reassigned across craft lines under Section 12.6C5a must be returned to the craft from which reassigned at the first available opportunity. This is an absolute; not retreat rights. While the language does not provide an order for returning employees when more than one was reassigned across craft lines, the parties at the national level agree that the employees are returned based on seniority. For example, if three (3) full-time employees were reassigned across craft lines within the installation, the three

employees do not have retreat rights but must return to the craft based on their seniority. When employees are excessed across craft lines and at the same time employees are involuntarily excessed outside the installation, the employees who were reassigned across craft lines must return first regardless of seniority. The controlling language is that, "…they must return at the first opportunity."

Senior employees identified as excess to the needs of an installation have the right to choose to remain in the installation in other crafts, while junior employees are excessed out of the installation. The prior provision allowed management to force senior employees to relocate while junior employees stayed in the installation.

The issue in this case is whether the National Postal Mail Handlers Union (NPMHU) has the right to file a grievance to enforce returning an excessed clerk into a residual vacancy in the clerk craft.

After full discussion of this issue, the parties agree the NPMHU has the right to file a grievance to enforce the terms of Article 12.6.C5a5 of the NPMHU national agreement.

Source: Step 4 Grievance C11M-1C-C 13103916, dated October 6, 2015.

C5a6	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 Section 12.6C5a5 above, seniority is reestablished as if the employee had served continuously in the original craft and had never been excessed.

C5a7	Except as provided for in paragraph C5a4 above, the right of election by a senior employee provided in paragraph 12.6C5b3, below is not available for this cross craft reassignment within the installation.

Under the provisions of Section 12.6C5b6 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.

C5b	Reassignments to Other Installations After Making Reassignments Within the Installation:
C5b1	Involuntarily reassign such excess full-time employees starting with the junior with their seniority for duty assignments into mail handler vacancies in

	the gaining installation at the same, higher or lower level for which they are qualified within 50 miles of the losing installation. Mail handlers will be excessed from the losing installation by inverse seniority in their craft by status (full-time regular, part-time regular, part-time flexible), without concern to level.

Section 12.6C5b1 provides for the involuntary reassignment of full-time employees by juniority to other installations to vacancies within 50 miles in the same, higher or lower level in the Mail Handler craft. Management designates the available vacancies in the craft. Pursuant to Section 12.2G6, mail handlers excessed under this provision retain their seniority.

	C5b2	Involuntarily reassign full-time employees for whom vacancies were not identified in C5b1 above in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level within 50 miles of the losing installation.

If management cannot identify a sufficient number of Mail Handler vacancies within 50 miles of the losing installation, excess full-time employees are reassigned to available vacancies in other crafts for which they meet the minimum qualification within the same or lower level within the 50 miles.

	C5b3	If sufficient vacancies cannot be identified within the 50 mile area, involuntarily reassign excess employees into mail handler vacancies in the gaining installation at the same, higher or lower level for which they are qualified within 100 miles . Mail handlers will be excessed from the losing installation by inverse seniority in their craft by status (full-time regular, part-time regular, part-time flexible), without concern to level.
	C5b4	If vacancies cannot be identified within the employees' own craft and occupational group, then vacancies will be identified in other crafts within the 100 mile area. Involuntarily reassign excess employees for whom vacancies were not identified in C5b3 above in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level.

If all the affected employees cannot be reassigned within 50 miles of the losing installation, involuntarily reassign them, with their seniority, to Mail Handler vacancies within 100 miles. If sufficient vacancies are still not available for

placement of affected employees, reassign to vacancies to other crafts for which the affected employees meet the minimum qualifications in the same or lower level within 100 miles.

The one hundred mile criterion is measured as the shortest actual driving distance between installations.

Source: Step 4 Grievance H7C-4K-C 28684, dated July 23, 1993.

C5b5 If vacancies cannot be identified within the 100 mile area, and after consultation with the affected union it is determined that it is necessary, the Postal Service will designate more distant installations for the reassignment of excess full-time employees.

If sufficient number of vacancies cannot be identified within 100 miles in all crafts, after consultation with the Union the Postal Service will identify vacancies in more distant installations, if available.

C5b6 If a veteran preference eligible is reached when assigning impacted or unassigned employees to lower level assignments, the following will apply:

a. The most junior non-preference eligible same level mail handler in the gaining installation shall be reassigned to the lower level vacancy.

b. The impacted preference eligible mail handler will then be assigned to the duty assignment previously occupied by that junior non-preference eligible mail handler.

c. Any employee reassigned to a lower level duty assignment shall receive saved grade and shall not be required to bid to their former level for two years to retain the saved grade.

d. The non-preference eligible mail handler moved to the lower level duty assignment shall have retreat rights back to the former duty assignment the first time it becomes vacant.

e. A veteran preference eligible mail handler for personal convenience may waive the right to appeal through the grievance process, to the Equal Employment Opportunity Commission,

and/or to the Merit Systems Protection Board and select a duty assignment at a lower level with saved grade with the same saved grade in C5b6c above.

f. If no level 5 vacancies exist, or if all level 5 occupied positions at the gaining installation are occupied by veteran preference eligible mail handlers, the withholding radius will be expanded to allow for placement unless the veteran eligible applies C5b6e above.

C5b7 The Regional Director for the NPMHU will receive at least 30 days notice for excessing outside of the installation that does not involve employee relocation. Such notice shall include a list of potential vacancies for reassignments. The impacted employees will receive the same notice at least 30 days in advance. Where employee relocation benefits are applicable the Regional Director for the NPMHU will receive at least 60 days notice for excessing outside of the installation. Such notice shall include a list of potential vacancies for reassignments. Impacted employees will receive the same notice at least 60 days in advance.

C5b8 Impacted mail handlers, and senior in lieu of volunteers, may be placed as unassigned regular mail handlers in the gaining installation provided that sufficient vacancies will be available for placement of all such unassigned regular mail handlers (regardless of level) within 6 months of the date that the employee was placed. These mail handlers must bid on all available vacancies in the gaining installation or be immediately placed into the first available residual vacancy by management in accordance with the provisions of Article 12 of the National Agreement, provided that Level 5 veteran preference mail handlers who were involuntarily excessed will only be placed into Level 5 residual vacancies or in accordance with paragraph C5b6 above.

C5b9 Any senior employee in the same 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.

Under this provision, 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 option applies when employees are excessed to positions in other installations, but not when employees are excessed to another craft within the same installation under Section 12.6C5a above. This option is available to senior employees up to the number of employees who are designated as subject to involuntary reassignment; the senior employees take the seniority of the specific junior employee that they will replace.

C5b10 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.

C5b11 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, if part-time flexible status exists in the losing installation.

Section 12.6C5b8 provides full-time employees subject to involuntary reassignment the option of changing to part-time flexible in lieu of involuntary reassignment**,** if part-time flexible status exists in the losing installation. This is the employee's option; not management's.

When an employee elects to change to part-time flexible in the Mail Handler craft in lieu of involuntary reassignment, the employee is placed on the part-time flexible roll in accordance with the employee's seniority. However, all full-time employees who are involuntarily reassigned either across craft lines or to other installations would be given the opportunity to return to the craft prior to the conversion of a part-time flexible regardless of the seniority date of the employee changing to part-time. Such employee has no retreat rights to full-time. The employee would have to wait until all full-time employees who were involuntarily reassigned had been given the opportunity to return to the craft before being converted to full-time. Also, should a sufficient number of full-time employees elect to change to part-time in lieu of involuntary reassignment, if part-time status exists in the losing installation**,** resulting in overstaffing of the part-time flexible category, then management should accomplish the following in accordance with Section 12.6C7:

Identify part-time flexible vacancies to accommodate part-time flexibles as follows:

1. vacancies in other crafts within the installation; then

2. vacancies in the Mail Handler craft in other installations; then

3. vacancies in other crafts in other installations.

C5b12	Employees involuntarily reassigned under 12.6C5b1 through 12.6C5b5 above, other than senior employees who elect to be reassigned in place of junior employees, shall be entitled to be returned to the first vacancy in any level, in the craft or occupational group in the installation from which reassigned, and such entitlement shall be honored until the employee withdraws or declines to accept an opportunity to return.

Section 12.6C5b9 provides retreat rights to full-time Mail Handlers who were involuntarily reassigned. Such retreat rights are automatically provided, and no longer require the employee to file a written request to be returned. The retreat rights will be honored until either the employee is returned, or the employee withdraws or declines an opportunity to return. Employees who volunteered to be reassigned in lieu of junior employees subject to involuntarily reassignment are not entitled to retreat rights.

An employee retains his/her retreat rights even if the employee, after the involuntary reassignment but before the exercise of retreat rights, voluntarily transfers to another installation.

Source: Step 4 Grievance NC-N-5462, dated July 15, 1977.

Question: Do career mail handlers have to submit a written request for retreat rights?

Answer: No, retreat rights no longer require a written request by the employee.

Remember:

The seniority of employees involuntarily reassigned is as follows:

- Other crafts within the installation – begin a new period of seniority.
- Mail Handler craft outside installation – reassigned with seniority **from the losing installation,** except as provided for in Section 12.6C5b6.
- Other crafts outside the installation – begin a new period of seniority.

C6 Centralized Mail Processing and/or Delivery Installation

C6a When the operations at a centralized installation or other mail processing and/or delivery installation result in an excess of full-time Mail Handlers at another installation(s), full-time Mail Handlers who are excess in a losing installation(s) by reason of the change, shall have a choice to be:

C6a(1) Involuntarily reassigned in other crafts or occupational groups in which they meet minimum qualifications at the same or lower level if no vacancies are available in the same craft or occupational group within 50 miles of the losing installation; or,

C6a(2) Involuntarily reassigned starting with the junior with their seniority for duty assignments to vacancies in the same**,** higher 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.

C6a(3) Reassignments of Mail Handlers and employees from other crafts involuntarily reassigned into the Mail Handler craft shall be treated as details for the first 120 days**,** for bidding purposes only, to avoid inequities in the selection of preferred duty assignments by full-time Mail Handlers in the gaining installation.

This provision provides for the reassignment of excess full-time mail handlers when the centralization of operations results in the need to make involuntary reassignments at another installation. Section 12.6C5 generally is used when reassignments from the mail handler craft are necessary. However, when involuntary reassignments are made, under this Section, due to Centralizing Mail Processing and/or Delivery Installation, somewhat different rules apply. The options available to mail handlers for reassignment are outlined in the contract language. In addition, full-time mail handlers and employees from other crafts involuntarily reassigned into the Mail Handler craft are not eligible to bid for 120 days; their reassignment is treated as a detail for that period of time to avoid inequities at the gaining installation.

The one hundred mile criterion is measured as the shortest actual driving distance between installations.

Source: Step 4 Grievance H7C-4K-C 28684, dated July 23, 1993.

Reassignments of mail handlers under this section shall be treated as details for the first 120 days to avoid inequities in the selection of bid assignments in the gaining installation. As noted hereunder, full-time mail handlers involuntarily reassigned are not eligible to bid for 120 days.

C6b 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 Mail Handlers then permanently assigned in the gaining installation. Excess part-time flexible Mail Handlers may be reassigned as provided for in Section 12.6C7.

During the 120 day detail period, all full-time duty assignments which were established prior to the centralization are posted for bid as they become vacant to the full-time employees who were assigned to the installation prior to the involuntary reassignment of the first full-time employee. The clock on the 120 day detail begins to run with the involuntary reassignment of the first full-time employee.

C6c 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 twenty (120) days is computed from the date of the first detail of an employee. Bidding shall be open to all full-time mail handlers of the craft involved at the gaining installation. This includes full-time Mail Handlers assigned to the gaining installation.

Employees involuntarily reassigned under 12.6C6 shall be entitled to be returned to the first vacancy in any level, in the craft or occupational group in the installation from which reassigned, and such entitlement such be honored until the employee withdraws or declines to accept an opportunity to return.

The NPMHU intervened in a national level NALC grievance where the unions argued an employee who was involuntarily reassigned out of his or her installation can exercise retreat rights back to that installation “into the first

vacancy in the level, in the craft or occupational group in the installation from which reassigned." Arbitrator Das denied the grievance.

Relying on Article 12, Section 5.C.5.b.(6), the NALC took the position that the employee could exercise retreat rights when, ten days after the employee was involuntarily reassigned, a letter carrier in the original installation retired thereby creating a vacancy. The Postal Service took the position that the letter carrier may only exercise his or her retreat rights upon the creation of a residual vacancy. Arbitrator Das denied the grievance, agreeing with the Postal Service that an employee involuntarily reassigned out of his or her installation can only exercise retreat rights to a residual vacancy.

Arbitrator Das concluded that, "while Section 5.C.5.b.(6) does not use the term 'residual vacancy,' that is the only vacancy to which a carrier involuntarily reassigned to another location could be returned consistent with other provisions of the National Agreement."

All newly created duty assignments and remaining vacant duty assignments shall be posted for bid at the close of the detail period. All full-time mail handlers then assigned to the centralized installation are eligible to bid. Again the 120-day period begins with the detail/reassignment of the first full-time employee.

C7 Reassignment-Part-time Flexible Employees in Excess of the Needs of the Craft/Installation

Where there are excess part-time flexible employees in 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.

Excess part-time flexible employees may, at their option, be reassigned to the part-time flexible rolls in the same or another craft in another installation, or to another craft in the same installation, and begin a new period of seniority.

Although the negotiated language contains the phrase "at their option," part-time flexibles may be involuntarily reassigned pursuant to Section 12.6C7e, f, and g. The option applies to where they select available vacancies.

C7a An excess part-time flexible 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 provides for the reassignment of excess part-time flexibles across craft lines in the same or another installation. When reassigned, part-time

flexible employees are placed at the foot of the gaining part-time flexible roll and begin a new period of seniority.

C7b An excess part-time flexible employee reassigned to the same craft in another installation shall be assigned the seniority and relative standing the employee had in the losing installation.

C7c 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 12.6C7a and 12.6C7b above.

Section 12.6C7c provides that a senior part-time flexible employee in the same craft or occupational group in the same installation may elect to be reassigned to another installation in the same or another craft and take the seniority, if any, of the senior excess part-time flexible subject to reassignment pursuant to Section 12.6C7a and b.

The provisions of a, b, and c provide that seniority for part-time flexibles would be established as follows:

- A senior part-time flexible employee volunteering to be reassigned to another craft in the same or another installation in lieu of a junior part-time flexible employee subject to involuntary reassignment would be reassigned to the "foot" of the part-time flexible roll and would begin a new period of seniority pursuant to Section 12.6C7a.

- A senior part-time flexible employee volunteering to be reassigned to the same craft in another installation in lieu of a junior part-time flexible employee subject to involuntary reassignment would be reassigned with the seniority and relative standing of the employee that s/he was reassigned in lieu of.

C7d The Postal Service will designate, after consultation with the 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.

Section 12.6C7d provides that the Postal Service, after consultation with the Union, will designate vacancies at installations in which excess PTFs may request to be reassigned, in the following order:

1. Vacancies in other crafts in the same installation;
2. Then vacancies in the same craft in other installations;
3. Then vacancies in other crafts in other installations.

When the Postal Service designates the vacancies, it is required to minimize relocation hardships to the extent possible.

C7e 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.

When a PTF is reassigned to another craft in the same installation, he/she shall be returned to the first PTF vacancy within the craft and level from which reassigned. This provision is mandatory.

C7f 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.

C7g Retreat rights shall be honored until the employee withdraws or an opportunity to return is declined, with full seniority or relative standing held in the installation from which reassigned plus credit for service for the time away from the installation.

Sections 12.6C7f and C7g govern retreat rights. Under Section 12.6C7f, PTFs who are reassigned to other installations have retreat rights to the next vacancy according to their standing on the PTF roll in the losing installation, unless the PTF elects to request reassignment in place of a junior PTF under Section 12.6C7c. Under Section 12.6C7g, retreat rights shall be honored until the employee withdraws or declines an opportunity to return.

Question: Do career mail handlers have to submit a written request for retreat rights?

Answer: No, retreat rights no longer require a written request by the employee.

D Part-Time Regular Employees

Part-time regular employees assigned in the craft unit 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 regulars are a separate category for the purposes of applying Section 12.6. They can be involuntarily reassigned, if necessary, using the provisions of Section 12.6C1 through 6, as appropriate.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NATIONAL POSTAL MAIL HANDLERS UNION
AND THE
UNITED STATES POSTAL SERVICE

RE: Excessing Issues

This Memorandum of Understanding (MOU) represents the parties' agreement with regard to mail handler employees who are being involuntarily reassigned into mail handler craft vacancies in other installations, after being excessed from their present installation.

1. Mail handlers will be placed into mail handler vacancies at the gaining installation at the same, higher, or lower level for which they are qualified.

2. Mail handlers will be excessed from the losing installation by inverse seniority in their craft by status (full-time regular, part-time regular, part-time flexible), without concern to level.

3. If a veteran preference eligible is reached when assigning impacted or unassigned employees to lower level duty assignments the following will apply:

   a. The most junior non-preference eligible same level mail handler in the gaining installation shall be reassigned to the lower level vacancy.

   b. The impacted preference eligible mail handler will then be assigned to the duty assignment previously occupied by that junior non-preference eligible mail handler.

   c. Any employee reassigned to a lower level duty assignment shall receive saved grade and shall not be required to bid to their former level for two years to retain the saved grade.

   d. The non-preference eligible mail handler moved to the lower level duty assignment shall have retreat rights back to the former duty assignment the first time it becomes vacant.

e. A veteran preference eligible mail handler for personal convenience may waive the right to appeal through the grievance process, to the Equal Employment Opportunity Commission, and/or to the Merit Systems Protection Board and select a duty assignment at a lower level with saved grade with the same saved grade in 3c above.

f. If no Level 5 vacancies exist, or if all Level 5 occupied positions at the gaining installation are occupied by veteran preference eligible mail handlers, the withholding radius will be expanded to allow for placement unless the veteran preference eligible applies 3e above.

4. The Regional Director for the National Postal Mail Handlers Union (NPMHU) will receive at least 30-days notice for excessing outside of the installation that does not involve employee relocation. Such notice shall include a list of potential vacancies for reassignments. The impacted employees will receive the same notice at least 30 days in advance.

5. The Regional Director for the NPMHU will receive at least 60-days notice for excessing outside of the installation where employee relocation benefits are applicable. Such notice shall include a list of potential vacancies for reassignments. Impacted employees will receive the same notice at least 60 days in advance.

6. Impacted mail handlers, and senior in lieu of volunteers, may be placed as unassigned regular mail handlers in the gaining installation (A Level 5 veteran preference employee who has been involuntarily excessed will be subject to paragraph 3 above), provided that local management has completed a bid management review with area concurrence and sufficient vacancies will be available for placement of all such unassigned regular employees (regardless of level) within three months of the date the employees were placed. These mail handlers must bid on all available vacancies in the gaining installation or be immediately placed into the first available residual vacancy by management in accordance with the provisions of Article 12 of the National Agreement, provided that Level 5 veteran preference mail handlers who were involuntarily excessed will only be placed into Level 5 residual vacancies or in accordance with paragraph 3.

7. The Postal Service (USPS) has agreed to develop an enhancement to eReassign to enable mail handlers from an impacted installation to receive priority consideration for a voluntary transfer. Management will accept the employee at the gaining installation without a review. However, regular transfer rules concerning other issues such as seniority, status, no relocation benefits, and no retreat rights will continue pursuant to items F, G, H, and I of the MOU, Re: Transfers.

8. Any disputes arising from the terms of this MOU, or other Article 12 local issues, will be resolved by the National NPMHU- USPS Article 12 Task Force. If the Article 12 Task Force cannot agree upon a resolution, either party may declare an impasse. Each party will identify the issue in dispute in writing within 30 days after the declared impasse on the subject. The identified dispute will then be placed on the appropriate arbitration docket.

The following is a series of jointly agreed to questions and answers, dated August 10, 2011, interpreting the MOU on Excessing Issues:

ARTICLE 12 MOU
USPS-NPMHU QUESTIONS AND ANSWERS

Q1. What is the scope of this MOU?

A1. The terms of the Article 12 MOU apply to impacted and senior in lieu of volunteer mail handlers being placed into the mail handler craft. The terms of the MOU do not apply for placement into positions outside of the mail handler craft.

Q2. When are the terms of the MOU in effect?

A2. The terms of the MOU are effective on the date the parties signed and do not apply for excessing activity already completed.

Q3. What is a veteran preference eligible employee?

A3. Certain employees are entitled to additional protection under the Veterans Preference Act of 1944, as amended, and in various sections of federal statutes. Check the ELM 354.215 to determine your eligibility.

Q4. What is saved grade as outlined in this Article 12 MOU?

A4. An employee receiving saved grade will be paid as if they were still within their former level. To continue receiving saved grade, an employee must bid or apply for all vacancies in their former level for which they are eligible to bid or apply. If an employee fails to bid to a job in their former level they will forfeit the saved grade. The terms of this MOU provide the employee with two years of saved grade during which they are not required to bid to retain their saved grade.

Q5. For how long will saved grade continue?

A5. Saved grade will continue for an indefinite term as long as the employee meets the obligation to bid for jobs in their former level. An employee may also bid for MH-4 vacancies without loss of saved grade as long they also bid for all vacancies posted

in their former higher level. The terms of this MOU provide the employee with two years of saved grade during which they are not required to bid or apply to retain their saved grade.

Q6. If a non veteran preference eligible employee is moved to a job in a lower pay level will he/she have retreat rights?

A6. Yes. The employee may retreat to their former assignment upon the first opportunity (vacancy). If the employee fails to do so at the first opportunity he/she will lose the right to retreat.

Q7. Is moving a non veteran preference eligible employee to a lower level to allow for placement of a veteran preference eligible employee in the same pay level considered bumping?

A7. No. It is considered an application of veteran preference rights to comply with federal law.

Q8. When does the 30/60 day notice period begin for excessing?

A8. The 30/60 day notice to the NPMHU begins when the Postal Service provides written notice and an Impact Report (AIR) to the union; the 30/60 day notice to the employee begins when the employee receives written notice from the Postal Service.

Q9. What will initiate relocation benefits for impacted/senior in lieu of volunteer employees, which provide for the 60 day notice period?

A9. Basically, the commute of an impacted/senior in lieu of volunteer employee must increase by 50 miles, the IRS regulation. For example, presently an employee commutes 30 miles from home to work. If that commute would increase to 80 miles as a result of the excessing placement, the impacted/senior in lieu of employee would be eligible for relocation benefits.

Q10. Where can I find information on relocation benefits?

A10. Each district has a relocation benefits coordinator and they have pamphlets to distribute when necessary.

Q11 What is the term of this MOU?

A11. The MOU will remain in effect unless the parties mutually agree to end it. The parties will evaluate the terms of the MOU during the 2011 national negotiations to determine if it should be made a permanent part of the CBA.

Q12. How will disputes be resolved concerning the application of the MOU?

A12. Any disputes arising from the application of the terms of this MOU will be referred to the parties at the national level.

Q13. What is Priority Consideration for mail handlers in eReassign?

A13. Mail handlers from impacted installations will be placed at the top of the list in eReassign for transfer to mail handler assignments at gaining installations. Please refer to the NPMHU-USPS eReassign MOU for further details on Priority Consideration.

Section 12.7 Transfer Request

A Prior to hiring Mail Handlers, installation heads will consider requests for transfers submitted by Mail Handlers 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.

The provisions of Section 12.7 must be read in conjunction with the Memorandum of Understanding on Transfers, which appears in the National Agreement and is reprinted below.

This section requires installation heads to consider request for transfers from employees from other installations. It also provides that if a written request is received, a timely written acknowledgment must be given.

The denial of a transfer request is a grievable matter. When the denial of a transfer request is grieved, the disputed decision is made by the installation head or other management representative at another installation. Nonetheless, any grievances concerning the denial of a transfer request must be filed with the aggrieved employee's immediate supervisor as required by Article 15. Arbitrators from one Region have the authority to order managers in another Region to accept a transfer request.

C An employee whose transfer is approved will be allowed to use up to five (5) days of annual leave or five (5) days leave without pay for purpose of transferring.

[See Memos, pages 168, 170, 173]

This provision authorizes the employee to use leave during the transfer period.

Question: Is the mutual swapping/exchanging of positions applicable to the mail handler craft?

Answer: No, there are no provisions for mutual swapping/exchanging of positions in the NPMHU/USPS National Agreement.

Source: ELM Section 351.6; Memorandum Re Mutual Swap Seniority Rules from Anthony J. Vegliante to Managers, Human Resources, dated June 7, 1995.

MEMORANDUM OF UNDERSTANDING

Re: Transfers

The parties agree that the following procedures will be followed when career Postal employees request reassignment from one Postal installation to another.

Reassignments (Transfers)

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-312, concerning first filling vacancies through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc.

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 man-years, at least one out of every four vacancies will be filled by granting requests for reassignment.

- In all offices of less than 100 man-years, at least one out of every six vacancies during the duration of the National Agreement will be filled by granting requests for reassignment.

C. Districts 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.

When requests for transfers are received, a record of the request is maintained in the District that has responsibility for that installation. The Union has a right to review this record on an annual basis upon request; on a semi-annual basis, the local union may request information to determine if the 1 to 4 ratio is being met in offices of 100 or more man-years.

Local management may not refuse to forward an employee's personnel folder to another installation in order to prevent or delay the consideration of the employee's request for transfer.

Source: Step 4 Grievance H4N-5C-C 14779, dated May 1988.

D. Managers will give full consideration to the work, attendance which is not in accordance with and protected by the Family and Medical Leave Act (FMLA), 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.

In evaluating transfer requests, managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment**.** Leave taken under the FMLA is prohibited from being considered when evaluating an employee's request for transfer. Additionally**,** 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 MOU.

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 the requesting 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.

1. For reassignments within the geographical area covered by a District or to the geographical area covered by adjacent Districts, the following applies: An employee must have at least eighteen months 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 eighteen months, unless released by the installation head earlier, before being eligible to be considered for reassignment again, with the following exceptions: 1.) in the case of an employee who requests to return to the installation where he/she previously worked; 2.) where an employee can substantially increase the number of hours (8 or more hours per week) by transferring to another installation and the employee meets the other criteria, in which case the lock-in period will be 12 months. These transfers are included in the 1 out of 4 ratio.

2. For all other reassignments, the following applies: 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.

These paragraphs provide particular rules with regard to local reassignments (defined as those within a District or to adjacent Districts) or to other reassignments. There is an important difference with regard to the "lock-in period:" a local reassignment requires 18 months of continuous service in the prior installation and, with certain exceptions, 18 months of service in the new installation; for a non-local transfer, the lock-in periods generally are one year. The exceptions in each instance are outlined in the MOU and as follows**:**

The parties have agreed that the lock in periods of 18 months or 12 months otherwise provided for in paragraphs (D)(1) and (D)(2) of the Memorandum of Understanding Re: Transfers shall not apply to mail handlers who are involuntarily reassigned to an installation. However, if an involuntarily reassigned employee successfully transfers to a new installation, the normal lock-in period at the new installation will apply.

The parties have further agreed that the lock-in periods referenced in paragraphs (D)(1) and (D)(2) in the Memorandum of Understanding on Transfers shall include all continuous time in the mail handler craft spent in the employee's

present installation. Thus, time spent as a Mail Handler Assistant (MHA), Part-Time Flexible (PTF), Part-Time Regular (PTR), or Full-Time Regular (FTR) will all count toward the lock-in period, the required 5-day break for MHAs every 360 calendar days notwithstanding.

E. Installation heads in the gaining installation 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 of 30 days and should not be more than 90 days after a transfer request is approved. The installation head of the losing installation may not deny an approved transfer.

F. Reassignments 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' period step increases following a transfer continue exactly as they would have progressed had the employee not transferred, but instead remained in the original installation. When voluntary reassignments are to a position at a lower level, the employee's step and waiting period for the next step increase will be established in accordance with the normal rules in ELM 420.

G. Employees reassigned under these provisions will be reassigned consistent with the provisions 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.

The seniority of mail handlers voluntarily transferred to another installation is governed by the seniority provisions of the gaining craft.

If the transfer is to another mail handler position in another installation, the employee will begin a new period of seniority as a part-time flexible employee, if such status is available in the installation. If the transfer is to a mail handler

position other than part-time flexible, the employee will begin a new period of seniority.

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 expense must be borne by the employee who requested the transfer.

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.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE NATIONAL POSTAL MAIL HANDLERS UNION
AND THE UNITED STATES POSTAL SERVICE

Re: Transfer Opportunities to Minimize Excessing Pursuant to the Memorandum of Understanding (MOU) on Transfers

In their 2006 National Agreement, the parties agreed to a Joint Task Force on Article 12 for the purpose of discussing and reviewing issues that arise as a result of implementing the provisions of Articles12.5 and 12.6. In addition, in August 2009, the parties agreed to a Memorandum of Understanding, Re: One-Time Retirement Incentive, as well as a moratorium on excessing from the date of that MOU through October 9, 2009. The parties also recognized that they might need to discuss application or modification of the requirements under Article 12 based on the impact of that MOU.

The parties have continued to meet at the National level, and have reached the following additional agreements with regard to Mail Handler employees in installations experiencing excessing from the installation who seek transfer opportunities under Article 12 and the MOU on Transfers.

1. All Mail Handler employees in the installation, including those employees experiencing excessing from the installation, may voluntarily submit a request for transfer through eReassign. These employees will be placed on a preferred listing within eReassign by date order. These volunteers will be allowed to transfer out of their impacted installation in accordance with the MOU on Transfer Opportunities to Minimize Excessing.

A. Affected employees requesting transfer must meet the minimum qualifications for the position being considered.

B. In accordance with applicable provisions of the EL-312 Handbook, nepotism rules are still in effect.

C. The following sections of the Memorandum of Understanding Re: Transfers (pages 128-130 of the 2006 National Agreement) are modified in order to accommodate transfer opportunities to minimize excessing. Specifically:

(1) Sections B & C (page 128) — Ratios contained in the Transfer MOU are not applicable to affected employees applying for transfer as a result of impending excessing.

(2) Section D (page 129) — Affected employees work, attendance, and safety records will not be considered when applying for transfer as a result of impending excessing.

(3) Section E (page 129) — A minimum of 30 days notice to the losing installation will be afforded if possible. Neither the gaining nor losing installation can place a hold on the employee. The affected employee requesting a transfer will be allowed to transfer prior to the excessing if they desire and choose their effective date of transfer to coincide with the start of a pay period at the gaining installation. The losing installation will coordinate between the employee and the gaining installation.

D. The Postal Service will not provide affected employees requesting a transfer with copies of vacancies at postal facilities in advance of transfer requests. Installations with approved and authorized vacancies will post them in eReassign as Reassignment Opportunities. Employees can request re-assignment to these specific positions. It is the responsibility of the affected employee requesting a transfer to check on a regular basis in eReassign for Reassignment Opportunities. Employees may also request transfers to offices that do not have reassignment opportunities listed on eReassign.

2. Selections by installations accepting transfer requests will be on a seniority basis using craft installation seniority from the losing installation.

A. In the event of a seniority tie, the tie breaker method will be as follows: (1) total career postal time, and (2) entered on duty date.

B. An employee's seniority in the gaining installation is established by the National Agreement based on the employee being a voluntary transfer (not excessed) employee.

3. An employee accepting a transfer under the priority consideration will have his/her name removed from the priority eReassign pending request list at all locations. Affected employees requesting a transfer can change their mind and decline a transfer opportunity before they receive written notice of their report date to the new installation. By doing so, the affected employee's name will be removed from the priority eReassign pending request list at the declined location.

4. Simultaneous (duplicate) requests for transfer by the same employee to the same craft and installation in eReassign are not permitted.

5. Employees may receive a printed confirmation of their request through eReassign.

6. In installations under Article 12 withholding, withheld Mail Handler vacancies are not available for transfer requests.

7. As a result of the MOU, there are no changes to the Article12 time frames for notification to the union.

8. Disputes arising from the application of this MOU will be processed at the National level under the jurisdiction of the National Administrative Committee.

9. The lock-in periods do not apply to the eReassign Priority Consideration MOU at the losing installation.

The following is a series of jointly agreed to questions and answers interpreting the above MOU on Transfer Opportunities to Minimize Excessing.

Questions and Answers
eReassign Priority Consideration
NPMHU - USPS

These questions and answers are provided to serve as a guide to the memorandum of understanding providing priority consideration for mail handlers from impacted installations applying for transfer in eReassign.

Q1. Does this MOU apply for transfer to crafts other than the mail handler craft?

A1. No. This MOU only applies for transfer of mail handlers to mail handler assignments. All other transfers to different crafts will be conducted under the regular eReassign rules.

Q2. What is priority consideration?

A2. All mail handlers from installations where there is Article 12 impact may apply for vacancies advertised in eReassign and will be placed at the top of the list for consideration to transfer.

Q3. Will the Postal Service review my record before accepting me at the gaining installation?

A3. No. The Postal Service will not review your attendance or safety records, or your supervisor's evaluations in the process to determine if you will be granted the transfer.

Q4. How will I know if I received priority consideration?

A4. eReassign will provide notice of priority consideration to the employee when the employee enters his/her application information in the system.

Q5. Will I retain my seniority when I receive priority consideration?

A5. No. Please check Article 12.2.F.l.b of the National Agreement for guidance.

Q6. If I am selected for the transfer in eReassign can I change my mind?

A6. You may change your mind and decline the transfer up to the point when you receive written notice of your acceptance.

Q7. If I decline the transfer opportunity, and I have been identified as an impacted employee will I be excessed?

A7. Yes. If you decline the transfer and you are an impacted employee you will immediately become available for involuntary Article 12 reassignment.

Q8. Will I receive relocation benefits under priority consideration?

A8. No. eReassign is used for voluntary transfers and relocation benefits are not authorized.

Q9. If two or more mail handlers apply in eReassign at the same time who will first be offered the transfer?

A9. The eReassign Priority Consideration MOU has tie breakers included.

Q10. Where can I get a copy of the MOU?

A10. HR Local Services can provide you with a copy. The Priority Consideration MOU will be posted on the eReassign home page.

Q11. If I already have an application to transfer in eReassign and my installation becomes impacted by Article 12, what must I do to gain priority consideration?

A11. You must delete your prior request and reapply.

Q12. Does all Article 12 impact provide priority consideration?

A12. No. Priority consideration is granted when there is excessing identified outside of the installation.

Q13. Are there any qualifications I must meet to be eligible for transfer?

A13. Yes. You must meet the minimum qualifications identified for the assignment before you will be considered eligible for the transfer.

Q14. If I accept a transfer offer in eReassign what happens to other active requests I may have?

A14. All other requests will be removed from eReassign.

Q15. Do the lock-in periods in the Transfer MOU apply to this eReassign MOU?

A15. The lock-in periods do not apply to the eReassign Priority Consideration MOU at the losing installation.

MEMORANDUM OF UNDERSTANDING

EMPLOYEE BIDDING

The following conditions have been agreed to in the implementation of the telephone bidding system:

1. There will be a one hundred and twenty (120) day transition period following the implementation of telephone bidding at an installation, during which employees may submit bids either by telephone or in writing. The one hundred and twenty (120) days will run from the first day on which telephone bidding is implemented at an installation.

2. There will be a toll-free telephone number available from any telephone, as well as TDD.

3. Telephone bidding shall be available during the following days and hours (including holidays): Monday through Friday, 6:00 a.m. to Midnight (Central Time), and Saturday, 6:00 a.m. to 6:00 p.m. (Central Time).

4. All bids shall close at midnight (Central Time) on a weekday on which the telephone bidding system is available until midnight.

5. Employees can enter, withdraw and/or review the status of their bids.

6. Employees will need their Employee Identification Number and Personal Identification Number (PIN) to access the telephone bidding system.

7. When an employee has reached his/her successful bid limit, as set forth in Article 12.3A of the National Agreement, the system will still allow bids to be entered, but the bid will be flagged by the system as "ineligible". A system message will notify the employee to contact management. The personnel office will routinely review job bidding reports prior to awarding the bid to investigate ineligible bids, and to determine if there are situations as provided for in Article 12.3A for which the employee's bid count must be manually adjusted to make the bid(s) eligible. It is the responsibility of the employee to notify management if a bid flagged as ineligible is proper under Article 12.3A3 because the employee is bidding on an assignment that is "closer to the employee's place of residence." It is the responsibility of management to identify and rectify all other situations in which eligible bids are erroneously flagged by the system as ineligible.

As one part of an effort to protect employees against identity theft, Social Security Numbers have been replaced with Employee Identification Numbers. New language also reflects the migration of Human Resources functions to the HR Shared Services environment.

LETTER OF INTENT

SACK SORTER MACHINE OPERATOR

The parties hereby agree that effective July 21, 1987, all future postings of the position, Sack Sorting Machine Operator, salary level MH-5, standard position 2-438, shall be filled by the senior qualified bidder meeting the qualification standard for the position.

LETTER OF INTENT

REVERSION NOTICE

William H. Quinn
National President
National Postal Mail Handlers

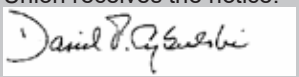
Union, AFL-CIO
1101 Connecticut Ave. NW STE 500
Washington DC 20036-4304

Re: Reversion Notice

Dear Mr. Quinn:

During negotiation of the 1998 National Agreement between the U.S. Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, the parties agreed to modify Article 12.3B3 by requiring that the Employer provide the appropriate Union official with a copy of the notice indicating that a bargaining unit assignment was being reverted.

This is to confirm that, in our discussions on this matter, the parties agreed that the only remedy that the Union has relative to a failure to provide such notice is the preservation of the Union's right to grieve such reversion, until such time as the Union receives the notice.



David P. Cybulski
Manager
Labor Relations
U.S. Postal Service

MEMORANDUM OF UNDERSTANDING

CROSS CRAFT

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.

MEMORANDUM OF UNDERSTANDING

Re: Joint Task Force on Article 12

The parties agree to establish a joint task force for the purpose of discussing and reviewing issues that arise as a result of implementing the provisions of Articles 12.5 and 12.6. The task force shall consist of at least four persons, two each selected by the Employer and the Union.

The work of the task force may include a review of issues that have arisen at the Area and local levels, including the extent of withholding in specific geographic areas or at particular locations. The task force shall make such findings and recommendations as it deems appropriate to facilitate compliance with the principles and requirements of Article 12 and any other related contractual obligations. These recommendations will be submitted to the Postal Service's Vice President, Labor Relations and to the President of the Union. The parties are committed to taking prompt action with respect to the work of the task force.

The arbitration panel determines that the following issues shall be referred to the Article 12 Task Force, which shall meet and discuss these issues within 45 days of the release of this Award:

- Whether management should notify the union when an installation is released from withholding, in whole or in part

- Whether senior employees may choose between staying in the installation in another craft or being reassigned to another installation in the same craft, under Article 12.6C5a4

MEMORANDUM OF UNDERSTANDING

Under Article 12.6B1, the dislocation and inconvenience to full-time and part-time flexible employees who are being involuntarily reassigned shall be kept to the minimum consistent with the needs of the service. In addition, under Article 12.6B2, the Vice President, 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.

The Joint Task Force on Article 12 shall meet after the effective date of this Agreement to explore ways to reduce unnecessary impact on career employees while maintaining utilization of the non-career workforce.

MEMORANDUM OF UNDERSTANDING

POTENTIAL FOR MAIL HANDLER ASSISTANT PTF OPPORTUNITIES

For the term of this Agreement, any newly established or vacant part-time career positions will be offered to Mail Handler Assistants (MHAs) within fifty (50) miles of the position for conversion to career based on relative standing. Any disputes arising from the terms of this MOU will be referred to the National NPMHU-USPS Article 12 Task Force for resolution.

MEMORANDUM OF UNDERSTANDING

PTFS IN 200 MAN YEAR FACILITIES SUBJECT TO EXCESSING

If one or more employees in a 200 man year facility are subject to excessing outside of the installation, the parties at the Regional/Area may enter into an agreement which allows employees to remain in the installation as part-time flexibles (PTFs). The exact number of employees to remain in the installation as PTFs will be determined by the Employer based on the operational need to perform the remaining mail handler work in the facility. If no employees elect to remain as PTFs in the facility, the Employer may hire additional mail handler assistant employees (MHAs) who will not be counted against any cap limitation provided the work remains part-time.

This **provision** allows employees in a 200 man year facility, when subject to excessing outside of the installation, to remain in the installation as PTFs. Such opportunities depend on the Postal Service's determination, based on operational needs, of the need to perform remaining mail handler work in the installation subject to excessing, and to agreement of the parties at the Regional/Area level. If no full-time or part-time regular employees elect to remain as PTFs in the installation, then management may hire additional MHAs who will not be counted against any cap limitation.

MEMORANDUM OF UNDERSTANDING

Re: Workforce Repositioning

The parties are committed to work together to the extent it becomes necessary to close or consolidate postal plants or other facilities. The parties will explore available options that can address related workforce issues. The Postal Service will meet with the Union at the national level to discuss plans to close or consolidate postal plants or other facilities and to discuss and consider changes to such plans based on input from the Union. Those discussions will include appropriate consideration of the principles and requirements of the applicable provisions of Article 12, including the principle that, in effecting reassignments, dislocation and inconvenience to employees shall be kept to a minimum, consistent with the needs of the Postal Service.

Nothing in this memorandum is intended to negate or alter the applicable requirements of Article 12 of the National Agreement.

This Memorandum of Understanding will terminate upon the expiration of the extension to the **2019** National Agreement.

The parties have continued agreements establishing a Joint Task Force on Article 12, to deal with issues related to employee reassignments, and committing to work together on issues involving workforce repositioning resulting from the closure or consolidation of postal facilities.

ARTICLE 13
ASSIGNMENT OF ILL OR INJURED REGULAR WORK FORCE EMPLOYEES

The provisions of Article 13 govern voluntary requests for light duty or other assignment by employees who are temporarily or permanently incapable of performing their normal duties as a result of illness or injury.

The term “light duty” often is confused with the term “limited duty”. The term “limited duty” is not used in this article. The parties have a continuing dispute over the meaning and applicability of these two terms. 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.

In any event, the parties agree that an employee who has suffered a compensable illness or injury – that is, an employee who is temporarily or permanently incapable of performing his/her normal duties because of a job-related illness or injury - may seek permanent light duty work through the procedures provided in Article 13. In most circumstances, however, such employees will find the procedures and regulations provided in ELM, Subchapter 540 better suited to their needs. The limited duty provisions contained in ELM, Subchapter 540 will be discussed further at the end of this article.

Section 13.1 Introduction

A Part-time fixed 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 fixed schedule employees within their own category.

Part-time fixed schedule employees are also known as part-time regulars. They are in a category separate and apart from full-time and part-time flexible employees, but Article 13 applies to these employees within their own category.

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.

In this paragraph, the parties recognize their responsibility for aiding and assisting employees who through illness or injury are unable to perform their regularly assigned duties.

A Step 4 decision issued under the 1978 National Agreement provided the following interpretation regarding management's responsibilities:

> While the Postal Service strives to accommodate all injured employees, its responsibilities toward employees injured on duty differ from its responsibilities toward employees whose injuries or illnesses are not job related. As outlined in Part 546, Employee and Labor Relations Manual, the Postal Service has certain legal obligations to employees with job related disabilities pursuant to 5 U.S.C. §8151 and Office of Personnel Management regulations. Article 21, Section 4, of the National Agreement acknowledges these legal obligations toward employees injured on the job and Article 13 recognizes the importance of attempting to accommodate employees whose injuries or illnesses are not job related. However, the statutory and regulatory responsibilities toward on-the-job injuries are obligatory in nature and given priority consideration when assigning ill or injured employees.
>
> The provisions promulgated in Part 546 of the Employee and Labor Relations Manual for reemploying employees partially recovered from a compensable injury on duty were not intended to disadvantage employees who occupy assignments properly secured under the terms and conditions of the collective bargaining agreement. This includes employees occupying permanent or temporary light-duty assignments acquired under the provisions set forth in Article 13 of the National Agreement.

Source: Step 4 Grievance H8N-NA-C 53, dated February 7, 1983.

As discussed below, Article 30, (Section 30.2) Items M, N and O provide for the identification of light duty assignments during local implementation. However, if an agreement is not reached during local implementation, that would not prevent an eligible employee from requesting light duty or other assignments under Article 13.

Section 13.2 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.

Any full-time or part-time employee may request temporary light duty or other assignment, regardless of length of service. When doing so, the following requirements apply to an employee seeking temporary reassignment:

- The request must be submitted in writing to the installation head.
- The request must be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor. When possible, the statement should include the anticipated duration of the convalescence period.
- The employee bears any cost connected with the statement required under this section.
- The employee may specifically seek light duty or may seek "other assignment" within the employee's medical limitations.
- 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 incurred when management requests a second medical examination.

Question: Is there a specific form that an employee must use in submitting the physician's medical statement or the chiropractor's written statement?

Answer: There is no specific form for submission of the physician's medical statement or chiropractor's written statement. The information can be submitted on the physician's letterhead.

Source: Step 4 Grievance H1C-1Q-C 14748, dated August 5, 1983.

B Permanent Reassignment

B1 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 perform all or part of the assigned duties. The request shall be accompanied by a medical certificate**--**from a physician designated by the installation head and made known to the Union and the employee--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 a light duty or other assignment:

- 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 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 the Employee and Labor Relations Manual, Subchapter 540.

- The request must be submitted in writing to the installation head.

- The request must be accompanied by a medical certificate from a physician designated by the installation head and made known to the Union and the employee. Unlike requests for temporary reassignment, a certificate 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.

B2 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 occupational, or 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.

If requested by the local union, a third doctor is selected from a list of certified specialists supplied, in each separate case, by the local Medical Society for the condition in question.

The parties in 2012 settled a grievance involving two issues. The first issue was whether management violated the National Agreement when it sent a letter to an employee and/or the employee's physician requesting clarification and/or information on an employee's medical progress without sending a copy to the Office of Workers' Compensation Programs (OWCP). The second issue was whether management violated the National Agreement when it created locally generated letters.

The parties agreed to settle both issues based on language from Handbook EL-505, Injury Compensation, dated December 1995, Section 6.3, Contacting the Treating Physician, which in part states:

> When the USPS medical provider or OHNA is unable to do so, contact the treating physician if additional information is needed because of inconsistencies relative to the employee's duty status or if there are incomplete medical reports. (ELM 545.62) The designated control point may contact the treating physician if clarification is needed following the initial examination.
>
> Send copies of such correspondence to the employee and to the OWCP district office, and forward copies of the physician's response to both, once it is received.

Source: Step 4 Grievance E98M-1E-C 02207779, dated June 28, 2012.

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 head make a bona fide effort to identify light duty or other assignments. It further requires management to give the matter "the greatest consideration" and "careful attention," and to reassign such employees to the extent possible in the employee's office. If management

does not provide the requested light duty or other assignment, it has an obligation to explain in writing the reasons for the inability to reassign the employee. Disputes concerning the failure to provide light duty or other assignment may be addressed through the grievance-arbitration procedure.

Section 13.3 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 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.

C Number of Light Duty Assignments. The number of assignments within the 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: Section 13.3, together with Article 30, (Section 30.2) Items M, N and O, provides that the parties may discuss the following issues during the local implementation period:

- The number of light duty assignments to be reserved for temporary or permanent light duty assignment (Article 30, Section 30.2, Item M).

- 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, Section 30.2, Item N).

- The identification of assignments that are to be considered light duty (Article 30, Section 30.2, Item O).

A local policy specifically stating that "temporary light or limited duty assignments will be authorized . . . for a period not to exceed 6 months," with a possible extension of one to three months with medical certification, violated the National Agreement. Any absolute language that limits the amount of time a light or limited duty assignment will be authorized, without qualification, is improper.

Source: Step 4 Grievances H1N-2D-C 5870 and 6298, dated September 30, 1983.

The parties have agreed that, through local negotiations, light duty assignments may be established by adjusting normal assignments without seriously affecting the production of the assignment, as per Section 13.3A, or light duty assignments may be established from part-time hours, to consist of eight hours or less in a service day and 40 hours or less in a service week, as provided in Section 13.3B.

In any case, 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 the employee's previous duty assignment, as provided in Section 13.3C.

Source: Step 4 Grievance H8C-4F-C 20495, dated April 29, 1982.

Section 13.3C provides that the installation head may make changes in an employee's regular schedule and work location in order to accommodate a light duty request without incurring an overtime or out-of-schedule premium obligation. However, if there is light duty on the employee's tour, it should be made available.

Sources: Step 4 Grievances NC-S-5127, dated April 15, 1977, and H8C-2F-C 8635, dated April 24, 1981; ELM Chapter 4, Section 434.622.

Question: Do employees who are on light duty have a right to work their normal work schedule?

Answer: No. The availability of the light duty assignment will determine the schedule of the employee, irrespective of the previous duty assignment. Local management will make a reasonable effort to reassign the employee to available light duty in his/her own craft prior to scheduling the employee for light duty in another craft.

Source: Step 4 Grievance NC-W-8182, dated November 14, 1977.

When an employee on limited duty is assigned to a schedule other than the employee's normal schedule, the employee is not entitled to out-of-schedule premium pay. Parenthetically, the arbitrator specifically noted that this decision does not give management an "unbridled right" to make such an out-of-schedule assignment if a limited duty assignment could be offered during the employee's regular tour. While the NALC was the grieving union in this case, the NPMHU intervened pursuant to Article 15, and therefore this decision is binding on mail handlers.

Source: National Arbitration Award N8-NA-0003, Arbitrator H. Gamser, dated March 12, 1980.

Note, however, that the considerations listed in ELM 546.142, outlined at the end of this chapter, must be made in assigning limited duty to employees who are injured on duty.

Requiring an employee to report for a light duty assignment that he/she has not requested is inappropriate. As the employee in question was directed to work a schedule different from his normal schedule, and as such assignment was not for the employee's personal convenience and was not sanctioned by the union, the employee was entitled to receive out-of-schedule premium pay for the period he worked in other than his normal work schedule.

Source: Step 4 Grievance N8-W-0096/W8N-5G-C 4396, dated November 26, 1979.

Question: Can light or limited duty employees be scheduled for holiday work?

Answer: Light or limited duty employees can be scheduled for holiday work provided the work to be performed fits within their medical restrictions.

Source: Step 4 Grievances H1C-4F-C 2041, dated April 30, 1982, and H1C-4F-C 2430/2437, dated September 21, 1982.

Section 13.4 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, bargaining unit employees should be provided light duty work within the employee's craft. This section obligates management to reduce casual hours, if necessary, in order to provide light duty work in the employee's craft.

The parties have agreed that, in accordance with Section 13.4A, every effort shall be made to assign light duty employees within their present craft or occupational group. After all such efforts are exhausted, consideration will be given to reassignment to other crafts or occupational groups in the same installation.

Source: Step 4 Grievance H7M-1A-C 31598, dated August 13, 1991.

The parties have further agreed that management must give consideration to reassignment to another craft or occupational group within the same installation when considering a light duty request, provided that the pre-existing conditions of Article 13 are met.

Source: Step 4 Grievance H7M-4K-C 13203, dated January 2, 1990.

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 temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.

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.

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.

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.

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.

A local practice of requiring an automatic update of medical information every 30 days is contrary to the intent or Article 13 and should be discontinued. Consistent with the provisions of Section 13.4F, an installation head shall review each light duty assignment at least once each year or at any time that the installation head has reason to believe that the employee is able to perform satisfactorily in other than the light duty assignment the employee occupies. 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.

Source: Pre-arbitration Settlement H90N-4H-C 96029235, dated April 9, 2001.

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 descriptions 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 authority to resolve disputes concerning the medical condition of employees who have suffered a compensable injury or illness.

The procedure in this section is the same as that in Section 13.2B2 of this Article. It provides that on request of the local union, a third doctor will be selected from a list of certified specialists supplied, in each separate case, by the local Medical Society for the condition in question.

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.

Question: Are employees who are injured off the job entitled to restoration to their former duty assignment?

Answer: Yes. In a National award, Arbitrator Mittenthal ruled that restoration rights under Section 13.4H apply to recovered injured employees regardless of whether the injury occurred on or off duty.

Source: National Arbitration Award H8N-5B-C 22251, Arbitrator R. Mittenthal, dated November 14, 1983.

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.

This provision is mandatory. The employee must be returned to the first available vacancy for which qualified in the employee's former craft.

Stated another way, an employee assigned to light duty in another craft pursuant to Article 13 who is declared recovered on medical review shall be returned to the first available full-time regular vacancy in complement in the employee's former craft.

Source: Step 4 Grievance H8C-1M-C 18735, dated April 22, 1981.

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.

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 4I, above, does not apply even though the

employee has advanced to full-time regular while on light duty.

Section 13.5 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 13.6A.

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 13.6B, they are required to begin a new period of seniority.

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 who successfully bid for a part-time flexible position in another craft pursuant to this provision must begin a new period of seniority and revert to part-time flexible status.

D The rule in 5A and 5B, 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.

Question: Does management have the right to unilaterally terminate all light duty assignments?

Answer: Section 13.5 does not give management the right to unilaterally terminate all light duty assignments. Such termination is made on a case-by-case basis.

Source: Step 4 Grievance H1C-4A-C 35760, discussed March 27, 1985.

National Arbitration Award issued by Arbitrator Das, addressed a long-standing dispute between the NPMHU and the Postal Service concerning work hour guarantees for employees on light duty under Article 13. He concluded, in relevant part, as follows:

> [E]mployees are not guaranteed light duty assignments if they are unable to perform their regular job due to an off-duty injury or illness. But management is required to make every effort to seek work for such employees, and Article 13.3 provides for the establishment of light duty assignments through local negotiations.
>
> It appears that often established light duty assignments given to full-time regular employees basically entail having the employee report to a designated work area on a particular tour -- much like a regular full-time duty assignment -- with the expectation that the employee (if physically capable) generally will be gainfully employed performing light duty work for a full eight-hour shift and 40-hour work week. The present dispute at its core is about the Postal Service's ability to send a light duty employee home before the end of an eight-hour tour (or to work the employee for less than five service days) due to lack of work**.**
>
> [U]ltimately it is the language of Article 13 that controls. ELM 355.14 provides:
>
> > The light duty provisions of the various collective bargaining agreements between the U.S. Postal Service and the postal unions do not guarantee any employee who is on a light duty assignment any number of hours of work per day or per week.
>
> The Union does not claim that Article 13, as such, guarantees an employee on a light duty assignment a certain number of hours of work per day or per week. Rather, as I understand its position, it argues that Article 13 allows for, or does not prohibit, local parties' agreeing to

provide such a guarantee in an LMOU, and if an LMOU does provide such a guarantee, it is enforceable. I am in agreement with the Mittenthal Award's reading of the language in Article 13, and conclude that Article 13.3.C, in particular, does not allow for local parties to establish light duty assignments that guarantee an employee a set number of hours per day or per week without regard to "the needs of the service." Article 13.3.C states:

> 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. (Emphasis added.)

Under this provision, "the needs of the service" not only are relevant in establishing the "light duty assignment" through local negotiations at the beginning of the contract period, but also in terms of the actual hours, work location and work week an employee is assigned while performing that assignment. That includes, as Arbitrator Mittenthal found in applying identical language in the USPS-APWU National Agreement, the right of the Postal Service to send the employee home when there is no work for him or her to perform on the light duty assignment, subject, of course, to management's obligation under Article 13.2.C and 13.4.A to make every effort to find work for the employee.

Source: National Arbitration Award Q87M-4Q-C 77008684, Arbitrator S. Das, November 26, 2013.

Section 13.6 Seniority of an Employee Assigned to Another Craft

A Except as provided for in Section 4I, 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 seniority of full-time regulars assigned to other crafts as a result of Article 13 is established as 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 the usual rule stated in Article 12.

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.

Section 13.7 Notice

Employees will be given at least 24 hours notice before appearance is required before an Accident Review Board. Union representation will be permitted at all discussions of accidents upon request of the employee, provided that the acquiring of such representation does not unreasonably delay the scheduled discussion.

This provision is meant to ensure that employees have ample notice before they may be required to appear before Accident Review Boards. Furthermore, union representation at all discussions of accidents is permitted, upon request of the employee, provided that requiring such representation does not unreasonably delay the scheduled meeting.

Source: Interest Arbitration Award, Arbitration David Goodman, dated January 18, 1982.

The following Memorandum of Understanding governs bidding by Mail Handlers on light or limited duty as reprinted below:

MEMORANDUM OF UNDERSTANDING

LIGHT DUTY BIDDING

It is agreed that the following procedures will be used in situations in which an employee covered by the Mail Handlers' National Agreement, as a result of illness or injury, is temporarily unable to work his or her normal assignment, and is working another assignment on a light duty or limited duty basis or is receiving Continuation of Pay (COP) or compensation as a result of being injured on the job, sick leave, or annual leave or Leave Without Pay (LWOP) in lieu of sick leave.

I. Bidding

A) An employee who is temporarily disabled will be allowed to bid for and be awarded a mail handler bid assignment in accordance with Article 12.3.E, or, where applicable, in accordance with the provisions of a local memorandum of understanding, provided that the employee will be able to assume the position within six (6) months from the time at which the bid is submitted.

B) Management may, at the time of submission of the bid or at any time thereafter, request that the employee provide medical certification indicating that the employee will be able to perform the duties of the bid-for position within six (6) months of the bid. If the employee 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 employee shall not be eligible to re-bid the next posting of that assignment.

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

D)If at the end of one (1) year from the submission of the bid the employee has not been able to perform the duties of the bid-for position, the employee must relinquish the assignment, and shall not be eligible to re-bid the next posting of that assignment.

E)It is still incumbent upon the employee to follow procedures in Article 12.3.C to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

II. Higher Level Pay

Employees 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.

Question: Can a full-time employee who is temporarily disabled bid for and be awarded a full-time duty assignment?

Answer: Yes. An employee who is temporarily disabled may bid for and be awarded a full-time duty assignment. If the employee is unable to immediately assume the duties of the assignment, management may require medical certification that indicates the employee will be physically able to perform the duties of the assignment within the six months from when the bid was submitted. If at the end of that six-month period, the employee is still physically unable to perform the duties of the assignment, new medical certification may be required that indicates the employee would be physically able to perform the duties of the assignment by the end of the next six-month period. If the employee fails to provide the required medical certification(s) when requested, the bid is disallowed and reposted; the employee in question cannot bid on the reposting.

If the employee is still physically unable to perform the duties of the assignment after one year, the bid is vacated and reposted pursuant to Article 12 and the

Local Memorandum of Understanding, if applicable. The employee in these circumstances shall not be eligible to re-bid the next posting of the subject assignment.

An employee who bids for and is awarded a full-time duty assignment in accordance with this MOU is declared the successful bidder for that assignment and vacates his/her prior duty assignment.

The issue(s) in these grievances are whether a light/limited duty employee can be assigned to a residual vacancy that he or she cannot physically perform.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties agree that an unassigned employee cannot be assigned to a residual vacancy unless the employee is able to perform the core functions of the position, with or without reasonable accommodations.

Source: Step 4 C00M-1C-C 05179842, C00M-1C-C 06002195, K00M-1K-C 050165441, dated December 18, 2011.

MEMORANDUM OF UNDERSTANDING

RETURN TO DUTY

The parties affirm 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 scheduled tour of duty or the date stated in the medical documentation, provided that adequate medical documentation is submitted within sufficient time for review and that a decision is made to return the employee to duty.

2. The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

This MOU provides guidelines for review of medical certification to assist in prompt return to duty of an employee who has been on extended absences due to illness, when it is determined that the employee will be returned to duty.

The parties at the National Level have agreed as follows:

> "The current ELM 865 language does not negate management's obligation under the MOU on Return to Duty when returning an employee to duty after an absence for medical reasons.
>
> "The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis."

Source: Pre-arbitration Settlement Q00M-6Q-C 05099748 and Q06M-6Q-C 11100872, dated February 10, 2014.

MEMORANDUM OF UNDERSTANDING

CROSS CRAFT

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.

Limited Duty: 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 was established by Title 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.

ELM, Section 546.14, below, provides for additional rules that must be observed when offering limited duty work.

546.14 **Disability Partially Overcome**

546.142 **Obligation**

When an employee has partially overcome the injury of disability, the Postal Service has the following obligation:

a. *Current Employees*. When an employee has partially overcome a compensable disability, the Postal Service 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 Postal Service 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 employees.

The provisions of ELM 546.14 are enforceable through the provisions of the grievance/arbitration procedure.

Source: Step 4 Grievances G90N-4G-C 95026885, et al., dated January 28, 1997.

Question: May MHAs who have an on the job illness or injury be assigned to work in other crafts?

Answer: As is the case now, the assignment to another craft has to be consistent with Section 546 of the Employee and Labor Relations Manual and relevant Department of Labor regulations.

ARTICLE 14
SAFETY AND HEALTH

Section 14.1 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 agrees to give appropriate consideration to human factors in the design and development of automated systems.

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. In addition, the Postal Service agrees to give appropriate consideration to human factors in the design and development of automated systems.

Employees have the right to become actively involved in the Postal Service's Safety and Health Program and to be provided a safe and healthful work environment. Employees also have the right to report unsafe and unhealthful working conditions. They may consult with management through appropriate employee representatives on safety and health matters, i.e., program effectiveness and participation in inspection activities where permissible. Employees have the right to participate in the safety and health program without fear of restraint, interference, coercion, discrimination, or reprisal.

Source: Employee and Labor Relations Manual (ELM) Chapter 8, Section 814.1

Employees have the responsibility to comply with all safety and health regulations, procedures, and practices, including the use of approved personal protective equipment. Employees also need to keep the work area in a safe and healthful condition through good housekeeping and proper maintenance of property and equipment and to immediately report safety hazards and unsafe working conditions. Employees have the responsibility to perform all duties in a safe manner. Employees should keep physically and mentally fit to meet the requirements of the job, and immediately report any accident or injury in which they are involved to their supervisors.

Source: ELM Chapter 8, Section 814.2.

Question: Can local management issue a local safety policy and conduct stand-up talks related thereto?

Answer: Management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, local accident policies, guidelines or procedures may not be inconsistent or in conflict

with the National Agreement. Any discipline imposed for cited safety rule violations must meet the "just cause" provisions of Article 16 and any administrative action related to safety violations must be consistent with Articles 14 and 29 of the National Agreement.

Source: Step 4 Grievance D94N-4D-C 97027016, et al., dated June 18, 1997.

Question: Can management involuntarily reassign an employee based upon his/her safety record?

Answer: Management may discuss an employee's safety record with the employee and the employee can volunteer for reassignment, but management cannot force the move.

Source: Pre-arbitration Settlement H8N-4J-C 33933, dated December 6, 1982.

Question: Is there an automatic discipline policy for safety rule violations?

Answer: No**.** When safety rule violations occur, managers and supervisors have several alternative, corrective measures at their disposal. Although discipline is one such measure, they should use it only when other corrective measures do not appropriately fit the circumstances.

Correction of safety rule violations, whether by discipline or other alternatives, should not be predicated on whether an accident happened but rather on a factual determination that improper conduct occurred. Where discipline is the chosen alternative, the facts must support the requirements of just cause.

Source: Postal Bulletin 21723, page 8, dated May 4, 1989.

Question: Is there an automatic discipline policy for accidents?

Answer: No**.** There should be no automatic discipline for employees involved in accidents (motor vehicles or industrial). Disciplinary action must be appropriate to the safety rule violation, not dependent on whether an accident occurred.

Supervisors and managers also should understand that postal policy prohibits disciplinary action that may discourage accident reports or the filing of a claim for compensable injury with the Office of Workers' Compensation Programs.

Source: Postal Bulletin 21603, page 3, January 22, 1987.

Question: When an employee is involved in an accident, is he/she required to complete the appropriate forms on the day the accident occurs?

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

Source: Pre-arbitration Settlement H8C-5D-C 11000, dated November 20, 1981.

Question: May local management require an employee to sign a locally developed form which documents an unsafe practice?

Answer: No. Management may document unsafe practices. However, as there is no national requirement for employees to acknowledge that the unsafe practice was documented, employees should not be required to sign a local form for that purpose.

Source: Step 4 Grievance H1C-5D-C 30950, dated July 25, 1985.

Section 14.2 Cooperation

A 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 employees may: a) notify the 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; d) and/or 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.

Section 14.2 provides a special priority for the handling of safety and health issues, providing for cooperative correction of unsafe conditions and enforcement of safety issues as they arise.

In addition, Section 14.2 provides that safety and health grievances may be filed directly at Step 2 of the grievance procedure.

Question: May an employee file a grievance directly at Step 2 of the grievance procedure, without first notifying his/her supervisor of the unsafe condition?

Answer: No. Under Section 14.2, an employee needs to notify the supervisor prior to filing a grievance. If no corrective action is taken, a grievance may be filed within 14 days of notifying the supervisor, and that grievance may be filed directly at Step 2 of the grievance procedure.

Question: When an employee notifies his/her supervisor of unsafe conditions, what actions should the supervisor take?

Answer: Section 14.2 requires the supervisor to ensure that the conditions will be investigated immediately and corrective action will be taken, if necessary.

Source: Step 4 Grievance H8C-3W-C 29785, dated August 19, 1981.

Question: Is it a management responsibility to make PS Form 1767 available at each installation for reporting unsafe or unhealthy conditions?

Answer: Yes**.** A supply of PS Form 1767 must be readily available in the workplace so employees can, if they so desire, obtain them while maintaining their anonymity.

The parties have agreed that employees will not be required or permitted to push two hampers at a time with one hamper leading the other held by hand grasping the lead hamper and the trailing hamper to one side.

Source: Step 4 Grievance C0M-1C-C 04148466, dated March 18, 2005**.**

B Any grievance which has as its subject a safety or health issue directly affecting an employee and 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.

Section 14.3 Implementation

To assist in the positive implementation of the program:

A1 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 parties, shall include representatives 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.

A2 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.

A3 The Chairman will be designated by the Employer. The Union, in conjunction with the Chairman, shall schedule the meetings, and recommend priorities on new agenda items. 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 the form of reports furnished OSHA on a quarterly basis.

A4 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 a significant, National nature arise between scheduled quarterly meetings any party may request a special meeting of the Committee. Any party will have the right to be accompanied to any Committee meeting by no more than two technical advisors.

A5 There shall be established at the Employer's Area level, a Regional/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, Regional/Area-wide nature arise between scheduled quarterly meetings, any party may request a special meeting of the Committee. Any party will have the right to be accompanied to any committee meeting by no more than two technical advisors.

A6 Representation on the Committee shall include representatives from the Union and appropriate representatives from the Postal Service Area Office. The Chairman will be designated by the Employer.

The provisions of Section 14.3A provide for National and Regional/Area Joint Labor-Management Safety Committees. The National Committee is responsible for evaluating and making recommendations on all aspects of the Employer’s Safety Program, including program adequacy, implementation at the local level, and studies being conducted for improving the work environment.

B 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: 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 Program, including employee choice of health services.

C The Employer will comply with the Postal Employees Safety Enhancement Act of 1998.

The Postal Employees Safety Enhancement Act of 1998 became effective on September 29, 1998. This Act requires the Postal Service to adapt to the private sector rules and regulations issued by the U.S. Department of Labor, including the reporting system required of private-sector employers and the possibility of monetary fines for proven OSHA violations.

Section 14.4 Local Safety Committee

At each postal installation having 50 or more employees, a Joint Labor-Management Safety and Health Committee will be established. Similar committees may be established upon request of the installation head in installations having fewer than 50 employees, as appropriate. 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 participating unions and management. The representation on the Committee, to be specifically determined by the parties, shall include one person from each of the participating unions and appropriate management representatives. The Chairman 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.

This section requires the creation of joint local safety committees at each installation with 50 or more employees and encourages their creation at smaller

facilities. In small facilities without a committee, safety and health issues may be discussed in labor-management meetings.

Question: Is the number of members on the local joint labor-management safety and health committee discretionary?

Answer: No**.** The language of Section 14.4 is clear and does not allow for exceptions. There shall be equal representation between the union and management.

Section 14.5 Subjects for Discussion

Individual grievances shall not be made the subject of discussion during Safety and Health Committee meetings.

In keeping with Section 14.5, individual safety-related grievances filed by mail handlers or the NPMHU may not be discussed during Joint Labor-Management Safety and Health Committee meetings. Under the 1998 APWU National Agreement, however, Article 14 (Section 14.5) provides that APWU individual grievances initiated in accordance with Article 14.2 of that agreement may be the subject of discussions at these meetings. Thus, NPMHU representatives on these committees can expect to be involved in meetings at which discussions of these grievances occur.

Section 14.6 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 Chairman and Secretary, the Committee members shall serve three-year terms and shall at the discretion of the Union be eligible to succeed themselves.

The employee participation 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.

Section 14.7 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 Chairman 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 Medical/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 Medical/Health Unit.

No request for a Safety and Health Committee meeting shall be unreasonably denied. If the local Union Safety and Health Committee member feels a request was unreasonably denied, the matter will be referred to the Union's Regional Office and the Employer's Area Office Safety Manager for a determination if the Safety and Health Committee should convene prior to the Quarterly meeting.

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 parties agree that requests for meetings in addition to the mandated quarterly meetings shall not be unreasonably denied. If the union's representative on the Committee believes such a request has been unreasonably denied, the issue will be referred to the designated parties at the Area/Regional level to determine if the Committee should convene prior to the next quarterly meeting.

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.

Question: Is the union representative for the local safety and health committee compensated for time spent at a committee meeting?

Answer: Yes**.** The representative is to be compensated at the appropriate rate for the official time spent at the safety and health meeting.

Source: Step 4 Grievance H4M-1E-C 9794, dated March 4, 1986.

Section 14.8 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:

A1 Reviewing Safety and Health suggestions, safety training records and reports of unsafe conditions or practices.

A2 Reviewing local Safety and Health rules.

A3 Identifying unsafe work practices and assisting in enforcing work-related safety rules.

A4 Reviewing updated list of hazardous materials used in the installation.

B 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 Presidents of the participating local unions 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.

C Upon proper written request to the Chairman 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.

D A Union representative from the local Safety and Health Committee may participate in the annual inspection, conducted by the Manager, Human Resources, in the main facility of each District and BMC, provided that the Union represents employees at the main facility of the District or BMC being inspected. In no case shall there be more than one (1) Union representative on such inspections.

E A Union representative from the local Safety and Health Committee may participate in other inspections of the main facility of each post office, District, BMC, or other installation with 100 or more man years of employment in the regular work force, and of an individual station or branch where the station or branch has 100 or more man years 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 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 that main facility or station or branch, at the Union's option, a representative from the Committee may participate in the inspection (at no additional cost for the Employer) or the Union may designate a representative domiciled at the main facility, or station or branch to be inspected to participate in the inspection. In no case shall there be more than one (1) Union representative on such inspections.

F One Union representative from the local Safety and Health Committee, selected on a rotational basis by the participating Unions, may participate in the annual inspection of each installation with less than 100 man years 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 that installation to accompany him during these inspections.

G An appointed member of a local committee will receive an orientation by the Employer which will include:

G1 Responsibilities of the Committee and its members.

G2 Basic elements of the Safety and Health Program.

G3 Identification of hazards and unsafe practices.

G4 Explanation of reports and statistics reviewed and analyzed by the Committee.

H Since it has been some time since some members of Safety Committees received orientation, all current members will receive an orientation not later than December 27, 2007.

I Where an investigation board is appointed by an Vice President, Area Operations or a District Manager to investigate a fatal or serious industrial non-criminal accident and/or injury, the 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.

J 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:

J1 Informational postings, pamphlets or articles in postal and Area publications.

J2 Distribution of Publication 52 to employees whose duties require acceptance of and handling hazardous items.

J3 On-the-job training of employees whose duties require the handling and/or transportation of hazardous 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.

J4 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.

J5 Personal protective equipment will be made available to employees who are exposed to spills and breakage of hazardous materials.

Question: May the union participate in safety inspections?

Answer: The union may participate in safety inspections so long as the requirements set forth in Section 14.8 are met.

Source: Step 4 Grievance C8T-4F-C 13605, dated August 13, 1981.

Section 14.9 Field Federal Safety and Health Councils

In those cities where Field Federal Safety and Health Councils exist, one representative of the Mail Handler 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 Mail Handler Assistant employees.)

Following passage of the Postal Employment Safety Enhancement Act, the parties re-emphasized the importance of providing a safe and healthful workplace by agreeing to a new Memorandum of Understanding on the Correction of Unsafe Conditions. The procedures established in that MOU are not intended to change the provisions of Article 14, but rather are in addition to the contractual obligations of both parties. The MOU on the Correction of Unsafe Conditions is reprinted below:

MEMORANDUM OF UNDERSTANDING
BETWEEN THE

UNITED STATES POSTAL SERVICE
AND THE
NATIONAL POSTAL MAIL HANDLERS UNION

Re: Correction of Unsafe Conditions

The National Postal Mail Handlers Union (Mail Handlers) and the United States Postal Service (USPS) recognize the importance of providing a safe and healthful workplace for all postal employees. The parties acknowledge the passage of the Postal Employee Safety Enhancement Act (PESEA) passed by Congress on September 29, 1998 and in concert with the provisions of PESEA, the parties agree to implement its provisions in the Postal Service by taking the following actions:

1. The parties encourage the resolution of unsafe conditions at the lowest level in the organization. In accordance with our current procedures, an employee or a union representative may identify and discuss an alleged unsafe condition with their immediate supervisor, who will investigate and take corrective action if necessary and within their authority. If unresolved, the issue will be recorded including all relevant facts and referred to the parties designated representatives identified in Section 2 below.

2. The local parties will designate at all plant and distribution centers, plant and distribution facilities, bulk mail centers, airmail centers, air mail facilities, post offices, and stations and branches where five (5) or more mail handlers are employed, a facility union and management representative. These representatives will meet on a regular predetermined basis to review and attempt to resolve the referred safety and health issues.

A. The management and the union representatives should have sufficient authority and knowledge to resolve safety issues in an expeditious manner. As necessary, the parties will utilize available safety, maintenance, and other appropriate resources to develop possible resolutions.

B. To the extent issues are addressed on one tour in multi-tour facilities, the same issue will not be a topic for discussion on another tour as long as the issue is pending resolution with the parties' representatives.

C. Those offices that have an established program (e.g. Safety Captain) in which they regularly meet with union representatives to discuss safety concerns are not required to modify their existing program to conform to these procedures.

D. Safety issues originating in all offices not identified in Section 2 above and unresolved in discussions between the union or employee and management representatives may be processed in accordance with tile regular grievance procedure.

3. If possible, management will try to immediately resolve safety issues as they are brought to its attention in the meetings described above. The parties recognize, however, that certain safety issues cannot be resolved immediately. For instance, a safety issue brought to management's attention might have national impact implications or might require engineering changes which facility management is incapable of resolving at the level to which the initial complaint is brought, or may require the use of outside resources to resolve. There may be instances when it may not be possible to resolve the issue due to disagreement between the representatives over the nature of the safety issue itself, the necessary alternative resolutions, or the extent of work that needs to be performed to correct the situation. The parties' representatives may mutually agree to refer an unresolved issue to the local Safety and Health Committee. If appealed to the regularly scheduled local safety and health committee, the parties' representatives shall be prepared to present the issue to the committee with their assessment and resolution.

4. The parties agree that bargaining unit employees will utilize these procedures to notify management of workplace safety issues for resolution. To this end, the union at both the national and local level will notify bargaining unit employees both verbally and through their written communications vehicles to communicate any safety matters to its representatives so they can raise and resolve them, if possible, through this procedure.

5. This Understanding and its procedures are for the purpose of further providing a safe and healthy workplace through timely recognition and resolution of safety issues and is not intended to deprive any bargaining unit employee of his/her right to notify appropriate third parties. It is the intent of this agreement to implement this process to allow employees and the union to bring safety issues to management's attention so they can be expeditiously addressed in a timely manner without invoking an administrative procedure and attendant litigation which would have a delaying effect on any resolution to the safety issue.

6. The parties agree that any issues regarding nationally deployed equipment or issues that have national implication are to be jointly

	forwarded by the local parties to the vice president, Labor Relations and manager, Contract Administration (Mail Handlers) for referral to the national Joint Labor-Management Safety Committee.
7	The parties will implement this process arid name representatives to begin meeting within 60 days of the signing of this agreement. This agreement and its procedures are in addition to the contractual obligations of both parties and in no way changes or alters those provisions.

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

Section 15.1 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.

On the basis of this broad definition of a grievance, most work-related disputes may be pursued through the grievance-arbitration procedure. The language recognizes that most grievances will involve alleged violations of the National Agreement or of a Local Memorandum of Understanding.

Other types of disputes that may be handled within the grievance procedure may include:

- Alleged violations of postal handbooks or manuals (see Article 19);

- Alleged violations of other enforceable agreements between the parties, such as the Joint Statement on Violence and Behavior in the Workplace. In a National award, 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 the Joint Statement.

  Source: National Arbitration Award Q90N-4F-C 94024977, Arbitrator C. Snow, dated August 16, 1996.

- Disputes concerning the rights of ill or injured employees, such as claims concerning fitness-for-duty exams, first aid treatment, compliance with the provisions of ELM Section 540 and other regulations concerning Office of Workers' Compensation Program (OWCP) claims. However, decisions of OWCP are not grievable matters, as OWCP has the exclusive authority to adjudicate compensation claims and to determine the medical suitability of proposed limited duty assignments.

  Source: Step 4 Grievance G90N-4G-C 95026885, et al., dated January 28, 1997.

- Alleged violations of law (see Article 5);

- Other complaints relating to wages, hours or conditions of employment.

Section 15.2 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 unless the parties agree in writing to extend the fourteen (14) day period. 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 1 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 1 Union grievance may involve a complaint affecting more than one employee in the office. Whenever the facts giving rise to a grievance relate to an incident/issue occurring or arising on a specific date and involve more than one employee in the office, a Step 1 or Step 2 grievance may only be initiated by the Union as a Union grievance on behalf of all involved employees within a specific work location in an installation as provided in Article 17.2A or as defined by local practice. Should any grievances concerning the same incident/issue be filed at Step 1 by individual employees, the Union will consolidate all such grievances and select a representative grievance which may be appealed to Step 2. Should multiple grievances concerning the same incident/issue be improperly filed/initiated at Step 1 by the Union, management shall notify the Union, and if so notified, the Union shall consolidate all such grievances and select a representative grievance which may be heard at Step 1.

The grievant or the union must discuss the grievance with the employee's immediate supervisor within fourteen (14) calendar days of when the grievant or the union first learned, or may reasonably have been expected to have learned, of its cause, unless the parties have agreed in writing to extend that period. 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.

In a case involving designation of the "immediate supervisor" in a class action grievance, the parties agreed that determination of who is the immediate supervisor is a fact circumstance best suited for the local parties. In order to resolve grievances at the lowest possible step, as required by Section 15.3A, a Step 1 grievance should normally be initiated with the supervisor most likely responsible for the action giving rise to the dispute.

Source: Pre-arbitration Settlement I84M-4I-C 87040125, dated May 17, 1999

The immediate supervisor may be an acting supervisor (204-B).

Source: Step 4 Grievance H4N-5E-C 36561, dated February 26, 1988

A newly-hired career employee may file a grievance during his/her probationary period, unless the issue relates to an evaluation of work performance given to the employee during the probationary period or to the separation of the employee during the probationary period. See a further discussion of this subject under Article 12 (Section 12.1A).

A casual employee in the supplemental workforce who is working in the mail handler craft may not file a grievance under Article 15 of the National Agreement.

Question: Can MHAs file grievances under Article 15 of the National Agreement?

Answer: Yes. MHAs have access to the grievance procedure for those provisions of the National Agreement that apply to MHAs.

The union steward may, while interviewing the grievant or the potential grievant, complete his/her grievance outline worksheet. The union steward's time for this purpose would be covered under Article 17 (Section 17.3)

Source: Step 4 Grievance H1C-3P-C-6922, dated August 20, 1982

A grievance may be filed at Step 1 in a number of different ways:

- If the grievant files his/her own grievance at Step 1, the grievant may be accompanied and represented by a union representative.

- If the grievant files his/her own grievance at Step 1, even if the grievant chooses not to be accompanied or represented by the union during the discussion portion of the procedure at Step 1, management must give the steward or other union representative the opportunity to be present during any portion of the procedure which involves adjustment or settlement of the grievance. The union representative may waive the union's right in this regard. Furthermore, the union need not be present if the grievance is denied at Step 1.

  Source: Step 4 Grievance H7M-4S-C 22798, dated February 15, 1993 (incorporating Pre-arbitration Settlement H7C-4J-C 18047, dated June 17, 1992.)

  Whether or not present, the Union at the local level has a right to be notified of a settlement or adjustment which occurred at Step 1 of the grievance procedure.

Source: Step 4 Grievance H1N-5G-C 8564, dated August 12, 1983

- If the union initiates a grievance at Step 1 on behalf of an individual employee, that employee's participation in the Step 1 meeting is neither required nor prohibited.

Either party, i.e., the union or management, may have an observer at a grievance discussion. For example, management is permitted to have a supervisor serve as an observer at a grievance discussion between a steward and an acting supervisor (204-B). Normally, it is expected that the parties will advise each other in advance of any intent to have an observer.

Source: Pre-arbitration Settlement N1C-4B-C 1716, dated December 1, 1983

Management must discuss the grievance at Step 1 even if it contends that the complaint is not grievable or that the grievance is procedurally defective. Management may include its position on these matters as one of the reasons for denying the grievance.

Sources: Step 4 Grievance A8-W-0538, dated February 28, 1980 and Step 4 grievance H8C-3W-C 24461, dated April 23, 1981.

The intent of the parties is to resolve cases at the lowest possible level, whether it is done by telephone or in person. Normally, the parties will meet on Step 1 grievances in person; however, in unusual circumstances, or by mutual agreement of the local parties, to accommodate the process a Step 1 discussion may take place via telephone.

Sources: Pre-arbitration Settlement H4C-3W-C 27397, dated January 19, 1989, and Step 4 Grievance H7N-5K-C 4965, dated March 23, 1989.

Where the incident or issue which gives rise to the grievance occurs on a specific date and involves the complaint of more than one (1) employee, the union is required to file a single grievance at Step 1, or at Step 2 where appropriate, on behalf of all of the affected employees within a specific work location. For these purposes, work location is defined by Article 17.2A or local practice as the area of the installation to which a specific steward is assigned for purposes of providing representation. Where individual employees file their own grievances at Step 1 concerning the same incident/issue, the union is required to consolidate all such grievances and select one (1) representative grievance for appeal to Step 2. Furthermore, where the union itself improperly files multiple grievances on the same incident/issue at Step 1, management will notify the union of this fact and, if so notified, the union is required to consolidate all such grievances and select one (1) representative grievance for hearing at Step 1.

(b) In any discussion at Step 1 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.

The parties' representatives have the specific authority to resolve a grievance at this initial step of the grievance-arbitration procedure. Although either representative may consult with higher levels of authority within his/her respective organization regarding the issues in dispute, this section clearly states that the parties who handle the Step 1 discussion are empowered to settle the grievance. For example, 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.

(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 provide an oral decision, which will include the reasons for the denial. If the decision is not rendered during the Step 1 meeting, it must be provided within five (5) calendar days of that Step 1 meeting, unless the parties mutually agree to extend the time limits. If requested by the union, the supervisor shall, within five (5) days after issuance of the Step 1 decision, initial the Standard Grievance Form to confirm the date of the Step 1 decision.

(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.

The parties at the national level shall agree upon a computer-generated version

of the standard grievance form that may be used to appeal an adverse decision to Step 2.

Time limits are calculated on the basis that day one (1) is the day following the receipt of the supervisor's oral decision. The union representative has until the tenth (10th) day to submit the appeal. If the appeal is being submitted through the mail, it must be postmarked no later than the tenth (10th) day following the Step 1 decision. It is recommended that union representatives not wait until the tenth (10th) day for this purpose.

Appeals to Step 2 must be made on the Standard Grievance Form. A computer-generated version of this form, agreed to by the parties at the National level, may be utilized.

Upon request, the Union is entitled to review the supervisor's Step 1 Grievance Summary Form, PS-2608 as follows. The PS Form 2608 is not completed by the Postal Service at the time of the Step 1 discussion, however, and therefore it is not available for the Union to review until Step 2. If at Step 2 or any subsequent step of the grievance procedure, the Union requests to review the completed PS Form 2608, it will be made available. A copy will be provided on request.

Source: Step 4 Grievance H1M-1J-C 10717, dated March 22, 1984.

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.

Management is responsible for notifying the union of the proper representative to whom Step 2 appeals are to be made. Office size is determined by adding together the number of career employees in the NPMHU, APWU and NALC bargaining units.

(b) Any grievance initiated at Step 2, pursuant to Article 2 of this Agreement, must be filed within fourteen (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.

Where grievances are filed directly at Step 2, the same fourteen (14) day time limit applicable for grievances filed at Step 1 applies. Types of grievances that *may,* but are not required to, be filed directly at Step 2 are:

- Article 2, Non-Discrimination and Civil Rights. See Article 2 (Section 2.3.)

- Article 14, Safety and Health. See Article 14 (Section 14.2.)

(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.

The Step 2 meeting will be held within seven (7) days following management's receipt of the appeal, unless the parties mutually agree to extend the time limits. Note that the union represents an individual grievant for all purposes at Step 2 and thereafter. Again, both parties have full authority to resolve the grievance, and the union has full authority to withdraw the grievance, at Step 2.

The parties at the National level agree that management has an obligation to meet with the Union at Step 2 as long as the Union has met the procedures outlined in Section 15.2, Steps 1 and 2 of the National Agreement.

Source: Step 4 Grievance H4C-3W-C 14958, dated December 5, 1986.

The necessity of the presence of a grievant at a Step 2 meeting is determined by the Union.

Source: Step 4 Grievance H4C-5D-C 5830, dated December 3, 1985.

In a case dealing with the issue of the presence of the grievant at the Step 2 meeting, the parties agreed that all time spent in the Step 2 grievance meeting will be on a no gain/no loss basis in accordance with Article 17 (Section 17.4.) If the grievant is not available to attend the scheduled meeting and advance notice of that fact and a significant reason is provided by the union, the parties may mutually agree to extend the date of the Step 2 meeting.

Source: Pre-arbitration Settlement H4C-4B-C 2899, dated October 19, 1988.

The parties agreed that the National Agreement does not dictate the location where Step 2 meetings must be held.

Source: Pre-arbitration Settlement D84M-1D-C 87013561, dated June 15, 1998.

The parties at the National level agree that the National Agreement does not dictate the location where Step 2 discussions must be held. This is a local dispute suitable for regional determination. Individual telephonic Step 2

discussions are permitted only with agreement by both parties. These discussions and reviews will have the same contractual force and effect as if the parties had met in person.

Source: Step 4 Grievance G06M-1G-C 11029012, dated June 22, 2012.

However, management is mandated along with the Union to have meaningful dialogue in order to resolve grievances. While complete privacy may be difficult to achieve, local management should make the effort to ensure that Step 2 meetings are as private as possible with no unnecessary interruptions.

Source: Step 4 Grievance H8C-5K-C-21811, dated January 12, 1982.

In a case involving more than one Management representative meeting with the Union at Step 2, the parties agreed that both the Union and Management have historically had persons other than the actual designated representatives attend Step 2 meetings as observers. However, such persons shall attend at the mutual consent of the parties designated to discuss the grievance. Payment is covered by the provisions of Article 17 (Section 17.4)

Source: Step 4 Grievance H8N-3U-C 16250, dated February 8, 1984.

(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.

Both parties are required to state in detail the facts and contractual provisions relied upon to support their respective positions and to exchange all relevant documents. The parties are expected to “cooperate fully” in the effort to develop all necessary facts and contentions.

Arbitrator Aaron stated that “all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration,” either at Step 2 or at a subsequent step of the grievance procedure. He held that the arbitral policy of refusal to accept new arguments at arbitration “should be strictly enforced.” He relied in part on an earlier award by Arbitrator Mittenthal in which

that arbitrator stated that “Article XV describes in great detail what is expected of the parties in the grievance procedure” in relation to full disclosure prior to arbitration. Hence, it is in each party’s interest to ensure that all of the facts and arguments to be relied upon are fully disclosed at Step 2 of the grievance procedure.

Sources: National Arbitration Awards H8N-5B-C 17682, Arbitrator B. Aaron, dated April 12, 1983 and H8N-5L-C 10418, Arbitrator R. Mittenthal, dated September 21, 1981.

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 (2) witnesses at the Step 2 meeting, and the parties can mutually agree to interview additional witnesses. All witnesses will be on the clock while traveling to and from the Step 2 meeting and while in attendance at the Step 2 meeting. Note that different rules apply to payment of the steward and the grievant. See further Article 17 (Section 17.4) for a full discussion of this issue.

(e) Where grievances appealed to Step 2 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 2, the “representative" grievance may be appealed to Step 3 of the grievance procedure. 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 2 pending resolution of the “representative" grievance, provided they were timely filed at Step 1 and properly appealed to Step 2 in accordance with the grievance procedure.

(f) Following resolution of the “representative" grievance, the parties involved in that grievance shall meet at Step 2 within seven (7) days of their receipt of that resolution, unless the parties agree upon a later date, to identify the other pending grievances involving the same, or substantially similar issues or facts, and to apply the resolution to those grievances. 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.

Where grievances appealed to this step involve the same, or substantially similar issues or facts, the union representative shall select one such grievance and designate it as the “representative” grievance. If resolution is not reached at Step 2, the “representative” grievance may be appealed through the grievance-arbitration procedure and all other such timely filed and timely appealed grievances will be held at Step 2 pending resolution of the “representative” grievance. Once the representative grievance is resolved, the parties at Step 2 meet to apply the resolution to the other grievances that were held at that step.

Where a dispute exists as to whether the resolution applies to a held grievance, the merits of that grievance will be considered at Step 2. If no agreement is reached, that grievance may then be appealed through the grievance-arbitration procedure.

(g) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form and shall be furnished to the Union representative within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. Any such settlement or withdrawal 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.

Settlements and acknowledgments of the union's withdrawal of a grievance at Step 2 must be provided in writing or noted on the Standard Grievance Form within ten (10) days after the Step 2 meeting, unless the parties mutually agree to an extension. In an effort to encourage resolution, such settlements or withdrawals will not serve as precedent for any purpose unless the parties specifically agree otherwise

(h) 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.

(i) 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.

Adverse Step 2 decisions must also be provided in writing within ten (10) days after the Step 2 meeting. The decision must include a full statement of management's understanding of all relevant facts and the contractual provisions involved and must provide detailed reasons for the denial.

Source: Step 4 Grievance H7M-3R-C 10666, dated October 20, 1988.

Where the union contends that the facts or contentions in the decision are incomplete or inaccurate, the union representative may submit written corrections and additions within ten (10) days of receipt of the decision. The steward is

entitled to time on-the-clock to prepare the union's statement of corrections and additions.

Source: Step 4 Grievance A8-S-0309, dated December 7, 1979.

Whether additions and corrections can be submitted by anyone other than the union Step 2 representative is based on the fact circumstances involved. A Union representative may submit additions and corrections to a Step 2 decision. Whether the additions and corrections are accurate is subject to challenge, regarding accuracy, throughout the rest of the grievance arbitration procedure.

Source: Step 4 Grievance C06M-1C-C 12277784, dated June 27, 2014.

Normally, management's Step 2 representative will not issue corrections and additions to the union. Should this occur, however, the appropriate union representative is entitled to reasonable time on-the-clock to prepare a written reply.

Source: Step 4 Grievance H8N-3W-C 33606, dated November 17, 1981.

Note that submission of corrections and additions does not alter the time limits for appeal to Step 3.

(j) 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 items listed in this subsection. Time spent in writing appeals to Step 3 is compensable under the provisions of Article 17 (Section 17.4.)

Source: National Arbitration Award AB-E-021/022, Arbitrator R. Mittenthal, dated December 10, 1979

Step 3: (a) Any appeal from an adverse decision in Step 2 shall be in writing to the appropriate management official at the LR Service Center with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal.

The time limit for the union's appeal to Step 3 is fifteen (15) days after its receipt of the Step 2 decision, unless the parties mutually agree to an extension. All of the listed materials must be included in the appeal file. The address for the LR Service Center, to which the Step 3 appeals must be made, is contained in the

Memorandum of Understanding Re: Language Changes Due To Organizational Structure Changes, reprinted on page **186** of the **2019** National Agreement.

The union is required to provide a copy of the Step 3 appeal letter to management's Step 2 representative.

Source: Step 4 Grievance H7M-3R-C 10666, dated December 8, 1988.

Contractual language does not preclude the granting of extensions for appeal to Step 3, so long as the extensions are mutually agreed upon by either the Step 2 or Step 3 representatives.

Source: Step 4 Grievance H7M-4U-C 33358, dated September 23, 1991.

(b) The grievant shall be represented at Step 3 level by the Union's Regional representative, or designee. The Step 3 meeting of the parties' representatives to discuss the grievance shall be held at the respective Postal Service office (former regional headquarters) within fifteen (15) days after it has been appealed to Step 3. Step 3 discussions by telephone or video conferencing are permitted with the agreement of both parties' representatives. These discussions and reviews will have the same contractual force and effect as if the parties had met in person. 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 jointly 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.

The Step 3 meeting will be held within fifteen (15) days of management's receipt of the Step 3 appeal, unless both parties mutually agree to an extension of the time limits. The union is represented by its Regional representative, or designee. The meetings shall be held in the locations agreed to by the National or Regional/Area parties, as specified in the Memorandum of Understanding on page **186** of the **2019** National Agreement. Again, at Step 3, both parties have full authority to resolve the grievance, and the union has full authority to withdraw the grievance.

Both parties have an affirmative obligation to assure that all relevant facts and contentions have been included so that the grievance is fully developed at Step 3. They may, by mutual agreement, remand a case to Step 2 where they

conclude that the parties at that step did not fully develop the case. If the case is remanded, the parties at Step 2 must meet within seven (7) days of receipt of the grievance; time limits and procedures for Step 2 grievances apply thereafter.

It is worth repeating Arbitrator Aaron's statement that "all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration . . ."He held that the arbitral policy of refusal to accept new arguments at arbitration "should be strictly enforced." Hence, it is in each party's interest to ensure that all of the facts and arguments to be relied upon are fully disclosed no later than Step 3 of the grievance procedure.

Source: National Arbitration Award H8N-5B-C 17682, Arbitrator B. Aaron, dated April 12, 1983.

Upon request, the Union is entitled to review PS Form 2609, Step 2 Grievance Summary, when it is utilized by Management's representative at Step 3 or above. Since the PS 2609 is not prepared until after the Step 2 meeting, this document cannot be supplied until the Step 3 meeting.

Source: Step 4 Grievance H1C-3U-C-6106, dated November 5, 1982.

(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 this Agreement or some supplement thereto which may be of general application is involved in the case.

Management's decision must be provided to the union's Regional representative within fifteen (15) days, unless the parties mutually agree to an extension. The decision must include detailed reasons and must also include a statement of any additional facts and contentions that were not included in the record when appealed from Step 2. The decision must also indicate whether management's representative believes that no interpretive issue is involved in the case.

(d) The Union, at the Regional level, may appeal an adverse decision directly to arbitration at the Regional level 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 this Agreement or some supplement thereto which may be of general application is involved in the case.

The union's Regional representative may appeal an adverse Step 3 decision directly to Regional level arbitration within twenty-one (21) days of receipt of the decision, so long as the decision indicates that no interpretive issue is involved in the case. The address for the LR Service Center to which appeals to Regional level arbitration must be submitted is contained in the Memorandum of Understanding Re: Language Changes Due to Organizational Structure Changes, reprinted on page 186 of the **2019** National Agreement.

(**e**) If either party's representative maintains that the grievance involves an interpretive issue under this 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 decisions and, if filed, any Union corrections and additions filed at Steps 2 or 3. The Union shall furnish a copy of the Union appeal to the appropriate management official at the Grievance/Arbitration Processing Center.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issue(s) to be decided. The Employer's notice shall be included in the Step 3 decision. The Union's written notice shall be automatically included as part of the grievance record in the case but the filing of such notice shall not affect the time limits for appeal

[See Memos, pages 182-183]

If the Union representative believes that the grievance involves an interpretive issue, the Union's Regional representative may appeal the case to Step 4 at the National level. Alternatively, the Union may appeal the case to regional arbitration.

Where Management's Step 3 decision indicates that an interpretive issue is involved in the grievance, the Union's Regional representative may only appeal the case to Step 4 at the National level.

Article 15.2 Step 3(d) requires the party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issue(s) to be decided.

Source: Step 4 Grievance K06M-1K-C 07261874, dated December 7, 2010.

All such appeals must be made within twenty-one (21) days of receipt of the Step 3 decision.

This contractual language applies only to cases in which a question exists regarding interpretation of the Agreement or some supplement thereto which may be of general application. As Arbitrator Garrett stated, it is "not intended to provide a vehicle for considering a multitude of individual grievances as a sort of 'class action.'"

Source: National Arbitration Award N8-NAT-2705, Arbitrator S. Garrett, dated July 30, 1975.

The union representative has the responsibility to provide a copy of the Step 4 appeal to the appropriate management official at the Grievance/Arbitration Processing Center. .

Source: National Arbitration Award N8-NA-0344, Arbitrator H. Gamser, dated July 10, 1981.

Step 4: (a) In any case properly appealed or referred 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 or referral 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 Union 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.

Any local grievances filed on the specific interpretive issue shall be held in abeyance at Step 3 pending resolution of the national interpretive dispute.

[See Memo, page 182]

New language in the 2019 National Agreement requires that any local grievances filed on specific interpretive issues will be held in abeyance pending resolution of the national interpretive dispute. These grievances will be held at Step 3.

Step 4 is reserved for the appeal from Step 3 or the referral from Regional level arbitration of those cases which contain an interpretive issue under the National Agreement or some supplement thereto which is of general application. Where the parties at Step 4 determine that an interpretive issue does not actually exist in a grievance appealed to that Step, they may by mutual agreement return that grievance to Step 3. The parties at Step 3 must meet within fifteen (15) days after the grievance is returned to that step; thereafter, the time limits for handling Step 3 grievances will apply.

No re-appeal to Step 3 is necessary when a case is remanded from Step 4.

Source: Step 4 Grievance H1C-3A-C 46843, dated December 4, 1987.

Section 15.3 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. Every effort shall be made to ensure timely compliance and payment of monetary grievance settlements and arbitration awards. The Employer agrees that upon receipt of necessary paperwork, from the grievant and/or union, concerning a grievance settlement or arbitration award, monetary remuneration will be made. The necessary paperwork is the documents and statements specified in Subchapter 436.4 of the ELM. The Employer will provide the union copies of appropriate pay adjustment forms, including confirmation that such forms were submitted to the appropriate postal officials for compliance and that action has been taken to ensure that the affected employee(s) receives payment and/or other benefits. In the event that an employee is not paid within sixty (60) days after submission of all the necessary paperwork, such employee, upon request, will be granted authorization from management to receive a pay advance equal to seventy (70) percent of the payment owed the employee. In the event of a dispute between the parties concerning the correct amount to be paid, the advance required by this section will be the amount that is not in dispute.

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.

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 that the grievance was untimely.

Step 1: If management asserts that a grievance was untimely filed at Step 1, it must raise that objection in the written Step 2 decision (which is "later" than Step 1) or the objection is waived. Furthermore, even if the objection is raised at Step 1 for a grievance that was untimely at that step, it must also be raised at Step 2 and included in the written decision.

Step 2 or later: For grievances which management asserts were untimely at Step 2 or at a later step, they must raise the objection at the step at which the time limits were not met and include it in the written decision for that step and all subsequent steps. If the Postal Service fails to reassert its timeliness objections at subsequent steps, even if timeliness was raised at Step 2 or another prior step, the Postal Service waives its timeliness objection.

Source: National Arbitration Award H8T-5C-C 11160, Arbitrator B. Aaron, dated July 7, 1982.

The cancellation date on the envelope containing the appeal may be used to determine the timeliness of the appeal.

Source: National Arbitration Award N8-NA-0344, Arbitrator H. Gamser, dated July 10, 1981.

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.

In a 2009 award, National Arbitrator Eischen concluded that "a Step 2 decision issued by the Postal Service after [a] grievance [challenging a 14-day suspension] has been progressed properly to Step 3 in accordance with the 'deemed to move' provisions of Article 15.3.C, because of failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), has no validity, force or effect under the last sentence of ¶ 2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement" (emphasis in original).

Source: National Arbitration Award I94M-1I-C 98072898, Arbitrator D. Eischen, dated Jan. 9, 2009.

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 either party. 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 initiating party. 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 either the union or management to file interpretive disputes directly at Step 4 at the National level and specifies the procedure to be used in handling such disputes. The grievance must be in writing and must specify in detail the precise interpretive issue(s) to be decided**.** In keeping with the last sentence of this section, and Section 15.4 below, only the union may appeal a dispute to National arbitration.

E The parties have agreed to jointly develop and implement a Contract Interpretation Manual (CIM) within six (6) months after the effective date of the 1998 National Agreement. The CIM will set forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of this Agreement. It is not intended to add to, modify, or replace, in any respect, the language in the current Agreement; nor is it intended to modify in any way the rights, responsibilities, or benefits of the parties under the Agreement. However, production of the CIM demonstrates the mutual intent of the parties at the National level to encourage their representatives at all levels to reach resolution regarding issues about which the parties are in agreement and to encourage consistency in the application of the terms of the Agreement. For these reasons, the positions of the parties as set forth in the CIM shall be binding on the representatives of both parties in the resolution of disputes at the Local and Regional levels, and in the processing of grievances through Steps 1, 2 and 3 of the grievance-arbitration procedure. In addition, the positions of the parties as set forth in the CIM are binding on the arbitrator, in accordance with the provisions of Article 15.4A6, in any Regional level arbitration case in which the CIM is introduced. The CIM will be updated periodically to reflect any modifications to the parties' positions which may result from National level arbitration awards, Step 4 decisions, or other sources. The parties' representatives are encouraged to utilize the most recent version of the CIM at all times.

[See Memos and Letters, pages 180-187]

This language provides for the document that you are currently reading.

As noted in the Introduction and Preamble, the CIM sets forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of the Agreement. The positions contained herein are binding on the parties' representatives in the handling of grievances at Steps 1, 2 and 3 of the grievance-arbitration procedure, on the parties' representatives at the local and Regional levels in the resolution of disputes, and on Regional level arbitrators.

Section 15.4 Arbitration

A General Provisions

A1 A request for arbitration shall be submitted within the specified time limit for appeal.

A2 No grievance may be arbitrated at the National level except when timely notice of appeal is given the Employer in writing by the Union. No grievance may be appealed to arbitration at the Regional level except when timely notice of appeal is given in writing to the appropriate management official at the LR Service Center by the certified representative of the Union in the particular Region. Such representative shall be certified to appeal grievances by the Union to the Employer at the National level.

Time limits for appeal to Regional-level arbitration are discussed under Section 15.2, Step 3(d). The union at the National level designates representatives who have the authority to appeal cases to Regional level arbitration.

A3 All grievances appealed to arbitration will be placed on the appropriate pending arbitration list(s) 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.

A4 In order to avoid loss of available hearing time, except in National level cases, a sufficient number of back-up cases shall be scheduled in accordance with Article 15.4B2 to be heard in the event of late settlement or withdrawal of grievances before the hearing. 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 backup cases on the appropriate arbitration list shall be scheduled. 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 scheduling other cases on that date, the party withdrawing the case shall pay the full costs of the

arbitrator for that date. If the parties settle a case less than five (5) days prior to the scheduled arbitration date and are unable to agree to schedule other cases, the parties shall share the costs of the arbitrator for that date. This paragraph shall not apply to National level arbitration cases.

Management, in consultation with the union, is responsible for maintaining arbitration dockets. Cases are placed on those lists in their order of appeal.

The parties have placed a special emphasis on the need to avoid loss of arbitration dates. To assure that cases appealed to arbitration are heard as quickly as possible, back-up cases are to be scheduled for each hearing date. Additional language is found in Section 15.4B2c. Allocation of arbitrators' fees is specified for situations in which cases are settled or withdrawn less than five (5) days prior to the scheduled hearing date and a back-up case cannot be agreed upon.

The parties have agreed that neither party has the right to unilaterally cancel an arbitration hearing once it has been scheduled pursuant to Section 15.4. If either party maintains that unforeseen circumstances prevent them from presenting their case, they may appear before the arbitrator to request a continuance and the arbitrator shall have the authority to grant or deny the request on its merits. If the continuance is granted, the requesting party shall be responsible for all costs of the arbitrator for that date.

Source: Step 4 Grievance C98M-1C-C 01146875, dated February 25, 2003.

A5 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. Absent a more permissive local past practice and at no cost to the Employer, the Employer will permit one (1) change of work schedule per case scheduled for arbitration for either the grievant or a witness, provided notice is given to his or her immediate supervisor at least two (2) days prior to the scheduled arbitration hearing.

Union witnesses are considered to be on-the-clock when appearing at an arbitration hearing during their regular work hours, including reasonable waiting time. Arbitrator Mittenthal defined "reasonable" for this purpose as follows:

> If his knowledge of the case is vital and the Union advocate needs him by his side, surely his presence is "required." He would be entitled to pay for all waiting time. But if he is called to corroborate what others will be

testifying to and he is merely an observer, his early presence is hardly "required." He would not be entitled to pay for all waiting time.

However, union witnesses are not compensated for time spent traveling to and from the arbitration hearing.

Source: National Arbitration Award H1N-NA-C-7, Arbitrator R. Mittenthal, dated February 15, 1985.

At no cost to the Employer, one (1) change of schedule per case will be granted to either the grievant or a witness, so long as notice is provided to the employee's immediate supervisor at least two (2) days prior to the scheduled hearing, unless there is a more permissive local past practice, in which case that practice will prevail.

The payment provisions do not apply to an employee who appears at a hearing as an "observer," who cannot provide information which has substantive or probative value; witnesses must be knowledgeable about the issues in question.

Source: Step 4 Grievance NC-N-2064, dated September 20, 1976.

A6 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.

Arbitration is the last step of the grievance-arbitration procedure. There are no further contractual avenues for management or the union to challenge or appeal an arbitration award**.** This exclusion of further contractual avenues includes appeals to Step 4 of the grievance-arbitration procedure. However, judicial relief or enforcement of an arbitration award may be available.

Source: Step 4 Grievance A98M-1A-C 01219270, et al., dated June 3, 2004.

Sound labor relations policy and the arbitration processes established under Article 15 are best served by precluding requests for reconsideration of arbitration awards by either the Union or the Postal Service. No requests or motions for reconsideration of arbitration awards may be filed by the Union or the Postal Service. This does not preclude any right that any party may have to seek judicial review of an arbitrator's award; nor does this preclude an arbitrator from correcting clerical mistakes or obvious errors of arithmetical computation.

Source: National Level Agreement dated October 3, 1975 (cited in Step 4 Grievance E06M-4E-C 08288303 dated March 22, 2011).

Arbitrators have the authority to fashion remedies in cases where the grievance is deemed to be arbitrable. Arbitrator Mittenthal ruled that "the remedy for an alleged violation is a facet of every grievance."

Source: National Arbitration Award N8-NA-0141, Arbitrator R. Mittenthal, dated July 7, 1980.

A7 The parties agree that, upon receipt of the award, each arbitrator's fees and expenses shall be paid in a prompt and timely manner.

A8 All arbitrators on the District Regular Contract/Discipline Panels and the District 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.

[See Letter, page 187]

A9 Arbitrators on the National and on the District Regular Contract/Discipline and District Expedited Panels shall be selected by the method agreed upon by the parties at the National Level. The parties shall meet for this purpose within ninety (90) days after signing this Agreement. In the event the parties cannot agree on individuals to serve on these panels, or to fill any vacancies, selection shall be made by the alternate striking of names from the appropriate list.

[See Letter, page 190]

The appointment of arbitrators is administered by the parties at the National level. Their terms of appointment are established by contractual language, and the appointment terms may be altered by mutual agreement of the parties.

B Regional Level Arbitration - Regular

B1 In each District three (3) separate dockets of cases to be heard in arbitration shall be maintained for the Union by the Employer at the Area level:

B1a one for all removal cases and cases involving suspensions for more than 30 days;

B1b one for all cases appealed or referred to Expedited Arbitration; and

B1c one for all other cases appealed to arbitration at the Regional Level.

In order to assure expeditious hearing of cases appealed to arbitration, the parties agreed to reconfigure the arbitration dockets on a District, rather than Area/Regional, basis. Three (3) separate dockets of cases are maintained in each District.

B2 Regional Arbitration Scheduling

B2a Except as otherwise provided in B2b hereunder**,** all cases will be scheduled from their respective dockets for each District on a first-in, first-out order based on appeal to arbitration date unless the Union and Employer otherwise agree at the Regional level.

B2b Grievances involving letters of warning or suspensions that have been timely appealed or referred to Expedited or Regular arbitration, where such discipline is cited in a removal or suspension of more than thirty (30) days timely appealed to Regional arbitration, will be provided priority scheduling on the respective docket to assure that such grievances are heard prior to the grievance regarding the removal or suspension of more than thirty (30) days. In no case shall a grievance regarding the removal or suspension of more than 30 days be heard prior to adjudication of any time-appealed grievance involving discipline cited in the removal or suspension of more than 30 days. Grievances involving separate elements of discipline cited in a particular removal or suspension of more than 30 days will not be combined for hearing without the mutual consent of the parties.

B2c The parties agree that all cases will be heard in arbitration within 120 days from the date of the grievance appeal to arbitration. If a grievance is not heard in arbitration within the 120 days, the grievance will be scheduled as the first primary case on the next available arbitration hearing date**.** If, one (1) year after the effective date of this Agreement, this hearing requirement is not complied with by a particular District Panel(s) for three (3) consecutive Accounting Periods, the parties will meet to jointly select a sufficient number of additional arbitrators for that panel(s) to ensure compliance with this hearing requirement. Such meetings and addition of arbitrators will continue, as jointly agreed to

by the parties, until the panel(s) is in compliance with the hearing requirement.

The date of appeal of the grievance to arbitration determines its placement on the particular District docket. Scheduling of cases from each of the three District dockets is accomplished on a first-in, first-out (FIFO) basis, unless the parties agree otherwise. One agreed-to exception is designed to assure that timely-filed grievances regarding past elements listed in removal notices are adjudicated before the hearing on the removal itself; the parties also agreed that grievances involving "live" past elements will be scheduled individually and not "batched" before an arbitrator to be heard on the same day without the parties' mutual consent. In a further effort to expedite arbitration hearings, the parties have agreed that if the one hundred and twenty (120) day hearing requirement cannot be met on any panel one (1) year after the effective date of the Agreement, additional arbitrators will be selected for that panel until the requirement is met.

B2d The primary case(s) assigned for each arbitration date will be listed on the scheduling letter. Unless mutually agreed otherwise, a maximum of two (2) primary cases from the District Regular Contract and District Regular Discipline dockets and a minimum of six (6) cases from the District Expedited docket will be listed on the respective scheduling letters. In addition every open case from the particular post office where the primary case(s) are located will be scheduled in the event the primary case(s) are resolved or withdrawn; a listing of such cases will be attached to the scheduling letter. If multiple cases exist at the primary location, the cases will be heard in order of appeal date, unless otherwise mutually agreed by the parties. The primary cases will be backed up with three (3) additional cases from the same District and Union geographic area. It is understood that the parties will resolve or arbitrate the cases at this primary location prior to moving to the first back-up location. The parties agree that cases will be heard rather than lose a hearing date.

The primary case(s) and the back-up cases will appear in the scheduling letter to the arbitrator and the parties, which will be submitted no later than forty-five (45) days prior to the scheduled hearing date, unless the parties at the Area/Regional level agree otherwise in a specific instance.

B2e If all cases at the primary location are resolved or withdrawn, the first back-up case shall become the scheduled case. If the first back-up case is resolved or withdrawn, additional back-up cases will consist of any open cases (see Section

4B2a for priority scheduling) at the post office location where the first back-up case is scheduled. The scheduling of these cases at the first back-up location shall go in order of appeal date to arbitration unless otherwise agreed at the Area/Regional level. If all cases at the first back-up location are resolved or withdrawn, the second back-up case shall become the scheduled case. If that case is resolved or withdrawn, any open cases (see Section 4B2a for priority scheduling) at the second back-up location will be scheduled as above, first-in, first-out. If all cases at the second back-up location are resolved or withdrawn, the third back-up case shall become the scheduled case, and the same procedures shall apply for scheduling additional cases at that location.

B2f In the event that all back-up locations are exhausted, the location will be determined by the order of appeal date of cases within the same District and Union geographic area and will continue until no arbitration appeals remain either in the original District or union geographic area.

B2g If the procedures in B2c through B2e are exhausted, additional locations will be determined by the parties based upon mutual agreement at the Area/Regional level. If no agreement is reached, scheduling of cases will be based upon the order in which cases were appealed to Regional arbitration.

B2h The appropriate management official at the LR Service Center will provide to the Union at the National level a list of the pending cases on each docket by District listed in order of first-in, first-out.

B2i If more than one hearing on a particular date is scheduled for a particular union geographic area, the union at the Regional level may request, and the Employer will agree to a mutually acceptable scheduling adjustment to another union geographic area.

Section 15.4B2d-j provides the order of scheduling for cases from each of the District arbitration dockets. For each scheduled date, a maximum of two (2) primary cases from the District Regular Contract or the District Regular Discipline or a minimum of six (6) cases from the District Expedited dockets will be scheduled. In order to assure that the date is utilized, a list of all pending cases from the appropriate docket will be attached to the scheduling letter listing the primary cases for that date.

B3 Only discipline cases involving suspensions of 30 days or less and those other disputes as may be mutually determined by the parties shall be appealed or referred to Expedited Arbitration in accordance with Section 4C hereof.

B4 Cases appealed or referred to arbitration, which involve removals or suspensions for more than 30 days, shall be scheduled from the appropriate District Regular Discipline docket for hearing at the Regional Level at the earliest possible date in the order in which appealed by the Union or referred.

B5 If a written request is submitted by either party at least thirty (30) days prior to the scheduled hearing date for a case(s) appealed to Regional arbitration, the parties will promptly (normally no later than ten (10) calendar days after the request is received by the other party) conduct pre-arbitration discussions regarding the specified case(s).

A pre-arbitration discussion will be conducted for any grievance for which the union submits a written request at least thirty (30) days prior to the scheduled hearing date.

B6 If either party concludes that a case appealed or referred to Regional Arbitration involves an interpretative 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. The party referring the case to Step 4 shall pay the full costs of the arbitrator for that date unless another scheduled case is heard on that date.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issue(s) to be decided and that party's contention with regard to the issue. A copy of the notice will be provided to the designated management and union officials at the Area/Regional level.

The withdrawal from Regional level arbitration and referral of a grievance to Step 4 can take place at any time from the date of appeal to arbitration until the issuance of the arbitrator's decision. If the parties' representatives at Step 4 determine that no interpretive issue is present in the grievance, it will be rescheduled for arbitration in keeping with the Memorandum of Understanding, Step 4 Procedures, reprinted at the end of this article. The intent of this memorandum is to expedite the hearing process and to prevent the use of Section 15.4B6 as a means of shopping for a new arbitrator.

When a union intervenes in an area level arbitration, it has the right to refer the case to Step 4 of the grievance procedure.

Source: National Arbitration Award Q94C-4Q-C 98062054, Arbitrator C. Snow, dated January 1, 2000.

When complying with the Memorandum of Understanding on Step 4 Procedures, the case is 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.

Sources: Step 4 Grievances A90M-1A-C 94023140/4A-C-93050831, dated November 12, 1998

The withdrawal of a grievance from Regional arbitration and the referral of that grievance to Step 4 are not required to be separate actions. Arbitrator Mittenthal ruled that "the act of referring the case to Step 4 necessarily included withdrawing the case from regional arbitration."

Source: National Arbitration Award H8C-4C-C 12764, Arbitrator R. Mittenthal, dated January 18, 1983.

B7 The arbitrators on each District Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties.

B8 Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level 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.

This provision prohibits either party to an arbitration hearing from seeking a transcript without notifying the other party in advance at the National level. In a National Award, Arbitrator Aaron concluded that this subsection does not preclude either party from ordering a verbatim transcript of a regular arbitration hearing at the regional level without the consent of the other party, so long as reasonable advance notice is provided.

Source: National Arbitration Award H1C-NA-C 52, Arbitrator B. Aaron, dated May 4, 1985.

This provision gives each party the procedural right to file a post-hearing brief after properly notifying the other party and the arbitrator of its intent to do so. Source: National Arbitration Award H4C-3W-C 8590, Arbitrator C. Snow, dated March 31, 1993. To be proper, the NPMHU and the Postal Service agree that the notice must occur prior to the close of the hearing so that both parties are aware of the other party's decision on whether to exercise this right.

A Regional arbitrator has the discretion to permit either party to make a tape recording of the hearing over the objection of the other party. In the instant case, the union sought to make a tape recording to assist in the preparation of its post-hearing brief.

Source: National Arbitration Award H1M-3D-C 42523, Arbitrator J. Harkless, dated May 22, 1986.

B9 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 through the terms of a contract signed by the arbitrator prior to placement on a panel, which provides for reduced fees to arbitrators if their awards are not timely rendered.

A regular regional arbitrator's award is binding only on the installation where the grievance arose and only to the extent that a subsequent grievance involves the same material facts. It may be cited outside the participating installation as persuasive authority only, not binding authority.

Sources: Step 4 Grievances H7M-3W-C 20857, dated January 31, 1990 and H7M-3W-C 19636, dated May 14, 1990

C Regional Level Arbitration Expedited

C1 The parties agree to continue the utilization of an expedited arbitration system for disciplinary cases of 30 days suspension or less which do not involve interpretation of this Agreement and for such other cases as the parties may mutually determine. This system may be utilized by agreement of the National Union and the Vice-President, Labor Relations, or designee. In any such case, the Federal Mediation and Conciliation Service or American Arbitration Association shall immediately notify the designated arbitrator. The designated arbitrator is that member of the District Expedited Panel who, pursuant to a rotation system, is scheduled for the next arbitration hearing. Immediately upon such notification

the designated arbitrator shall arrange a place and date for the hearing promptly but within a period of not more than ten (10) working days. If the designated arbitrator is not available to conduct a hearing within the ten (10) working days, the next panel member in rotation shall be notified until an available arbitrator is obtained.

C2 The parties agree that all cases will be heard in arbitration within 120 days from the date of the grievance appeal to arbitration. If a grievance is not heard in arbitration within the 120 days, the grievance will be scheduled as the first case to be heard on the next available arbitration date. If, one (1) year after the effective date of this Agreement, this hearing requirement is not complied with by a particular District Panel(s) for three (3) consecutive Accounting Periods, the parties will meet to jointly select a sufficient number of additional arbitrators for that panel(s) to ensure compliance with this hearing requirement. Such meetings and addition of arbitrators will continue, as jointly agreed to by the parties, until the panel(s) is in compliance with the hearing requirement.

C3 If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the District Regular Contract/Discipline Arbitration Panel(s), 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.

C4 The hearing shall be conducted in accordance with the following:

C4a the hearing shall be informal;

C4b no briefs shall be filed or transcripts made;

C4c there shall be no formal rules of evidence;

C4d the hearing shall normally be completed within one day;

C4e 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 District Regular Contract/Discipline Arbitration Panel, the case shall be referred to that panel. If the arbitrator, or the parties mutually, refer the case to Regular Arbitration, the parties shall share the costs of the arbitrator for that expedited arbitration date; and

C4f 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.

C5 No decision by a member of the District 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.

C6 The District Expedited Arbitration Panel shall be developed by the National parties, on a geographic area basis, with the aid of the American Arbitration Association and the Federal Mediation and Conciliation Service.

[See MOU, page 191]

An Expedited Arbitration docket is maintained for each District. Separate panels of expedited arbitrators are created for each grouping of Districts. The rules for conducting an expedited hearing are less formal than those for a grievance appealed to regular arbitration. Decisions must be rendered within a significantly shorter time frame than for regular arbitration. While expedited decisions cannot be regarded as a precedent or be cited in any other case, the decisions of expedited arbitrators are final and binding.

Types of grievances which are proper for appeal to expedited arbitration are listed in the Memorandum of Understanding, Expedited Arbitration, reprinted at the end of this article. If the arbitrator or the parties mutually conclude at the expedited hearing that the issues are sufficiently complex or significant to be referred to regular arbitration, the grievance will be so referred.

Section 15.4C3 specifically allows for either party to conclude that issues in an expedited case involving complexity or significance may warrant reference to regular arbitration. Pursuant to this subsection, either party may refer a case and notify the other party of such reference at least twenty-four hours prior to the scheduled time for the expedited arbitration.

Source: Step 4 Grievance G90M-1G-D 94057283, dated April 18, 1996.

D National Level Arbitration

D1 Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

D2 A docket of cases appealed to arbitration at the National level shall be maintained for the Union. 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, and with the exception of priority scheduling hereinafter defined. The parties agree that in each calendar year the Employer may, at its option, elect priority scheduling to the top of the arbitration docket, of up to two cases from the list of disputes it previously initiated pursuant to Article 15.3D, and the Union may, at its option, elect priority scheduling to the top of the arbitration docket, of up to two cases from all cases other than those initiated by the Employer pursuant to Article 15.3D.

National level arbitration is reserved for cases involving interpretive issues. Decisions of National level arbitrators are precedent-setting and binding on Regional level arbitrators.

With the new language in Section 15.3D that allows either party to initiate an interpretive dispute at the National level, the parties have agreed to a scheduling system applicable only to the National arbitration docket, allowing each party to elect priority scheduling of up to two cases each calendar year only from among those cases it initiated under Section 15.3D, and the Union selecting only from all cases other than those initiated by the Employer pursuant to Section 15.3D.

National level arbitration is reserved for cases involving interpretive issues. Decisions of National level arbitrators are precedent-setting and binding on Regional level arbitrators.

In a Letter of Intent reprinted after Article 39, the parties have agreed that the Postal Service will continue to send all National level arbitration scheduling letters and moving papers for all bargaining units to the NPMHU.

Section 15.5 Administration

The parties recognize their continuing joint responsibility for efficient functioning of the grievance procedure and effective use of arbitration. The Employer will furnish to 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 District docket 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.

(The preceding Article, Article 15, shall apply to Mail Handler Assistant employees.)

This section reiterates the joint responsibility of the parties for the efficient functioning of the grievance procedure and effective use of arbitration, to assure that cases are heard in their order of appeal and in the most timely manner possible. Neither party may make unilateral decisions concerning any aspect of the process. As noted 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.

Note that while the Revised Grievance-Arbitration Procedure was discontinued in 2006 negotiations, grievances pending in former test sites as of the effective date of the 2006 National Agreement will continue to be adjudicated under the provisions of the REGAP guidelines.

MEMORANDUM OF UNDERSTANDING

ARTICLE 15 (MAP)

The parties agree to continue piloting the Modified Arbitration Procedure (MAP). Locations for further implementation of the MAP will be subject to mutual agreement of the parties.

This Memorandum of Understanding shall be effective during the term of the **2019** National Agreement.

Question: Can Mod-15 arbitration awards issued under a USPS/APWU Modified Article 15 program be introduced in arbitration by the union when it did not participate in the Mod-15 program?

Answer: The union is not barred by contract language, mutual past practice or USPS/APWU Memoranda of Understanding, from citing and proffering in

arbitration proceedings under Article 15, not as precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU National Agreement by an arbitrator who was informed, at the time of his/her decision, that the award could be cited as binding precedent between the APWU and the USPS in the office from which the award arose. Discretion is vested in the individual arbitrator to accept or reject such "Mod-15" arbitration awards as the union may cite or proffer and, if accepted, to accord such awards whatever persuasive value the individual arbitrator deems appropriate.

Sources: National Arbitration Award B90M-1B-C 94024725/94021081, Arbitrator D. Eischen, dated September 25, 2003 and Step 4 Grievances B90M-1B-C 94024725/94021081, dated November 19, 2003.

LETTER OF INTENT

ARTICLE 15.2 STEP 3

The Arbitration Panel orders the parties to establish a Step 3 Scheduling Task Force to determine the most efficient location in which Step 3 meetings are to be held.

MEMORANDUM OF UNDERSTANDING

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. The case will be scheduled on that arbitrator's next available date (i.e., the next date for which cases have not already been scheduled.) Additionally, if the hearing had opened, the case will be returned to the same stage of arbitration. If the case had not previously been scheduled for an arbitration hearing, it will be given priority scheduling, such that the case will be heard in the same order which would have applied if the case had not been withdrawn and referred. In the event that the case would already have been heard had it not been withdrawn and referred, then the case will be heard as the next case on the appropriate docket.

This Memorandum of Understanding determines the arbitration scheduling of grievances which had previously been appealed to Regional level arbitration and then withdrawn and referred to Step 4 and which were subsequently determined not to involve an interpretive issue. The language assures that adjudication of the grievances will not be unduly delayed by their withdrawal and referral. See discussion under Section 15.4B6 for further discussion of this memorandum.

MEMORANDUM OF UNDERSTANDING

PRE-ARBITRATION DISCUSSIONS

The Arbitration Panel directs the parties to discuss whether to make changes to the pre-arbitration discussion set forth in Article 15.4(B)(5). Such discussions shall include, but are not limited to, the consideration of the following issues:

1. The timing for any pre-arbitration discussions;
2. Whether cases should be placed on a scheduling letter before any such pre- arbitration discussion is held;
3. Procedures to address a refusal by any party to conduct a pre-arbitration discussion; and
4. The process for scheduling cases following the completion of the pre-arbitration discussion.

MEMORANDUM OF UNDERSTANDING

The Arbitration Panel directs the parties to discuss the creation of a pilot program to address issues regarding the number of cases to be placed on a scheduling letter and the withdrawal, postponement, or referral of grievances that have been placed on a scheduling letter for arbitration. Such discussions shall include, but are not limited to, the consideration of the following issues:

1. The number of cases that shall be placed on a scheduling letter;
2. The terms of arbitrator contracts, including the appropriate timeframe in which cancellation fees are owed to the arbitrator; and
3. The circumstances under which one party or the other would be fully responsible for the payment of any cancellation fees.

MEMORANDUM OF UNDERSTANDING

NATIONAL ADMINISTRATIVE COMMITTEE

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to

continue the National Administrative Committee (NAC) to help resolve technical and/or complex disputes that may arise during the course of their National Agreement and may not be amenable to the usual Grievance-Arbitration Procedures established by the National Agreement. The NAC will be used to resolve those disputes jointly identified by the parties without the need to file any grievances. A listing of subjects for consideration in the NAC will be updated by the parties at the national level within 60 days following the effective date of this Memorandum of Understanding. By mutual agreement, the parties at the national level may continue to add subjects to the original listing. The parties will meet within six (6) months of the effective date of this Memorandum of Understanding, as well as every six (6) months thereafter, or more frequently as the need arises, to review the activities of the NAC.

For each subject(s), the Employer and the Union will designate individuals at the national level who will be responsible for discussing and, where possible, for resolving any disputes concerning the referenced subject(s). When a specific subject is under consideration by the NAC, any grievance(s) concerning that identified subject will be removed from the Grievance/Arbitration Procedure and forwarded to the NAC. When a grievance(s) has been filed and the subject of that grievance subsequently comes under consideration by the NAC, such grievance(s) will be removed and forwarded to the NAC.

The national level designees will be responsible for meeting regularly to resolve pending disputes. No special forms, appeals or paper work will be necessary to present a dispute to the NAC. When the designees cannot agree upon a resolution, either party may declare an impasse. Each party will identify the issue in dispute in writing within 30 days after the declared impasse on the subject. The identified dispute will then be placed on the appropriate arbitration docket.

The parties will update specific instructions concerning the NAC within 60 days after the effective date of this Memorandum of Understanding.

This Memorandum of Understanding shall be effective during the term of the **2019** National Agreement.

The National Administrative Committee (NAC) is designed to assist in the timely resolution of grievances which involve technical and/or complex disputes which may not be suitable for handling in the grievance-arbitration procedure. Subjects proper for consideration by the NAC are jointly identified by the parties at the National level.

MEMORANDUM OF UNDERSTANDING

INTERVENTION INITIATIVE

The parties agree to establish at the National level an "Intervention Protocol" to facilitate resolution of contractually-based disputes at the local level which contribute to contentious labor-management relations. Interventions are intended to analyze the underlying causes of such ongoing contractual disputes and to reach resolution through cooperative efforts.

The parties agree that all efforts initiated under this agreement will be coordinated by the National parties and the respective local and/or Area/Regional management and union officials who are responsible for ensuring that such problems are properly resolved.

Either party at the local level may advance an individual request for intervention to their respective National representatives. An intervention will be initiated contingent upon mutual agreement between the National parties. It is agreed that the following rationale, while not intended to be all-inclusive, may be used to support a request for intervention:

- ongoing or repetitive labor-management problems related to the local parties' inability to jointly settle or to identify the root cause of a contractually-based dispute(s);

- continued failure of either party to comply with the grievance-arbitration procedures of Article 15;

- excessive use of official time or excessive denial of official union time; and

- excessive cancellation of arbitration dates.

This Memorandum of Understanding shall be effective during the term of the **2019** National Agreement.

This Memorandum of Understanding provides for National level consideration of intervention in any site where either of the local parties determines that contractual disputes are contributing to poor labor-management relations. Intervention efforts will be designed to resolve the underlying causes of the disputes and to enable the local parties' to deal effectively with each other.

MEMORANDUM OF UNDERSTANDING

PROCESSING OF POST-SEPARATION AND POST-REMOVAL GRIEVANCES

The parties agree 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.

Additionally, the processing and/or arbitration of a non-disciplinary grievance is not barred by the final disposition of the removal of the grievant, if that non-disciplinary grievance is not related to the removal action.

(The preceding MOU, Processing of Post-Separation and Post-Removal Grievances, shall apply to Mail Handler Assistant employees.)

This Memorandum of Understanding governs the processing of grievances after a grievant is separated from the Postal Service and the processing of non-disciplinary grievances not related to a removal action after final disposition of a grievant's removal.

MEMORANDUM OF UNDERSTANDING

ARTICLE 15 BACK PAY AWARDS

The parties agreed that every effort should be made to assure that grievance settlements involving monetary remedies, back pay awards and scheduled payments are not unreasonably delayed after the receipt of all information necessary for their processing, including information needed from the individual employee.

The parties agreed to meet during the first six (6) months of the term of the new Agreement in an effort to identify methods to avoid unnecessary delays in the processing of grievance settlements involving monetary remedies, back pay awards and scheduled payments. Management also committed to address any significant delays in such payments brought to its attention by the Union at the national level, including through the National Administrative Committee, and to provide the Union with a written response thereto.

Delays in the issuance of back pay awards are a concern to both parties. This is a proper subject for the National Administrative Committee.

MEMORANDUM OF UNDERSTANDING

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.

(The preceding MOU, Interest on Back Pay, shall apply to Mail Handler Assistant employees.)

MEMORANDUM OF UNDERSTANDING

LANGUAGE CHANGES DUE TO ORGANIZATIONAL STRUCTURE CHANGES

Whenever the **2019** National Agreement calls for meetings at the Area level, including Step 3 grievance meetings under the grievance-arbitration procedure set forth in Article 15, such meetings will be held in the cities where the Postal Service's former Regional Headquarters were located prior to the Postal Service organizational structure change of 1992 -- i.e., Windsor, Connecticut; Philadelphia, Pennsylvania; Memphis, Tennessee; Chicago, Illinois; or San Bruno, California. These locations shall remain unchanged during the term of the 2019National Agreement, unless the parties mutually agree otherwise.

In addition, whenever the **2019** National Agreement refers to "the appropriate management official at the LR Service Center," it means that a notice or other information that is to be provided to that management official should be sent to the LR Service Center**.** This reference also applies to the documents relating to the Modified Arbitration Procedure and Modified Article 15 procedures. The current address of the LR Service Center is:

National Service Center
U.S. Postal Service
P.O. Box 25398
Tampa, FL 33622-5398

In addition, this letter is meant to confirm that, whenever language changes have been made in the **2019** National Agreement to reflect those changes made during the Postal Service's organizational structure change of 1992, the Postal Service's Area level shall serve as the counterpart to the Union's Regional level.

This MOU specifies the location for Step 3 meetings and the address for appeals to Step 3 and to Regional level arbitration.

LETTER OF INTENT

DISTRICT ARBITRATION PANELS

The parties agree that the arbitration panels referenced in Article 15.4 will be constituted on a District- or grouping of Districts-basis, as provided hereunder. Within each grouping, arbitrators may be appointed to the District Regular Contract/Discipline Panel, to the District Expedited Panel or to a combination of both. In the event that a District is discontinued and/or combined with one or more other Districts, the arbitrators residing on panels for that District will be added to the panels of the gaining District(s) unless otherwise agreed to by the parties at the National level.

EASTERN AREA	Appalachian
	Central PA
	Ohio Valley
	Kentuckiana
	Northern Ohio
	Philadelphia Metropolitan
	South Jersey
	Tennessee
	Western NY
	Western PA
CAPITAL METRO AREA	Atlanta
	Baltimore
	Northern Virginia
	Capital
	Richmond
	Greater South Carolina
	Mid-Carolinas
	Greensboro
GREAT LAKES AREA	Chicago
	Central Illinois
	Detroit
	Greater Michigan
	Greater Indiana
	Gateway
	Lakeland
NORTHEAST AREA	Albany
	Caribbean
	Connecticut Valley
	Greater Boston
	Long Island
	New York City
	Northern New England

	Northern New Jersey
	Triboro
	Westchester
PACIFIC AREA	Bay-Valley
	Honolulu
	Los Angeles
	Sacramento
	San Diego
	San Francisco
	Santa Ana
	Sierra Coastal
SOUTHERN AREA	Alabama
	Arkansas
	Dallas
	Ft. Worth
	Houston
	Louisiana
	Mississippi
	Gulf Atlantic
	Oklahoma
	Rio Grande
	South Florida
	Suncoast
WESTERN AREA	Alaska
	Arizona
	Central Plains
	Colorado-Wyoming
	Dakotas
	Hawkeye
	Mid-America
	Nevada-Sierra
	Northland
	Portland
	Salt Lake City
	Seattle

Three (3) dockets are established in each District for all grievances appealed to Regional level arbitration.

Additionally, two (2) separate panels of arbitrators are established in Districts or groupings of Districts to hear grievances on those dockets:

Arbitrators on the District Regular Contract/Discipline Panel will hear cases on the District Regular Contract Docket and the District Regular Discipline Docket;

Arbitrators on the District Expedited Panel will hear cases on the District Expedited Docket.

Individual arbitrators may be appointed to both panels.

The decision to establish the panels for a specific District or for a combination of Districts, as listed in the MOU, was made based on a series of factors, including the volume of cases pending in each District, geography, and the anticipated availability of arbitrators.

The language recognizes that, unless the National parties agree otherwise, if a District is discontinued and/or combined with one or more other Districts, the arbitrators residing on panels for that District will be added to the panels of the gaining District(s).

LETTER OF INTENT

RE: EXPECTATIONS OF ARBITRATORS

The parties recognize and acknowledge the importance of bringing closure to workplace disputes between labor and management as expeditiously as possible. During discussions held regarding Article 15 of the National Agreement, the parties reaffirmed their commitment to ensure the efficiency of the grievance-arbitration procedure. The parties mutually identified the following expectations for Arbitrators serving during the term of the **2019** National Agreement to hear cases at the Area/Regional level:

In accordance with the terms, timelines and conditions articulated in the contract effectuating their appointment to the Joint USPS-NPMHU Arbitration Panel, Arbitrators should expect to:

- be scheduled for a minimum of six (6) hours of hearing time on each arbitration date.
- hear more than one (1) case on each arbitration date.
- hear cases in the order of their appearance on the scheduling letter, then move to other cases pending within the primary location, and finally, proceed to the appropriate back-up list if the initial docket is depleted prior to hearing, unless a deviation from the first-in, first-out sequence has been

agreed to by both advocates in accordance with the provisions articulated in Article 15. 4.

- produce clear arbitration awards, ensuring both brevity and ease of understanding, by limiting the recitation of contract language to only citations that are relevant to the fact-circumstances of the case, without reproduction of unnecessary and lengthy quotes from the USPS-NPMHU National Agreement or other USPS handbooks or manuals.

- ensure fairness to the parties, especially the grievant, by issuing punctual awards as soon as possible following the close of the hearing record.

In keeping with our joint responsibility to ensure the effective use of arbitration, it is the position of the parties that canceled or lost arbitration hearing dates should be a rare occurrence. The parties are to be diligent in exerting their best efforts to ensure that hearing dates are effectively utilized to the maximum extent possible.

This Letter of Intent is intended to clarify the parties' expectations for the conduct of arbitration hearings, including the duration of the hearing, the number and order of cases to be heard, and the content and timeliness of arbitration decisions. It is designed for either party to submit to the arbitrator at the hearing if any questions regarding the conduct of the hearing are raised by that arbitrator or the other party's advocate.

In order to maintain the integrity of the arbitral process, the parties and their agents, employees, and representatives should avoid even the appearance of impropriety when making contact with an arbitrator. The parties must maintain an arms length relationship with the arbitrator at all times. In this regard, 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.

Source: MOU between USPS and NPMHU, dated April 28, 1988.

MEMORANDUM OF UNDERSTANDING

EXPEDITED ARBITRATION

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree to hear grievances concerning the following issues in the Expedited Arbitration forum.

1. Restricted Sick Leave;

2. Step Withholding;

3. Employee Requests for Leave;

4. AWOL;

5. Request for Medical Certification;

6. Supervisor performance of bargaining unit work in 1.6A offices;

7. Bypass of employee(s) on the Overtime Desired List;

8. Holiday scheduling;

9. Designation of successful bidder;

10. Movement outside of bid assignment area;

11. Higher level assignments;

12. Employee claims;

13. Employer claims (Letters of Demand of $3000 or less);

14. Any other grievance mutually agreed upon by the parties at Step 3.

This Agreement does not change either party's right to refer an expedited case to regular arbitration in accordance with the applicable procedures of Article 15, Section 4.C., of the National Agreement.

This Memorandum of Understanding relates to Section 15.4C. It allows for referral from expedited to regular arbitration where the arbitrator or the parties mutually agree that the grievance is of sufficient complexity or significance to warrant such referral; please refer to the discussion under Section 15.4C6 for further information regarding the procedures.

LETTER OF INTENT

LETTER ON ARTICLE 15 ISSUES

John F. Hegarty
National President
National Postal Mail Handlers Union, AFL-CIO
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiations over the terms of the 2006 National Agreement between the National Postal Mail Handlers Union and the U.S. Postal Service, the parties reached the following understandings with regard to the changes made to Article 15.3D and Article 15.4D2.

1. Any dispute initiated by the Employer at the National level under Article 15.3D shall not include any issue that previously has been appealed by the Union to the National arbitration docket.

2. If the parties are unable to resolve a dispute initiated by the Employer at the National level under Article 15.3D, then the Union has the option to accept the Employer's position on that issue or appeal the issue to National arbitration within existing contractual time limits. The Employer has no right to appeal any dispute or issue to National arbitration.

3. If either the Employer or the Union, or both, do not opt to elect priority scheduling to the top of the National arbitration docket for up to two cases in any given calendar year, then those available arbitration hearing dates will revert to the dates subject to the preexisting scheduling standards – i.e., cases on the docket will be scheduled for arbitration in the order in which appealed, unless otherwise agreed to by the parties.

4. Cases on the National arbitration docket will be scheduled for arbitration with no less than one hundred and fifty (150) days notice to both parties measured from the date of scheduling to the date of the initial arbitration hearing, unless the parties mutually agree to expedite a particular hearing date.

5. Any local grievances filed on the specific interpretive issues pending on the National arbitration docket shall, upon mutual agreement, be held in abeyance at **Step 3** until a resolution of the national interpretive dispute. Said grievances should not be referred/appealed to Step 4 merely because the parties cannot agree on whether the specific interpretive issue is fairly presented in the local grievance.

6. Ordering of those cases elected for priority scheduling shall be accomplished in the following manner: during each calendar quarter, the first case to be heard of the possible four such cases will be that case which has the earliest appeal to arbitration date. If this first case was selected for priority scheduling by the Union, the second case will be the Employer's priority case with the earlier appeal date, the third will be the Union's remaining case, and the fourth the Employer's remaining case. If the first case (the case with the earliest appeal date of the parties' four cases) is a case selected for priority scheduling by the Employer, the ordering process described above will be reversed. Unless the parties mutually agree otherwise, any priority cases remaining on the docket from prior calendar year(s) shall remain in their respective positions on the docket, with the newly-selected priority cases scheduled behind them in the above-described order.

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The procedures outlined in this letter relate to the language of Sections 15.3D and 15.4D2. Management cannot initiate a dispute which includes an issue previously appealed to National level arbitration by the Union, nor does Management have an independent right to appeal a dispute to National level arbitration. If the parties are unable to reach agreement in a dispute initiated by Management, the Union must either appeal that dispute to National arbitration or accept Management's position. Procedures for priority arbitration scheduling of two of each parties' cases during each calendar year are also outlined. The parties may mutually agree to hold local grievances at **Step 3** when they involve specific interpretive issues pending on the National arbitration docket.

ARTICLE 16
DISCIPLINE PROCEDURE

Section 16.1 Statement of Principle

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. On the other hand, 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 given 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 discipline that is usually administered, as well as to the seriousness of the employee's past record?** The following is an example of what arbitrators may consider 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 judgment 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 – remember that discussions are appropriate for first offenses of a minor nature - 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 discipline is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

Examples of Behavior

Section 16.1 lists several examples of misconduct that may constitute just cause for discipline. Some Postal Service 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, arbitrators generally have recognized that these behaviors are intended as examples and that, in any event, even if a 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, etc. 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 16.1'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 generally states the remedy in the award.

Back Pay

The implementing regulations concerning the back pay provided for in this section are found in the Employee and Labor Relations Manual, 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. See the section on Article 15 of this document.

Question: May management unilaterally implement modified disciplinary programs without bargaining with the union over such programs?

Answer: In a case dealing with PAC, N-DEM and N-TOL modified programs initiated in the prior Central Region, Arbitrator Zumas held that those programs affected several steps of the disciplinary process, drastically altered the progressive nature of the disciplinary process and were of such magnitude not to

be covered by an established past practice justification. He ruled that the unilateral implementation of those programs and the refusal to bargain over them with the union violated the National Agreement.

Source: National Arbitration Award H1M-NA-C 99, Arbitrator N. Zumas, dated May 11, 1987.

Disciplinary procedures for MHAs are outlined in the *Memorandum of Understanding Re Mail Handler Assistant Employees*, Section 3.A. (Other Provisions, Article 15). That MOU provides that MHAs who have completed either 90 work days or a 120 calendar day period (whichever comes first) within the preceding six months may be disciplined only for just cause and that such discipline is subject to the grievance-arbitration procedure. The parties also agree that an MHA who has not completed a period of either 90 work days or 120 calendar days within the preceding six months does not have access to the grievance-arbitration procedure if disciplined. Furthermore, in the case of removal for cause within the term of an appointment, an MHA is entitled to advance written notice of the charges against him/her, in accordance with the Fishgold award.

Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.

Source: Step 4 Grievance F11M-1F-C 14166312, F11M-1F-D 15006539, F11M-1F-C 15095101, F11M-1F-D 15190470, J11M-1J-D 15053696, F11M-1F-C 15113951, B11M-1B-D 15242839, F11M-1F-D 15299381, J11M-1J-D 14338311, F11M-1F-C15095176 dated February 8, 2016.

Section 16.2 Discussions

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 a 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 and they may not 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.

Source: Step 4 Grievance H4C-3P-D 1531, dated August 1, 1985.

There are a number of Step 4 decisions regarding discussions. They have resolved the following issues:

- Discussion notations made by a supervisor are strictly personal and are not to be considered official Postal Service documents. They are not to be made a part of a central record system to which other individuals have access.

  Source: Step 4 Grievance H8C-5G-C 14672, dated March 17, 1981.

- When a supervisor discussed an employee’s need to improve attendance, the discussion was properly held in private. Under these circumstances, the grievant was not entitled to have a steward present.

  Source: Step 4 Grievance H8C-3W-C 25394, dated May 7, 1981.

- Discussions shall not be noted on the reverse of PS Form 3972.

Source: Step 4 Grievance H4C-4G-20241, dated November 16, 1987.

Question: Can supervisors exchange written notes regarding a discussion with an employee with other supervisors?

Answer: No. Supervisors will not exchange written notes regarding discussions. However, a supervisor of a former employee may orally exchange information relative to discussions with the employee’s current supervisor.

Source: Step 4 Grievance H4C-3W-C 12019, dated April 9, 1986.

Question: Can the union be given copies of a supervisor's personal notes that were taken during a discussion?

Answer: No. When requested, the union will be given the date and subject of a discussion, providing that the discussion was relied upon by the supervisor in a disciplinary action to establish that the employee had been made aware of his/her obligations and responsibilities.

Source: Step 4 Grievance H4C-5C-C 45726, dated July 27, 1988.

Question: What is the proper conduct of a supervisor and an employee during discussions?

Answer: During a discussion held between a supervisor and an employee, both parties are expected to conduct themselves in a professional manner at all times. The purpose of such discussions is to give the supervisor the opportunity to bring to the attention of an employee, through non-disciplinary means, a minor offense committed by the employee. Clearly, the intent of a discussion is to provide the supervisor and the employee an informal setting in which both parties may address the minor offense.

Source: Step 4 Grievance H7M-3R-C 2128, dated March 7, 1988.

Section 16.3 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.

[See MOU, page 192]

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 16.10. National Arbitrator Fasser held that a letter of warning which fails to advise the recipient that it may be appealed through the grievance procedure is procedurally deficient.

Source: National Arbitration Award NB-E-5724, Arbitrator P. Fasser, dated February 23, 1977.

Question: Can a modified disciplinary action resulting in a letter of warning meet the conditions of the Memorandum of Understanding, Re: Purge of Warning Letters?

Answer: Yes. If a suspension is modified by the parties or an arbitrator resulting in a letter of warning, such letters of warning will not be considered to have been issued in lieu of a suspension or a removal action pursuant to Item 3 of the

Memorandum of Understanding, Re: Purge of Warning Letters.

Source: Letter William J. Downes, Director, Office of Contract Administration to Joseph N. Amma, Jr., Director, Contract Administration, NPMHU, dated December 17, 1987.

Section 16.4 Suspensions of Less Than 14 Days

In the case of discipline involving suspensions of less than fourteen (14) days, 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, but that such suspension shall be served while on duty with no loss of pay (no-time-off suspension). No-time-off suspensions shall be considered to be of the same degree of seriousness, and will satisfy the same step in the pattern of progressive discipline as the time-off suspension being replaced. As such, no-time-off suspensions are equivalent to the previously issued time-off suspensions as an element of past discipline.

Question: Can a suspension of 14 or more days be reduced to a time-off suspension of less than 14 days?

Answer: No. Suspensions of less than 14 days must be no-time-off suspensions effective with the 1998 National Agreement. The parties agreed that any suspension of less than 14 days will be served on the clock. If a longer suspension is reduced to less than 14 days, it takes on the characteristics of the shorter suspension which, by definition in this section, is no-time-off.

Question: Is there a Postal Service policy regarding issuance of suspensions of less than five working days?

Answer: Yes. Postal Service policy has established that letters of warning should be utilized in lieu of suspensions of less than five working days. Where a suspension of five days or more is under consideration to be administratively reduced to a period of four days or less, the reduction should be to a letter of warning. However, agreement can be reached in settlement of a grievance that results in a suspension of less than five working days.

Source: Memorandum, SAPMG Darrell F. Brown, dated February 15, 1974.

Section 16.5 Suspensions of 14 or More Days or Discharge

In the case of discipline involving suspensions of fourteen (14) days, 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 fourteen (14) calendar days during which fourteen (14)-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer. However, if the Union or

the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the **effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.**

In the case of suspensions of more than fourteen (14) days, or 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 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 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.

Mail Handlers must be given fourteen (14) calendar days advance written notice prior to serving a suspension of 14 days. (As of April 10, 2002, the effective date of the 2000 National Agreement, the notice period is aligned with the time limits for initiating a grievance regarding the suspension.) 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 16.6 and 16.7.

Question: Under the new 2019 agreement, when does an employee begin serving a 14-Day Suspension?

Answer: If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2, the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Where an employee begins serving a suspension before the issuance of a written Step 2 decision of a grievance properly appealed under this section, the appropriate remedy is to rescind the suspension and make the grievant whole. Note that, as of this writing, the parties at the National level have an ongoing dispute regarding the Postal Service's right to reissue the suspension to correct an administrative error.

Source: Step 4 Grievances D90M-1D-D 94049865, dated June 26, 1996; A90M-1A-D 96015486 and B90M-1B-D 94029660, dated July 31, 1996.

Mail Handler craft employees 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 16.6 and 16.7.

In a 2009 award, National Arbitrator Eischen concluded that "a Step 2 decision issued by the Postal Service after [a] grievance [challenging a 14-day suspension] has been progressed properly to Step 3 in accordance with the 'deemed to move' provisions of Article 15.3.C, because of failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), has no validity, force or effect under the last sentence of ¶ 2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement" (emphasis in original**).**

Source: National Arbitration Award I94M-1I-C 98072898, Arbitrator D. Eischen, dated Jan. 9, 2009.

Issues concerning the MSPB appeal rights afforded preference eligibles are discussed in Section 16.9.

When an employee receives a proposed letter of removal, the time limits provided for in Article 15 (Section 15.2) run from the date of the proposed removal notice and not the decision letter.

- Once a grievance on a notice of proposed removal is filed, it is not necessary to also file a grievance on the decision letter.

- Receipt of a notice of proposed removal starts the 30 day advance notice period in Section 16.5 of the National Agreement.

Source: Step 4 Grievance H4C-3S-D 44197, dated July 17, 1991.

Question: How is the notice period for issuance of discipline computed?

Answer: The parties have agreed that for purposes of computing the period of notice required prior to the imposition of various disciplinary measures, the notice

period is deemed to begin on the calendar day following the date upon which the letter of notification is received by the employee.

Source: Step 4 Grievance H4N-4A-D 30730, dated February 5, 1989.

Section 16.6 Indefinite Suspension 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.

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 6B 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 16.5 of this Article.

This section deals with indefinite suspensions in crime situations and provides the following:

- The full 30-day notice is not required in such cases. (See also Section 16.5)

- Just cause of an indefinite suspension is grievable and an arbitrator has the authority to reinstate and make whole. National Arbitrator Garrett opined 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.

Source: National Arbitration Award NC-NAT-8580, Arbitrator S. Garrett, dated September 29, 1978.

- If the USPS returns an employee who was on an indefinite suspension to pay status, after further investigation or after the resolution of the criminal charges against the employee, the employee is entitled to back pay for the period that the indefinite suspension exceeded seventy (70) days, so long as the employee was otherwise available for duty. The indefinite suspension and entitlement to the first 70 days of pay would remain subject to the grievance provisions as stated in Section 16.6B.

- During an indefinite suspension, the employer can take final action to remove the employee and such removal must be for just cause and subject to Section 16.5.

Section 16.7 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 (nonpay 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.

An employee placed in an off-duty status under this Section may utilize his or her accrued annual leave during this period.

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 notice of the reasons within a reasonable period of time. Arbitrator Mittenthal wrote as follows regarding this issue:

> 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 the 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.

Source: National Arbitration Award H4N-3U-C 58637/59518, dated August 3, 1990.

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 Section 16.7 depends upon the nature of the "emergency". In Award 58637/59518, referenced above, Arbitrator Mittenthal further noted:

> 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. . . 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 discharges the employee, the emergency action taken under this section should be grieved separately from the later disciplinary action.

Section 16.8 Review of Discipline

A 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, in a signed and dated writing, by the installation head or designee.

B In associate 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, in a signed and dated writing, 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, the discipline must be reviewed and concurred in by a manager who is a higher level than the initiating or issuing supervisor. The act of review and concurrence must take place prior to the issuance of the discipline. This provision requires that there be a written record of concurrence.

In a case involving the question of whether only the "immediate supervisor" would normally issue discipline to an employee, National Arbitrator S. Das ruled that "issuance of attendance-related discipline by an attendance control supervisor at a particular facility, when the Postal Service deems that to better meet the needs of the Service, does not conflict with the interpretation of Article 16.8 . . ." He noted further that imposition of a suspension or discharge had to meet the review and concurrence requirements and otherwise be consistent with Section 16.1 and any other applicable contractual provisions.

Source: National Arbitration Award Q98C-4Q-C 01059241, Arbitrator S. Das, dated July 7, 2006.

A National Level arbitration award has provided further guidance relating to the meaning of Section 16.8 when it is proposed to suspend or discharge an employee.

The following actions do not constitute a violation of the contract language:

> The initiating or issuing official consults, discusses, communicates with or jointly confers with the higher level reviewing authority before deciding to propose suspension or discharge;
>
> The higher level reviewing authority does not conduct an independent investigation, but rather relies upon the record submitted by the initiating or issuing official when reviewing and concurring with the proposed suspension or discharge.

Each of the following actions constitutes a substantive violation of the contract language and requires invalidation of the discipline and a remedy of reinstatement with "make whole" damages:

The initiating or issuing official receives a “command decision” from higher level authority to impose a suspension or discharge;

The decision to impose the suspension or discharge is made jointly by the initiating and higher level reviewing officials;

Either the initiating or reviewing official fails to make an independent substantive review of the evidence prior to imposition of a suspension or discharge.

The following action clearly constitutes a procedural violation of the contract language, for which an arbitral remedy might well be appropriate, but it is not so clear that such a violation, standing alone, would invalidate the disciplinary action and require reversal and reinstatement in every case. Rather, Regional arbitrators remain free to exercise their own best judgment as to whether, in the facts and circumstances of the individual case, such a violation requires reversal of the disciplinary action or some other remedy:

There is no evidence of written review and concurrence prior to the imposition of a suspension or discharge.

Source: National Arbitration Award E95R-4E-D 01027978, Arbitrator D. Eischen, dated December 3, 2002.

Section 16.9 Veterans' Preference

A 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 will be deemed to have waived further access to the grievance arbitration procedure beyond Step 3 under any of the following circumstances:

1. If an MSPB settlement agreement is reached.

2. If the MSPB has not yet issued a decision on the merits, but a hearing on the merits before the MSPB has begun.

3. If the MSPB issues a decision on the merits of the appeal.

Question: Can a preference eligible be placed on an off duty status (without pay) by the employer?

Answer: Yes. However, if a preference eligible remains in an off duty status (without pay) for more than fourteen (14) days, the employee is entitled to MSPB appeal rights.

B. In the event the grievance of a preference eligible is due to be scheduled in accordance with Article 15, Section 4, and the preference eligible has a live MSPB appeal on the same action, the parties will not schedule the grievance for arbitration until a final determination is reached in the MSPB procedure. If the grievance is not waived under Section 16.9A1, 2 or 3 above, the case will be scheduled promptly for arbitration. Should the grievance ultimately be sustained or modified in arbitration, the preference eligible employee will have no entitlement to back pay under the National Agreement for the period from the date the case would have been scheduled for arbitration and the date it is actually scheduled for arbitration.

Grievances of preference eligible employees who have a live MSPB appeal on the same action will not be scheduled for arbitration until a final determination is reached in the MSPB procedure. Note the last sentence of Section 16.9B waives liability for the period from the date the case would have been scheduled for arbitration and the date it is actually scheduled for arbitration.

EEO dual/filings — no bar to arbitration. Section 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.

Source: National Arbitration Award D90N-4D-D 95003945, Arbitrator C. Snow, dated January 1, 1997.

Section 16.10 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, a 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.

[See Memos, pages 193-195]

(The preceding Article, Article 16, shall apply to Mail Handler Assistant employees to the extent provided in the MOU Re: Mail Handler Assistant employees.)

(Additional discipline procedure provisions regarding Mail Handler Assistant Employees are found in the MOU RE: Mail Handler Assistant Employees.)

In 2020, in a decision addressing the Postal Service's use of an MHA's disciplinary record after conversion to career, National Arbitrator Shyam Das concluded that "discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may not be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status." Only one narrow exception may exist to this new rule: where an MHA is subject to a notice of removal at the time the individual otherwise would be converted to a career position, that removal process might have to be completed before the employee is converted to career.

Source: National Arbitration Award B11M-1B-C 16189293 & J11M-1J-D 16441426, Arbitrator S. Das, dated October 14, 2020.

Question: Are there procedures for maintaining disciplinary records and listing past elements in disciplinary actions?

Answer: All records of totally overturned disciplinary actions will be removed from the supervisor's personnel records as well as from the employee's Official Personnel Folder.

If a disciplinary action has been modified, the original action may be modified by pen and ink changes so as to obscure the original disciplinary action in the employee's Official Personnel Folder and the supervisor's personnel records, or the original action may be deleted from the records and the discipline reissued as modified.

When listing past elements in a disciplinary action, only the final action resulting from a modified disciplinary action will be included, except where modification is the result of a "last chance" settlement, or where the discipline is to be reduced to a lesser penalty after an intervening period of time and/or certain conditions are met.

Source: Step 4 Grievance H4C-5R-C 43882, dated August 17, 1988.

Question: May discipline which has been fully rescinded be cited or considered in a subsequent disciplinary action?

Answer: No. When a notice of discipline is fully rescinded, whether by settlement, arbitration award or independent management action, that disciplinary action is deemed not to have been "initiated" and may not be cited or considered in any subsequent disciplinary action.

Source: Step 4 Grievance H4N-5G-D 7167, dated January 5, 1989.

Question: Can management list disciplinary actions which are over two years old as aggravating factors in a notice of proposed removal, even though the employee had received no discipline for a period of two years?

Answer: No. Such discipline cannot be considered or cited in a subsequent disciplinary action. However, management takes the position that it is not precluded from introducing such prior disciplinary action for purposes of rebuttal or impeachment in the grievance procedure, in arbitration, or in other forums of appeal. (Note that, as of this writing, the parties at the National level have an ongoing dispute regarding management's use of prior disciplinary action for rebuttal or impeachment purposes.)

Source: Pre-arbitration Settlement H4T-5D-D 15115, dated September 7, 1993.

Question: Should outdated disciplinary action "cover letters" be removed from the supervisor's personnel records?

Answer: "Cover letters" or notations concerning outdated disciplinary notices or decision letters, and the requests for removal of such from the employee's official personnel folder will be removed from and not maintained in the supervisor's personnel records.

Source: Pre-arbitration Settlement H1M-3A-C 14019, dated February 22, 1985.

Question: Can an employee request to have a disciplinary notice or decision letter removed from his/her Official Personnel Folder?

Answer: Yes. Upon the employee's written request, a 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.

MEMORANDUM OF UNDERSTANDING

PURGE OF WARNING LETTERS

The parties agree that there will be a one-time purge of Official Disciplinary Letters of Warning from the personnel folders of all employees represented by the National Postal Mail Handlers Union. To qualify to be purged, a Letter of Warning must:

1. Have an issue date prior to the effective date of the **2019** National Agreement between the parties;

2. Have been in effect for 6 months or longer and not cited as an element of prior discipline in any subsequent disciplinary action; and

3. Not have been issued in lieu of a suspension or a removal action.

All grievances associated with discipline that is purged as a result of this Memorandum shall be withdrawn.

(The preceding MOU, Purge of Warning Letters, shall apply to Mail Handler Assistant employees.)

MEMORANDUM OF UNDERSTANDING

TASK FORCE ON DISCIPLINE

The parties agree to establish at the national level a "Task Force on Discipline." The Task Force shall have three (3) representatives of the Union and three (3) 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 shall convene periodically but at least quarterly, at such times and at such places as it deems appropriate during the term of the **2019** National Agreement. No action or recommendations may be taken by the Task Force except by an agreement of the parties.

Nothing herein shall preclude any of the parties from exercising the rights which they may otherwise have.

MEMORANDUM OF UNDERSTANDING

MODIFIED DISCIPLINE PROGRAMS

The parties agree to continue with the testing of Modified Article 16. The purpose and format of Modified Article 16 shall remain the same as it was originally developed under the Task Force on Discipline, unless changed by the Task Force. Those sites which are currently involved in the testing of Modified Article 16 shall continue with the testing, unless the local parties notify the Task Force

on Discipline to the contrary, in accordance with the stated guidelines as developed by the Task Force.

This Memorandum of Understanding will terminate upon the expiration of the **2019** National Agreement.

MEMORANDUM OF UNDERSTANDING

ROLE OF THE INSPECTION SERVICE IN LABOR RELATIONS MATTERS

The parties recognize the role of the Postal Inspection Service in the operation of the Postal Service and its responsibility to provide protection to our employees, security to the mail and service to our customers.

Postal Inspection Service policy does not condone disrespect by Inspectors in dealing with an individual. The Postal Inspection Service has an obligation to comply fully with the letter and spirit of the National Agreement between the United States Postal Service and the National Postal Mail Handlers Union, and will not interfere in the dispute resolution process as it relates to Articles 15 and 16.

The parties further acknowledge the necessity of an independent review of the facts by management prior to the issuance of disciplinary action, emergency procedures, indefinite suspensions, enforced leave or administrative actions. Inspectors will not make recommendations, provide opinions, or attempt to influence management personnel regarding a particular disciplinary action, as defined above.

Nothing in this document is meant to preclude or limit Postal Service management from reviewing Inspection Service documents in deciding to issue discipline.

MEMORANDUM OF UNDERSTANDING

STEP INCREASE, UNSATISFACTORY PERFORMANCE

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 **2019** National Agreement.

MEMORANDUM OF UNDERSTANDING

ARTICLE 16 PRIVACY IN THE DISCIPLINARY PROCESS

The parties agree with the principle that when it is necessary for a supervisor to take corrective action under the discipline procedure, such action between the supervisor and the employee should be private and should be conducted in an environment which does not compromise that privacy. While the use of an office in which only the participants are present is the preferred situation, it is recognized that other alternatives may be necessary.

Regardless of the situation, we agree that disciplinary matters between a supervisor and an employee must be done in a manner that would not compromise this principle.

The use of a witness to confirm the delivery of a disciplinary notice or, when appropriate, the presence of a steward when requested by the employee, is not considered a violation of this principle.

ARTICLE 17
REPRESENTATION

Section 17.1 Stewards

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

Stewards are provided with important rights and responsibilities by the terms of the National Agreement and the National Labor Relations Act. Management is required to cooperate with stewards in various ways, as outlined hereunder, as they perform their grievance-handling duties.

The specific steward rights and responsibilities set forth in Article 17 are supplemented by other provisions of the National Agreement, including Article 6 (Section 6.4D)[seniority in layoff or reduction in force]; Article 14 (Section 14.2A)[safety]; Article 15 [grievance handling]; Article 27 (Section 27.2)[employee claims]; Article 31 (Section 31.3)[information requests]; Article 37 (Sections 37.2 and 37.5)[inspection of lockers and use of USPS telephones]; and the Memorandum of Understanding Re. Improper By-Pass Overtime.

Section 17.2 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 shall be in accordance with the formula as hereinafter set forth:

Employees in the bargaining unit 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

At each installation, the Union may certify one representative employed at that installation to represent employees in all work locations and on all tours in complaints involving issues of general application in that installation. Such complaints involve tour-wide and/or installation-wide issues, including, but not limited to, local policy issues, casual employment/utilization and Acts of God. The activities of such Union representative shall be in lieu of a steward designated under the formula above and shall be in accordance with Section 17.3. Payment, when applicable, shall be in accordance with Section 17.4.

The selection and appointment of stewards is the sole and exclusive function of the union. This section provides the formula to determine the number of stewards that a local union may appoint; the number of regular stewards appointed may be less than the number provided by the formula, but it cannot be greater than that number. When appointing stewards, the union must certify those stewards to the employer in writing and must specify the work location(s) for which each steward will provide representation; only one steward may be certified for each work location. Alternate stewards may be appointed to cover absences of regular stewards.

Source: Step 4 Grievance H1M-4K-C 7453, dated August 21, 1985.
This language provides for the filing of a single grievance to cover employees across work locations/tours when the alleged violation has an impact on all or most of the employees in an installation. This provision allows for the filing of a single grievance when the circumstances impact a group of employees larger than those in a specific work location as provided by the class action grievance provisions of Article 15.2Step1(a). Examples include cases involving local policy issues, casual employment/utilization, and Acts of God (e.g., snow days). See further the explanation in the Letter reproduced at the end of this Article**.**

Question: May an alternate steward continue processing a grievance that he/she initiated?

Answer: Once an alternate steward has initiated a grievance, the alternate steward may continue processing that grievance, as determined by the union. However, only one steward will be given time for processing the grievance.

Source: Step 4 Grievance H1N-1J-C 5026, dated May 24, 1984.

Question: Must all stewards be absent before an alternate steward is allowed to represent employees?

Answer: No. Each steward is certified to represent employees in a specific work location, and the alternate may serve in a particular steward's absence. All stewards need not be absent before an alternate is allowed to represent employees.

Source: Step 4 Grievance NC-S-4915, dated December 21, 1977

Question: Can an MHA serve as a union steward?

Answer: Yes.

B At an installation, the Union may designate in writing to the Employer one Union representative 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 representative shall be in lieu of a steward designated under the formula in Section 2A and shall be in accordance with Section 17.3. Payment, when applicable, shall be in accordance with Section 17.4.

This section provides that the union may designate one union representative actively employed at that installation to act as a steward for the handling of a specific grievance or for the investigation of a specific problem for purposes of determining whether to file a grievance. While the designation is no longer limited to elected officers of the union, the representative selected under this provision must have specialized expertise in the issue in question. The designation must be in writing at the installation level and applies to the specific grievance or specific problem only; the designation does not carry over. See further the explanation in the Letter reproduced at the end of this Article.

The union representative designated under this section acts in lieu of a steward certified under Section 17.2A. The union representative is entitled to payment under Section 17.4 only if the time spent would be part of the representative's regular work day; i.e., payment would not be made to a full-time union representative.

C To provide steward service to a number of small installations where a steward is not provided by the above formula, the Union representative certified to the Employer in writing and compensated by the Union may perform the duties of a steward.

This provision can be used by the local unions to provide steward coverage to smaller installations where members of the bargaining unit are employed. Stewards designated for this purpose are not entitled to travel time or official time on the clock to investigate, present or adjust grievances. Written certification at the installation level is once again required.

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 District level, with a courtesy copy to the Area, and providing such

representatives act in lieu of stewards designated under the provisions of 2A or 2B above.

In these instances, written certification must be provided to management at the District level, with a copy to the Area. Once again, all activities of the designated union representative are compensated by the union and the designated representative acts in lieu of a steward designated under Section 17.2A or 17.2B.

Question: Can a union member actively employed at one postal facility or installation be designated as the union representative for a Step 2 meeting at another facility or installation under the provisions of Section 17.2D?

Answer: Yes. A union member actively employed in one postal facility or installation may be designated as a union representative to process a grievance at another postal facility or installation. Such employee: needs to be certified to the Employer, in writing, in accordance with Section 17.2D; will not be on the Employer's official time (i.e., will be compensated by the union); and will act in lieu of the steward designated under Sections 17.2A or .2B at the facility or installation where the grievance was initiated.

Source: Pre-arbitration Settlement H8N-2B-C 12054, dated May 20, 1982; Interpretive Agreement, dated June 2, 1982.

Question: Does a steward have the right to be represented by another steward?

Answer: Yes. A steward, just as any other employee, has a right to representation by another steward.

Source: Step 4 Grievance H1C-3W-C 41731, dated February 15, 1985.

Section 17.3 Rights of Stewards

A 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.

B The steward, chief steward or other Union representative properly certified in accordance with Section 17.2 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.

A number of issues relating to this language have been resolved or adjudicated over the course of the parties' bargaining relationship.

Arbitrator Garrett ruled that this section does not authorize management to determine in advance the amount of time which a steward reasonably needs to investigate a grievance. In a case in which he concluded that a specific local form designed to assist management in authorizing steward time had to be withdrawn and "given no effect," the arbitrator provided the following guidance regarding certain permissible restrictions which management can place on a steward:

> "This is not to say, of course, that Management cannot (1) ask a Steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the Steward anticipates he or she will be away from his or her work station; or (2) that a Supervisor cannot decline to release a Steward from duty during a period of time when his or her absence during such period will unnecessarily delay essential work; or (3) that a Supervisor, in advance, may not specify a time period during which the Steward's absence will unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, consistent with the Agreement, in any case where it can be established that a Steward has improperly obtained permission to leave his or her work station under the guise of investigating or preparing a grievance."

Source: National Arbitration Award MB-NAT-562/936, Arbitrator S. Garrett, dated January 19, 1977.

Subsequent to the Garrett award, the parties further clarified their understanding of the Section 17.3 requirements as stated below:

> "If management must delay a steward from investigating or continuing to investigate a grievance, management should inform the steward involved of the reasons for the delay and should also inform the steward of when time should be available. Likewise, the steward has an obligation to request additional time and to state reasons why this additional time is needed. Requests for additional time to process grievances should be dealt with on an individual basis and not be unreasonably denied."

Source: Step 4 Grievance NC-C-16045, dated November 22, 1978.

Management may ask a steward who is seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the steward anticipates he/she will be away from the work area.

Source: Pre-arbitration Settlement H8C-1M-C 17945, dated February 19, 1982.

Under normal circumstances, employees should be permitted a reasonable amount of time to consult with their steward. Reasonable time cannot be measured by a predetermined factor.

Source: Step 4 Grievance H1C-3W-C 44345, dated 1985.

While the steward normally determines how much time the grievant needs to be present during the processing of a grievance, the immediate supervisor may set a specified time to begin and end a period of grievance handling activity due to service needs. If additional time is necessary, the steward should discuss the need with the supervisor. Additional time may be granted in conjunction with the previously specified time or at a later time or date. Requests for grievance time or denials of such requests are subject to the rule of reason based upon local fact circumstances.

Source: Step 4 Grievances H1C-4B-C 25906/25998, dated June 4, 1984.

Question: How should situations be handled in which management must delay an employee's request for a steward?

Answer: Management should inform the employee involved of the reasons for the delay and of when time should be available.

Source: Step 4 Grievance NC-C-12200, dated November 13, 1978.

Section 17.3 also outlines the right of the union to review documents, files and other records, as well as the right to interview grievants, supervisors and witnesses. See also Article 31, (Section 31.3), regarding the union's right to information relevant to collective bargaining and contract administration.

Steward requests to review documents should include a statement as to how the request is relevant to the processing of a grievance or to determining whether a grievance exists. Management should respond to questions and document requests in a cooperative and timely manner. When a relevant request is made, management should provide for review of the requested documentation as soon as is reasonably possible.

Regarding the review of PS Form 2608, the parties have agreed that since the supervisor's Step 1 Grievance Summary form is not completed at the time of the Step 1 discussion, it is not available for the union to review until Step 2. The PS Form 2608 will be made available, if requested by the union at Step 2 or any subsequent step of the grievance procedure.

Source: Step 4 Grievance H1M-1J-C 10717, dated March 22, 1984.

Photographs may be taken only with the permission of the installation head or local postmaster.

Source: Postal Operations Manual Chapter 1, Section 124.58

Judicious use of a camera to establish or refute a grievance may facilitate resolution of some problems. If the Union desires to take photographs on the work room floor, permission must first be obtained from local management, and a supervisor must be present. If management deems it necessary to take evidential photographs, it would also be prudent to have a steward or union official present.

Source: Step 4 Grievance NC-S-5482, dated April 22, 1977.

Notwithstanding the above, however, stewards are not permitted to use camera equipment to photograph mail processing operations on postal premises. Use of such equipment is not within the purview of Article 17.

Source: Pre-arbitration Settlement H8C-3W-C 22224, dated February 19, 1982.

Management may determine the location where Step 1 meetings or interviews by union stewards are to be conducted. The location chosen should be reasonably private (although not necessarily completely out of eyesight) and reasonably free from excessive noise.

Source: Step 4 Grievances H4M-4K-C 9874, dated April 2, 1986, and H8C-5K-C 11884, dated January 15, 1981.

Stewards have the right to leave the work area to interview non-postal witnesses when it has been determined that such witnesses possess "relevant information and/or knowledge directly related to the instant dispute under investigation." In such cases, reasonable time on the clock would be provided. The supervisor and/or the steward may call the potential witness in advance to assure his/her willingness and availability to be interviewed and to make arrangements for the interview.

Source: National Arbitration Award N8-NA-0219, Arbitrator B. Aaron, dated November 10, 1980.

Subsequent to this Aaron arbitration award, the parties recognized the following as nationally established policy regarding a steward's request to leave the work area while on-the-clock to interview a non-postal witness:

> ". . . a steward's request to leave his/her work area to investigate a grievance, shall not be unreasonably denied. Subsequent to determining

that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock, to interview such witness, even if the interview is conducted away from the postal facility. However, each request to interview witnesses off postal premises must be reasonable and viewed on a case by case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale."

Source: Memorandum of Understanding, 1982.

Stewards who are processing or investigating a grievance may interview postal inspectors on appropriate occasions; e.g., with respect to any events actually observed by an inspector and upon which disciplinary action was based. Requests for such interviews are to be made to the installation head or designee. The parties disagree as to whether in other circumstances a steward should be given the opportunity to interview the involved inspector.

Source: Pre-arbitration Settlement N8-N-0224, dated March 10, 1981.

In a case dealing with a request for a supervisor's discussion notes, Arbitrator Mittenthal ruled that access to records is not absolute. Access may be denied where management makes a "reasonable" determination that such documents are not "necessary" for the processing of a grievance.

Source: National Arbitration Award H8N-3W-C 20711, Arbitrator R. Mittenthal, dated February 16, 1982.

Question: Are union stewards entitled to copies of employee medical records when such records are relevant to a grievance?

Answer: Yes. Relevant medical records are subject to release in accordance with the Administrative Support Manual, Appendix, USPS 120.090.

C 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.

This section provides certain protections for stewards from involuntary reassignment; this right is commonly referred to as "super seniority." This

language protects a steward from being involuntarily reassigned from a tour or installation unless there is no duty assignment for which the steward is qualified. The parties agreed that this protection applied to a steward upon conversion to full-time, even if it resulted in the excessing of another employee in order to provide the steward with a duty assignment.

Source: Step 4 Grievance H1M-1A-C 13294, dated September 4, 1984.

In the 1975 case, NLRB v. J. Weingarten, Inc, the U.S. Supreme Court held that an employee has a right, under Section 7 of the National Labor Relations Act, to have a union representative present whenever he or she is interviewed by a supervisor or Postal Inspector and has reasonable cause to believe that discipline will result from that interview. This right is independent of any rights under the National Agreement.

It must be remembered, however, that the Weingarten right is the employee's right and not the union's. Thus, to be activated, the employee must request the presence of a union representative; the union cannot exercise Weingarten rights on the employee's behalf. Additionally, management is not required to inform an employee of his/her Weingarten right to representation.

Once the request for representation is made, the employer is required to either:

1. grant the request;
2. deny the request and offer the employee the opportunity to continue the interview without union representation; or
3. deny the request and hold no interview at all.

Employees also have the right under Weingarten to a pre-interview consultation with a steward. Federal courts have extended this right to pre-meeting consultations between employee and union representative prior to Inspection Service interrogations. (*U.S. Postal Service v. NLRB, D.C. Cir. 1992.)*

During a Weingarten interview, the employee has the right to the steward's assistance; the steward is not required to be a silent witness. Although ELM Section 666.6 requires all employees to cooperate with postal investigations, the employee retains the right under Weingarten to have a steward present before answering questions in this situation. The employee may respond that he/she will answer questions once a steward is provided.

Section 17.4 Payment of Stewards

A 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 .2A) 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.

B 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 2A) regular work day.

Arbitrator Mittenthal ruled that grievance handling could not reasonably be said to include time while a grievant travels to attend a grievance meeting in another postal facility. He stated that grievance handling begins only when the grievant arrives at the meeting. However, different language applied to witnesses, providing payment for the "time required to attend" a Step 2 meeting; thus, payment for travel time for witnesses would be appropriate.

Source: National Arbitration Award N8-N-0221, Arbitrator R. Mittenthal, dated January 18, 1982.

Mittenthal's decision was further applied to deny payment to a steward for time spent traveling between two facilities for grievance processing.

Source: Pre-arbitration Settlement H8C-5D-C 6315, dated September 25, 1984.

There is also no requirement to compensate a steward who accompanies an employee to a medical facility for a fitness-for-duty examination.

Source: Step 4 Grievance NC-N-12792, dated December 13, 1978.

In another case, Arbitrator Mittenthal ruled that management is required to provide stewards with time on the clock for purposes of writing grievance appeals to Step 3, as appeals from Step 2 to Step 3 involved "Step 2 'grievance handling.'"

Source: National Arbitration Award A8-E-0021, Arbitrator R. Mittenthal, dated December 10, 1979.

Question: Are union stewards entitled to continue working into an overtime status for the sole purpose of processing grievances?

Answer: Under Section 17.4, payment of stewards is "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 2A) regular work day." However, a steward who is already working in an overtime status, is not precluded from processing grievances solely based on the fact that he/she is in an overtime status. In those situations, management will not unreasonably deny the steward time to perform union duties.

Source: Step 4 Grievance H1C-3F-C 43267, et al., dated February 26, 1986.

Question: Is an employee entitled to overtime compensation for time spent at a grievance hearing outside of their regular work hours?

Answer: Article 17 contains no provisions for compensating employees whose attendance at arbitration hearings or grievance meetings extends beyond their normally scheduled work hours. Please refer to Article 15 (Section 15.4A5) for provisions governing possible changes in work schedules for grievants or witnesses at arbitration hearings.

Source: Step 4 Grievance H1C-5H-C 17671, dated April 27, 1984.

However, in Article 15 (Section 15.4A5), the parties have agreed that, absent a more permissive local past practice and at no cost to the Employer, the Employer will permit one (1) change of work schedule per case scheduled for arbitration for either the grievant or a witness, provided notice is given to his or her immediate supervisor at least two (2) days prior to the scheduled arbitration hearing. For grievance meetings at Steps 1 and 2 of the grievance procedure, the provisions of Section 17.4 captioned Payment of Stewards will control.

Question: Should a steward on light duty be authorized steward time?

Answer: A steward on light duty may perform steward duties unless the steward's medical restrictions preclude such activity.

Source: Step 4 Grievance H4C-3W-C 20157/20158, dated February 3, 1987.

Section 17.5 Union Participation in New Employee Orientation

During the course of any employment orientation program for new career or non-career employees covered by this Agreement, or in the event a current postal employee is reassigned **or transfers** to the mail handler craft, a representative of the Union representing the craft to which the new or current 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. In addition, at the time any non-career employees covered by this Agreement become eligible for health insurance, the Union will be provided ample opportunity to address such employees on the

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.

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During the course of employment orientation for new career or non-career Mail Handlers, a representative of the union will be provided ample opportunity to address the new employees during the orientation. Management is to ensure that those union representatives are given sufficient advance notice to attend the scheduled orientations.

Source: Letter to Area Managers from Douglas A. Tulino, Vice President, Labor Relations, USPS, dated November 25, 2019.

The union will also be provided time to address current postal employees (clerks, carriers, etc.) who are reassigned **or transferred** to the Mail Handler craft.

Question: When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

Answer: Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

Additionally, the union will be allowed to address an MHA at the time that they become eligible for health insurance. The parties also have agreed that health benefit enrollment information will not be provided to new employees during orientation until such time as the union representative has had an opportunity to address the new employees.

Section 17.5 does not preclude management officials from being present when the union addresses new employees during orientation, except in those cases where an established past practice precluding such presence exists.

Source: Step 4 Grievance H1C-5D-C 21764, dated December 17, 1984.

Section 17.6 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 such 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 within 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.

B The authorization of such deductions shall be in the following form:

AUTHORIZATION FOR DEDUCTION OF DUES
UNITED STATES POSTAL SERVICE

I hereby assign to the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL CIO, Local Union No._____, 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.

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 (10) 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.

Signature of Employee	Date
Name of Employee (Print, Last Name, First, Middle)	Social Security Number
Home Address (Street and Number)	(City and State) (Zip Code)
Postal Installation	Installation Finance Number

FOR USE BY LOCAL UNION OFFICIAL

National Postal Mail Handlers Union Local Union
A Division of the Laborers' International
Union of North America, AFL-CIO _____
Local Union No._____

I hereby certify that the regular dues of the Local Union for the above named member are currently established at
$_____ per pay period.

Signature and Title of Authorized Union Official Date

FOR USE BY EMPLOYER REPRESENTATIVE

Date of Delivery to Employer

Signature and Title of Employer Representative

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 for employees and/or homeowners/tenant liability insurance for employees, provided only one insurance carrier is selected to provide such coverage.

(The preceding Sections, Articles 17.2, 17.3, 17.4, 17.5 and 17.6, shall apply to Mail Handler Assistant employees.)

[See Memo, page 195]

Question: Are employees permitted to complete PS Form 1187 (Authorization for Deduction of Union Dues) during employee orientation?

Answer: Completion of Form 1187 is permitted during employee orientation in the areas designated by management.

Source: Step 4 Grievance H7M-3E-C 2411, dated April 8, 1988.

Question: If an MHA is reappointed to a new term, do they have to execute a new Standard Form 1187 to remain a member of the Union?

Answer: No. The union enrollment is active, and appropriate withholding occurs if an MHA separates and returns to the same non-career MHA job within 180 days of the separation. The enrollment is also active if the MHA is promoted to a career mail handler bargaining unit position.

MEMORANDUM OF UNDERSTANDING

ARTICLE 17.6D PAYROLL ADJUSTMENTS

As soon as administratively practicable, the Postal Service will increase the maximum allotments in the existing program by providing one additional allotment for the use of NPMHU bargaining unit employees.

The MOU increases the number of allotments that can be utilized by mail handlers to a total of three (3) plus net-to-bank; the new allotment can be used for any purpose that such allotments are authorized.

John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue NW Suite 500
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiation of the 2006 National Agreement, we agreed to the following:

Article 17.2A: Management will not rely upon the new language agreed to in the 2006 National Agreement to argue, in any forum, that grievances were procedurally defective if filed by the union regarding issues affecting more than one specific work location in an installation as provided in the pre-existing language in Article 17.2A. Arguments concerning unrelated procedural defects are unaffected and may still be made**.**

Article 17.2B: The union agreed that the term “representative” refers to a steward, officer, former officer or a mail handler bargaining unit employee with a specialized expertise pertinent to the specific issue in question.

The parties further agreed that these understandings will be incorporated into the Contract Interpretation Manual (CIM).

Valerie E. Martin
Manager, Contract Administration NPMHU
U.S. Postal Service

The agreement related to Section 17.2A provides assurance that management will not rely upon the new language to support procedural challenges to grievances that covered employees in more than one specific work location and that were filed prior to the 2006 National Agreement. The agreement does not preclude procedural challenges that were made on other bases.

The language related to Section 17.2B provides a definition of the type of “representative,” other than the previous language of “officer,” who will be authorized to deal with a specific issue or grievance under this section.

ARTICLE 18
NO STRIKE

Section 18.1

The Union in behalf of its members agrees that it will not call or sanction a strike or slowdown.

Federal law has long prohibited strikes by postal and most other federal employees and has provided criminal penalties for violations. The Postal Reorganization Act of 1970 continued to apply the strike prohibitions of Title 5, Section 7311 of the U.S. Code (5 U.S.C. §7311) to postal employees, as well as the federal criminal penalties for violations contained in 18 U.S.C. §1918. In Section 18.1, the Union agrees on behalf of its members that it will not call or sanction a strike or slowdown.

Question: Why are strikes by postal employees referred to as "illegal strikes"?

Answer: Because the "no strike" prohibition is mandated by federal law (5 U.S.C. § 7311).

In an unnumbered National Award, seven arbitrators ruled in a case involving management's determination to issue termination or proposed termination notices to employees who were "positively identified as in the picket line or otherwise appeared to be participating in a (1978) work stoppage" and were "scheduled to be working . . . during the time of their participation . . ." In their award, the arbitrators held that the law made it "a job duty and condition of continued employment" for an employee to refrain from participating in a strike; and made it a violation of federal law for the employer "to continue in a position of employment therein one who so participates in a strike."

Source: National Arbitration Award (Unnumbered), Arbitrators D. Kornblum, et al., dated May 5, 1979.

National Arbitrator Richard Mittenthal found that the wearing of "No Contract – No Work" buttons on postal premises during the final weeks of contract negotiations was a call for illegal strike action in the event the deadline passed without a new contract. He ruled that the prohibition of the wearing of such buttons in these circumstances was "fair, reasonable and equitable" within the meaning of Article 19.

Source: National Arbitration Award H8C-2W-C 34408, Arbitrator R. Mittenthal, dated November 1, 1983.

Section 18.2

The Union or its local Unions (whether called Area Locals 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.

The Union will take reasonable actions to prevent or avoid strikes.

Question: If members of a local union strike or attempt a slowdown, must Union officers inform the members that they are in violation of the Agreement and order them back to work?

Answer: Yes. The Union or its local Unions will take reasonable action to avoid such activity and where such activity occurs will immediately inform striking employees that they are in violation of the Agreement and order said employees back to work.

Section 18.3

It is agreed that the Union or its local Unions (whether called Area Locals 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.

While individual postal employees may be held responsible for their own actions, the Union or its local Unions that comply with Article 18 shall not be held liable for an employee's unauthorized actions.

Section 18.4

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 Mail Handler Assistant employees.)

Although Article 18 prohibits strikes in accordance with current federal law, it is not intended to prevent or be used to defeat any legislation and/or litigation that might change or alter the law.

ARTICLE 19
HANDBOOKS AND MANUALS

Section 19.1

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.

Section 19.2

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. The Employer shall provide the Union with the following information about the proposed changes: a narrative explanation of the purpose and impact on employees and any documentation concerning the proposed changes from the manager(s) requesting the changes. Proposed changes will be furnished to the Union by hard copy and, if available, by electronic file. At the request of the Union, the parties shall meet concerning such changes. If the Union requests a meeting concerning the proposed changes, those present at the meeting will include representatives of USPS Labor Relations and manager(s) who are knowledgeable about the purpose of the proposed changes and the impact of such proposed changes on employees. If the Union, after the meeting, believes the proposed changes violate this Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within ninety (90) days after receipt of the notice of proposed change. Within fifteen (15) days after the issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues. 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.

(The preceding Article, Article 19, shall apply to Mail Handler Assistant employees to the extent provided in the MOU Re: Mail Handler Assistant employees.)

Article 19 provides that postal handbook and manual provisions directly relating to wages, hours, or working conditions shall contain nothing that conflicts with the National Agreement and 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 but may not be inconsistent with the National Agreement. When such changes are proposed, a narrative explanation of the purpose and impact on employees, along with related documentation, will be provided by the manager(s) requesting the changes. A challenge that such changes are inconsistent with the National Agreement or are not fair, reasonable, or equitable may be made only by the union at the national level, by submitting the dispute to arbitration within ninety (90) days after receipt of notice of the proposed changes.

Locally developed forms must be approved pursuant to Section 325 of the ASM and may not conflict with nationally developed forms found in Handbooks and Manuals.

While there have been numerous Step 4 grievances alleging violations of provisions within handbooks and manuals, the vast majority were remanded to Step 3 due to the fact that national interpretive issues could not be identified. However, the following issue was arbitrated at the national level:

National Arbitrator Garrett held that "the development of a new form locally to deal with stewards' absences from assigned duties on union business—as a substitute for a national form embodied in an existing manual (and thus *in conflict* with that manual)—thus falls within the second paragraph of Article 19. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn."

Source: National Arbitration Award NB-NAT 562, Arbitrator S. Garrett, dated January 19, 1977.

ARTICLE 20
PARKING

Section 20.1 Parking Program

The existing parking program will remain in effect.

Section 20.2 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.

Article 20 requires the Postal Service to continue the existing parking program and to take reasonable steps to safeguard employee security in parking areas.

The issue of the assignment of employee parking spaces is a proper subject for discussion during local implementation, pursuant to Article 30 (Section 30.2.Q). The intent of the provision of Article 30 (Section 30.2.Q) is to enable the parties to decide on the number of existing parking spaces, if any, which will be allocated to bargaining unit employees; it does not encompass the construction of new spaces. For example, local memoranda language may determine the number of existing spaces allocated, may assign spaces on a seniority or first-come, first-served or other basis, and may provide for parking in other available spaces.

Question: Currently, there is no free parking at the facility. Does management have to provide parking for its employees?

Answer: No. The contract only provides that the existing parking program will remain in effect.

Question: Where else is the assignment of employee parking spaces addressed?

Answer: Under Item Q of the Local Memorandum of Understanding implemented pursuant to Article 30, the parties have a right to negotiate over the assignment of existing parking spaces to employees. Any language adopted in Item Q is enforceable in keeping with the terms of Article 30, provided that it is not inconsistent or in conflict with the National Agreement.

Section 20.3 Energy Usage

In order to reduce energy usage the Employer and the Union will promote the use of carpooling and public transportation, where available.

The Postal Service and the Union agree that reduction of air pollution by means of carpooling and the use of public transportation should be promoted. This subject is further addressed in the Memorandum of Understanding, Clean Air Act Committee, reprinted at the end of this article.

Section 20.4 Parking

A In postal facilities where parking is on a first-come/first-served basis, there will not be a parking space assigned to the designated agent of the Mail Handlers Union, except where such space has been previously negotiated.

B In postal facilities where at least one space has been assigned to a postal employee (either bargaining or nonbargaining), a parking space shall be assigned to the designated agent of the Mail Handlers Union.

C The provisions of B above will not apply to parking spaces assigned for the handicapped, nonpostal people (i.e., tenants), customers, postal vehicles, personal vehicles normally utilized in official postal duties or if a parking space is assigned adjunct to a security post. The above provisions are not intended to eliminate any parking space previously acquired by the designated agent of the Mail Handler Union through local negotiations.

The language of Section 20.4 outlines the conditions under which a parking space may be designated for the authorized representative of the union. Where parking is assigned on a first-come, first-served basis, a space is assigned to the designated union representative only where such assignment has been previously provided for in the local memorandum. Designation of the appropriate union representative will be made by the union.

Question: Must management always assign a parking space to the designated agent of the National Postal Mail Handlers Union?

Answer: No. In postal facilities where parking is on a first-come/first-served basis, there will not be a parking space assigned to the Union, except where such space has been previously negotiated. However, in postal facilities where at least one space has been assigned to a postal employee (either bargaining or non-bargaining), a parking space shall be assigned; this does not apply to parking spaces assigned for the handicapped, non-postal people (tenants), customers, postal vehicles, personal vehicles normally utilized in official postal duties, or if a parking space is assigned adjunct to a security post.

Section 20.5 Committee

The parking program is a proper subject for discussion at Labor-Management Committee meetings at the national level provided in Article 38.

(The preceding Article, Article 20, shall apply to Mail Handler Assistant employees.)

This language specifies that parking is a proper subject for discussion in labor-management meetings at the National level.

ARTICLE 21
BENEFIT PLANS

Section 21.1 Health Benefits

The method for 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**,** self plus one, and self and family enrollments.

B. The bi-weekly Employer contribution for self only**,** self plus one and self and family plans is adjusted to an amount equal to **73% in 2020 and 72.0% in 2021 and 2022** 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 **2020,** January **2021,** and January **2022.**

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 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 **76% in 2020 and 75% in 2021 and 2022** of the subscription charge under the FEHBP in **2020, 2021,** and **2022.**

Mail handlers are covered by the Federal Employees' Health Benefits Program (FEHBP), which enables each mail handler to choose among a number of health plans offering different levels and types of coverage. The premium amounts differ depending upon the FEHBP health insurance plan selected and the option chosen by the employee – self-only, self plus one or family. Thus, the actual

amounts paid as health insurance premium contributions by the employee and by the Postal Service may vary from one employee to another.

Health Benefits Contribution Formula: Article 21 specifies the formula for employer health benefits contribution levels. The method of paying health benefits for NPMHU employees changed as a result of the 1998 National Agreement. The change reflects adoption of the Federal Government's weighted average formula. This formula replaces the use of the Big-6 formula that had previously been in effect.

Establishment of Subscription Charges: The Office of Personnel Management (OPM) will calculate the subscription charges that will be in effect the following January for individual, self plus one and family plans.

Postal Service Contribution: The Employer contribution will be adjusted to 73% effective in January 2020, 72% effective in January 2021, and January 2022.

Weighting of Plans: The weighted average formula reflects the number of federal and postal employees who elect coverage in any given plan and option.

Limitation on Postal Service Contribution: **The limitation on the Postal Service's contribution to any individual employee is 76.0% in 2020, 75% in 2021, and 2022 of the subscription charge in 2020, 2021 and 2022.**

Employee Contribution: To the extent permitted by law, and unless waived by the individual mail handler, the portions of the health benefit plan premiums paid by mail handlers have been deducted on a pretax basis since April, 1994.

More information about FEHBP coverage can be found in the Employee and Labor Relations Manual Chapter 5, Section 520.

Flexible Spending Accounts (FSA): As provided in Section 21.1D, all mail handlers are eligible to participate in the Postal Service's flexible spending account plans, under which they can pay for unreimbursed health care expenses and work-related child care and elder care expenses with pretax dollars.

The maximum allowable contribution for mail handlers enrolling in the FSA for health care expenses is set forth in the MOU re Flexible Spending Account, and is capped each year in the amount promulgated by the IRS.

Section 21.2 Life Insurance

The Employer shall maintain the current life insurance program in effect during the term of this Agreement.

Mail handlers are covered by the Federal Employees Group Life Insurance (FEGLI) program. More information about FEGLI can be found in the Employee and Labor Relations Manual Chapter 5, Section 530.

Section 21.3 Retirement

The provisions of Chapters 83 and 84 of Title 5 U.S. Code, and any amendments thereto, shall continue to apply to employees covered by this Agreement.

Mail handlers are covered by federal retirement laws which govern retirement annuities. Each mail handler is covered by either the Civil Service Retirement System (CSRS) or by the Federal Employees Retirement System (FERS). More detailed information about these retirement programs is contained in the Employee and Labor Relations Manual Chapter 5, Sections 560 and 580.

Section 21.4 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.

Mail handlers who sustain occupational injury or disease are entitled to workers' compensation benefits under the Federal Employees' Compensation Act (FECA), which is administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP). More information about compensation benefits is contained in the Employee and Labor Relations Manual Chapter 5, Section 540, in USPS Handbook EL-505 (Injury Compensation) and in the relevant provisions of Title 5 of the United States Code and Titles 5 and 20 of the Code of Federal Regulations.

Section 21.5 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.

[See Memo, page 196]

MEMORANDUM OF UNDERSTANDING

COMMITTEE ON BENEFITS

It is hereby recognized and acknowledged by the United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO**,** a Division of the Laborers' International Union of North America, that the benefits structure in many industries in the private sector is changing and evolving. In keeping with these circumstances, the parties agree to the establishment of a national level committee to study the current benefits structure as set forth in Article 21 of the 1998 Mail Handlers Division National Agreement. As a part of this study, the parties will also consider the feasibility of other benefit plans such as:

(a) Child care;

(b) Group legal services; and

(c) Long term and short term disability insurance.

During the term of the **2019** Mail Handlers Division National Agreement, the Committee on Benefits will meet to study and discuss these subjects and, if mutual agreement is reached by the parties on any changes concerning the current benefit structure, appropriate amendments to Article 21 could be negotiated. It is understood such implementation could take the form of pilot or test sites at mutually agreed upon installations or Districts where a modified benefits structure could be further assessed.

The parties understand and agree that benefit plans which are currently mandated by statute will not be discussed by this committee.

MEMORANDUM OF UNDERSTANDING
FLEXIBLE SPENDING ACCOUNT

The United States Postal Service agrees the maximum allowable employee Flexible Spending Account (FSA) health care contribution will be the amount permitted by the Internal Revenue Service (IRS).

FSA contributions are now capped each year in the amount promulgated by the IRS.

ARTICLE 22
BULLETIN BOARDS

The Employer shall furnish a bulletin board for the exclusive use of the Union, subject to the conditions stated herein, if space is available. The Union may place a literature rack in swing rooms, if space is available. Only suitable notices and literature may be posted or placed in literature racks. There shall be no posting or placement of notices or literature in literature racks except upon the authority of the officially designated Union representative.

(The preceding Article, Article 22, shall apply to Mail Handler Assistant employees.)

If space is available, the Postal Service is required to furnish a bulletin board for the exclusive use of the Union, but only suitable notices and literature may be posted.

In a case related to a posting containing the names of union non-members, National Arbitrator Howard Gamser stated:

> "The Undersigned is in agreement that the language of the Agreement does not give the unions an unfettered right to post any material on the bulletin boards which they consider is suitable for such posting. That language reads, '...only suitable notices and literature may be posted or placed in literature racks.' Management certainly, under this language, may challenge the contents of the proposed notices and literature on the grounds that such material is not suitable for publication in such fashion on post office premises and more particularly in work areas.
>
> "When management does prohibit a posting on union bulletin boards on the grounds that the material is unsuitable, it is required to establish that it has just cause for reaching such a conclusion. The decision on suitability must be bottomed upon factual evidence that the posting will prove or has proven to be a cause of disruption or dissension and thus has had or will have an adverse impact upon productivity or efficiency.
>
> "If the testimony and other documentation offered by Management did establish that this could be or was the consequence of such a posting, the Arbitrator would have to sustain management's right to prohibit such a posting. From within the four corners of the Agreement would come the authority for such a finding in the provisions of Article III dealing with management's exclusive right to maintain the efficiency of the operations. Resort to external law would not require that the unions be allowed to post inflammatory, prejudicial, or derogatory statements. It would be reasonable to assume that the results of such a posting would undermine management's ability to direct the work force and the enterprise efficiently

> and productively. That would be the primary purpose of the prohibition and not to strip away the rights of employees to engage in certain protected concerted actions which are detailed under the provisions of Section 7 of the National Labor Relations Act."

The Arbitrator noted that "[n]othing in (postal management's) testimony supported a conclusion that the notices did, in fact, cause sufficient disruption or dissension so as to interfere with the orderly conduct of business, or that a failure to remove such notice would inevitably lead to such a result."

Finally, in his award, Arbitrator Gamser sustained the grievance, and directed management "not to interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that this material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the work force and to manage its operations efficiently and productively."

Source: National Arbitration Award N3-W-0214, Arbitrator H. Gamser, dated July 14, 1981.

After that decision, pre-arbitration settlements were reached as follows:

> "After a thorough discussion of the issue, it was agreed that the following would represent a full settlement of the cases in compliance with Arbitrator Gamser's Award of case N8-W-0214. Management will not interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that the 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."

Source: Pre-arbitration Settlements H8C-NA-C 49, H8C-2B-C 9351, dated October 15, 1981.

Question: Can the Union place a literature rack in a postal facility?

Answer: Yes. The Union may place a literature rack in swing rooms, if space is available. Only suitable notices and literature may be placed in literature racks.

Question: Who has the authority to post or place notices or literature on Union bulletin boards or in Union literature racks?

Answer: Authority is given to the officially designated Union representative.

Question: May the Union post a listing of endorsements of political candidates for public office?

Answer: Yes. Management may not remove a document listing Union endorsements of candidates for public political office.

Source: Step 4 Grievance E90N-1E-C 93023117, dated December 16, 1993.

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 this 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 Mail Handler Assistant employees.)

This article provides the authority for duly authorized union officials to enter postal installations for the purpose of performing their official union duties. Prior to entry the union official is responsible for providing reasonable notice to management.

It is the policy of the Postal Service that when union officials wish to enter postal facilities other than the one where they are employed, they shall notify the employer at the same organizational level as the union official, i.e. National Officers or representatives notify Headquarters Labor Relations, Regional representatives notify Area Labor Relations, and local officers or representatives notify local management.

This article establishes the right of NPMHU officials to enter postal installations for any official purpose related to collective bargaining. Step 4 settlements regarding this provision have established that:

- High mail volume on a particular day is not a legitimate reason to prevent union officials from entering a facility.

Source: Step 4 Grievance NC-S-8831, dated November 14, 1977.

- There should be no unreasonable delays in granting a requesting union official access to a postal facility.

Source: Step 4 Grievance NC-C 10535, dated March 28, 1978.

- Normally, reasonable notice would not be required in writing. A telephone call to an appropriate management official would be sufficient.

Source: Step 4 Grievance H1N-5C-C 1479, dated June 25, 1982.

ARTICLE 24
EMPLOYEES ON LEAVE WITH REGARD TO UNION BUSINESS

Section 24.1 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.

Section 24.2 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. Such requests will not be unreasonably denied.

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. Such requests will not be unreasonably denied.

(The preceding Article, Article 24, shall apply to Mail Handler Assistant 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.

Section 24.1 addresses leave from postal employment taken because of a full or part-time job with the local or national union. Section 24.1 guarantees that such employees on leave from postal employment continue to accrue retirement credit (so long as payment is made) and earn credit toward step increases. Employees working a part-time job with the union continue to earn annual and sick leave in accordance with existing procedures based on the hours that they work for the Postal Service.

Section 24.2A requires management to approve annual leave or leave without pay (LWOP), at the employee's election, to a bargaining unit employee who will attend a national, state or regional union convention as a delegate provided that a request for leave has been submitted by the employee to the installation head as soon as practicable. Management must grant such leave unless the leave would "seriously adversely affect the service needs of the installation." This is an exception to the general rule that the granting of LWOP is at the discretion of management, subject to the provisions of ELM, Section 514.

Section 24.2B establishes three rules as follows:

- A bargaining unit employee who requests annual leave or leave without pay to attend a union convention will receive priority consideration over employees requesting vacation leave, if the request is submitted prior to the determination of the vacation schedule.

- Such leave to attend conventions will be counted toward the "quota" of employees that must be given leave during that period, unless the local parties agree to the contrary.

- 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. Where the determination of the choice vacation period schedule precedes the Union's determination of who the actual delegates will be, the Union may request that a certain number of slots be allocated for convention delegates. This number would then be included in the number of slots allowed during the period, unless the local parties agree to the contrary.

Section 24.2C provides that management will make every reasonable effort to grant the employee(s) leave request to attend union conventions that fall within the choice vacation period, even though the request is submitted after the determination of the choice vacation period. Management is obligated to honor all advance commitments for granting annual leave pursuant to Article 10, Section .4D, however, and therefore should not cancel any previously approved leave in order to grant convention leave.

Article 30, Section .2 lists two items for local implementation which involve leave for union activities and could affect the application of the above provisions. The items are as follows:

Item G: Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period. Under this item the parties at the local level may settle on language to alter the effect of Section 24.2B under which leave for union conventions during the choice vacation period is counted toward the percentage off provided for in Item H.

Item R: 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 G. "Union Activities" may include a wide variety of union programs other than conventions, for example, legislative rallies, educational seminars or conferences.

ARTICLE 25
HIGHER LEVEL ASSIGNMENTS

Section 25.1 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.

Additional provisions governing higher level assignments are set forth in Employee and Labor Relations Manual (ELM) Section 422.4, which is made applicable to mail handlers by ELM Section 423(d).

The higher level positions in the Mail Handler craft are listed in Article 12 (Section 12.2H).

Additionally, as outlined in the Memorandum of Understanding reprinted on page 25-5, mail handlers certified by the PEDC and serving as On-the-Job Instructors are compensated at the MH-5 rate for the time that they spend performing in that capacity.

Level 4 mail handlers operating powered industrial equipment, including powered walk-behind forklifts, are entitled to higher level compensation for the period of such operation.

Source: Letter from Director, Office of Contract Administration, dated May 13, 1986.

The determination of whether the performance of certain specific duties contained in a higher level position constitutes the performance of higher level work has been addressed in several national arbitration awards.

Arbitrator Gamser ruled that consideration must be given to whether or not the core elements or the disparate key duties of the higher level position are being performed. Arbitrator Garrett ruled that “the assignment of an employee to perform some particular duty which is also performed by a higher level position, does not necessarily constitute assignment to such higher level position for purposes of Article XXV." However, in the same decision, Arbitrator Garrett also concluded that, when a lower level employee is assigned by management at any time – even if only for part of a tour – to replace a higher level employee in performing required duties within the scope of the higher level position, then the lower level employee is entitled to higher level pay. The same principle also applies in any instance where the lower level employee is assigned to augment the normal force of higher level employees, as long as the lower level employee is expected to handle all of the higher level duties which may be required on that tour.

Sources: National Arbitration Award AB-W-1520, Arbitrator H. Gamser, dated October 25, 1975; National Arbitration Award AC-NAT-6743, Arbitrator S. Garrett, dated May 25, 1977.

Section 25.2 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.

[See Memo, page 197]

As the employee's higher level rate is determined as if he/she had been promoted to the position, the employee receives credit for the time on detail for purposes of attaining the next step.

Source: ELM 422.441

Part-time flexible employees are paid at the part-time flexible hourly rate for the higher level position.

Source: ELM 422.431

In the event an MHA is temporarily assigned to a higher level position, such employee will be paid at the higher level only for the time spent on the job.

Source: MOU re Mail Handler Assistant Employees

Section 25.3 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.

Normally, employees are notified of their assignment to higher level work by receipt of PS Form 1723, Assignment Order. However, the failure of management to provide a Form 1723 or other written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

For employees detailed to temporary supervisory positions (204b), local management must provide copies of Form 1723, showing the beginning and ending times of the detail period, to the union **at the installation level** in advance of the detail or modification thereto.

Source: Article 12 (Section 12.3B12.)

Section 25.4 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 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.

This section sets forth the rules for filling temporarily vacant, bargaining unit, higher level positions. Employees detailed to higher level work shall be from among eligible, qualified and available employees in the immediate work area in which the higher level vacancy exists. The specific rules governing which employee is selected depend upon the duration of the vacancy.

As long as the employee is qualified to perform the required duties and is paid at the higher level, management may require a non-volunteer to work a bargaining unit assignment because of a special skill requirement or other operational consideration.

When the opportunity exists for higher level assignment, the principle of preference for career employees over MHAs should be utilized.

Source: MOU re Mail Handler Assistant Employees

Section 25.5 Leave Pay

A Leave pay for employees detailed to a higher level position will be administered in accordance with the following:

A1 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.

A2 Short-term shall mean an employee has been on an assignment or detail to a higher level for a period of 29 consecutive workdays 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.

A3 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.

B 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.

This section provides that a mail handler who works a higher-level detail for 29 consecutive working days or less and who resumes the detail upon return to work will receive sick or annual leave paid at the higher rate, but only for a period not to exceed 3 days for each occurrence. If a replacement for the employee on such a short-term detail is needed, the detail is automatically canceled.

A mail handler on a long-term temporary higher level assignment, defined as an assignment to the higher level position for a period of 30 consecutive workdays or longer at the time leave is taken, is entitled to have annual and sick leave paid at the higher level rate for the full period of approved leave, provided that the employee resumes the detail assignment upon returning to work.

In applying the definition of a workday in Article 8 (Section 8.1), Arbitrator Gamser ruled that an employee must work at least eight (8) hours per day on each of the 30 days prior to taking annual leave in order to be considered to be on a long-term detail.

Source: National Arbitration Award H8C-5F-C 4333, Arbitrator H. Gamser, dated July 27, 1981.

Question: Is an MHA who is assigned to a higher level position entitled to higher level pay if scheduled for annual leave during the higher level detail?

Answer: No, the MHA will be paid at the higher level only for the time actually spent on such job.

In addition to the provisions for annual and sick leave outlined above, ELM 422.432 provides the following direction regarding holiday leave and worked pay:

ELM 422.432:

e. *Holiday Leave Pay*. Full-time employees are paid for the holiday at the rate of the higher level, provided that they perform higher level service both on the workday preceding and on the workday following the holiday. Otherwise, the employee is paid for the holiday at the rate appropriate for her or his regular position.

f. *Holiday Worked Pay*. If an employee performs authorized service at the higher grade on a holiday, the employee is paid at the rate for the higher grade position, in addition to holiday leave pay.

MEMORANDUM OF UNDERSTANDING

HIGHER LEVEL PAY FOR TEMPORARY DETAILS

When level 4 mail handlers are temporarily detailed to level 5 mail handler duties, higher level pay will be designated to the same step within level 5 as the employees occupy in their level 4 duty assignments.

This MOU provides that when level 4 mail handlers are detailed to level 5 duties, they are paid higher level at the same step as that which they would have occupied if they had remained at level 4.

MEMORANDUM OF UNDERSTANDING

ON-THE-JOB INSTRUCTORS COMPENSATION

The U.S. Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, agree that employees in the mail handler craft who are certified by the PEDC to act as on-the-job instructors will be compensated at one level higher pay grade than their current bid position while performing in that capacity.

Mail handlers who are certified by the PEDC and who serve as On-the-Job Instructors are compensated at one level higher than their current bid position for the time that they spend performing in that capacity. A mail handler with a Level 4 bid position would be paid at the Level 5 rate when performing in that capacity. A mail handler with a Level 5 bid position would be paid at the Level 6 rate.

Question: When is a mail handler who is temporarily disabled but nonetheless bids for and is awarded a higher level duty assignment entitled to receive higher level pay?

Answer: An employee who is temporarily disabled is permitted to bid for and be awarded a higher level mail handler duty assignment in accordance with the

Memorandum of Understanding on Light Duty Bidding found in the 1998 National Agreement. Such an employee will not receive higher level pay, however, until he or she is physically able to, and actually does, perform work in the bid-for higher level position.

Source: Memorandum of Understanding Re Light Duty Bidding.

ARTICLE 26
UNIFORM AND WORK CLOTHES

Section 26.1 Uniform and Work Clothes Administration

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 the Employer.

Since the early 1970s, mail handlers have not been 'issued' work clothes or the contract uniform. Instead, employees are provided with an annual allowance with which to purchase these items.

Eligibility for work clothes and contract uniforms is more clearly defined in Subchapter 930 of the Employee and Labor Relations Manual (ELM). Only full time employees are eligible for work clothes or contract uniforms.

ELM, Subchapter 930, Work Clothes and Uniforms, identifies employees who are entitled to work clothes, regular uniforms or contract uniforms. The applicable provision of ELM 931.13 as it relates to the mail handler craft is reprinted below:

> c. Type 3 — vehicle maintenance, custodial maintenance, mail handler, BMEU, and clerical employees eligible under 932.12 and 932.13.

See also the letter regarding gender-specific garments reprinted at the end of this Article.

Section 26.2 Contract Program Administration

Employees who are currently furnished uniforms pursuant to the contract program shall continue to be so entitled. Such uniforms shall be issued in a timely manner. The allowance to Mail Handlers under this program shall be as follows:

$188 effective May 21, **2020**
$192 effective May 21**, 2021**
$197 effective May 21**, 2022**

Each increase shall become effective on the employee's anniversary date following the effective date of change.

The applicable provision of the ELM is:

932.12 **Contract Uniforms**

The Postal Service has authorized uniforms for mail handlers, custodial maintenance, vehicle maintenance employees, and certain full-time employees in the Business Mail Entry Unit (BMEU) in CAG A-J post offices who meet certain criteria. To be eligible for uniforms under the contract uniforms program, employees must (a) be in public view 4 hours a day for 5 days a week or (b) be in public view not less than 30 hours a week in combined total time. Eligible employees are:

a. *Mail Handlers and Group Leaders (Mail Handlers)*. Those who are assigned to dock areas, platforms, and other locations and meet the 4-hour-a-day or 30-hour-a-week criteria.

Section 26.3 Annual Allowance

The current Work Clothes Program will be continued for those full-time employees who have been determined to be eligible for such clothing based on the nature of work performed on a full-time basis in pouching and dispatching units, parcel post sorting units, **platform (dock) operations,** bulk mail sacking operations, and ordinary paper sacking units. The Employer will provide eligible employees with an annual allowance to obtain authorized work clothes on a reimbursable basis from licensed vendors as follows:

$95 effective May 21, **2020**
$98 effective May 21, **2021**
$100 effective May 21**, 2022**

Each increase shall become effective on the employee's anniversary date following the effective date of change.

Employees in the work clothes program may purchase and wear the reimbursable items at their discretion. This program is intended to mitigate the wear and tear of the employee's personal clothing. The applicable provision of the ELM is:

932.13 **Work Clothes**

This program is separate from the contract uniform program. It is for employees who are not presently eligible for uniforms or contract uniforms. Affected are certain mail handlers, maintenance employees, motor vehicle employees, and clerical employees involved full time in pouching and dispatching units, parcel post sorting units, bulk mail sacking operations, and ordinary paper sacking units:

c. Mail Handlers — full-time mail handlers working in the following areas:

(1) Ordinary paper sacking units.
(2) Parcel post units (dumping of sacks or manual separation of sacks).
(3) Platform (dock) operations.
(4) Pouch dumping units.
(5) Sack dumping units.

Question: Where is there a list of authorized uniform items?

Answer: The uniform items authorized for mail handlers are listed in Section 933.3 of the ELM, entitled "Type 3 Uniform Items," and currently include a jacket, jacket liner, sweatshirt, sweater, vest, shirt, trousers, coveralls, headgear, and shoes.

Source: ELM Chapter 9, Section 933.3.

Question: When do the allowances for work clothes and contract uniforms take effect?

Answer: Allowances generally take effect on the earliest date a full-time employee is authorized to wear the work clothes or contract uniform following completion of the 90-day probationary period. This date is known as the employee's anniversary date for purposes of work clothes or contract uniform allowances. Adjustments may be made for transfers and for certain absences during the allowance year as set forth in the ELM, Section 935.

Source: ELM Chapter 9, Section 935.

LETTER OF INTENT

GENDER-SPECIFIC GARMENTS

John F. Hegarty
National President
National Postal Mail Handlers Union
500 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiation of the 2006 National Agreement, we agreed to the following:

Article 26: The U.S. Postal Service and the National Postal Mail Handlers Union will jointly explore the availability of gender-specific garments for the mail handler work clothes program.

Valerie E. Martin, Manager
Contract Administration, NPMHU
U.S. Postal Service

Currently, the work clothes program provides only male and unisex garments. The parties have committed to jointly explore the availability of gender-specific garments.

ARTICLE 27
EMPLOYEE CLAIMS

Section 27.1 Claim Filing

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.

Section 27.2 Claim Adjudication

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 District office for determination. The claim will be adjudicated within thirty (30) days after receipt at the District 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. The District office will provide to the Union's Regional Representative a copy of the denial letter, 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 preceding Article, Article 27, shall apply to Mail Handler Assistant employees.)

Article 27 provides for the filing of a claim for reimbursement from the Postal Service should the employee lose or damage personal property while on duty or on postal premises. To file a claim the loss or damage must be a $10.00 minimum and meet all of the following requirements:

- Connection with or incident to employment while on duty or on postal premises.
- Possession must have been reasonable or proper under the circumstances.
- Loss or damage was not caused in whole or in part by negligent or wrongful

act of the employee.

- Loss or damage did not result from normal wear and tear associated with day-to-day living and working conditions.

- Does not involve loss or damage to privately owned motor vehicle and/or contents thereof.

Personal property: The property must be "personal property." This includes cash, jewelry, clothing or uniforms, as well as other privately owned items that are worn or otherwise brought to work. Personal property does not include automobiles and the contents thereof. (See "automobile exclusion" below.")

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.

Automobile exclusion: Motor vehicles and their contents are excluded from Article 27 Employee Claims. However, if an automobile is damaged, the bargaining unit employee may seek recovery under the Federal Tort Claims Act. To initiate a Tort Claim an employee 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 the issue of fault differently. The Postal Service must pay a claim under Article 27 if the possession was reasonable and necessary to the performance of the duties and if, in addition, the loss or damage was not caused in whole or in part by the negligent or wrongful act of the employee. This is true 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.

Not caused by employee negligence: The Postal Service need not pay a claim when a loss was caused in whole or in part by the negligent act of the employee. "Negligence" means a failure to act with reasonable prudence or care.

Not normal wear and tear: The loss or damage will not be compensated when it results from normal wear and tear associated with day-to-day living and working conditions.

Depreciated value: The amount of the loss claimed must reflect the depreciated value of the property.

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. The employee is expected to know the proper procedures to file, including the time limits.

Written claim: In keeping with Section 641.52 of the Employee and Labor Relations Manual (ELM), PS Form 2146, Employee Claim for Personal Property, must be completed in its entirety (Section 1 by the employee, Section 2 by the union and Section 3 by supervisor) to document a claim. However, any written document received within the period allowed is treated as a proper claim if it provides substantiating information. Claims must be supported with evidence such as a sales receipt, a statement from the seller identifying the price and date of purchase, or a statement from a seller about the replacement value.

The procedures for filing an employee claim are as follows:

- Claim should be submitted to management with the recommendation of the appropriate shop steward and must be submitted within 14 days of the date of loss or damage.

- Management submits the claim, with the employer's and the steward's recommendations, to the District office within 15 days of receipt of the employee claim.

- District office will adjudicate claim within 30 days of receipt.

- If the decision is made to pay the claim, the employee will receive a letter advising that the claim is approved and a check is being processed. At that point the procedure ends.

- If the decision is made to modify or deny the claim, the employee will receive a letter indicating a denial or modification of the original claim. The letter will include the appeal procedures.

- The union has the option to appeal a modified or denied claim, pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.

- The District office will provide the union's Regional Representative a copy of the modified or denial letter, the claim form and all other documentation filed 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 parties do not meet to discuss the employee claims at steps 1, 2, or 3 of the grievance procedure.

ARTICLE 28
EMPLOYER CLAIMS

Section 28.1 Statement of Principle

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the U.S.P.S. 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 Claim: An employer claim is a demand made by management on a bargaining unit employee for loss or damage of the mails, or damage to USPS property and vehicles.

This paragraph requires the Postal Service to inform an employee in writing in advance of the reasons for any money demand. Some arbitrators have held that failure to issue a letter of demand in advance constitutes reversible error.

In addition to the employee protections found in this Article, Employee and Labor Relations Manual (ELM) Section 437 sets forth procedures under which an employee may request a waiver of an employer claim. See the discussion of the waiver provisions at the end of this Article.

Section 28.2 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 provides that a bargaining unit employee shall not be financially liable for the loss or damage of mails unless the employee "failed to exercise reasonable care."

Section 28.3 Damage to U.S.P.S. 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 misconduct: This section provides that a bargaining unit employee shall not be financially liable 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 employee.

Section 28.4 Collection Procedures

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 procedures.

If a grievance is filed regarding a demand for payment or a petition is filed pursuant to the Debt Collection Act, such demand for payment is held in abeyance until final disposition of the grievance or petition regardless of the amount of the demand or type of debt.

B No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

(The preceding Article, Article 28, shall apply to Mail Handler Assistant employees.)

This provision sets absolute limits on the amount that 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 Claims:

Many employer claims involve mistakes in which mail handlers are overpaid. Section 437 of the ELM provides, however, for the waiver of certain claims for erroneous payment of pay. In general terms, under the process set forth in ELM Section 437, the employee files Form 3074, Request for 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 of the information the mail handler may have concerning the overpayment, including a statement of the circumstances which the mail handler 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 mail handler did or did not do, and that it would be unfair to require repayment under the circumstances presented.

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 Eagan Accounting Service Center.

Under ELM Section 461.4, an employee's request for a waiver of a debt does not stay the collection process, which is dealt with further in the section entitled "Collection of Debts." However, if the waiver request is ultimately granted, the amount collected is refunded to the employee.

More specifically, ELM Section 437 states the purpose for which a waiver can be filed (Section 437.1) as well as definitions (Section 437.2) and the mechanics for filing a claim (Section 437.3). In addition, a review by the installation head and human resources is provided for in Sections 437.4 and 437.5 and Sections 437.6 and 437.7 complete the process. The provisions are as follows:

437 **Waiver of Claims for Erroneous Payment of Pay**

437.1 **Purpose**

This part establishes procedures for (a) requesting a waiver of a claim made by the Postal Service against a current or former employee for the recovery of pay that was erroneously paid and (b) applying for a refund of money paid by or deducted from a current or former employee as a result of such a claim.

437.2 **Definitions**

Definitions relevant to waiver of claims for erroneous payment of pay include the following:

a. *Pay* - salary, wages, or compensation for services including all forms of premium pay, holiday pay, or shift differentials; payment for leave, whether accumulated, accrued, or advanced; and severance pay. Pay does not include rental allowances or payment for travel, transportation, or relocation expenses.

b. *Employee* - throughout 437, a *former* employee as well as a *current* employee.

c. *Applicant* - an employee (current or former) or an individual acting on behalf of the employee who applies for a waiver of a claim for overpayment of pay.

d. *Installation head* - the postmaster, manager, or director of a field facility or the head (or designee) of a Headquarters field unit where the employee is employed or was last employed.

437.3 **Submission of Request**

437.31 **Expiration Date**

Waiver action may not be taken after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered.

437.32 **Form 3074**

The applicant requests a waiver of a claim or a refund of money paid as a result of a claim by submitting Form 3074, *Request for Waiver of Claim for Erroneous Payment of Pay*, in *triplicate* to the installation head. The completed Form 3074 must contain:

a. Information sufficient to identify the claim for which the waiver is sought including the amount of the claim, the period during which the erroneous payment occurred, and the nature of the erroneous payment.

b. A copy of the invoice and/or demand letter sent by the Postal Service, if available, or a statement setting forth the date the erroneous payment was discovered.

c. A statement of the circumstances that the applicant feels would justify a waiver of the claim by the Postal Service.

d. The dates and amount of any payments made by the employee in response to the claim.

437.4 **Review by Installation Head**

The installation head investigates the claim and writes a report of the investigation on the reverse side of the Form 3074. The report should include the following data and/or attachments:

a. All relevant facts or circumstances that are not described or are incorrectly described by the applicant on the Form 3074.

b. An explanation of the cause of the overpayment.

c. If available, a listing for each pay period in which an overpayment was made, of (1) the employee's pay rate, (2) the gross amount due the employee, and (3) the gross amount that was actually paid.

d. A statement as to whether there is any indication of fraud,

misrepresentation, fault, or lack of good faith on the part of anyone having an interest.

e. A recommendation for approval or disapproval of the claim based upon review of the facts and circumstances.

f. A copy of the invoice or notice to the employee of the amount requested to be repaid to the Postal Service together with the Form 3074. If neither of these items is available, a statement establishing the discovery date of the Postal Service claim should be included.

g. Copies of pertinent Forms 50, *Notifications of Personnel Action*; and any correspondence having a bearing on the claims, obtained from the employee's official personnel folder and included with the Form 3074.

h. Any other information that would assist in making a determination of whether collection action to collect the claim would be against equity or good conscience and would not be in the best interest of the Postal Service.

437.5 **Review by Human Resources**

The installation head forwards the Form 3074 to the servicing Human Resources official who:

a. Reviews the file for accuracy and completeness.

b. Completes part III of Form 3074.

c. Adds any pertinent comments to the file.

d. Forwards the entire file to the Payroll Processing Branch of the Eagan Accounting Service Center.

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 Postal Service. Excluded from consideration for waiver of collection are overpayments resulting from errors in time keeping, 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 interest of the Postal Service.

437.7 **Appeal of Disallowed Request**

437.71 **Appeal Procedure**

When a request for waiver has been partially or completely denied, the applicant may submit a written appeal to the Eagan Accounting Service Center within 15 days of receipt of the determination. The appeal letter should clearly indicate that the employee is appealing the disallowance of the waiver request and explain in detail the reasons why the employee believes the claim should be waived.

437.72 **Final Decision**

The Eagan Accounting Service Center will then forward the appeal, with the entire case file, to the applicable area Finance manager for area employees or to the manager of National Accounting at Headquarters for Headquarters and area office employees for a final decision. The area Finance manager or manager of National Accounting advises the employee concerned and the Eagan Accounting Service Center of his or her final decision. If necessary, the Eagan Accounting Service Center adjusts its records.

Collection of Debts:

Subchapter 460 of the ELM provides the regulations to be applied to the collection of any debt owed to the Postal Service by current bargaining unit employees. Due to the importance of this subchapter, the provisions are reprinted below.

460 Collection of Postal Debts From Bargaining Unit Employees

461 **General**

461.1 **Scope**

These regulations apply to the collection of any debt owed the Postal Service by a current postal employee who is included in any collective bargaining unit. If the circumstances specified in 462.32 apply to such

employees, 452.3 may also apply, and consequently 451.2, 451.5, and 451.7 as well.

461.2 Debts Due Other Federal Agencies

Regulations governing the collection, by involuntary salary offset, of debts owed by postal employees to federal agencies other than the Postal Service are specified in Handbook F-16, *Accounts Receivable*, Chapter 7.

461.3 Definitions

As used in this subchapter, the following terms have the same meaning ascribed to them in 451.4:

a. Administrative salary offset.

b. Court judgment salary offset.

c. Current pay and disposable pay.

d. Debt.

e. Employee.

f. Pay.

g. Postmaster or installation head.

h. Severe financial hardship.

i. Waiver.

461.4 Effect of Waiver Request

If an employee requests a waiver of a debt, the recovery of which is covered by these regulations, that request does not stay the collection process. However, if the waiver request ultimately is granted, the amount collected must be refunded to the employee.

462 Procedures Governing Administrative Salary Offsets

462.1 Determination and Collection of Debt

462.11 Establishment of Accounts Receivable

Depending upon the circumstances of a particular case, the determination of a debt, the collection of which is covered by this subchapter, may be made by an official in the field or at the Eagan Accounting Service Center (ASC). For payroll-related debts discovered in the field, Form 2240, *Pay, Leave, or Other Hours Adjustment Request*, must be submitted to the Eagan ASC. Payroll-related debts discovered at the ASC level must be reported on Form 2248, *Monetary Payroll Adjustment*. Other debts must be reported to the manager of the Postal Accounts Branch, on Form 1902, *Justification for Billing Accounts Receivable*. Regardless of the amount of the debt, it is the responsibility of the Eagan ASC to create a receivable for each debt and to forward an invoice to the postmaster or installation head at the facility where the debtor is employed. At the time a receivable is created, the ASC must ensure that the employee's records are flagged so that the final salary or lump sum leave payment for that employee is not made until the debt is paid.

462.12 **Collection by Postmaster or Installation Head**

Each postmaster or installation head is responsible for collecting, in accordance with these regulations, any debt owed to the Postal Service by an employee under his or her supervision. A postmaster or installation head may delegate his or her responsibilities under these regulations.

462.2 **Applicable Collection Procedures**

462.21 **Right to Grieve Letters of Demand**

A bargaining unit employee or the employee's union has the right in accordance with the provisions of Article 15 of the applicable collective bargaining agreement to initiate a grievance concerning any letter of demand to challenge (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, (c) the proposed repayment schedule, and/or (d) any other issue arising under Article 28 of the applicable collective bargaining agreement. Care must be taken to ensure that any letter of demand served on an employee provides notice of the employee's right to challenge the demand under the applicable collective bargaining agreement.

462.22 **Right to Petition for Hearing**

Under the following circumstances, the statutory offset procedures in 452.3, including the right to petition for hearing after the receipt of a Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act, apply:

a. *Failure to Initiate a Grievance in Time*. If a bargaining unit employee or the employee's union does not initiate, within 14 days of the employee's receipt of a letter of demand, a grievance challenging (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, and/or (c) the proposed repayment schedule, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32).

b. Failure to Advance Grievance in Time. If a bargaining unit employee or the employee's union initiates a grievance in time challenging (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, and/or (c) the proposed repayment schedule, but the employee's union, following receipt of a decision denying the grievance, does not advance the grievance to the next step of the grievance procedure within the time limits set forth in Article 15 of the applicable collective bargaining agreement, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32).

c. Partial Settlement of Grievance. If a grievance challenging (a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, and/or (c) the proposed repayment schedule is resolved at any stage of the grievance-arbitration procedure through a written settlement agreement between the Postal Service and the union under which the employee remains liable for all or a portion of the debt, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32). If the employee petitions for a hearing under 452.336, the Postal Service is free to pursue collection of the full amount of the debt before the hearing officer, notwithstanding the settlement with the union. However, if any contractual issue is resolved at any stage of the grievance-arbitration procedure, the settlement of that issue is final and binding.

d. *Ruling of Nonarbitrability*. If an arbitrator rules that a grievance concerning any letter of demand is not arbitrable, and the Postal Service intends to proceed with the collection of the debt, the statutory offset procedures in 452.3 apply (see 462.32).

462.3 **Statutory Offset Procedures**

462.31 **Authority**

Under section 5 of the Debt Collection Act, 5 U.S.C. 5514(a) (1982), the Postal Service, after providing an employee with procedural due process, may offset an employee's salary in order to satisfy any debt due the Postal Service. Generally, up to 15 percent of an individual's "disposable pay" may be deducted in monthly installments or at "officially established pay

intervals," except as provided by 462.42. A greater percentage may be deducted with the written consent of the individual debtor. If the individual's employment ends before collection of the full debt, deduction may be made from subsequent payments of any nature due the employee.

462.32 Initiation of Statutory Offset Procedure

After (a) the 14 days referenced in 462.22a or the time limits referenced in 462.22b have passed, (b) any settlement agreement referenced in 462.22c has been signed, or (c) any nonarbitrability ruling referenced in 462.22d has been issued, and at least 30 calendar days before making an administrative offset under this authority, the postmaster or installation head, in accordance with 452.321, must provide the employee with (a) two copies of a Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act containing the information in 452.322, and (b) one copy of the procedures that govern hearings under the Debt Collection Act that are set forth at 39 CFR Part 961 (see Exhibit 452.322). The procedures in 452.33 governing the exercise of employee rights apply. The postmaster or installation head has discretion to agree to an alternative offset schedule, based on a showing of severe financial hardship, as outlined in 452.335.

462.33 Hearing Officials Under 39 CFR Part 961

In accordance with 39 CFR 961.3, administrative hearings under the Debt Collection Act may be conducted by any individual who is not under the control or supervision of the postmaster general and who is designated as a hearing official by the judicial officer.

462.34 Limit of Right to Petition for Hearing

If an arbitrator opens a hearing on the merits of a grievance concerning any letter of demand, the statutory offset procedures in 452.3 do not apply thereafter, unless the arbitrator makes a ruling of nonarbitrability (see 462.22d) or the Postal Service and the union negotiate a partial settlement of the grievance (see 462.22c).

462.4 Collection of Debt

462.41 Stay of Collection of Debt

Whenever a grievance concerning any letter of demand has been initiated in time, in accordance with Article 15 of the applicable collective bargaining agreement, and/or a petition for a hearing has been filed in time, in accordance with 462.22, regardless of the type and amount of the

debt, the Postal Service will stay the collection of the debt until after the disposition of the grievance and/or the petition, through settlement or exhaustion of the contractual and/or administrative remedies.

462.42 Limit on Amount of Salary Offset to Collect Debt

Except as specified in part 463, the maximum salary offset to collect a debt that is owed to the Postal Service is 15 percent of an employee's biweekly disposable pay, or 20 percent of the employee's biweekly gross pay, whichever amount is lower when the salary offset is started. A greater salary offset may be made if the employee agrees with the Postal Service, in writing, on such greater amount.

There is no dispute between the parties that a money demand from current employees must be consistent with Article 28 of the National Agreement, Section 460 of the Employee and Labor Relations Manual, and any applicable law. The parties agree 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. No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

Source: Step 4 Grievance Q90M-4Q-C 95048706, dated April 19, 2011.

462.5 Implementing Offsets

After the applicable procedural requirements have been followed, the postmaster or installation head must institute the collection process by completing the appropriate sections of Form 3239, *Payroll Deduction Authorization to Liquidate Postal Service Indebtedness* (see Exhibit 452.233).

463 Court Judgment Salary Offsets

463.1 Authority

In accordance with section 124 of Public Law 97-276 (October 2, 1982), 5 U.S.C. 5514 note (1982), the Postal Service may deduct up to one-fourth (25 percent) of an employee's "current pay" in monthly installments or at officially established pay periods to satisfy a debt determined by a federal court to be owed to the Postal Service. The statute authorizes the

deduction of a “greater amount” if necessary to collect the debt within the employee’s anticipated period of employment. If an individual’s employment ends before the full amount of the indebtedness has been collected, section 124 provides that deduction is to be made from later payments of any nature due the employee.

463.2 Applicable Collection Procedures

463.21 General

The requirements governing the collection of employer claims specified by a pertinent collective bargaining agreement are not applicable to the collection by salary offset of a Postal Service claim if a federal court has granted judgment upholding the debt.

463.22 Notice

At least 15 calendar days before initiating an offset to collect a debt reflected by a federal court judgment, the postmaster or installation head must provide the employee with a copy of that judgment, as well as with written notice of the Postal Service’s intention to deduct 25 percent of the employee’s current pay each pay period until the judgment is satisfied. The letter (see Exhibit 453.21, Sample Letter of Salary Offsets Based on Federal Court Judgment) also must include a statement that indicates the approximate amount, duration, and starting date of the deductions. The letter and judgment generally should be hand delivered, and a dated, signed receipt of delivery obtained. However, if personal delivery is not possible, certified or Express Mail, return receipt requested, should be used.

463.23 Implementing Offsets

The postmaster or installation head must initiate the collection process by completing the appropriate sections of Form 3239 no earlier than 15 calendar days after the employee’s receipt of the letter.

464 Multiple Offsets

464.1 Administrative Salary Offsets

By statute, administrative salary offsets under section 5 of the Debt Collection Act of 1982 are limited to no more than 15 percent of an employee’s disposable pay during any one pay period — whether the deductions are made to satisfy a debt owed the Postal Service, another federal agency, or some combination of these (but see 462.42 for the alternative limit on amount of salary offset to collect a debt that is owed to

the Postal Service). Generally, priority among competing administrative salary offset requests is determined by the order in which they are received. However, a request to collect a debt due the Postal Service must be given priority over other government agency offset requests, regardless of the date the postal offset request is received (see 464.4). If a collection request cannot be honored upon receipt, or can be honored only in part, the postmaster or installation head must notify the requesting postal or other government official, in writing, of the reasons for the delay or for the collection of a lesser amount than that requested and the approximate date the requested offsets can be implemented.

464.2 Court Judgment Salary Offsets

No more than 25 percent of an employee's current pay may be withheld to satisfy a debt determined by a federal court to be due the United States — whether the deductions are made to satisfy a debt owed the Postal Service, another federal agency, or some combination of these. Generally, priority among competing court judgment salary offset requests is determined by the order in which they are received. However, a request to collect a debt due the Postal Service must be given priority over other government agency offset requests regardless of the date the postal offset request is received (see 464.4). If a collection request cannot be honored upon receipt, or can be honored only in part, the postmaster or installation head must notify the requesting postal or other government official, in writing, of the reasons for the delay or for the collection of a lesser amount than that requested and the approximate date the requested offsets can be implemented.

464.3 Administrative and Court Judgment Salary Offsets

If the salary of a postal employee is the target of one or more of both types of offsets — administrative and court judgment — a combined total of no more than 25 percent will be withheld during any one pay period. However, in no case may the amount withheld in accordance with administrative salary offsets exceed 15 percent of current pay (but see 462.42 for the alternative limit on amount of salary offset to collect a debt that is owed to the Postal Service). As is generally the case with competing offsets of the same type and subject to section 464.4, priority between administrative salary offsets and court judgment salary offsets is determined by the order in which they are received.

464.4 Priority of Postal Service Indebtedness

If a postal employee is indebted to the Postal Service, that debt takes priority over any debt he or she may owe another federal agency, even if the other agency's request for salary offsets was received first. Accordingly, if both the Postal Service and another agency request the

maximum allowable deductions, collection of the other agency's debt must be interrupted or postponed until the entire postal debt is recovered. However, if an amount less than that requested by the other agency can be deducted in addition to the offsets requested by the Postal Service without exceeding the appropriate percentage ceiling, deductions for the lesser amount must be withheld and forwarded to the requesting agency along with an explanation for the smaller offsets.

464.5 Garnishments

Administrative salary offsets based on section 5 of the Debt Collection Act of 1982 and court judgment salary offsets based on section 124 of Public Law 97-276 are not, as a matter of law, considered garnishments. Rather, for purposes of determining an employee's "disposable earnings" under the Federal Consumer Credit Protection Act, 15 U.S.C. 1671, et seq., these withholdings are considered to be amounts required by law to be deducted. Accordingly, they should be deducted before the applicable garnishment ceilings are imposed and before deductions for garnishments are made.

465 Action Upon Transfer or Separation

465.1 Withholdings From Any Amount Due

If a postal employee whose wages are subject to offset transfers to another federal agency or separates from employment, the Postal Service applies any amount due the employee at the time of his or her separation to the debt owed the Postal Service. If the debt is still not satisfied, appropriate action as described in 465.2 or 465.3 should be taken.

465.2 Transfer to Another Federal Agency

If a postal employee whose wages are subject to offset transfers to another federal agency, and the full debt cannot be collected from amounts due the employee from the Postal Service, the Postal Service must request the former postal employee's new agency to continue offsetting the debtor's salary until the debt is satisfied. The request must specify the amount of the original debt, the amount collected by the Postal Service through salary offsets, the amount that remains to be collected, and the percentage of the debtor's disposable earnings or current pay that should be deducted each pay period. In addition, the Postal Service must certify that the former postal employee has been accorded all required rights of due process. When the Postal Service's request is sent to the new employing agency, a copy also must be sent to the former employee at his or her home address.

465.3 **Collection of Debt Upon Separation**

If the full debt cannot be collected from amounts due the employee at the time of his or her separation, the manager of the Postal Accounts Branch must attempt to recover the debt from any available retirement or disability payments due the former employee in accordance with the provisions of 5 CFR 831, Subpart R, or 5 CFR 845, Subpart D (see Handbook F-16, *Accounts Receivable*, 743).

ARTICLE 29
LIMITATION ON REVOCATION OF OF-346

Section 29.1 Revocation or Suspension of OF-346

A An employee's OF-346, Operator's Identification Card, may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver.

B 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 operations standards.

C The report of the Safe Driver Award Committee cannot be used as a basis for revoking or suspending an OF-346.

D When a revocation, suspension, or reissuance of an employee's OF-346 is under consideration, only the on-duty record will be considered in making a final determination. An employee's OF-346 will be automatically revoked or suspended concurrently with any revocation or suspension of State driver's license and restored upon reinstatement. Such revocation or suspension of the State driver's license shall not prevent the employee from operating in-house power equipment, if the employee is otherwise qualified to do so. Every reasonable effort will be made to reassign such employee to non-driving duties. 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 OF-346 will not be automatically revoked. When revocation, suspension, or reissuance of an employee's OF-346 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.

For many years the USPS issued a special postal “Operator’s Identification Card” known as the OF-346 and before that, the SF-46. This form has been discontinued and has been replaced with a ‘Certificate of Vehicle Familiarization and Safe Operation’. This certificate applies to the operation of motor vehicles and to the operation of powered industrial equipment.

In the Mail Handler Craft, this Article has its greatest application relative to the operation of powered industrial equipment. Operation of industrial equipment that is powered by electric motor (battery) or internal combustion (flammable gases) requires the operator to have an appropriately endorsed Certificate of Vehicle Familiarization and Safe Operation regardless of whether the operator walks behind or rides on the equipment to guide it.

Operators of powered industrial equipment do not have to possess a valid State driver's license. The policies that govern selection of these operators, therefore, do not contain the requirement to obtain a State driving abstract, compare it with the Table of Disqualification, or administer an initial road test.

Moreover, revocation or suspension of a State driver's license shall not prevent an employee from operating in-house power equipment, if the employee is otherwise qualified to do so.

- Rules regarding the suspension or revocation of driving privileges relative to powered industrial equipment are contained in the Powered Industrial Equipment Section of the driver training program entitled *Driver Selection, Orientation, Familiarization and Certification,* (Course 43513-00) issued in 1993. This training program replaced former Handbook EL-827, *Driver Selection, Testing and Licensing.* That section states:

  "D.Suspension and Revocation

  1. The driving privileges for powered industrial equipment may be suspended or revoked for the following reasons:

     a. If a licensed physician finds that an employee's physical condition warrants such suspension or revocation;

     b. If an employee continues to operate powered industrial equipment in an unsafe manner after being individually warned or instructed;

     c. If an operator has been involved in two or more at-fault powered industrial equipment accidents within a 12-month period; or

     d. If allowing the employee to continue operating powered industrial equipment may result in damage to USPS property, loss of mail or funds, or injury to the employee or others."

In those circumstances where an employee operates a motor vehicle (see comments in Section 2.2), management may suspend or revoke an employee's driving privileges under certain circumstances:

- Automatically, concurrently with the suspension or revocation of the employee's state driver's license, unless the suspension or revocation by the state includes the condition that the employee may operate a vehicle for employment purposes. Automatic reinstatement of postal driving privileges must follow reinstatement of the state driver's license.

As noted above, such revocation or suspension of the State driver's license shall not prevent the employee from operating in-house power equipment, if the employee is otherwise qualified to do so.

- 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. This 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 a 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 privileges 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 result 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: In the event an employee's driving privileges have been suspended or revoked, Article 29 provides that "Every reasonable effort will be made to reassign such employee to non-driving duties." This requirement is not contingent upon a mail handler making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable non-driving work.

Section 29.2 Issuance

A An employee shall be issued an OF-346 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.

In an APWU national arbitration case, with NPMHU and NALC intervention, Arbitrator Snow held that management is not prevented by the parties' collective bargaining agreement from granting driving privileges to employees who are not required to drive solely on the basis of their position or job description, if those employees otherwise are qualified to drive and meet internal requirements. He added that where management can show a local past practice of licensing Mail Handlers, Letter Carriers and others to drive five-ton and larger vehicles, such conduct continues to be permissible within the bounds of good faith. If it can be shown that local management has not conducted its operations in such a manner, the employer is limited to its prior course of conduct, unless the parties negotiate a different result.

Source: National Arbitration Award H7C-1K-C 31669, Arbitrator Carlton Snow, dated November 14, 1997.

B An employee who has been issued an OF-346 for the operation of a motor vehicle must inform the supervisor immediately of the revocation or suspension of such employee's State driver's license

ARTICLE 30
LOCAL IMPLEMENTATION

Section 30.1 Current Memoranda of Understanding

Presently effective local memoranda of understanding not inconsistent or in conflict with this 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.

Since the beginning of full postal collective bargaining in 1971, the contractual rights and benefits of bargaining unit employees have been negotiated at the national level. However, the implementation of certain provisions of the National Agreement has been left to the local parties on the basis of their particular preferences and circumstances; this period of "local implementation" has followed the negotiation of each National Agreement. The agreement reached by the local parties during this period is referred to as the Local Memorandum of Understanding (LMOU).

Section 30.1 provides that currently effective LMOU provisions, which are not in conflict or inconsistent with the National Agreement, remain in effect during the term of the new National Agreement unless the parties change them through local implementation or the related impasse procedures.

Question: If neither party invokes the local implementation process during the specified period, does the previous LMOU continue in effect?

Answer: Yes. Section 30.1 states that "presently effective local memoranda of understanding not inconsistent or in conflict with this 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. . ."

Section 30.2 Items for Local Negotiations

There shall be a 30 consecutive day period of local implementation which shall occur within a period of 60 days commencing **May 2, 2020** on the 20 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of this Agreement:

Local implementation takes place during a consecutive 30 day period selected by the local parties. That 30 day period is selected within a period of 60 days, which will commence under the **2019** National Agreement on **May 2, 2020**. The Memorandum of Understanding, Article 30 – Local Implementation Procedures,

reproduced hereunder, contains specific procedures for local implementation under the **2019** National Agreement.

MEMORANDUM OF UNDERSTANDING

ARTICLE 30--LOCAL IMPLEMENTATION PROCEDURES

It is hereby agreed by the United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO**,** a Division of the Laborers' International Union of North America, that the following procedures will apply to the implementation of Article 30 during the **2019** local implementation period.

1. The thirty (30) consecutive day period for **2019** local implementation will commence, pursuant to agreement by the local parties, on or after **May 2, 2020** and terminate on or before **June 30, 2020**. If the local parties do not reach agreement on the dates for local implementation, the local implementation period shall be from **June 1, 2020** to **June 30, 2020**. Initial proposals must be exchanged within the first twenty one (21) days of the thirty (30) consecutive day local implementation period.

If neither party provides written notification of its intent to invoke the local implementation process on or before **May 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the **2019** National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive 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 LR Service Center of the Employer with copies to the Installation Head, local Union President and the Union's Regional Representative within fifteen (15) days after **June 30, 2020**. 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 appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days after **June 30, 2020**. The appropriate management official at the Area office and the Regional Union representative will have full authority to resolve all issues still in dispute.

4. If the parties identified in paragraph 3 above are unable to reach agreement at the Regional level 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 Union

or the Vice President, Labor Relations, within twenty-one (21) days of the end of the seventy-five (75) day period. Any such appeal shall be given priority scheduling on the District Regular Contract Docket.

5. Where there is no agreement and the matter is not referred to the appropriate management official at the LR Service 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 new or amended provisions of the **2019** 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 **2019** Mail Handlers National Agreement, such dispute will be processed in accordance with the procedures outlined in 2. through 4. above. Items declared to be inconsistent or in conflict shall remain in effect until four (4) months have elapsed from the conclusion of the local implementation period under the **2019** National Agreement.

This Memorandum of Understanding expires at 12 midnight **September 20, 2019**.

The Memorandum of Understanding provides specific dates for local implementation under the **2019** National Agreement, including establishment of a set 30-day implementation period in those instances where the local parties do not reach agreement, standardization of the dates for impassing the dispute to the Area/Regional level and, if resolution is not achieved at that level, for appeal to Regional level arbitration.

Because of the ongoing 2020 pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding (a copy is included in the CIM Resource Manual) to delay the period during which the parties at each installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty day period for local negotiations - which originally was set to occur in May and June 2020 under Article 30 of the National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is October 2, 2020 through October 31, 2020.

Either party can open negotiations with notification to the other party on or before September 15, 2020. The key dates to remember regarding Local negotiations are as follows:

1. **The deadline for notification of intent to open negotiations is September 15, 2020. If neither party provides notification of its intent**

to invoke local implementation procedures by September 15, 2020, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. **In the event that any issue(s) remain in dispute at the end of the thirty consecutive day 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 shall be appealed within fifteen (15) days after October 31, 2020 to all of the following addresses:**

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. **The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy five (75) days of the close of the implementation period. The seventy five day period runs from October 31, 2020 to January 14, 2021.**

4. **If the parties at the Area/Regional level are unable to reach agreement by the end of the 75 day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of January 14, 2021 or by February 4, 2021.**

Source: 2019 – 2022 National Agreement Questions and Answers, 5/22/2020.

In an effort to assure timely resolution of impasse items resulting from local implementation under the **2019** National Agreement, appeals to Regional arbitration are given priority scheduling on the District Regular Contract Docket. Items declared in conflict or inconsistent remain in effect for four months after the conclusion of the local implementation period.

A National arbitration award has confirmed that the local parties do not have the right to make changes to the LMOU that are substantial, in character or scope, except during the specific 30-day implementation period. Where the local parties desire to make such interim changes in the LMOU, they must obtain joint agreement from the parties at the National level in advance.

Source: National Arbitration Award H7N-1F-C 39072, Arbitrator R. Mittenthal, dated June 2, 1995.

The 20 Items: Section 30.2 lists the 20 Items that 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 20 items listed in Section 30.2. See further the discussion of the September 21, 1981 National Arbitration Award by Arbitrator R. Mittenthal under Section 30.3A below.

A Additional or longer wash-up periods.

Article 8 (Section 8.9) is the contractual provision that provides for wash-up time. Item A provides the opportunity to discuss locally additional or longer wash-up periods.

B 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.

This item gives the local parties the opportunity to discuss and formulate guidelines for the curtailment of postal operations in case of an emergency.

C Formulation of local leave program.

D The duration of the choice vacation period.

E The determination of the beginning day of an employee's vacation period.

F Whether employees at their option may request two selections during the choice vacation period, in units of either 5 or 10 days.

G Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period.

H Determination of the maximum percentage of employees who shall receive leave each week during the choice vacation period.

I The issuance of official notices to each employee of the vacation schedule approved for such employee.

J Determination of the date and means of notifying employees of the beginning of the new leave year.

K	The procedures for submission of applications for annual leave during other than the choice vacation period.

All of the above Items (C thru K) plus Item R cover the formulation of a local leave program. See generally Article 10. This program covers both choice and other-than-choice vacation.

L	Whether "Overtime Desired" lists in Article 8 shall be by section and/or tour.

Article 8 (Section 8.5B) contains the National Agreement language related to this item.

M	The number of light duty assignments to be reserved for temporary or permanent light duty assignment.
N	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.
O	The identification of assignments that are to be considered light duty.

See Article 13 (Section 13.3).

P	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 (Section 12.6C4) is the provision related to this item. This item provides for the identification of sections for the purposes of administering the provisions of Article 12 (Section 12.6C4). If sections are not identified in accordance with this item the entire installation will be considered a section.

Q	The assignment of employee parking spaces.

The parties locally can identify procedures for the assignment of parking spaces; e.g. first come, first served. See generally Article 20.

R	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.

See discussion under Items C through K above.

S Those other items which are subject to local negotiations as provided in the following Articles:

Article 12, Section .3B5

Relates to reposting of a duty assignment due to changes in duties or principal assignment area.

Article 12, Section .3C

Relates to posting and bidding on an installation-wide or other basis.

Article 12, Section .3E3f

Relates to the order of movement of full-time employees outside the bid assignment area.

Article 12, Section .4

Relates to the definition of a section.

Article 12, Section .6C4a

See Item P above.

Article 13, Section .3

See Items M through O above.

T Local implementation of this Agreement relating to seniority, reassignments and posting.

Section 30.3 Grievance-Arbitration Procedure

A All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the Union 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 this Agreement. The Employer may challenge a provision(s) of a local memorandum of understanding on "inconsistent or in conflict" grounds only by making a reasonable claim during the local implementation process that a provision(s) of the local memorandum of understanding is inconsistent or in conflict with new or amended provisions of the current National Agreement that did not exist in the previous National Agreement, or with provisions that have been

amended subsequent to the effective date of the previous National Agreement. If local management refuses to abide by a local memorandum of understanding on "inconsistent or in conflict" grounds and an arbitrator subsequently finds that local management had no reasonable basis for its claim, the arbitrator is empowered to issue an appropriate remedy.

In the event of a mid-term change or addition in the National Agreement, local management may challenge a provision(s) of a local memorandum of understanding subsequent to the local implementation period, but only by making a reasonable claim that a provision(s) of a local memorandum of understanding is inconsistent or in conflict with the changed provision(s) of the National Agreement. The challenged provision(s) declared to be inconsistent or in conflict with the National Agreement shall remain in effect for 120 days from the date on which the Union is notified in writing of management's challenge or the date of an arbitrator's award dealing with management's challenge, whichever is sooner.

[See Memo, page 198]

The Memorandum of Understanding, Article 30 – Local Implementation Procedures, reprinted above, sets out the specific provisions for impasse of items remaining in dispute. Either party may impasse and submit to interest arbitration a provision in a LMOU that relates to one of the 20 items listed in Section 30.2. Neither party, however, has the right to resort to impasse arbitration over subject matters outside the 20 items.

Source: National Arbitration Award H0C-NA-C 3, Arbitrator R. Mittenthal, dated July 12, 1993.

The parties have agreed that the time limits for appeal to Regional level arbitration contained in the Memorandum of Understanding supersede the language found in this section. The ten day period provided for in Section 30.3 is overridden by the Memorandum of Understanding which provides 21 days.

Source: Letter from W. Flynn, NPMHU, to A. Wilson, USPS, dated June 19, 2002.

Question: If there is no agreement on a proposal as a result of local implementation, and the proposal is not referred to the Area/Regional level and/or to impasse arbitration, is the proposal thereby automatically adopted by the local parties?

Answer: No. Where there is no agreement, and the matter is not referred to the Area/Regional level or to arbitration, the provision(s), if any, of the former LMOU shall apply unless inconsistent or in conflict with new or amended provisions of the current National Agreement.

Management may challenge a local memorandum provision as in conflict or inconsistent only by making a reasonable claim during the local implementation process that a provision(s) of the LMOU is inconsistent or in conflict with new or amended provisions in the current National Agreement that did not exist in the previous National Agreement, or with provisions that have been amended subsequent to the effective date of the previous National Agreement. If local management refuses to abide by the LMOU on "inconsistent or in conflict" grounds and an arbitrator subsequently finds that local management had no reasonable basis for its claim, the arbitrator is empowered to issue an appropriate remedy. When management declares an item to be in conflict and/or inconsistent during the local implementation period, the union has the burden to appeal that item under the impasse procedures. Management may cease to honor provisions of a LMOU which it deems to be in conflict or inconsistent with the National Agreement after four months have elapsed following the conclusion of the local implementation period.

Management may also make an in conflict or inconsistent challenge as a result of a mid-term change or addition to the National Agreement that is made subsequent to the local implementation period, but only by making a reasonable claim that a provision(s) of the LMOU is inconsistent or in conflict with the changed provision(s) of the National Agreement. In this circumstance, the local memorandum provision must remain in effect for 120 days from the date that management notified the union of the challenge or the date on which an arbitrator rules on the challenge, whichever is sooner.

The parties have agreed that the introduction of the CIM does not constitute "new or amended provisions" or "a mid-term change or addition" to the National Agreement and that, therefore, it cannot be used as a basis to declare an item in an existing Local Memorandum of Understanding inconsistent or in conflict with the National Agreement.

Arbitrator Garrett declared that a proposal which may seem to seek a result in conflict with the National Agreement, but which nonetheless seeks to deal with a genuine problem within the scope of Article 30, still may provide a basis for good faith negotiations. "Nothing in the present Article (XXX) authorizes a refusal to negotiate concerning a local proposal, on one of the subjects delineated in Paragraph (B) thereof." However, "either party may and should resist agreement upon any compromise or alternate solution which would conflict with the National Agreement."

Source: National Arbitration Award Impasse 78, Arbitrator S. Garrett, dated October 28, 1974.

While the parties may discuss and implement language which is outside the scope of the 20 items listed in Section 30.2, they are not required to do so. Arbitrator Mittenthal ruled that it would take clear contractual language to prohibit the local parties from negotiating a clause on a subject outside the listed items

and that no such language exists in Article 30. In this case, in which local management in Helena, MT had agreed to restrict the re-labeling of carrier cases to the regular carrier or T-6, the arbitrator ruled that the "exclusive right" provisions of Article 3 did not prevent local management from agreeing to "limit the assignment of particular work to particular employees. That was simply one of the options available to it. Because this Helena clause was hence within Management's powers, it can hardly be considered 'inconsistent or in conflict with' Article III rights."

Arbitrator Mittenthal added that the local parties are free if they wish to expand their negotiating agenda to include subjects nowhere mentioned in Section 30.2, but that neither party can be required to negotiate any subject outside those listed.

Source: National Arbitration Award N8-W-0406, Arbitrator R. Mittenthal, dated September 21, 1981.

B An alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure.

Once the LMOU is signed and implemented, its provisions are enforceable through the grievance-arbitration procedures of Article 15. As noted above, items which are in conflict and/or inconsistent with new or amended provisions of the current National Agreement must be challenged by management during the local implementation period. Also, management may make an in conflict and/or inconsistent challenge as a result of a mid-term change or addition to the National Agreement.

C 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 2. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the Union or the Vice President, Labor Relations. The request for arbitration must be submitted in accordance with the Memorandum of Understanding Re: Local Implementation.

This provision provides for the parties to conduct local implementation outside the period provided in Section 30.2 in those limited instances where installations are consolidated or a new installation is created.

D Where the Postal Service, pursuant to Section 3A, 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 Postal Service.

This provision establishes the burden of proof required where management impasses an existing provision of a currently effective LMOU – that management "shall have the burden of establishing that continuation of the existing provision would represent an unreasonable burden to the Postal Service." Note that the union does not bear the same burden when it seeks to change a presently effective LMOU provision.

Section 30.4 Local Memorandum of Understanding

Subject to the local implementation provisions of this Article, at the conclusion of the local negotiation period, the management representative and the Union representative will sign a local memorandum of understanding for those items on which agreement has been reached. Any items which remain in dispute and which are subsequently resolved in accordance with the local implementation provisions of this Article will be incorporated as an addendum to the local memorandum of understanding. The format for the local memorandum shall be as follows: This Memorandum of Understanding is entered into on_____, 20____, at _____, between the representatives of the United States Postal Service, and the designated agent of the National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America, pursuant to the Local Implementation Article of the **2019** National Agreement. This Memorandum of Understanding constitutes the entire agreement on matters relating to local conditions of employment.

Section 30.4 sets out the procedures and specific language required for executing the LMOU and provides for incorporation of items eventually resolved through the impasse procedures.

ARTICLE 31
UNION-MANAGEMENT COOPERATION

Section 31.1 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.

Section 31.1 specifies the right of the union to solicit employees for membership and to receive dues payments from employees in non-work areas of postal installations, subject to a requirement that the activity does not interfere with postal operations.

Question: Are new employees permitted to fill out applications for membership in the Union during employee orientation?

Answer: Yes. New employees can complete SF-1187, Authorization for Deduction of Union Dues, during employee orientation. The completion of the forms should be carried out in areas designated by management.

Source: Step 4 Grievance H4N-4J-C 2536, dated August 29, 1985.

Section 31.2 Electronic Communication

The Employer shall, on an accounting period basis, provide the Union at its national headquarters with electronic communication containing information as set forth in the Memorandum of Understanding regarding Article 31.

[See Memo and Letter, pages 199-200

This language requires the Postal Service to provide specified detailed information about each member of the mail handlers bargaining unit represented by the NPMHU. The Union uses this information to conduct its representation functions and administer its membership information system. The referenced Memorandum of Understanding Article 31 – Computer Tape Accounting Period Report, and a Letter of Intent Article 31 – Information/Reports outlining certain additional reports and indicating their cost and frequency of production, are reprinted at the end of this article.

Section 31.3 Information

A 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 written 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.

B 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 should be directed by the Union to the Vice President, Labor Relations.

C Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

This language sets forth the parameters for providing information when requested by the union. Management must provide the union with all relevant information necessary for collective bargaining or for the enforcement, administration or interpretation of the agreement, including information necessary to determine whether to file or to continue processing a grievance. The union's request for information must be made in writing.

The union is required only to give a description of the information it needs and to make a reasonable claim that the information is needed to enforce or administer the contract. An explanation of the relevance of the information is required; the union is not permitted to conduct a "fishing expedition" into employer records.

Paragraph C of this section recognizes the Union's legal right to obtain USPS information under the National Labor Relations Act, which may be enforced through the filing of an unfair labor practice complaint with the National Labor Relations Board.

Examples of types of information covered by this provision include:

Employee attendance records;
Employee payroll records;
Documents in an employee's official personnel file;
Internal USPS instructions and memoranda;
Employee disciplinary records;
Handbooks and manuals;
Reports and studies;
Seniority lists;
Overtime Desired List and Volunteer List records;
Bid records and
Postal Inspection Service Investigative Memoranda (IM) relating to employee discipline.

Settlements and arbitration awards have addressed the Union's entitlement to information in certain specific areas:

A completed PS Form 2608, Supervisor's Step 1 Grievance Summary, will be provided upon request at Step 2 or at any subsequent step of the grievance procedure.

Source: Step 4 Grievance H1M-1J-C 10717, dated March 22, 1984.

Any and all information upon which the parties rely to support their position in a grievance is to be exchanged between the representatives to assure that every effort is made to resolve the grievance at the lowest possible level.

Source: Step 4 Grievance H8C-5K-C 14259, dated April 23, 1981.

Minutes of Quality of Work Life meetings must be submitted to a non-participating union when that union asserts a need for specific minutes in order to determine whether or not to file a grievance and provides a reasonable explanation of that need.

Source: National Arbitration Award H4T-2A-C 36687, Arbitrator R. Mittenthal, dated November 16, 1990.

Restricted sick leave lists will be provided upon union request, pursuant to the routine use provisions of the Privacy Act.

Source: Pre-arbitration Settlement H8C-5D-C 8083, dated April 14, 1981.

Question: What is the proper level at which the Union should generate and file requests for information relating to purely local matters?

Answer: Requests relating to purely local matters should be submitted by the local union representative to the installation head or his/her designee.

Information regarding costs chargeable for providing information to the union is found in Chapter 4 of the AS-353; note that the union is in the AS-353 category of "All Other Requesters." Currently, the AS-353 provides for the waiver of information fees for the first 100 pages of duplication and the first 2 hours of search time; after the first 100 pages, duplication costs are charged at the rate of $0.15 per page. While relevant excerpts from that handbook are reprinted below, a review of the complete AS-353 language is recommended.

4-6.2 Aggregate Requests

When a custodian reasonably believes that a requester is attempting to break a request down into a series of requests to avoid fees, the custodian may aggregate the requests and charge accordingly. Multiple requests pertaining to unrelated subject matters are not aggregated. Requests made by more than one requester may be aggregated when a custodian has a concrete basis to conclude that requesters are acting together to avoid fees.

4-6.5 How to Assess Fees

a. *Fees Not Assessed.* The Postal Service does not charge for responding to the following: requests for records if fees do not exceed $10 . . .

Question: How are payments for requested information handled?

Answer: The union agrees that it will be required to reimburse the Postal Service for any costs reasonably incurred in gathering requested information, in keeping with the provisions of the ASM (now AS-353). Management should provide the union with an estimate of the fees involved and may require payment in advance. Thus, requests for information should not be denied solely due to compliance being burdensome and/or time consuming.

Source: Step 4 Grievance H4C-1K-C 41761, dated June 14, 1988.

Section 31.4 Committee

The Employer and the Union, believing that improvements in the work life can heighten employee job satisfaction, enhance organizational effectiveness, and increase the quality of service and that these objectives can be best accomplished by joint effort, hereby continue, at the national level, a joint Committee to Improve the Quality of Work Life.

(The preceding Article, Article 31, shall apply to Mail Handler Assistant employees.)

This paragraph establishes the Quality of Work Life or QWL process as part of the parties' contractual relationship.

The following Memorandum of Understanding is referenced in Section 31.2.

MEMORANDUM OF UNDERSTANDING

ARTICLE 31 - ELECTRONIC COMMUNICATION ACCOUNTING PERIOD REPORT

Pursuant to the provisions of Article 31 of the National Agreement, the Employer shall, on an accounting period basis, provide the Union with electronic communication containing the following information on those in the bargaining units:

1. SSN
2. Last Name
3. First Initial
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

Social Security Numbers (SSNs) will continue to be provided to the National Office of the National Postal Mail Handlers Union. The NPMHU will ensure that all SSNs provided will be kept confidential.

Employee Identification Numbers (EINs) will be provided to the National Office of the NPMHU, and in place of SSNs to Union Officials at the Local Level.

In keeping with the parties' interest in protecting the confidentiality of employees' SSNs, and in reducing the possibility of identity theft, they agreed that dissemination of SSNs would be limited to the National Office of the Union. Reports provided to the Local Unions that previously contained SSNs will now provide Employee Identification Numbers in their place.

LETTER OF INTENT

ARTICLE 31 - INFORMATION/REPORTS

As a result of the discussions held regarding Article 31 of the National Agreement, the Employer shall provide to the Union the information and reports listed below at the frequency designated. The Union shall compensate the Postal Service for its actual costs associated with the systems, programming and production, unless specifically indicated otherwise.

The information and reports shall be provided through the Office of the Vice President, Labor Relations, at the costs and frequencies listed below:

INFORMATION/REPORT	COST	FREQUENCY
1. ORPES Report	No Cost	Accounting Period
2. National Payroll Hours Summary Report	No Cost	Accounting Period
3. 200 Man-Year Report	No Cost	Accounting Period
4. Listing of Associate Offices, Districts, Areas	No Cost	Accounting Period
5. Dues Check-Off With Full First Name and Union Anniversary Date	No Cost	Pay Period
6. Safety Data - from Form 1769 (without employee identification; with scrambled social security numbers)	Actual cost not to exceed $2500	Annual
7. Financial and Operations Statement Summary	No Cost	Accounting Period

Additionally, in January of each year of this Agreement**,** the Postal Service shall provide the Union, at its request, with electronic communication containing the information it agreed to provide it on its membership in **2019** from the following files:

1. Salary History File
2. Hours History File
3. Employee Master File
4. W-2 Information/Gross Salary File

All actual costs associated with the systems, programming and production of the information shall be borne by the Union, although the Postal Service shall make reasonable efforts to retain and reuse the computer programs used in previous years.

Since the methods, means and types of information collected by the Postal Service are subject to change, the availability of any information or reports are dependent solely on the Postal Service's determination to keep such records.

MEMORANDUM OF UNDERSTANDING

EDUCATION AND TRAINING FUND

It is hereby recognized and acknowledged by the United States Postal Service and the National Postal Mail Handlers Union, AFL-CIO, a Division of The Laborers' International Union of North America, that there is a need to further expand and improve the education and training opportunities of both supervisors and employees. Further, the parties recognize that there is a need to provide both supervisors and employees with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness and an overall improved labor/management climate.

In keeping with this objective, the parties agree to continue during the term of this National Agreement the Joint Education and Training Fund for the purposes of providing education and training in the following areas:

A. Contract Training
B. Labor/Management Relations
C. Such other purposes as the members of the National Committee may mutually agree upon.

This activity shall be administered by a Joint National Committee comprised of six persons, three appointed by the Employer and three by the Union. The Committee shall set policy, suggest and approve education and training programs.

The parties shall also establish a Local Joint Education and Training Committee. It shall be established on a District basis. The Local Committee representation shall be comprised of two members each from the respective local parties. The purpose of the Local Committee is to select and suggest various programs best suited for their District from a menu of programs developed and approved by the National Committee.

The Employer shall make available $1,000,000.00 per year for the Joint Education and Training Committee for each Fiscal Year covered by the **2019** National Agreement. In the event that the maximum allowable annual contribution of the Employer is not used, the remainder shall not carry over to the succeeding fiscal year and no funds will be carried beyond the term of the **2019** Agreement. The Fund shall be supervised by the Joint National Committee. However, the disbursement of any expenditures must be authorized by the

appointed chairpersons of each of the respective parties. The appointment of such shall be in writing and provided to each of the parties.

This Memorandum of Understanding established the jointly-administered Education and Training Fund, which provides money for each Fiscal Year covered by the **2019** National Agreement to provide continuing education and training with regard to the contract, labor-management relations and other matters identified by the national committee administering the program.

ARTICLE 32
SUBCONTRACTING

Section 32.1 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.

This section sets forth the factors which the Postal Service must consider in evaluating the need to subcontract.

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 with the Union while developing the initial Comparative Analysis Report. The Employer will consider the Union's views on costs and other factors, together with proposals to avoid subcontracting and proposals to minimize the impact of any subcontracting. A statement of the Union's views and proposals will be included in the initial Comparative Analysis and in any Decision Analysis Report relating to the subcontracting under consideration. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

This section requires that the Postal Service give advance notice to the NPMHU at the national level when subcontracting is being considered which will have a "significant impact" on bargaining unit work and meet with the Union while developing the initial Comparative Analysis Report and consider the Union's views on costs and other factors and its proposals on how to avoid subcontracting or to minimize its impact. A statement of the Union's views and proposals will be included in that initial Comparative Analysis and any related Decision Analysis Report.

Section 32.2 Special Provisions

A The Employer and the Union agree that at processing and distribution facilities or post offices where mail handler craft employees are assigned and on duty on the platform at the time a star route vehicle is being loaded or unloaded exclusively by a star route contract driver, a mail handler(s) will assist in loading and unloading the star route vehicle, unless such requirement delays the scheduled receipt and dispatch of mail or alters the routing or affects the safety requirements provided in the star route contract.

B At offices where this Section is applicable, the schedules of mail handlers will not be changed nor will the number of mail handlers be augmented solely on the basis of this Section.

This section provides that, except in limited specified circumstances, mail handlers will assist the contract driver in loading and unloading a star route vehicle when mail handler craft employees are assigned and on duty on the platform when the star route vehicle is being loaded and/or unloaded by a contract driver.

Section 32.3 Committee

Subcontracting is a proper subject for discussion at Labor-Management Committee meetings at the national level provided in Article 38.

(The preceding Article, Article 32, shall apply to Mail Handler Assistant employees.)

(See Memo, page 201)

See also Article 38.

MEMORANDUM OF UNDERSTANDING

ARTICLE 32

In addition to the cap on the MHAs set forth in paragraph 7.1B3 above, the Board acknowledges that the parties may agree upon the use of additional MHAs in other circumstances, when new or contracted work is brought in-house. In addition, whenever contracting-out or in-sourcing is under consideration, the Union may propose different hourly rates for such MHAs to ensure competitiveness with outside services.

Under the **2019** National Agreement, the parties commit to re-establishing their Subcontracting Committee and continuing their discussions about the possibility of returning mail handler work from Surface transportation Centers (STC), Mail Transport Equipment Service Centers (MTEC), and the bedloading project. The Committee will consider all relevant factors when discussing the issue outlined above, to include cost, operational efficiency, availability of equipment, and qualification of employees. In addition, any MHA employees utilized as referenced in paragraph 1 will not count against existing non-career caps.

ARTICLE 33
PROMOTIONS

Section 33.1 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.

This section provides that the Postal Service will seek to fill career positions by making them available to qualified career employees prior to hiring new employees. Further, this section obligates the postal Service to assist employees seeking advancement through training and self-help programs.

The Postal Service is committed to the principle of promotions from within, with emphasis upon career advancement opportunities.

Source: Step 4 Grievance M-NAT-17, dated February 27, 1974.

Postal Employee Development Centers (PEDC) are field units located in Districts that provide area-wide training and development support services for all postal personnel on a continuing basis. The primary mission of the PEDC is to contribute to and foster improved employee job performance. The PEDC also provides counseling to help employees pursue career and self-development goals.

Source: Employee and Labor Relations Manual Chapter 7, Section 722.1

Self-development training is training that is taken to attain self-determined goals or career objectives that are not directly related to the employee's current job.

Source: Employee and Labor Relations Manual Chapter 7, Section 711.421.

Section 33.2 Bargaining Unit Promotions

A When an opportunity for promotion to a bargaining unit position exists in an installation, an announcement shall be posted on official bulletin boards soliciting applications from employees in the bargaining unit. Bargaining unit 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 bargaining unit employee is selected for the promotion, the Employer will solicit applications from all other qualified employees within the installation.

B Promotions to positions enumerated in Article 12 of this Agreement shall be made in accordance with such Article by selection of the senior qualified employee bidding for the position.

Question: Are promotions to higher level positions in the mail handler craft filled by senior employees or by best qualified employees?

Answer: Promotions to higher level positions in the mail handler craft, enumerated in Article 12, shall be made by selection of the senior qualified employee bidding for the position.

Mail handlers are eligible to apply for the best qualified positions of Examination Specialist, as outlined in Article 12 (Section 12.2H3), and Console Operator. These positions, however, are assigned to the craft of the successful applicant and are not exclusive to any one particular craft. When a mail handler is the successful applicant, these positions are designated to the mail handler craft. Where more than one applicant is qualified, the best qualified of the applicants is selected. Where there is no appreciable difference in the qualifications of the best of the qualified applicants, and the Postal Service selects from among those applicants, seniority shall be the determining factor.

In addition, Mail handler craft employees may apply, also on a best-qualified basis, for Office Machine Operator, MH-5.

They may also apply on a best-qualified basis for the positions of Accounting Technician, PS-6, and Training Technician, PEDC, PS-6; however, the successful applicants for these positions will be assigned to the clerk craft.

Section 33.3 Examinations

When an examination is given, there shall be no unreasonable limitation on the number of examinations that may be taken by an applicant.

Question: Are examinations given on or off the clock?

Answer: In-service examinations are to be conducted on a no-gain no-loss basis. Management will not intentionally schedule in-service examinations in order to avoid any payment applicable under the no-gain no-loss principle.

Source: Pre-arbitration Settlement H8C-4B-C 29625, dated November 21, 1983.

Question: Are job interviews given on or off the clock?

Answer: Job interviews are to be conducted on a no-gain, no-loss basis. Management will not intentionally schedule job interviews in order to avoid any payment applicable under the no-gain, no-loss principle.

Source: Step 4 Grievance H4C-1M-C 5833, dated March 7, 1986.

Question: How many times can an employee take an examination?

Answer: When an examination is given, there shall be no unreasonable limitation on the number of examinations that may be taken by an applicant.

ARTICLE 34
WORK AND/OR TIME STANDARDS

Section 34.1 Statement of Principle

The principle of a fair day's work for a fair day's pay is recognized by the parties to this Agreement.

Section 34.2 Union Notification

A 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 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 Union may designate a 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.

B 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 as far in advance as practicable, but not less than 15 days in advance.

C 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 tests to live implementation in the test cities, it will notify the Union at least 30 days in advance of such intended implementation.

The parties recognize the principle of a fair day’s work for a fair day’s pay. In addition, the parties agree that the Postal Service can introduce new work measurement systems and establish new time or work standards, as long as those systems or standards are fair, reasonable and equitable.

These provisions of Article 34 further require that, before making any changes in current or instituting any new work measurement systems or work or time standards, the Postal Service will give timely advance notification to the Union. In addition, the Union 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, and the Union may designate a representative to observe such studies in postal installations.

Should the Postal Service determine a need to implement any new nationally developed and nationally applicable work or time standards, it first will conduct a test or tests of those standards in one or more installations. The Union will receive at least 15 days advance notice of such a test. Finally, the last paragraph of Section 34.2 requires that the Postal Service will notify the Union at least 30 days in advance of any live implementation of satisfactory tests of changes in work or time standards.

Question: Can management establish goals and objectives for employees in a specific work unit?

Answer: Yes. Management may establish goals and objectives for employees in specific work units. However, as provided by Section 34.2B, the Postal Service agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union as far in advance as practicable, but not less than 15 days in advance.

Source: Step 4 Grievance H1M-5L-C 20301, dated October 4, 1984.

Question: Can management use average times as a criterion for measuring employees' performance?

Answer: The parties agree that Article 34 embodies mutual recognition of the principles of a fair day's work for a fair day's pay. The parties also agree that discipline cannot be imposed on one mail handler solely because he/she fails to perform at the same level as another.

Source: Step 4 Grievance H4M-3P-C 28212, dated December 8, 1994.

Section 34.3 Difference Resolution

Within a reasonable time not to exceed 10 days after the receipt of such notice, 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.

Section 34.3 establishes clear time limits during which the parties will meet, after the Union's receipt of notice of live implementation, to resolve any differences concerning the proposed work measurement systems or work or time standards.

Section 34.4 Grievance and Arbitration

A 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.

B 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 5 days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Section 34.5.

C 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.

D The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

E 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.

Section 34.4 provides that if no grievance is filed by the Union at the National level, the Postal Service may implement the new work or time standards at its discretion. If a grievance is filed by the Union at the National level and is unresolved after 10 days, the matter may be submitted to priority arbitration by the Union; any such submission must be made within 5 days. While the dispute is pending, live implementation of the new or changed work measurement system or work or time standard may occur in the test sites (except as provided in Section 34.5 hereunder.)

As noted, while the arbitrator’s decision is pending, the new systems or standards will not be implemented beyond the test cities. During this interim period, however, the Postal Service may continue to gather data or conduct related time studies in any other facility pending receipt of the arbitration decision.

The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

Question: Is there any recourse if the Union and Management do not agree on proposed work measurement systems or work and/or time standards?

Answer: The Union may file a grievance at the National level to determine whether the new system or standard is fair, reasonable and equitable.

Section 34.5 Union Studies

After receipt of notification provided for in Section 2.D of this Article, the Union shall be permitted to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed ninety (90) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Union 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 Mail Handler Assistant employees.)

This section provides that, after receiving the notification required by Section 34.2D, the Union may conduct its own time or work studies in the test cities. These studies may not exceed 90 days, and during this period the Postal Service agrees to postpone implementation in the test cities.

ARTICLE 35
ALCOHOL AND DRUG RECOVERY PROGRAMS

Section 35.1 Programs

A 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 EAP by the Employer, the EAP counselor will have a reasonable period of time to evaluate the employee's progress in the program. The parties will meet at the national level at least once every 6 months to discuss existing and new programs. This program of labor-management cooperation shall support the continuation of the EAP Program, at the current level. In addition, the Employer will give full consideration to expansion of the EAP Program where warranted.

B An employee's voluntary participation in such programs will be considered favorably in disciplinary action proceedings.

C In offices having EAP Programs the status and progress of the program, including improving methods for identifying alcoholism and drug abuse at its early stages and encouraging employees to obtain treatment without delay, will be proper agenda items for discussion at the local regularly scheduled Labor-Management Committee meetings as provided for in Article 38. Such discussion shall not breach the confidentiality of EAP participants.

The Employee Assistance Program (EAP) is designed to assist employees and their immediate families in recovering from alcoholism and drug abuse and in dealing with other problems in a formal, non-disciplinary setting. The EAP helps employees and their immediate families through consultation, evaluation, counseling, and/or referral to community resources and treatment facilities. Participation in the EAP is voluntary and will not place the employee's job security or promotional opportunities in jeopardy. However, participation in the EAP does not shield the employee from discipline or prosecution. The EAP is a confidential program, subject to the provisions of Section 940 of the Employee and Labor Relations Manual.

Question: If an employee enrolls in the EAP, should such enrollment be considered favorably in disciplinary action proceedings?

Answer: Yes. An employee's voluntary participation in the program will be considered favorably in disciplinary action proceedings.

Question: Is management prohibited from taking disciplinary action while an employee is enrolled in the EAP?

Answer: No. Although voluntary participation in EAP will be given favorable consideration in disciplinary action, participation in EAP does not prohibit disciplinary action for failure to meet acceptable standards of work performance, attendance and/or conduct. Furthermore, participation in EAP does not shield an employee from discipline or from prosecution for criminal activities.

Source: Employee and Labor Relations Manual (ELM) Chapter 9, Section 941.32.

Question: Will participation in EAP jeopardize an employee's promotional opportunities?

Answer: Participation in EAP will not jeopardize an employee's job security or promotional opportunities.

Source: ELM Chapter 9, Section 941.31

Section 35.2 Referral Information

In Postal installations having professional medical units, the Employer will insure that the professional staffs maintain a current listing of all local community federally-approved drug treatment agencies for referring employees with such problems. A copy of this community listing will be given to the local union representative.

(The preceding Article, Article 35, shall apply to Mail Handler Assistant employees.)

(See Memo, page 202)

Due to changes in the Employee and Labor Relations Manual (ELM), Section 942.221, Management Referrals, now provides that management may refer an employee to EAP using the EAP referral form if the supervisor or manager observes such characteristics as listed in Section 942.21or has some other reason to believe that the EAP could provide needed assistance to the employee. The employee, however, has the option to refuse the referral, and he/she cannot be disciplined for refusing the referral.

Employees also may be referred to EAP by other employees, union representatives, management association representatives, medical personnel, family members, or judicial or social service agencies. Employees are also encouraged to seek assistance on their own.

Question: Are there exceptions to the employee's option to refuse a management referral to EAP?

Answer: Yes. In instances when there is a Last Chance Agreement, or when the employee has signed a settlement agreement agreeing to participate in the EAP, the employee can be disciplined for noncompliance with the terms of the signed agreement.

Source: ELM Chapter 9, Section 942.221

Question: Is the first visit to EAP on the clock?

Answer: An employee's first visit to EAP is on the clock, whether the visit is initiated by management, the union representative, or the employee concerned, unless the employee prefers to visit the EAP unit on his or her time. Subsequent consultations are on the employee's own time.

Source: ELM Chapter 9, Section 941.35

Question: What types of leave will be considered if an employee participates in an inpatient treatment program?

Answer: In cases in which hospitalization or detoxification is recommended, requests for sick leave, leave without pay, annual leave, or advanced sick leave are the responsibility of the employee and will be given careful consideration by management.

Source: ELM Chapter 9, Section 942.32

Question: Is there confidentiality associated with EAP?

Answer: 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.

Information regarding participation in EAP counseling is confidential pursuant to the provisions of ELM 944.4. Due to the importance of this subject, Section 944.4 is reprinted hereunder in its entirety.

Source: ELM Chapter 9, Section 944.4.

944 Disclosure

944.41 General

944.411 Usual Recipients

Information identifying substance abuse program participants, whether or not such information is recorded, may be disclosed as follows:

a. To medical personnel outside the Postal Service to the extent necessary to meet a *bona fide* medical emergency involving the EAP participant.

b. To qualified personnel, with the written authorization of the vice president of Employee Resource Management, for purposes of conducting scientific research or program audits or evaluation. However, under no circumstances may any personally identifiable information be disclosed in the resulting evaluation, research, or audit reports

c. To a court, under the following circumstances:

(1) When authorized by a court order upon showing of good cause, such as when necessary to protect against an existing threat to life or of bodily injury, or in connection with the investigation or prosecution of a crime.

(2) In litigation or an administrative proceeding when authorized by the trier of fact, when the EAP participant offers testimony or other evidence pertaining to the content of his or her EAP participation. Counsel should be contacted for assistance in both evaluating the order and in determining the extent to which information must be released.

d. To any person when the EAP participant gives prior written consent to disclose information. This consent specifies the nature and scope of the topics to be released, to whom information is to be released, the purpose of the disclosure, and the date on which the consent terminates.

e. To a person in any situation in which the EAP counselor has a duty to warn.

f. To an expert, consultant, or other individual who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function, and in accordance with the Privacy Act restrictions as listed under 39 CFR 266.6.

944.412 Limitation of Disclosure

In all cases cited in 944.411, only information that is absolutely necessary to satisfy the recipient's business or medical need is to be disclosed.

944.42 Criminal Activity

944.421 EAP Records

EAP counseling records or personnel may not be used to initiate or substantiate any criminal charges against an EAP participant or to conduct any investigation of a participant, except as authorized by a court order for good cause.

944.422 Limitation of Confidentiality

If an employee who is an EAP counseling participant reveals the commission or intended commission of serious criminal activity, the EAP counselor is not prohibited from disclosing that information so long as the employee is not identified as an EAP counseling program participant. Confidentiality does not apply in any of the following cases:

a. A crime is committed on EAP premises or against EAP counselor personnel or a threat to commit such a crime is made.

b. Incidents occur in which information must be reported as required by state law; for example, mandatory reporting of child abuse and/or neglect (elder abuse in some states).

c. For a disclosure that may be required by elements of the criminal justice system because they have referred employees who are EAP participants.

MEMORANDUM OF UNDERSTANDING

ARTICLE 35 TASK FORCE ON PARTICIPATION ON EMPLOYEE ASSISTANCE PROGRAM COMMITTEES

The parties agree to establish at the National Level a "Task Force on Participation on Employee Assistance Program Committees."

The Task Force will discuss opportunities for the parties to facilitate NPMHU participation and representation on Employee Assistance Program Committees at the District and National level.

Nothing in this memorandum is intended to negate or alter the applicable requirements of the National Agreement.

ARTICLE 36
CREDIT UNIONS AND TRAVEL

Section 36.1 Credit Unions

A In the event the Union or its local Unions (whether called Area Locals 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.

B 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.

Question: What are the Postal Service's obligations with regard to providing space for credit unions in Federal buildings?

Answer: If space is available, the Postal Service will authorize a suitable location (other than workroom floor space) for credit unions in postal buildings. If the area is accessible through the workroom only, membership in the credit union is restricted to USPS employees (active and retired). Other federal employees in the same building may not join unless the credit union is situated so that it is unnecessary to enter the postal workroom. Credit union business cannot be conducted from any post office service window.

Source: Employee and Labor Relations Manual Section 613.2.

Question: Are employees entitled to USPS compensation for performing credit union duties?

Answer: No. Postal employees who are employees, officers, officials, or board members of employee credit unions are not entitled to USPS compensation for credit union duties. Such employees have the option of using annual leave or leave without pay for up to 8 hours per day to perform credit union activities, provided that they can be spared from their regular duties.

Section 36.2 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.

Most disputes that arise under Section 36.2 pertain to compensation for travel time and/or compensation for mileage. The parties at the National level agree that the appropriate handbook provisions – including the regulations contained in Section 438 of the Employee and Labor Relations Manual (ELM) and Handbook F-15, Travel and Relocation -- generally provide sufficient guidance to resolve any disagreement and that such disputes must be resolved based on the fact circumstances of each individual case.

Question: Does commuting time to and from an employee's home and the employee's official duty station qualify as compensable travel?

Answer: No. Commuting time before or after the regular workday between an employee's home and official duty station, or any other location within the local commuting area, is a normal incident of employment and is not compensable.

Source: ELM Section 438.121

Question: How is the "local commuting area" defined?

Answer: The local commuting area is the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.

Source: ELM Section 438.11b

Question: If an employee is called back to work after the completion of his or her regular work day, does the employee qualify for reimbursement for the travel involved?

Answer: Commuting time to and from work is also not compensable when an employee is called back to work after the completion of the regular work day, unless the employee is called back to work at a location other than his or her regular work site.

Source: ELM Section 438.122

Question: Are there circumstances under which travel time is compensable when management sends an employee to work in another facility?

Answer: Time spent at any time during a service day by an eligible employee in travel from one job site to another within a local commuting area without a break in duty status is compensable.

Source: ELM Section 438.132a.

Question: Is an employee entitled to compensation for time spent commuting between locations when employed to work on a permanent basis at more than one location in the same service day?

Answer: The time spent commuting between the locations in these circumstances is not compensable travel time, provided there is a break in duty status between the work performed in the different locations. A break in duty status occurs when an employee is completely relieved from duty for a period of at least 1 hour that may be used for the employee's own purposes. This 1 hour or greater period must be in addition to the actual time spent in travel and the normal meal period, if the normal meal period occurs during the time interval between the work at the different locations.

Source: ELM Section 438.123.

Question: Does compensable travel time count towards an employee's work hours and overtime hours?

Answer: Compensable travel time is counted as worktime for pay purposes and is included in hours worked in excess of 8 hours in a day, 40 hours in a week, or on a nonscheduled day for a full-time employee, for the determination of overtime for eligible employees.

Source: ELM Section 438.15a.

Question: When can an employee use a privately-owned vehicle for postal business purposes?

Answer: An employee may receive approval when the appropriate official determines that using a privately-owned vehicle will be advantageous to the Postal Service.

Source: F-15 Handbook, Travel and Relocation, Section 5-5.1.1.a.

Question: What is the mileage allowance paid to employees for the use of privately-owned automobiles for travel on official business authorized by the Postal Service?

Answer: The mileage allowance for use of privately-owned automobiles for travel is equal to the standard mileage rate for use of a privately-owned automobile as authorized by the General Services Administration (GSA).

C All travel for job-related training will be considered compensable work hours.

(The preceding Article, Article 36, shall apply to Mail Handler Assistant employees.)

When mail handlers remain overnight on travel for job-related training, their travel time will be considered work hours for compensation purposes. Travel time is the time spent by a mail handler moving from one location to another during which no productive work is performed. It includes time spent traveling between his/her residence, airports, training facilities and hotels (portal to portal). Management must provide prior approval for overnight travel.

ARTICLE 37
SPECIAL PROVISIONS

Section 37.1 Mail Handler Watchmen

Former mail handler watchmen, whose positions have been abolished, shall continue to be treated in accordance with the seniority, posting and reassignment provisions of this Agreement.

The Postal Reorganization Act of 1970, in Sections 1201 and 1202 of Title 39 of the United States Code, excludes “any individual employed as a security guard” from the production and maintenance bargaining units of the Postal Service. Mail handler watchmen positions have been eliminated, first through attrition and then through the procedures required by Article 12.

As stated in this section, former watchmen previously represented by the NPMHU, whose positions have been abolished, shall continue to be treated in accordance with the seniority, posting, and reassignment provisions of the National Agreement.

Section 37.2 Inspection of Lockers

The Employer agrees that, except in matters where there is reasonable cause to suspect criminal activity, a steward or the employee shall be given the opportunity to be present at any inspection of employees' lockers. For a general inspection where employees have had prior notification of at least a week, the above is not applicable.

For any inspection of an employee’s locker that is not based on reasonable cause to suspect criminal activity, or any general inspection of lockers where employees have not had prior notification of at least a week, either a steward or the employee(s) affected shall be given the opportunity to be present at the inspection.

Section 37.3 Local Distribution of Personnel Action Roster Notices

Copies of information bulletins, which contain notification of personnel changes and are currently posted on post office bulletin boards, will be given to the Mail Handler's Union on a regular basis.

Section 37.4 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 38.

(The preceding Section, Article 37.4, shall apply to Mail Handler Assistant employees.)

Section 37.5 Local Policy on Telephones

The parties recognize that telephones are for official USPS business. However, the Employer at the local level shall establish a policy for the use of telephones by designated Union representatives for legitimate business related to the administration of this Agreement, subject to sound business judgment and practices.

The Postal Service at the local level is required to establish a policy, subject to sound business judgment and practices, for the use of telephones by designated Union representatives for legitimate business related to the administration of the National Agreement.

Section 37.6 Fatigue

The subject of fatigue, as it relates to the safety and health of mail handler employees, is a proper subject for discussion in local Joint Labor-Management Safety and Health Committee meetings.

Additional provisions regarding meetings of the local Joint Labor-Management Safety and Health Committee are found in Article 14 (Sections 14.7 and 14.8).

Section 37.7 Saved Grade Retention

An employee shall not lose Saved Grade by bidding on preferred duty assignments in the position and level assigned.

See further Article 4 (Section 4.4) and Article 9 (Section 9.6B).

ARTICLE 38
LABOR-MANAGEMENT COMMITTEE

Section 38.1 Statement of Principle

The Union through its designated agents shall be entitled at the national, regional/area, and local levels, and at such other intermediate levels as may be appropriate, to participate in regularly scheduled 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.

This article establishes labor-management committees at the national, regional/area and local levels. The purpose of these committees is to discuss matters of mutual concern, subject to the understanding that neither party to these discussions shall attempt to modify the terms of the National Agreement.

These labor-management committees are specifically mentioned in several other provisions of the National Agreement. Various subjects are deemed to be proper for discussion at labor-management meetings, including the following: under Article 2 (Section 2.2), non-discrimination and civil rights, at the national, regional/area and local levels; under Article 8 (Section 8.4D), sustained and excessive overtime where it is being worked by non-volunteers, at the regional/area and local levels; under Article 20 (Section 20.5), the parking program, at the national level; under Article 32 (Section 32.3), subcontracting, at the national level; and under Article 37 (Section 37.4), the problems and proposed solutions associated with an energy crisis or any serious widespread energy shortage, at the national level.

Section 38.2 Committee Meetings

A At the national and regional/area levels, the Labor-Management Committees shall meet quarterly, unless additional meetings are scheduled by mutual agreement. Agenda items shall be exchanged at least 15 working days in advance of the scheduled meeting. National level agenda items include those of national concern such as human rights, technological and mechanization changes, subcontracting, jurisdiction, uniforms and work clothes, parking and other labor-management subjects. Regional/Area level agenda items include those of regional/area concern such as human rights and other labor-management subjects.

B Union attendance at national level meetings shall be limited to no more than six (6) persons, not including secretarial staff. Union attendance at regional/area level meetings shall be limited to no more than three (3) persons, not including secretarial staff. If the Union requires technical

assistance, such technical assistance shall be in addition to the numbers listed above.

C Meetings at the national and regional/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.

With the exception of meetings dealing with the Christmas operation, the compensation provisions apply only for local Labor-Management Committee meetings.

D Subject to the provisions of this Agreement, Labor-Management Committee meetings will be separate from other unions.

E Provided agenda items are submitted, Labor-Management Committee meetings shall be scheduled in all offices in accordance with the following criteria:

E1 In offices with a total complement of 300 bargaining unit employees or more, meetings will be held once a month. Complement is defined in this Section as total number of employees currently on the rolls in the installation;

E2 In offices with a complement of 100 to 299 bargaining unit employees, meetings will be held bi-monthly; and

E3 In offices of less than 100 employees, meetings will be held quarterly.

F Agenda items will be exchanged at least 72 hours prior to such meetings. Meetings shall be held at a time and date convenient to both parties. Where agenda items do not warrant a regularly scheduled meeting, discussions may take place by mutual agreement in lieu thereof.

Meeting frequency is determined by the complement of bargaining unit employees, including MHAs, in each office. Additionally, it is important that the time requirements for exchange of agenda items be adhered to so that full consideration can be given to submitted items. If agenda items do not warrant a regularly scheduled meeting, the parties can mutually agree to discuss issues of concern.

Question: As a general rule, should management respond to all issues discussed at meetings of the labor-management committees?

Answer: Yes. To maintain good labor-management relations, it is necessary for management to make every effort to respond to all issues discussed at labor-management committee meetings in as short a time as it practical.

Source: Step 4 Grievance NC-S-11532, dated October 24, 1978.

Section 38.3 Christmas Operation

The policies to be established by management for the Christmas operation will be a subject of discussion at a timely regularly scheduled Labor-Management Committee meeting.

Section 38.4 Minutes

Minutes of local Labor-Management Committee meetings may be taken by each party.

ARTICLE 39
SEPARABILITY AND DURATION

Section 39.1 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.

If any part or provision of the National Agreement is rendered invalid due to legislation or court order, the remainder of the National Agreement will remain in full force and effect.

Section 39.2 Duration

Unless otherwise provided, this agreement shall be effective **September 21, 2019,** and shall remain in full force and effect to and including 12 midnight, September 20, **2022** 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 39, shall apply to Mail Handler Assistant employees.)

Except for certain provisions that were specifically designated as retroactive to September 21, 2019 or to other dates set forth in the National Agreement, the terms of the 2019 National Agreement were effective on April 25, 2020.

The **2019** National Agreement is effective until 12 midnight on **September 20, 2022** unless neither party indicates its desire to terminate or modify it, in which case the National Agreement is automatically renewed for successive annual periods. If either party notifies the other in writing, within the prescribed time limits, of its desire to terminate or modify the National Agreement, then the National Agreement is subject to re-negotiation in accordance with the terms of the Postal Reorganization Act.

LETTER OF INTENT

REFERENCES TO UNION, CRAFT OR BARGAINING UNIT

During negotiation of the **2019** National Agreement, we agreed that references to a union, craft or bargaining unit are limited to the National Postal Mail Handlers Union and the craft it represents, with the following understandings:

Article 1.5: The Postal Service will continue to inform the NPMHU of all new positions whether or not the positions are within the craft unit represented by the NPMHU.

Article 6: This article will continue to apply to all bargaining units covered by the September 15, 1978 Award of James J. Healy.

Article 15.4.D: The Postal Service will continue to send all National level arbitration scheduling letters and moving papers for all bargaining units to the NPMHU.

Article 33.2: This article will continue to permit employees in non-NPMHU represented crafts to make application for best qualified positions in the NPMHU represented craft after required procedures are followed.

Transitional employees may not perform mail handler work.

This Letter of Intent sets forth the parties' understandings regarding issues relating to a number of different contract articles.

In the Matter of the Arbitration Between

AMERICAN POSTAL WORKERS UNION, AFL-CIO

-and-

UNITED STATES POSTAL SERVICE

OPINION AND AWARD

Case No. AB-NAT-1009

Appearances: For the USPS - Eugene B. Granof, Esq.
Stephen E. Alpern, Esq.

For the Unions - Daniel B. Jordan, Esq.

Background: Pursuant to the provisions of the July 21, 1973 Agreement between the above-captioned parties, the undersigned was duly designated to act as arbitrator and to hear and to determine an issue arising under said Agreement. The hearing was held at the offices of the USPS in Washington, DC on April 1, 1974. Both parties were represented by counsel, as identified above, and during the course of this proceeding Counsel for the APWU represented that he was also representing the other three signatory unions in this case.

At this hearing, both parties were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. A verbatim transcript of this hearing was made.

The parties did not stipulate the definition of the matter in issue in this proceeding. However, from the exchange of contentions, it became apparent that these parties were in disagreement concerning the definition of the term "post office" as used in Article I, Section 6 of the Agreement.

Contentions of the Parties: Specifically, Article I, Section 6, dealing with "Performance of Bargaining Unit Work" reads as follows:

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 instructing 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.

B. In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6A1 through 5 above, or when the duties are included in the supervisor's position description.

The Union counsel asserted that the interpretation of the installation covered or defined or identified in Subsection B above is the matter in issue. According to the Unions, only in small Post Offices (with less than 100 bargaining unit employees) are supervisors permitted to work under the specific conditions listed in Section 6A, and, in addition, when the duties being performed by said supervisors are included in their respective job descriptions. It was alleged, on behalf of the Unions, that they desired, during the negotiations, to achieve a full and complete restriction upon supervisors doing bargaining unit work, but agreed to a compromise whereby supervisors would be permitted to do work described in their position descriptions in "small" post offices where particular problems existed involving efficient manpower utilization. The Union spokesman argued that, after the effective date of the Agreement, the USPS [illegible]ed that post office with less than 100 employees, as used in Section 6B, meant each station and branch of a post office which had less than 100 employees whereas the Unions had only granted the limited right to perform bargaining unit work when the duties were within the position description in the actual post offices which had less than 100 employees, meaning the vast majority of post offices. The Unions contended that the privilege of doing bargaining

unit work was thus expanded by the postal authorities beyond the agreed upon limits determined in collective bargaining.

The Unions claimed that the contractual meaning of the term "post office" was clear and unambiguous, and that the parties did not mean to include stations and branches of post offices. In support of such a claim, the Unions pointed to the way in which the Agreement itself makes careful distinction between these different types of facilities.

Counsel for the USPS agreed that in contention was the question of what is a "post office" within the meaning of Article I, Section 6. The USPS did concede that there are First, Second, Third and Fourth Class Post Offices whose classification is determined by clearly defined criteria. However, according to the USPS, there are stations and branches which act just like post offices and function just like post offices.

USPS also argued that if the Unions' technical definition of a post office were to be adopted it would lead to ridiculous and impractical results wherein at certain stations and branches bargaining unit employees would have little to do for the major part of the day. If the USPS definition of the term post office, as employed in Section 6 were adopted, such gross inefficiency would be avoided and manpower would be properly and effectively utilized.

The USPS urged the adoption of the layman's or dictionary definition of post office meaning a building in which mail is processed for delivery or postal matters may be transacted. The USPS also contended that the parties agreed that Section 6B would apply at any facility where less than 100 bargaining unit employees were at work. This would cover the stations and branches where at present the USPS has decided that supervisors may do work within their position descriptions. This according to the USPS is also a reasonable interpretation of the contract language set forth above.

Opinion:

The undersigned is persuaded by the documentary evidence submitted by the Unions in this proceeding that the parties have previously distinguished between post offices and stations, branches and other types of mail handling or ancillary facilities. The term post office the parties themselves have employed, and as the statutory draftsmen have employed it, can be defined as did a witness for the Postal Service in an NLRB representation proceeding:

> "A Post Office or postal installation is a mail processing and delivery activity under the head of a single manager. That could range from a single small Post Office to a large Post Office with several associated stations and branches which are responsible to the single manager or could include a large Post Office with many stations and branches, even over 100 stations and branches including related activities such as vehicle and motor facility or an air mail facility, all of which are part of that single postal installation."

This finding that the parties have themselves employed the term Post Office as a specific concept or a word of art, is further substantiated by the contractual language which the parties have employed in this and the previous collective bargaining agreement. For example, the language in the newly written portion of Article VIII, dealing with Hours of Work, shows that the concept of offices with 100 or more full time employees in the bargaining unit is set forth in another context. Where the parties desired to define an installation, as they did in Article XXXVIII of the 1973 Agreement dealing with the Maintenance Craft, and distinguish between a Post Office, stations, branches, and subordinate units, they knew how to do so:

> "2. Installation. A main post office, airport mail facility, terminal or any similar organizational unit under the direction of one postal official, together with all stations, branches and other subordinate units." (emphasis supplied)

In various publications of the USPS and its predecessor organization the distinction between post offices, branches, stations and other mail processing facilities was maintained. The subordinate units, such as the ones

that the USPS is urging, in the instant case, be regarded as being one and the same as post offices, are carefully distinguished and properly identified as being subordinate units and not post offices. This distinction between the the four classes of post offices and the other units was originally found in the predecessor legislation at 39USC701,ff. It is a term with this precise statutory origin which has been continued under the current legislation. This history cannot be ignored in making a determination of the definition of terms.

For all the reasons set forth above, it is necessary to conclude that the parties meant to adopt the definition of post office which the USPS urged in the New York representation hearing which is quoted from in part above. The practical application of this conclusion is to require that the Agreement be implemented to restrict the performance of bargaining unit work by supervisory employees at post offices having more than 100 employees, except under the provisions of Section 6A1 thorugh 5, even though such work is included in the position descriptions for such supervisors. If the USPS desires to have such supervsiors perform bargaining unit work it will have to achieve the liberalization of the present restrictive language through collective bargaining. The undersigned is not vested with the authority to amend the present requirement and intent of the parties as revealed by the language in Section 6 of Article I.

AWARD

The grievance filed in Case No. AB-NAT-1009 is sustained. Supervisors in post offices having 100 or more bargaining unit employees shall not do bargaining unit work except under the circumstances set forth in Article I, Section 6 A 1 through 5, incl.

Howard G. Gamser, Arbitrator

Washington, DC
June 8, 1974

POLICY STATEMENT

A fundamental part of the Postal Service Equal Employment Opportunity policy is that discrimination based on religion is prohibited. Further, the Postal Service is committed to making reasonable accommodations of employees' and applicants' religious needs with respect to regular schedules, scheduling of tests, training, interviewing, etc., on employees' and applicants' Sabbath or religious holidays. In this regard, managers must be particularly conscious of days on which employees, because of their religious beliefs, may be prohibited from working or required to attend religious services. Methods of accommodating which are consistent with any applicable collective bargaining agreements and our operating requirements must be attempted.

William F. Bolger

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Brian Farris
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

APR 15 1987

Re: R. Rubin
Houston, TX 77201
H4N-3U-D 25076

Dear Mr. Farris:

On April 2, 1987, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.

The issue in this grievance is the seven day suspension of the grievant.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We mutually agreed the EEO settlement regarding the suspension, in this case, does not bar further processing of the grievance.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Andre B. Buchanan
Grievance and Arbitration
Division

Brian Farris
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 9 1985

Mr. Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

15
EEO
SETTLEMENTS

Re: Class Action
Knoxville, TN 37901
H1C-3F-C 25743

Dear Mr. Anderson:

On April 23, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether an administrative EEO case can be settled in a manner that is contrary to the provisions to the National Agreement.

During our discussion, we mutually agreed:

> Equal Employment Opportunity settlements may not take precedence over the language contained in the collective-bargaining agreement.

Accordingly, the parties at Step 3 are to determine if the employee was properly detailed to the subject position in accordance with the contractual provisions of the National Agreement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

This supersedes my letter dated July 31, 1985.

Sincerely,

Thomas J. Lang
Labor Relations Department

Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

October 22, 1987

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: M. Meza
Upland, CA 91786
H1N-5G-C 15447

Dear Mr. Hutchins:

On June 23, 1987, a preabitration discussion was held between David Noble and Larry Handy of this office regarding H1N-5G 15447, Upland, CA. The question in this case is whether the grievant was improperly denied 45 minutes of pay at the overtime rate for the time he spent testifying outside his normal work hours at an EEO hearing.

It was mutually agreed to full settlement of this case as follows:

1. The grievant shall be compensated at the overtime rate for the 45 minutes spent testifying outside his normal work hours at an EEO hearing on June 1, 1983.

2. Witnesses whose presence at the hearing is officially required will be in a duty status during a reasonable period of waiting time prior to their testimony at the hearing and during their actual testimony.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle this case, withdrawing HIN-5G-C 15447 from the pending national arbitration listing.

Sincerely,

Stephen W. Furgeson
Acting General Manager
Grievance and Arbitration Division
Labor Relations Department

Lawrence G. Hutchins
Vice President
National Association of Letter Carriers, AFL-CIO

Enclosure

the appropriate step in the new grade that represents a wage equal to or above that protected by the special pay status.

d. Change in compensation of the employee to a basic wage equal to or higher than the protected rate for any reason other than by a general increase.

421.515 **Effect on Other Compensation**

Rate protection affects other compensation as follows:

a. *Promotion Rules.* In applying the promotion rules, the former basic wage is the basic wage the employee would have received except for the protected rate.

b. *Rural Routes.* Equipment maintenance allowances on rural routes are paid in relation to the documented route to which the carrier is assigned.

421.516 **Documentation**

PS Form 50, *Notification of Personnel Action,* is used to notify an employee who is changed to a lower grade or salary standing of entitlement to rate retention. The PS Form 50 contains under the Remarks section a reference to 421.5 explaining the amount and duration of the rate retention. The PS Form 50 is also used to notify an employee of the expiration of the rate retention status.

421.517 **Step Increases**

An employee with a protected rate continues to receive step increases in the grade to which the employee is reduced. However, under no circumstances can receipt of these step increases cause the employee's wage to exceed the maximum step of the lower grade.

421.52 Saved Rate

421.521 **Explanation**

Employees with a saved rate will continue to be paid the wage they received in the previous higher grade position, augmented by any general increases occurring while the saved rate is in effect. A saved rate differs from a protected rate in that it continues for an indefinite period, subject to the conditions explained below (see 421.522 through 421.526) and occurs in several different circumstances, as follows:

a. An employee is given 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 position under the same job description. In this case, *saved rate* means that the employee continues to receive the wage of the higher grade position.

b. Management action effects a general increase that, when added to an employee's wage, produces a wage above the maximum rate for the grade. In this case, *saved rate* means that the amount of the general increase is added to the employee's wage and the employee continues to receive the new wage even though it is above the maximum for the grade.

c. An employee is given a position reevaluation down-grade assignment to a lower grade due to a change in the Cost Ascertainment Group (CAG) of a Post Office.

d. An employee accepts a job offer based on his or her limitations due to an injury on duty (see 546.143e).

421.522 **Red-Circle Amount**

The *red-circle amount* is the dollar portion of an employee's salary that is in excess of the maximum salary of the grade. An employee continues to receive a red-circle amount as long as he or she is in saved rate status. Note the following:

a. Red-circle amount results from saved rate only. It does *not* result from protected rate.

b. If an employee who receives a red-circle amount (under section C, Special Rule, Pay System for Employees, covered by the collective bargaining agreement of November 18, 1970) is subsequently promoted and later returned to the former position, the red-circle amount is restored.

421.523 **Duration**

Employees retain the saved rate for as long as they hold a position in the same or higher grade for which the maximum schedule rate is below the saved rate.

421.524 **Termination**

Saved rate is terminated for any of the following reasons:

a. A break in service of 1 workday or more.

b. Demotion or voluntary reduction.

c. Promotion (or other advancement) of an employee to a higher grade in the same rate schedule, or to a position with a higher than equivalent grade in another rate schedule, which has a maximum wage equal to or above the saved rate. For the saved rate special pay status to terminate in this circumstance, the employee must be first slotted to the appropriate step in the new grade that represents a wage equal to or above that saved by the special pay status. See 421.525.

d. Change in compensation of the employee to a basic wage equal to or higher than the saved rate for any reason other than by a general increase.

421.525 **Effect on Promotion**

If an employee with a saved rate is placed into a different position, the placement is compared to those in Exhibit 418.1, Equivalent Grades, to determine whether or not the placement action is a promotion, change to lower level, or lateral reassignment. If the action is a promotion and the employee's saved wage exceeds the maximum of the new grade, then the saved rate special pay status continues following the promotion. However, if the promotion is to a higher grade in the same rate schedule, or to a position with a higher than equivalent grade in another rate schedule that includes a maximum wage equal to or above the saved rate, the employee is slotted to the appropriate step in the new grade, and the saved rate special pay status terminates.

421.526 **Documentation**

PS Form 50 is used to notify an employee of a saved rate status.

421.53 Saved Grade

421.531 **Explanation**

Saved grade provisions can be invoked only in accordance with the applicable collective bargaining agreement. Decisions to disapprove saved grade are subject to review through the grievance and arbitration process. Saved grade must be approved by area Human Resources managers or their designees. Saved grade applies to all bargaining unit employees *except* the following:

a. Employees in Operating Services Division at Headquarters and the Merrifield Engineering Support Center (APWU) (see 422.7).

b. Employees under the National Postal Professional Nurses' (NPPN) Agreement (see 422.5).

c. Employees under the Fraternal Order of Police, National Labor Council (FOP-NLC) Agreement (see 422.8).

421.532 **Duration and Termination**

The saved grade will be in effect for an indefinite period of time subject to the conditions below:

a. To continue to receive a saved grade, an employee must bid or apply for all vacant jobs in the saved grade for which he or she is qualified.

b. If the employee fails to bid or apply, the employee loses the saved grade status immediately.

c. The Information Service Centers collective bargaining agreement requires that, in order to retain the saved grade, employees bid or apply for reassignment to their former grade or to any position at a grade between that of their former grade and present grade.

421.533 **Step Increases**

An employee with a saved grade continues to receive step increases in the saved grade. However, under no circumstances can these step increases exceed the maximum step of the saved grade (see 421.45b).

421.6 Changes in Compensation Following Review or Audit

A review or audit of a position may result in a change in compensation if a decision is made to change the evaluation of the position or its identification. The compensation change occurs at the beginning of the pay period following the date of the decision.

421.7 Rate Schedule Summary and References

Exhibit 421.7, Rate Schedule Summary and References, outlines the rate schedule codes (RSCs) for the categories and subcategories of bargaining unit employees, their salary schedule acronyms, and their grade ranges. It also provides references to ELM sections with appropriate exhibits and explanations.

In the Matter of Arbitration Between UNITED STATES POSTAL SERVICE And NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	OPINION AND AWARD Nicholas H. Zumas, Arbitrator Case No.: H1M-NA-C-99

BACKGROUND

This is a Step 4 appeal to National Level Arbitration pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO (hereinafter "Union"). Hearing was held in Washington, D.C. on February 26, 1986, at which time testimony was taken, exhibits offered and made part of the record and oral argument was heard. The hearing was stenographically reported resulting in a transcript of the proceedings numbering 107 pages. Post-hearing briefs were filed on April 29, 1986.

APPEARANCES

For the Service: D. James Shipman, Esq.

For the Union: Joseph N. Amma, Jr.
Ralph H. Goldstein, Esq.

STATEMENT OF THE CASE

In this grievance, the Union protests the unilateral implementation by the Service of three programs which the Union alleges fundamentally change the nature of the disciplinary process by eliminating suspensions (as well as Letters of Warning in one of the programs). The grievance also protests the unilateral termination by the Service of one of the programs. The Union asserts that these programs are violative of the provisions of successively collectively bargained National Agreements and long-established past practices relating to progressive discipline. By implementing these programs and by terminating one of them unilaterally, the Union charges that the Service violated its duty to bargain under the National Agreement and the National Labor Relations Act, and disregarded past practice.

The Service contends that the National Agreement does not prohibit the implementation of the these programs or preclude the types of discipline utilized in these programs. The Service

further contends that it has no obligation to negotiate over the provisions of these programs; and that the past practice between the parties clearly indicates a unilateral right to implement such programs.

The parties, unable to resolve the matter during the various Steps of the grievance procedure, referred the dispute to this Arbitrator for resolution.

ISSUES

The Union frames the issue as follows:

> "Whether the Service has a duty to bargain with the Union over changes in the employee discipline process, and whether the Service violated this duty under the National Agreement and the National Labor Relations Act by implementing unilaterally three new disciplinary programs, by terminating one of the programs unilaterally, and by failing to bargain with the Union over these programs; and if so, what should the remedy be."

The Service frames the issue as follows:

> "Whether the Service violated Article 16 of the 1981-84 National Agreement by implementing these pilot programs at certain sites within the Central Region."

RELEVANT CONTRACT PROVISIONS

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

3.1 To direct employees of the Employer in the performance of official duties;

3.2 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;

3.3 To maintain the efficiency of the operations entrusted to it;

3.4 To determine the methods, means, and personnel by which such operations are to be conducted;

3.5 To prescribe a uniform dress to be worn by designated employees; and

3.6 To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be of recurring nature.

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 and conditions of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 16

DISCIPLINE PROCEDURE

Section 16.1 - Statement of Principle

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.

Section 16.2 - Discussions

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 a 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.

Section 16.3 - Letter of Warning

A letter of warning is a disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

Section 16.4 - 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 two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

Section 16.5 - 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 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 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 given 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.

* * *

Section 16.8 - Review of Discipline

A. 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.

B. In associate 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.

Section 16.9 - 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.

Section 16.10 - 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, a 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.

STATEMENT OF FACTS

In late 1983 and early 1984, management in the Service's Central Region initiated three pilot employee motivational programs at three postal facilities. Lawrence G. Handy, a Central Region Labor Relations official, described their purpose as follows:

"...We developed three separate programs, pilot programs, if you will, which were designed to minimize the necessity for disciplining employees, and to approach the relationship between the employee and the supervisor in a more positive vein than had previously

been done."

The first of the three programs implemented was Positive Attendance Control (hereinafter "PAC"). PAC became effective on November 26, 1983 in the St. Louis Post Office. In this program, no time off discipline (suspension) was to be given with respect to any attendance-related deficiencies or infractions. In lieu of suspension, progressively more severe Letters of Warning were to be issued for any attendance-related deficiencies. A PAC 1 letter was similar to a Section 16.3 Letter of Warning. A PAC 2 letter would be issued in lieu of Section 16.4 supension (14 days or less). A PAC 3 letter would be issued in lieu of a Section 16.5 suspension (14 days or more). Both the PAC 2 and PAC 3 letters would include statements that the employee's offense was serious enough to merit a suspension of the appropriate length. The Service considered the PAC program a success. In the year prior to the implementation of the program, 172 Section 16.3 Letters of Warning had been issued, while in the following year only 51 PAC 1 letters were issued. There had been 33 Section 16.4 suspensions, but only 3 PAC 2 letters. There were 37 Section 16.5 suspensions issued the previous year, but no PAC 3 letters were issued the following year.

The second program established was No Discipline Employee Motivation (N-DEM). This program became effective on January 21, 1984 in the St. Paul, Minnesota Post Office. This program

eliminated the use of Letters of Warning and suspensions altogether, except that it allowed management to retain the right to discharge for serious offenses such as theft or assault. The basic thrust of the N-DEM was to allow management to discuss problems with employees and encourage employees to resolve them. This program was eventually terminated on July 1, 1985 because, according to Handy, there were "operational problems." When asked to amplify, Handy stated that, "The working management did not feel comfortable with the program, or I should say certain members of management didn't feel comfortable with the program...there are some supervisors even today that think that the only thing to solve a problem with an employee is to give them a suspension or suspensions."

The third program implemented was No Time Off Letter of Warning (N-TOL). This program was implemented on February 18, 1984 in the Louisville, Kentucky Post Office. The program eliminated time-off suspensions for work-related deficiencies and substituted progressively severe Letters of Warning. Employees were given the right to appeal the issuance of a Letter of Warning under the grievance arbitration procedure.

The program, like PAC, used three letters. A N-TOL 1 letter was similar to a Section 16.3 Letter of Warning. A N-TOL 2 letter would be issued in lieu of a Section 16.4 suspension. A N-TOL 3 letter would be the substitute for a Section 16.5

suspension. Both N-TOL 2 and N-TOL 3 letters would include statements that the employee's offense was serious enough to merit a suspension of the appropriate length.

The Service also considered this program a success. In the year before the establishment of the N-TOL program, 185 Section 16.3 Letters of Warning were issued, while only 16 N-TOL 1 letters were written. There had been 59 Section 16.4 suspensions, but only 10 N-TOL letters. A total of 32 suspensions under Section 16.5 was reduced to 4 N-TOL 3 letters.

Before each program was implemented, the Service advised all employees. They also presented a slide-show to all supervisors, explaining the program. This same slide-show was presented to the four major unions. It was also presented to the Regional representatives, the Local representatives and the Shop Stewards of the unions. The Service offered to make the presentation to employees at local union halls, but only the National Association of Letter Carriers accepted this offer.

There is some dispute as to the initial reaction to these programs. Handy, who was a Program Manager in the Central Region at the time, testified that the reaction was favorable. Marcellus Wilson, an Administrative Technical Assistant for the Union, testified that he attended a December 1983 meeting where PAC was explained. Wilson testified that the Union protested the

establishment of the program.

As indicated earlier, the Service issued a Memorandum dated July 2, 1985, stating that the N-DEM program would be terminated; and that the Service would "return to using the discipline procedures set forth in Article 16 of the National Agreement." (Underscoring added)

On March 21, 1984, the Union filed a Step 4 grievance protesting the Service's "unilateral action in altering the terms, conditions and past practice application of Article 16 of the National Agreement in several sites in the Central Region." It should be noted that the American Postal Workers Union filed a similar grievance, but there is no record that it had been progressed to National Arbitration.

POSITION OF THE UNION

The Union asserts that the Service violated the National Agreement when it unilaterally implemented these three programs and refused to engage in collective bargaining, contending that they are inconsistent with the successively negotiated National Agreements and long-established past practices which mandate a progressive disciplinary procedure, beginning with Letters of Warning, progressed to short and then long suspensions, and

ultimately discharge.

The Union emphasizes that it does not challenge the merits of these "unprecedented changes" in the disciplinary procedure. In its brief, the Union states:

> "The Union does not argue that suspensions constitute in any way a superior, or inferior, method for disciplining employees, or that the PAC, N-DEM and the N-TOL programs constitute a worse or better method. Rather, the Union contends simply that the Postal Service has a duty to engage in collective bargaining with the Union over a modification of that procedure--- regardless of its merit -- and that the Service has violated that duty in the present case by failing to bargain with the Union."

The Union maintains that these programs not only violate Article 5 of the National Agreement, which prohibits unilateral changes, but that these programs violate the provisions of Article 16 as well inasmuch as they change the established and agreed upon disciplinary procedure. Pointing to the history of negotiations and of Article 16 of the National Agreement, the Union asserts that suspensions have always been a topic of major concern to both the Service and the Union; and that changes in disciplinary procedures have been bargained over in each successive negotiation between the parties. Article 16, the Union asserts, contemplates that the progression from pre-disciplinary discussions to Letters of Warning, to suspensions of increasing duration and then to discharge is made "absolutely certain by the past practice of imposing discipline in precisely

these forms and in precisely this order," and that the PAC, N-DEM and N-TOL programs represent a major departure from the disciplinary procedures set forth in Article 16.

With respect to the reliance by the Service on Article 3 of the National Agreement (the reservation of management rights clause), the Union points out that Article 3 may grant the Service exclusive rights, but it makes these rights "subject to the provisions of this Agreement and consistent with applicable laws and regulations...." Therefore, Articles 5 and 16 limit the "exclusive rights" of the Service under Article 3.

The Union next argues that the exhibits submitted by the Service concerning alleged prior unilateral changes in the disciplinary procedures should not be given serious consideration. The Union maintains that these exhibits are internal memorandums, and that the Service produced no evidence regarding the decision-making process which brought them about, or that there is any evidence showing whether the Unions were notified of these memorandums or were consulted in advance; and that there was no evidence as to the Unions' responses, or whether the Unions requested bargaining or waived their rights to bargain.

Finally, the Union takes the position that the Service violated the National Labor Relations Act, arguing that a change

in disciplinary procedure is a change in "working conditions" as defined by the Act, pointing out that Article 5 of the National Agreement prohibits unilateral changes "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 Union points out that the NLRB and the Courts have ruled repeatedly that disciplinary procedures that affect a continuation of employment constitute mandatory subjects of bargaining. There is nothing in the National Agreement that contains any language waiving the Union's rights over disciplinary procedures, and there is no evidence in the bargaining history that would indicate that the Union ever waived its right to bargain over disciplinary procedures.

By way of remedy, the Union asks this Arbitrator to find that the Service violated the Agreement by implementing unilaterally new programs concerning discipline; and that the

Arbitrator order the Service to negotiate with the Union in this regard.

POSITION OF THE SERVICE

The Service contends that these three programs and the manner in which they were implemented do not violate the National Agreement, arguing that they do not change Article 16, nor does such implementation violate Article 16.

Preliminarily, the Service emphasizes that these programs are not intended to supplant traditional disciplinary methods, including suspensions and other disciplinary tools.

The Service maintains that these three programs do not, in any way, alter the provisions of Article 16, pointing out that the programs are intended to be corrective and not punitive. According to the Service, Article 16 does not require that any particular form of discipline be used in a particular situation; that by these programs, the Service has elected not to utilize certain disciplinary action; and that these programs are effective supplements to the traditional disciplinary concepts

currently in use in the Service, consistent with the corrective and non-punitive mandates of Article 16.

The Service asserts that Article 3 of the National Agreement gives it the right to implement these programs since, under Article 3, it has the exclusive right to "suspend, demote, discharge or take other disciplinary action," and that historically the Service has exercised its discretion to implement management policy with respect to discipline within the procedural constraints of Article 16.

The Service further argues that the implementation of these programs is consistent with past practice. At the hearing, the Service introduced several exhibits which it maintains is proof of such past practice. It points to Exhibit 23, a 1972 letter announcing the temporary elimination of Letters of Warning, and Exhibit 24, indicating a unilateral reinstatement of Letters of Warning and substituting them for suspensions of less than five days. The Service points to Exhibit 26, announcing a new policy of not imposing suspensions greater than 14 days, except in unusual circumstances.

The Service argues that these exhibits clearly show that the

parties intended that the Service have the discretion to implement unilaterally such programs.

FINDINGS AND CONCLUSIONS

After review of the record, this Arbitrator concludes that the unilateral implementation of these pilot programs violated the National Agreement between the parties, and that this grievance must be sustained.

Prior to the implementation of these three pilot programs, the parties have generally followed the progressive discipline procedures set forth in Article 16. Disciplinary measures have been imposed progressively, beginning with oral or written warnings, then progressing to short and long suspensions, and finally to discharge. While the number of warnings preceding suspension or the number of suspensions preceding discharge vary from case to case, this progressive pattern has been generally followed. These three new pilot programs alter this progressive pattern by utilizing special Letters of Warning or eliminating suspensions altogether. It is clear that these programs

represent a substantial departure from the traditional and established order of progressive and corrective discipline under Article 16.

It should be noted for the purposes of this dispute, the question of whether these changes are good or bad is of no relevance. Since the programs represent major changes, the essential question is whether these programs were properly implemented in accordance with the requirements of the National Agreement.

While Article 3 gives the Service the exclusive right "to suspend, demote, discharge or take other disciplinary action," such authority, as the Service concedes, is "subject to the [other] provisions of this Agreement." In this dispute, the rights of the Service in this regard are limited by the provisions of Article 5 and Article 16.

Article 5, the Prohibition of Unilateral Action clause, provides that the Service "will not take any actions altering wages, hours and other terms and conditions of employment." It is well established that discipline procedure is a term and condition of employment, and the unilateral implementation of programs which alter such procedure is an action that affects the

terms and conditions of employment in violation of Article 5. In Electri-Flex Co. vs. NLRB, 570 F. 2d 1327 (7th Cir 1978), cert. denied, 439 US 911, 99 LRRM 2743 (1978), the Court of Appeals held:

> "...the institution of a new system of discipline is a significant change in working conditions, and thus one of the mandatory subjects for bargaining under the provisions of Section 8(d) of the Act, included within the phrase 'other terms and conditions of employment.'"

The next area of inquiry is whether there was an established past practice in respect to similar changes in discipline procedure implemented unilaterally by the Service so as to constitute a waiver of the Union's right to demand that such changes be negotiated. In order to justify the unilateral implementation by the Service of these three programs on the basis of established past practice, it must be shown not only that there was acquiescence, either expressly or by implication, but that the prior unilateral changes were similar in magnitude and scope.

As indicated earlier, the Service presented exhibits indicating that during the 1970s numerous apparent unilateral changes were made in the disciplinary procedure. While the Union is correct in asserting that there is no evidence that these changes were not a result of previous or subsequent negotiation, or that there is any evidence that the Union ever acquiesced to

unilateral changes, the Union has not presented any evidence to the contrary. On the state of the record, it must be assumed that these prior changes were unilateral and that the Union waived its right to negotiate and acquiesced to the changes instituted by the Service.

The record, therefore, reveals the following: There was a unilateral change during the 1972 Agreement; a unilateral change during the 1973-75 Agreement; and a unilateral change during the 1978-81 Agreement. (No change was made during the 1975-78 Agreement.) The programs at the heart of this dispute represent an attempted change during the 1981-1984 Agreement.

Thus, at first glance, it would appear that the prior practice of unilateral changes made without objection gave the Service the right to unilaterally implement the programs in dispute. However, a closer analysis of the prior changes and a comparison with these disputed programs compel a different conclusion.

As evidenced by Exhibit 23, the use of Letters of Warning was temporarily suspended pending formulation of a standard national procedure. Exhibit 24 involves the implementation of using Letters of Warning in lieu of suspensions of less than five

days. Exhibit 26 established a policy of not imposing suspensions greater than 14 days except in unusual circumstances.

Each of these unilateral implementations involved a change at only one Step of the disciplinary process. However, the changes in the pilot programs involved in this dispute affect several Steps in the disciplinary process, so drastically alter the progressive nature of the disciplinary process, and are of such magnitude that the prior unilateral changes do not provide an established past practice justification for the unilateral implementation of the changes in these programs.

Both PAC and N-TOL eliminate two levels of suspension and replace them with Letters of Warning. The N-DEM program completely eliminates the progressive Steps set forth in Article 16. These changes have such a fundamental impact on employees' working conditions that they must be negotiated.

Further indication that these prior unilateral changes have little or no effect as binding past practice is the Memorandum of Understanding incorporated into and made part of the identical Article 16 provisions in the 1984-1987 National Agreement with the American Postal Workers Union and the National Association of

Letter Carriers.[1] The Memorandum of Understanding created a national-level "Task Force on Discipline," and reads, in pertinent part:

> "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 shall convene periodically but at least quarterly at such times and at such places as it deems appropriate during the term of the 1984 National Agreement. No action or recommendations may be taken by the Task Force except by a consensus of its parties." (underscoring added)

While this Union was not a party to this Memorandum of Understanding, the fact remains that its members and the members of the APWU and NALC are all part of the total work force and are all governed by identical Article 16 Discipline Procedure provisions in their respective collective bargaining agreements. It would be illogical in the extreme to allow the Service to

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1. This Union was not a party to that Agreement, having elected in 1981 to negotiate separate collective bargaining agreements with the Service.

implement unilaterally disciplinary changes affecting the members of this Union while at the same time negotiate, by Agreement, any such changes with the APWU and NALC.

AWARD

Grievance sustained. The Service violated the National Agreement by unilaterally implementing the PAC, N-DEM and N-TOL pilot programs, by unilaterally terminating the N-DEM, and by failing and refusing to bargain with the Union over these programs. The Service is ordered to enter into collective bargaining with the Union over these programs.

Nicholas H. Zumas, Arbitrator

Date: May 11, 1987

UNITED STATES POSTAL SERVICE and AMERICAN POSTAL WORKERS UNION, AFL-CIO	ARBITRATION CASE NO. AC-NAT-3052 ISSUED: April 25, 1977

BACKGROUND

This is a national level grievance initiated by APWU President Filbey in a March 4, 1976 letter to Senior Assistant Postmaster General Conway. The major issue involves interpretation and application of Appendix A, Section II-A and -B of the July 21, 1975 National Agreement, as hereinafter set forth. 1

The basic facts are not seriously in dispute. Under date of March 1, 1976, Logistics Division Director Koenigs, Central Regional Office, issued a directive to all Central Region SCF Managers and Postmasters including the following relevant paragraphs: 2

> Effective March 6, 1976, the distribution of contiguous state first-class mail at your office is revised as outlined herein.
>
> 1. MPLSM Distribution
>
> Outgoing mail will be separated on MPLSM's to SCF's of contiguous states where volume justifies or the make-up is necessary to maintain service standards. This will be accomplished on the initial sortation.
>
> 2. Manual and SPLSM Distribution
>
> The distribution of first-class mail for contiguous states will be discontinued at all Sectional Centers except as noted below.

(a) Origin SCF offices actually contiguous to another state will makeup overnight ODIS committed SCF's of that state on the primary case. Other SCF's of the contiguous state may be made up as warranted by volume and as space permits on the manual 77-hole primary case or on the SPLSM. All other mail for the state(s) involved will be dispatched to the appropriate SDC.

(b) Origin SCF offices not actually contiguous to another state will discontinue contiguous state distribution. Exceptions to this will be makeup of overnight ODIS committed areas on a primary sortation. All other mail for the states involved will be dispatched to the appropriate SDC.

3. The distribution of first-class flats will be accomplished to the same degree as that afforded manual letter sortation.

4. Each SCF office will continue to accomplish local state distribution of all classes of mail by General Scheme.

To conform to these guidelines, the authorized distribution of first-class mail at your office, destined to contiguous states, will be as follows:

	Contiguous State(s)/Type of Distribution							
Distribution Method								
MPLSM								
Manual & SPLSM								

Separations for SCF/City Zip Codes, if shown for manual distribution, must be provided for on the primary case. This is in your overnight ODIS committed area.

Corrections to the Postal Logistics Directory (PLD) and effected schemes and schedules should be initiated by your office. Additional Zip Code separations of contiguous states which are made on manual cases, as provided in paragraph 2A, should be identified on the corrected PLD page. It is expected that revised pages, as necessary, will be submitted promptly to insure publication of correct information.

Issuance of the above directive was prompted by a decision late in 1975 to eliminate a substantial number of air taxi routes used to transport mail in the Central Region. Since the existing mail distribution system was geared to use of such routes, appropriate revision of the distribution system was required. Prior to the cutback in air taxi use, under the ATP program, installations where mail originated performed primary and secondary sortation of contiguous state mail. With elimination of various air taxi routes, it seemed more efficient to transfer the secondary distribution from installations where distribution of contiguous state mail was being performed (either manually or on Single Position Letter Sorting Machines) to the appropriate SDC in the state where mail was destined. The cutback in the ATP program, however, was not intended to require any change in distribution methods where contiguous state mail was distributed on Multiple Position Letter Sorting Machines. 3

APWU Vice President Williams, who also is APWU Regional Coordinator for the Central Region, received a number of phone calls on or shortly after March 1, 1976, from various local APWU officials in Central Regional Post Offices who had learned informally of the above directive and were concerned about its impact upon the clerical work force in the offices affected. Shortly after March 1, indeed, Williams received a copy of the directive from a local Union official in Evansville, Indiana. He had not been provided a copy by the Service, but telephoned Contract Administration Branch Manager Powell (Labor Relations Division, Central Region) to inquire and learned that Powell also had been unaware of its issuance. Williams and Powell thereafter had several conversations, with Powell ultimately asserting that the directive did not affect bargaining unit personnel in such manner as to have required the giving of notice to the Union at the Regional level under Appendix A, Section II-B-4 of the July 21, 1975 National Agreement. In relevant part, Appendix A, Section II-A and -B reads: 4

"Section II: Clerk Craft

A. Basic Principles and Reassignments

When it is proposed to:

1. Discontinue an independent installation;

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

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

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

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

6. Reduce RPO, HPO employment, including employment in mobile stations;

7. Centralized mail processing and/or delivery installation (New and Old);

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

"B. Principles and Requirements

1. Dislocation and inconvenience to full-time or part-time flexible employees affected shall be kept to the minimum consistent with the needs of the service.

"2. The Regional Postmasters General 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.

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

4. Unions affected shall be notified in advance (as much as six months whenever possible), such notification to be at the regional level, except under A4 above, which shall be at the local level.

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, and shall receive moving, mileage, per diem and reimbursement for movement of household goods, as appropriate, if legally payable, will be governed by the standardized Government travel regulations as set forth in Methods Handbook M-9, 'Travel'.

"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."

. . . . . .

(Underscoring added.)

On March 3, 1976, Vice President Williams wrote APWU Industrial Relations Director Andrews stating in part: 5

"We have been deluged with calls since this bulletin hit the field, since the impact on Outgoing Distribution jobs at various offices will be severe.

"Minneapolis indicates that between 40 and 50 jobs, including a number of level 6 Distribution and Dispatch Expediter positions will be affected.

"Cleveland indicates that 30 to 50 jobs will be impacted; Indianapolis 20 positions; Rockford, IL 9 positions, Evansville, Indiana 15 positions, etc.

"There was no consultation, nor was Labor Relations at the Central Region given any advance notice."

On March 4, 1976 President Filbey initiated this grievance by letter, enclosing a copy of the Central Region March 1 directive and noting that it was to become effective on March 6. Filbey's letter concluded: 6

"It would appear that the Postal Service is completely ignoring the consultation provisions of the National Agreement, specifically those contained in Appendix A, Section II, B, 4. For that reason I am hereby instituting a grievance at the National level. We shall be prepared to meet for discussion at Step 4 at the earliest possible date."

Fourth Step discussion took place April 8, 1976 between Acting Director Merrill of the Office of Grievance Procedures (Labor Relations Department) and APWU Industrial Relations Director Andrews. On April 19, 1976 Merrill replied to the grievance as follows, in relevant part: 7

"The issue in dispute is whether or not the United States Postal Service has violated Appendix A, Section 2, B, 4, of the National Agreement, when the Central Region issued changes in mail processing regarding the processing of contiguous state first class mail without notifying the Union in advance?

"At the Step 4 meeting, I stated that Regional Labor Relations officials were not aware of the change in advance, which was of concern to us particularly in view of Mr. Williams' assessment of the impact on employees. I stated that if Mr. Williams' assessment was accurate and clerk craft employees were to be excessed from their installation, management was in violation of Appendix A, Section 2, B, 4, of the National Agreement by not providing advance notification to the Union.

"However, the information we have received subsequent to our meeting discloses that no employees have been excessed out of the installations nor has there been significant excessing of employees out of their sections within the installations, as a result of the changes involved. In addition, local management has advised the local union officials when jobs were reverted due to scheme changes which occurred.

"For example, in Minneapolis, no plans are contemplated to excess employees from the section or installation as a result of the changes in question. In Cleveland, Rockford, Evansville, and Indianapolis, no plans are contemplated to excess employees from those installations due to these changes.

"Therefore, the provision of Appendix A, Section 2, B, 4, regarding regional notification to the Union has not been violated since it is not applicable. However, the region should have advised the Union in advance of these changes as a matter of sound labor-management relations.

"I recognize that the Regional Labor Relations officials were not aware of the change in question beforehand in order to determine if Appendix A, Section 2, B, 4, would be applicable. By copy of this letter to all regions, we are advising them to insure that matters as described above are acted upon as appropriate to avoid unnecessary grievances and to insure compliance with the National Agreement."

(All underscoring added, except in second paragraph.)

The Fourth Step answer was not satisfactory to the APWU and after subsequent discussions failed to resolve the parties' differences, the grievance was certified to arbitration on May 19, 1976. 8

THE ARGUMENTS

1. APWU

During an opening exchange between Counsel at the hearing, the Postal Service stressed that Appendix A, Section II-A starts with the phrase "When it is proposed to:". According to the Postal Service, the operational changes flowing from the March 1, 1976 directive did not result in a "proposal" to reduce the number of regular work force employees at any installation. Thus, said Counsel, there was no obligation to notify the APWU under Appendix A, Section II-B-4. 9

The APWU elected not to file a post-hearing brief and summarized its arguments at the end of the hearing. The APWU then emphasized not only a contention that there was violation of the notification requirements of Appendix A, Section II-B-4 but also that the USPS had failed to bargain collectively over a fundamental change in conditions of employment. This, said the APWU, not only violated Article V of the National Agreement, but also ignored the continuing duty of the Postal Service to engage in collective bargaining on such matters pursuant to the National Labor Relations Act. 10

The APWU notes that Appendix A originally was developed in March of 1968, before the Postal reorganization took place, and its language obviously was addressed to the situation as it then existed. This specifically did not include any obligation of the Post Office Department to engage in collective bargaining under the National Labor 11

Relations Act. Given this critical fact, it would be entirely unrealistic to interpret the phrase "When it is proposed to" as if it contemplated a formal proposal to initiate collective bargaining. Instead, the intent of this phrase is to require the giving of notice whenever Management action is contemplated which reasonably may be expected to have consequences of the types delineated in Appendix A, Section II-A.

Article XII, Section 4--Principles of Reassignments--first was embodied in the National Agreement in 1973. Section 4-A states: 12

> "A primary principle in effecting reassignments will be that dislocation and inconvenience to employees will be kept to a minimum, consistent with the needs of the Service. Reassignments will be made in accordance with this Article and the provisions of Appendix A."

Given this contractual commitment and the provisions of Appendix A, the APWU deems it entirely clear that the parties should bargain concerning any situation which falls within the scope of Appendix A, Section II-A. Since Article V of the National Agreement is intended to prohibit unilateral action by the Service, it seems obvious to the APWU that collective bargaining should take place once notification is given pursuant to Appendix A, Section II-B-4.

In the present case, the Regional directive embodied a region-wide program, not a local program. Hence, the APWU holds that the responsibility for giving notice to the Union could not be passed down from the Region to the various local installations where reassignments would be required. 13

Since there was no notice given and no opportunity for collective bargaining, the APWU urges that the only meaningful remedy now would be an order that the Postal Service withdraw the March 1, 1976 Regional directive completely, and cancel all actions taken as a result of the directive. After the status quo thus was restored, the parties then could proceed to bargain in accordance with the requirements of the Agreement. If good faith bargaining did not produce agreement, the APWU agrees that the Service then could implement the program subject to protest through the grievance procedure. 14

2. USPS

Initially the Service asserts that an obligation to give notice to the Union can arise under Appendix A, Section II-B-4 only "when Management has formulated a proposal" to engage in any of the personnel actions specified in Appendix A, Section II-A. This is the only proper meaning which can be attributed to the word "proposed," it says, since the terms of a collective bargaining agreement must be given "their ordinary and popularly accepted meaning." Thus it cites Webster's International Dictionary--Unabridged (2nd Ed.) as defining "propose" as "to offer for consideration, discussion, acceptance, or adoption." 15

Even if the term "proposed" is not to be given such literal meaning here, says the Service, there is no solid evidence at all that the March 1, 1976 Regional directive either contemplated, or resulted in, the reassignment of Clerks from one installation to another. Thus the only notices which might have been required as a result of the directive would have been at the local level where reassignments within an installation may have been required as contemplated under Appendix A, Section II-A-4. 16

While there is no clear evidence as to whether or how actual notice was given locally, the Service emphasizes that local APWU officials in at least 9 cities had become aware of the directive locally and were concerned about its impact. The Service thus reasons that local notices must have been given in these instances by no later than March 3. Its brief suggests further that June 19, 1976 was the earliest date upon which any reassignment within an installation was required under the directive. Thus, the brief concludes, there was adequate notice given at the local level pursuant to Appendix A, Section II-B-4. 17

The Service fundamentally disagrees with the APWU claims that the notice requirements in Appendix A, Section II, contemplate any "consultation" with the Union, or any "bargaining" as to the propriety of a proposed new program. Nothing in the Agreement uses the terms "consult" or "consultation," and the actions detailed in the directive were fully consistent with all substantive provisions of the National Agreement. 18

In addition, the Service suggests that it is improper to consider here any claim of violation of Article V since this particular argument was not raised specifically in the grievance procedure or in Fourth Step discussions. As noted in its brief-- "It is an axiom of industrial relations that matters not raised in the contractual grievance procedure may not be raised for the first time at arbitration..." 19

The absence of any duty to bargain about the substance of the March 1, 1976 Regional directive, in any event, is clear under the National Agreement, in the view of the Service. The use of the phrase "notified in advance" in Appendix A, Section II-B-4 implies no duty to bargain, as is apparent from the manner in which the parties dealt with "major" relocations of employees under Article XII, Section 4-B. This reads: 20

> "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 Article XII, 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 number 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."

(Underscoring added.)

FINDINGS

The March 1, 1976 Regional directive was issued without the knowledge of the Labor Relations Division of the Central Region. It is clear that no consideration was given by USPS Management to the need to comply with the notification requirement under Appendix A, Section II-B-4. 21

Subsequent events establish that the directive actually did not result in reassignment of any Clerks to other installations. It also now is clear that implementation of the directive did require reassignment of Clerks who were "excess to the needs of a section," within the meaning of Appendix A, Section II-A-4, in at least four cities. 22

1. The Claimed Necessity for a Formal Proposal Under Appendix A, Section II-A

Given these basic facts it is appropriate to consider first the principal USPS contention that the notice requirement under Appendix A, Section II-B-4 cannot apply because the Service never "proposed," to the Union, that any action be taken which would fall under 1 of the 8 categories of actions delineated under Appendix A, Section II-A. This argument rests on the assertion that the word "proposed" in the first sentence of Section II-A must be given its "ordinary and popularly accepted meaning" as found in a dictionary. 23

This argument is unpersuasive. Words which appear in a collective agreement must be interpreted in the context in which they were written: their "popularly accepted" meaning may not in fact reflect the true intent of the parties, who hardly can be expected to negotiate with a dictionary in hand to be sure that the "accepted" meaning of each important word they put in their agreement actually comports with their true intent. In the present instance the relevant interpretive context includes the entire collective bargaining agreement, and more particularly the framework of Appendix A, Section II. Other provisions in Article XII (and particularly Section 4-B thereof) also are pertinent. Finally, it is significant that the phrase "When it is proposed to" first was used for this purpose in 1968 when the Post Office Department obviously was not required to make any formal proposals to a Union, for negotiation, on a matter of this sort. 24

The Impartial Chairman thus has no doubt that the requirement to notify under Appendix A, Section II-B-4 arises whenever USPS Management decides to effectuate any program which reasonably may have consequences which fall within any of the 8 categories listed in Section II-A of Appendix A. To adopt a narrower interpretation would be to defeat the stated purpose of Appendix A, Section II-B to minimize "dislocation and inconvenience" to affected employees. 25

While the Service stresses that there is no hard evidence here that the March 1, 1976 directive actually resulted (or will ultimately result) in reassignments of Clerks except within an installation (under Section II-A-4), it is unrealistic and impractical to determine whether notice is required by later events. "Notice" is meaningless unless given prior to the event. One obvious purpose of giving notice is to provide opportunity for an involved Union to investigate the facts and make suggestions calculated to minimize "dislocation and inconvenience to full-time or part-time flexible employees affected." Thus, in any given instance it is possible that some (or all) of such potential consequences of a proposed Management action under Section II-A may be avoided in the end after proper notice has been given. 26

The present facts, in any event, leave no room for doubt that a violation of Appendix A, Section II-B-4 occurred, even if it could be assumed that Regional USPS officials were absolutely certain, in advance, that no reassignments of Clerks excess to the needs of an installation would be required. The directive was issued March 1, 1976, to be effective exactly 5 days later and 27

there is no way that it could be claimed that the officials who prepared the directive could not anticipate that it would be necessary to reassign Clerks, in a number of localities, who were excess to the needs of a section. This precipitate action thus left no time for local management representatives to comply with Section II-B-4 which requires that the notice be given "as much as six months" in advance "whenever possible." Even a cursory reading of Appendix A, Section II, leaves no doubt that proper notice is not given, for purposes of Section II-B-4, unless it provides an affected Union with a reasonable time period to investigate relevant facts and to discuss the matter with appropriate Management representatives before the proposed action becomes effective.

2. The Claimed Duty to Bargain Concerning Matters Covered by Appendix A, Section II-A

The APWU urges that a duty to bargain collectively also arises in any situation where notice is required under Appendix A, Section II-B-4. Here the Union stresses Article V of the National Agreement, which states: 28

"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 Service objects to any consideration of this argument, on the ground that it constitutes a "matter" not raised in the grievance. The Impartial Chairman does not so regard it. It simply constitutes an additional contractual argument to support a basic position advanced by the APWU in President Filbey's letter of March 4, 1976, complaining that the USPS was "completely ignoring the consultation provisions of the National Agreement." The Service has had full opportunity to deal with this contractual argument in its post-hearing brief. Thus the APWU argument under Article V is not deemed by the Impartial Chairman to constitute a "matter" not fairly raised during the course of this case. 29

On the merits of this issue, however, the Service position is correct. The applicable provisions of the National Agreement, and specifically Appendix A, Section II, fully deal with both the notice requirement and the substantive policies which apply in the present situation. Given Management's authority under Article III and the provisions of Article XII and Appendix A, Section 2, the parties already have bargained on this subject and have recognized that Management may proceed, under Appendix A, Section II, without any further collective bargaining. Although it is a plain implication of these provisions that once the Union is notified, it will have reasonable opportunity to present facts and suggestions to the Service, there can be no obligation by the Service to engage in "collective bargaining" as to whether or how it should exercise its authority under Article III of the National Agreement. 30

3. Remedial Action

It seems apparent that responsible officials in Central Region Operations were unaware of the applicability of Appendix A, Section II-B-4 of the National Agreement because they failed to consult with representatives of the Labor Relations Division. This was a serious oversight and demonstrates need for clear instructions to the Regions for future guidance in such instances. Since the present case represents a national level dispute, therefore, the Award herein will direct the Postal Service to send appropriate notification to all concerned Regional officials, if such action has not already been taken. 31

The APWU further requests, however, that the March 1, 1976 directive be withdrawn in its entirety, and that all actions taken thereunder be rescinded. There is no evidence in this record to demonstrate need for such a drastic step at this time. No Clerk actually was reassigned outside his or her installation. Nor is there evidence that any Clerk actually lost earnings, or otherwise was deprived of contractual rights, by virtue of reassignment within an installation. Absent a showing that significant instances of this sort actually occurred, it would seem unrealistic and punitive to undo all that was done pursuant to the March 1, 1976 directive. 32

This ruling, of course, rests on the unique facts here. Different remedial action easily may be required should similar violations of Appendix A, Section II-B-4 occur in the future. Nothing in this Opinion, moreover, bars any individual Clerk from pressing a grievance claiming violation of the Agreement because of any reassignment, adversely affecting such Clerk, as a result of the March 1, 1976 directive. 33

AWARD

1. The grievance is sustained to the extent that the effectuation of the March 1, 1976 Regional directive without reasonable prior notice to the APWU, violated Appendix A, Section II-B-4 of the National Agreement.

2. To avoid recurrence of such a problem, the USPS shall issue appropriate instructions to all Regional offices, unless such action already has been taken.

3. Under the particular facts here, and in the absence of any showing that individual employees suffered loss or otherwise were deprived of contractual rights, no further remedial action now is warranted.

4. This ruling does not affect the rights of individual employees to file grievances seeking to be made whole for claimed violations of the National Agreement, or any applicable local agreement, as a result of local implementation of the March 1, 1976 Regional directive.

5. No violation of Article V of the National Agreement has been established.

Sylvester Garrett
Impartial Chairman

Mr. Lonnie L. Johnson
National President
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 450
1225 19th Street, N.W.
Washington, D.C. 20036-2411

OCT 25 1984

Re: Local
Spokane, Washington 99210-9998
H1M-5D-C 21062

Dear Mr. Johnson:

On September 13, 1984, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question raised in this grievance involved whether management altered a past practice concerning breaks for mail handlers.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. We agreed that issues involving breaks are determined by local policy. Whether management altered a past practice can only be determined by full development of the specific fact circumstances involved. Therefore, this case is suitable for regional determination.

Accordingly, we further agreed, this case is hereby remanded to the parties at Step 3 for further processing and arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

Thomas J. Laney
Labor Relations Department

Lonnie L. Johnson
National President
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
between	)	
UNITED STATES POSTAL SERVICE	)	Case No. Q06M-6Q-1 2288977
and	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Julienne W. Bramesco, Esq. Lucia R. Miras, Esq.
For the NPMHU:	Matthew Clash-Drexler, Esq.

Place of Hearing:	Washington, D.C.
Dates of Hearing:	May 1, 2014
Date of Award:	November 5, 2014
Relevant Contract Provisions:	Articles 3 and 5
Contract Year:	2006 - 2011
Type of Grievance:	Contract Interpretation

Award Summary:

The grievance is sustained on the basis set forth in the final paragraph of the above Findings.

Shyam Das, Arbitrator

BACKGROUND Q06M-6Q-1 2288977

The NPMHU filed this grievance in August 2012 challenging whether Lead Mail Processing Clerks and, in some circumstances, Lead Customer Service Clerks, have the authority to supervise or in any way to assign or direct members of the Mail Handler Craft in the performance of their duties. The NPMHU alleged that adoption of a policy by the Postal Service under which Lead Clerks may guide, assign or otherwise direct employees in the Mail Handler craft unilaterally changed the terms and conditions of employment governing Mail Handlers.

In the 2010-2015 National Agreement between the American Postal Workers Union (APWU) and the Postal Service those parties entered into a Memorandum of Understanding which includes provisions relating to Lead Clerk assignments (Lead Clerk MOU). This MOU created two Lead Clerk positions: Lead Mail Processing Clerk and Lead Customer Service Clerk (both hereinafter referred to as Lead Clerk).[1]

The NPMHU protested that Lead Clerks cannot properly exercise authority to supervise or to provide direction to Mail Handlers. The Postal Service has since made clear and the NPMHU accepts the explanation that Lead Clerks are not authorized to perform supervisory functions, as defined by the NLRB, including decisions about hiring, promotion, discipline, approval of leave, the resolution of grievances, and employee evaluations.

The creation and implementation of the Lead Clerk position occurred in conjunction with an agreement between the APWU and the Postal Service to eliminate temporary supervisor positions (204-B positions), except in the absence or vacancy of a supervisor for 14 days or more. When there is no supervisor available, Lead Clerks, per their job description, provide oversight to mail processing employees in both the Clerk Craft and the Mail Handler Craft.

The Mail Handler Craft is distinct from the Clerk Craft and is represented by the NPMHU. The Clerk Craft is represented by the APWU. Mail Handlers generally are responsible for loading, unloading, and moving bulk mail. There is a Mail Handler Group Leader

[1] Another lead position, Lead Sales and Service Associate, existed long before the Lead Clerk MOU.

position. Teresa Harmon, Contract Administration Representative for the NPMHU, testified that she was aware of lead employees called Group Leader Mail Handlers in the Mail Handler Craft since at least the late 1960s. Group Leaders provide guidance, direction and assistance where a supervisor is unable to be present at the worksite. The job description states that the Group Leader serves as a working leader of a group of at least five Mail Handlers, although Harmon indicated that is not always followed.

Relevant provisions of the applicable 2006 NPMHU National Agreement include the following:

> ARTICLE 3 MANAGEMENT RIGHTS
>
> The Employer shall have the exclusive right, subject to the provisions of the Agreement and consistent with applicable laws and regulations:
>
> 3.1 To direct employees of the Employer in the performance of official duties;
>
> 3.2 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;
>
> 3.3 To maintain the efficiency of the operations entrusted to it;
>
> 3.4 To determine the methods, means, and personnel by which such operations are to be conducted;
>
> 3.5 To prescribe a uniform dress to be worn by designated employees; and
>
> 3.6 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.
>
> * * *

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 the law.

Relevant provisions of the Lead Clerk MOU agreed to by the Postal Service and the APWU include the following:

2) Mail Processing/Customer Service

The intent behind the creation of the Lead Processing Clerk and the Lead Sales and Services Associate is to provide oversight, direction and support, in the absence of Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations. Lead Clerk positions will be created at one level above other employees in the group. The Employer will fill duty assignments of a Lead Clerk in any facilities where clerks work without direct supervision and in facilities that have a minimum complement of five (5) clerks. Lead Clerk assignments shall include duties in both the Retail and Mail Processing operations in Post Offices. Lead Clerk assignments will also be filled in facilities with only a Retail operation.

A) Lead Clerk-Mail Processing- Responsibilities include, but are not limited to, resolving problems that may occur during tour operations and determining when a supervisor should be involved, work as a working leader of mail processing employees in a mail processing activity; maintaining records related to mail on hand and mail processed; maintaining a working knowledge of regulations, policies and procedures to mail processing activities.

B) Lead Clerk-Customer Service- Responsibilities include, but are not limited to, maintaining a working knowledge of regulations, policies and procedures related to all phases of retail services and Post Office mail processing operations; acting alone or as a working leader to retail and mail processing employees; providing technical guidance to retail clerks in addition to communicating regulations, policies and procedures to those employees; performing administrative duties in both retail and mail processing operations; and ensuring that all work is performed efficiently.

UNION POSITION

The NPMHU argues that Lead Mail Processing Clerks and Lead Customer Service Clerks should not have the authority to supervise, assign or direct members of the Mail Handler Craft in the performance of their duties. The NPMHU asserts that by permitting Lead Clerks to guide and direct the work of Mail Handlers, the Postal Service unilaterally changed the terms and conditions of employment for employees in the Mail Handler craft. The NPMHU accepts the Postal Service's statement that Lead Clerks are not authorized to perform supervisory functions and asks the Arbitrator to incorporate that limitation into the Award in this matter.

The NPMHU argues that the Postal Service violated Article 5 when it unilaterally changed the terms and conditions of employment for Mail Handlers by permitting the Lead Clerk, as opposed to the (Mail Handler) Group Leader, to direct the work of Mail Handlers. The Postal Service acknowledged at the hearing that it has changed the identity of the individual providing direction or guidance to Mail Handlers. The NPMHU points out that the Postal Service made this change through negotiations with the APWU and did not discuss this change with the NPMHU. The NPMHU argues that this change causes a material, substantial, and significant change to the working environment for Mail Handlers and therefore, violates Article 5. See Flambeau Airmold Corp., 334 N.L.R.B. 165 (2001), quoting Alamo Cement Co., 281 N.L.R.B. 737, 738 (1986), modified on other grounds 337 N.L.R.B. 1025 (2002).

The Postal Service has used Group Leaders for nearly 50 years to provide direction and guidance to Mail Handlers when a supervisor is unavailable. The NPMHU points out that in accordance with the position description, the Group Leader:

(i) "[a]ssures...that each Mail Handler is assigned a fair share of the load,"
(ii) "assures that adequate on-the-job training is carried out" and that "each Mail Handler understands the work to be done,"
(iii) "[a]ssigns employees in the group, as instructed by a supervisor, to individual tasks, and shifts employees from one assignment to another to meet fluctuating workloads,"

(iv) "[r]esolves problems of a routine nature arising during the tour of duty," and
(v) "provides leadership necessary to secure maximum interest and effort among employees" and "maintains morale of employees in the group."

Harmon testified that the job duties of the Group Leader and the Lead Mail Processing Clerk are the same. The NPMHU asserts that the general practice in the Postal Service is for lead-type positions to be in the same craft as the employees who are being provided direction and guidance, and that by assigning Lead Clerks to direct Mail Handlers the Postal Service was assigning them Mail Handler Group Leader duties. The NPMHU cites NLRB precedent that the substitution of one group of workers for another to perform the same work is clearly a mandatory subject of bargaining. See Spurlino Materials, Inc., 353 N.L.R.B. 1198, 1218 (2009).

The NPMHU disagrees with the Postal Service's assertion that the General Expeditor (Expeditor) position, a position within the APWU, has held the responsibility to direct the work of Mail Handlers for years. The NPMHU argues that the evidence shows that the responsibilities of the Lead Clerk are different than those assigned to the Expeditor. Thus, the Postal Service's argument that there is a long-standing history of allowing employees from one craft to guide members from other crafts lacks merit.

The NPMHU contends that the creation of the Lead Clerk position limits the opportunity for Mail Handlers to be promoted to Group Leader. The total number of Mail Handler Group Leaders may not have been affected by the new Lead Clerk position, but it has reduced the availability of promotional opportunities in situations where the Postal Service determines that bargaining unit employees require oversight, direction and support in the absence of a supervisor.[2]

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[2] The NPMHU cites an NLRB decision that a reduction in the opportunity for higher-level pay is a mandatory subject of bargaining. See Corp. for Gen. Trade, 330 N.L.R.B. 617, 627-28 (2000); Dearborn Country Club, 298 N.L.R.B. 915, 915 (1990).

The NPMHU argues that allowing Clerk Craft employees to provide oversight, direction and guidance to Mail Handlers constitutes a material, substantial, and significant change in the working conditions of Mail Handlers. Harmon testified that the most important function of a Mail Handler Group Leader is the ability to maintain morale within the group. Harmon explained that the ability of a Group Leader to maintain morale derives from working side-by-side with their fellow union members, with an understanding of the NPMHU National Agreement and supplementary agreements reached by NPMHU local unions and the Postal Service.

The NPMHU asserts that the Lead Clerk's responsibilities affect the terms and conditions of employment for Mail Handlers. For example, the Lead Clerk has the ability to start a process that could result in discipline by relaying information to a supervisor, as well as the ability to direct the assignments of Mail Handlers.

The NPMHU cites a prior national arbitration award issued in 2014 that makes clear that the Postal Service cannot bargain with one union any terms that would harm members of another union unless it first receives the second union's consent. Postal Service and NALC, APWU, and NPMHU, Case No. Q06N-Q4-C 12114440 (Nolan, 2014).[3] The NPMHU asks the arbitrator to similarly find that the Postal Service cannot unilaterally change the terms and conditions of employment for Mail Handlers through separate negotiations with the APWU.

The NPMHU contends that despite the management rights clause in Article 3, the Postal Service does not have the right to unilaterally change the terms and conditions of employment for Mail Handlers. The NPMHU acknowledges the Postal Service's right to determine whether a non-supervisory lead is necessary, however it argues that the Postal

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[3] The issue in that case was whether a Non-Traditional Full-Time employee (considered full-time under the APWU agreement) could be excessed into a full-time position in the NALC bargaining unit under the NALC agreement. The NALC agreement and the APWU agreement had different and conflicting definitions of full-time employment. Arbitrator Nolan held that the definition of full-time in the gaining union agreement (NALC) governed.

Service does not have the authority to unilaterally assign the duties being performed by the Mail Handler Group Leader to nonbargaining unit employees.

The NPMHU requests that the Postal Service be required to rewrite the Lead Clerk job description to specify that direction can be provided only to employees within the APWU bargaining unit or, alternatively, to restore the status quo and bargain with the NPMHU over these matters.

EMPLOYER POSITION

The Postal Service contends that introducing Lead Clerks to the workplace did not change the terms and conditions of employment for the Mail Handlers. Relying on NLRB precedent, the Postal Service argues that an improper change to a working condition involves more than just an insubstantial modification like the one in this case.[4]

Patrick Devine, the Postal Service Manager of Contract Administration for the APWU Agreement, testified that Mail Handlers receive the same instructions that they always have, the only change is the identity of the person conveying the instructions. Previously it was a supervisor and now, in addition to the Group Leader, Lead Clerks are providing instruction to Mail Handlers. The Postal Service asserts that this small modification, and the minimal interaction between the Lead Clerks and the Mail Handlers, do not amount to a material, substantial, and significant change affecting the terms and conditions of employment.

Devine testified that APWU members have been directing Mail Handlers since at least 1983 when the Postal Service began using Expeditors. Devine explained that an Expeditor is responsible for ensuring that the correct mail gets on the correct truck before it leaves. Expeditors, like Lead Clerks, carry out instructions of the supervisor.

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[4] "[F]or a statutory bargaining obligation to arise with respect to a particular change implemented by an employer, such change must be a 'material, substantial and a significant' one affecting the terms and conditions of employment of bargaining unit employees." United Technologies Corp., 278 N.L.R.B. 306 (1986), at 308.

The Postal Service argues that the management rights provision of the National Agreement gives it the right to direct employees in the performance of their official duties. The Postal Service points out that the management rights clause is almost word for word the language of the Postal Reorganization Act, 39 U.S.C. § 1001(e). The Postal Service contends that this means that its right to direct employees in the performance of their official duties has the force of law.

The Postal Service argues that it has the authority to create the Lead Clerk position pursuant to Article 3. Lead Clerks direct employees when necessary and facilitate efficient operations by providing oversight, direction and support to the operations in the absence of a supervisor. The Postal Service asserts that in the absence of anything in the NPMHU agreement prohibiting the use of leads, or prohibiting the use of leads from other crafts or bargaining units, the management rights clause controls.

The Postal Service rejects the NPMHU's argument that the Lead Clerk MOU violates the NPMHU National Agreement. The Postal Service contends that the NPMHU's arguments are unsupported by the evidence. The NPMHU failed to prove that the Mail Handlers' working conditions changed with the creation of the Lead Clerk position. Additionally, the Lead Clerk position is complement neutral which means that it will not result in the hiring of additional employees, but will result in a duty assignment for an exiting Clerk Craft employee. The ratio of Group Leaders to total Mail Handlers has not varied significantly since May 2011, when the Lead Clerk position was created. There is no evidence that there were any changes to the job duties or tasks that Mail Handlers perform resulting from the creation of the Lead Clerk position.

The Postal Service refutes the NMPHU's position that there was a longstanding agreement between the parties that only Group Leaders could lead Mail Handlers. The Postal Service asserts there was never an agreement to designate Group Leaders as the exclusive lead of Mail Handlers in the absence of the supervisor. The Postal Service also contends that if it had wanted to restrict Lead Clerks to only lead APWU bargaining unit members it would have

done so in the job description, as it did in the Mail Classification Clerk, Window Services Technician, and Accounting Technician job descriptions.

The Postal Service argues that even if it erred by failing to negotiate with the NPMHU over the creation of Lead Clerks, there was no impermissible unilateral action, because any change in working conditions was immaterial, insubstantial, and insignificant. The directions given by the Lead Clerks are the same directions as those given to Mail Handlers by others outside the bargaining unit -- Supervisors, including Acting Supervisors (204-B), and APWU-represented Expeditors. The Postal Service contends that any change to the working conditions of Mail Handlers was *de minimis*.

The Postal Service maintains that the facts considered in the 2014 Nolan Award are distinguishable from the instant case because the Lead Clerk MOU does not conflict with the NPMHU Agreement. Here, the Postal Service contends, there is no conflicting language in the NPMHU Agreement that prohibits employees from a different bargaining unit leading Mail Handler employees.

FINDINGS

The NPMHU National Agreement does not contain a provision expressly precluding employees in a different bargaining unit, such as the APWU, from leading Mail Handlers. However, certain unilateral actions are prohibited in the National Agreement. Article 5 states:

> 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 the law.

In the past Mail Handler Group Leaders have supplemented supervisors in giving oversight, direction and guidance to Mail Handlers. Now in addition to Group Leaders, Lead

Clerks are performing this function as a consequence of the Postal Service agreement with the APWU to eliminate temporary supervisors (204-B supervisors) and to establish the Lead Clerk positions in issue. The Postal Service should have bargained with the NPMHU prior to assigning Lead Clerks to perform this work.

The Postal Service's argument that there has been no significant change because Expeditors in the APWU bargaining unit have directed the work of NPMHU members in the past is not persuasive. The Expeditor position essentially is responsible for making sure the mail gets onto the correct trucks. As the Postal Service's witness testified (Tr. p. 73) they "inform" Mail Handlers, and, as the NPMHU points out, the Expeditor job description does not include the word "direct", let alone provide that the Expeditor "directs" Mail Handlers. Unlike the Group Leader -- or the Lead Clerk as established by the Postal Service -- the Expeditor does not provide oversight, direction or support to Mail Handlers. In the past the Postal Service has used lead positions, but they have not crossed over bargaining unit lines.[5]

The Postal Service takes the position that Lead Clerks are only conveying instructions from a supervisor and that this is a *de minimis* or insignificant change. The job description makes it is clear that the role of the Lead Clerk is more significant than simply conveying the instructions of a supervisor. The Lead Clerk:

(i) "Maintains a working knowledge of regulations, policies and procedures related to mail processing activities. Provides guidance to mail processing employees assigned to mail processing operations. Resolves problems that may occur during tour operations and determines when a supervisor should be involved."

(ii.) "As a working leader of mail processing employees, will cooperate with supervisor to meet established targets for identified goals. Will work to maintain efficiencies and meet dispatches based on the installation operating plan. Shifts employees in the group from one assignment to

[5] The Lead Clerk MOU which is incorporated in the APWU National Agreement states that Lead Clerks will "provide oversight, direction and support, in the absence of a Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations." As the NPMHU points out, the APWU National Agreement also provides that references therein to "bargaining unit are limited to the APWU and the crafts that it represents."

> another, in accordance with the Collective Bargaining Agreement, to balance workload. Trains new employees in specific area of specialization. Makes Supervisor approved entries to correct time and attendance records and retains required supporting documents."

The Postal Service cites several NLRB decisions, including United Technologies Corp., in support of its *de minimis* argument. See, United Technologies Corp., 278 N.L.R.B. 306 (1986). The Board held that in order for a statutory bargaining obligation to arise with respect to a particular change implemented by an employer, such change must be a "material, substantial, and a significant" one affecting the terms and conditions of employment of bargaining unit employees. In that case the Board relied on the limited duration of the program in question and that it was likely to affect only a small number of employees. In this case, however, the creation and assignment of Lead Clerks to direct mail processing employees, including Mail Handlers, potentially could impact much of the Mail Handler bargaining unit. And as noted above, the role of the Lead Clerk as envisaged in its job description is considerably broader than conveying the instructions of a supervisor, and overlaps the role of the Mail Handler Group Leader position which previously performed those functions in the absence of a supervisor. Under these circumstances, I find that the change at issue was material, substantial and significant, and not *de minimis*.

The Postal Service stresses that the ratio of Group Leaders to total Mail Handlers has not significantly decreased, which the NPMHU does not dispute. But, based on the evidence in the record, it is reasonable to conclude there has been an impact on Mail Handler promotional opportunities because Lead Clerks now are able to direct Mail Handlers in the absence of supervisors. The NPMHU, utilizing Postal Service data, provides a statistical review which shows a lost opportunity for Mail Handlers to fill the gap left by the reduction in mail processing supervisors. Between July 2012 and April 2014, the number of employees performing lead (non-supervisory) responsibilities for mail processing employees (both Clerks and Mail Handlers) increased from a total of 1,204 lead positions to 1,627 positions -- a 35% increase. During this same time period, the number of Mail Handler Group Leaders dropped from 711 in July 2012 to 628 in April 2014. While this corresponded to a drop in total Mail Handlers on the rolls, what is significant for present purposes is that Group Leaders decreased

from 59% to 39% of total mail processing lead positions. At the same time, the number of Lead Mail Processing Clerks increased from 493 to 999 -- an increase from 41% to 61% of the total lead positions.

Based on the foregoing, I find that the Postal Service violated Article 5 of the National Agreement. In sum, the NPMHU has established that the Postal Service unilaterally changed the terms and conditions of employment for Mail Handlers when it assigned the Lead Clerk position which it had negotiated with the APWU to provide oversight, direction and support to Mail Handlers, work that in the absence of a supervisor previously had been performed by Mail Handler Group Leaders. The Postal Service is ordered to restore the status quo and to bargain with the NPMHU over these matters.

AWARD

The grievance is sustained on the basis set forth in the final paragraph of the above Findings.

Shyam Das, Arbitrator

IN THE MATTER OF
THE ARBITRATION

between

UNITED STATES POSTAL SERVICE	)	
	)	
and	)	Case H1N-5G-C 14964
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	
	)	

Decision of the Arbitrator

Before
Neil N. Bernstein
Arbitrator

APPEARING:

FOR THE SERVICE: C. B. Weiser, Attorney
Office of Field Legal Services
United States Postal Service
Southern Regional Office
Memphis, Tennessee 38166

FOR THE UNION: Ms. Shailah T. Stewart
Cohen, Weiss & Simon
330 West 42nd Street
New York, New York 10036

OPINION OF THE ARBITRATOR

This proceeding involves the issue whether the Service violated the National Agreement by prohibiting uniformed letter carriers from wearing buttons bearing the insignia of Local 1280 of the Union on their uniforms in its South San Francisco facility in April 1983.

I

The facts of this dispute are not substantially in controversy. In January, 1983, Local 1280 of the Union began a campaign to induce more members of the bargaining unit to become Union members. As part of that campaign, Local 1280 purchased 1,000 buttons, roughly the size of a 25 cent piece, bearing the Union's identifying logo, and distributed them to its members.

Sometime in late February or early March of that year, Union Steward Gary Ono began wearing his Local 1280 button on his uniform during his regular working hours. His display of the button was noticed by the Postmaster, who contacted Regional Labor Relations for advice on handling the matter. Late in April, the Postmaster was told that the wearing of these buttons on uniforms should be prohibited. Steward Ono was ordered by his Supervisor on April 27, 1983 to remove the button from his uniform. Ono complied with the directive.

The Union requested a Step 1 meeting on the order, which was held on May 11, 1983. When the parties were unable to resolve their differences, the Union filed the instant grievance

on May 23, 1983. Sometime between August 5, 1983 and April 11, 1984, the Union, pursuant to Article 15.4 of the National Agreement, withdrew the case from regional arbitration and referred it to Step 4 of the grievance procedure. After the parties were unable to resolve their dispute at Step 4, the Union, on April 20, 1984, certified the case for National arbitration.

II

The Union relies principally on Article 5 of the National Agreement, under which the Service promises that it will not take any actions affecting terms and conditions of employment that are "inconsistent with its obligations under law". The Union claims that this language incorporates all applicable federal and state statutes into the Agreement, thereby providing an arbitrator with contractual authority to enforce them. The statutes incorporated into the Agreement include the National Labor Relations Act.

Under the National Labor Relations Act, the Union continues, the wearing of union buttons is a protected activity, which cannot be prohibited by management in the absence of "special circumstances". The only possible "special circumstances" that might apply in this case would be a perceived need to present a specific image to the public, which "circumstance" must be balanced against the employees' right to wear their union buttons. Finally, the Union presented evidence that the Service had permitted employees to wear advertising penholders and various buttons and insignia with their uniforms, which both

defeats the claim of a need to present a uniform image and amounts to discriminatory enforcement of its regulations regarding uniforms.

III

The Service relies principally on Article 3 of the National Agreement which gives it the right to prescribe a uniform dress to be worn by letter carriers and other designated employees. Pursuant to that authorization, the Service adopted Section 580 of the Employee and Labor Relations Manual, spelling out its uniform dress prescriptions. Section 583 of the Manual sets out the insignia that may be worn with a uniform. That section, after allowing employees to wear stars or bars to indicate their length of service, provides:

> ".32 Other Insignia. Other insignia may not be worn with the uniform. Exception: An award emblem for safe driving or superior accomplishment, or other officially authorized insignia, may be worn on the cap (left side). Employees not required to wear caps may wear the insignia on the lapel of the jacket."

The Service contends that the Union made no attempt to induce the Service to authorize wearing of the Union buttons involved in this case. Therefore, they were prohibited by Section 583.32, which was incorporated into the National Agreement through Article 19. Secondly, the Service claims that enforcement of Part 583.32 has not been discriminatory. Uniformed employees have only been permitted to wear authorized insignia, which the Union has never challenged. Moreover, the Union has waived its

right to contest these provisions by failing to do so when the regulations were originally promulgated. In addition, the Service notes that it was not trying to prevent the Union from soliciting new members, utilizing the methods specifically permitted by Articles 17.6 and 31.1 of the National Agreement.

With respect to the National Labor Relations Act, the Service contends that only the Board and not an arbitrator has authority to enforce its provisions. The Service also maintains that there has been no violation of the Act, because the Union has waived its right to contest the provisions of Part 583. Finally, the Service argues it has the right to prohibit the wearing of emblems and buttons by uniformed employees to protect the Service's public image.

IV

The Arbitrator concludes that the Service violated the National Agreement by ordering uniformed employees in the South San Francisco office to remove local union buttons from their uniforms in April 1983. Therefore the instant grievance, protesting that order, must be sustained.

This conclusion is derived from the following:

A

If the focus of attention is limited to the contractual provisions relating to uniforms, there is considerable merit to the Service's position. Article 3.E gives management the right to "prescribe a uniform dress to be worn by letter carriers". Pursuant to that authority, the Service has enacted Part 580 of

the Employee and Labor Relations Manual. That part includes Section 583.32, which prohibits uniformed employees from wearing insignia with their uniforms, other than "stars and bars" for years of service and "an award emblem for safe driving or superior accomplishment or other authorized insignia".

There is no contention from the Union that the union button involved in this proceeding comes within any of the exceptions. Therefore, the language of Section 583.32 would appear to prohibit such button-wearing by uniformed employees.

B

But Section 583.32 is not the whole story. Article 3 of the National Agreement qualifies management's right to prescribe a uniform dress by making that right "subject to the provisions of the Agreement and consistent with applicable laws and regulations".

Even more directly, Article 5 of the National Agreement contains this explicit commitment from the Service:

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.

This language appears curious, because the Service is barred from taking any actions that violate the Agreement or "its obligations under the law", even if Article 5 were totally

absent. 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 in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

In other words, if the Service has taken action which violated the National Labor Relations Act, it thereby violated Article 5. Consequently, the parties have given the Arbitrator jurisdiction to interpret and apply the National Labor Relations Act.

C

The question of the power of employers to regulate or prohibit the wearing of union buttons by their employees is one that has been extensively litigated under the National Labor Relations Act.

More than forty years ago, the Supreme Court of the United States established that the wearing of union buttons is a protected right under Section 7 of the Act. Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945). As interpreted by the Board,

this holding does not mean that employees have an absolute right to wear union buttons. However, they do have at least a presumptive right to wear them, and any employer rule that curtails that right is "presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline, or to ensure safety". Malta Construction Co., 276 NLRB No. 171 (1985). The courts have been more lenient toward employers and have also permitted them to curtail the wearing of union buttons where that curtailment is necessary to avoid distraction from work demanding great concentration or is a part of a policy "to project a certain type of image to the public". Pay'N Save Corp. v. NLRB, 641 F.2d 697 (9th Cir. 1981); Burger King Corp. v. NLRB, 725 F.2d 1053 (6th Cir. 1984).

D

Applying these precedents to Section 583.32 is not easy. It appears that the Board itself would find that the Service has no recognized "special circumstance" for banning the wearing of union buttons by uniformed employees and that the application of the rule in that manner would be found to violate Section 8(a)(1) of the NLRA. On the other hand, if the Service appealed such a holding to a circuit court of appeals, there is a strong likelihood that the court would find the rule, at least on its face, to be permissible because the Service, by outlawing insignia, is trying to "project a certain type of image to the public".

Given this state of the law, the Arbitrator holds that Section 583.32, on its face, does not violate the Service's obligations under the National Labor Relations Act, even though it has an inevitable consequence of curtailing the wearing of union buttons.

E

On the other hand, the Arbitrator find that the regulation was applied in a disparate and inconsistent manner in the South San Francisco office. Consequently, the rule was used there, not to project a certain image of uniform and consistent dress. Instead, the Service at that location was regulating the content of the buttons being worn, and was permitting uniformed employees to wear buttons of distracting size and shape if it like the message that the buttons were projecting, and prohibiting them when it did not like the content. This it may not do, where one of the prohibited buttons is a union button.

The Arbitrator does not base this holding on the Union's evidence with respect to stamp pins, penholders or the APWU "letter perfect" button. The Union's evidence failed to establish that the Service permitted uniformed employees to wear these items at the time that it was prohibiting the wearing of union buttons.

The Arbitrator also believes that the Service had the right to allow uniformed employees to wear insignia of "superior accomplishment", such as safe driving awards. Although it is a closer question, he also finds that the Combined Federal Campaign

button, worn by employees who had contributed to the campaign, is permissible as a recognition of a worthwhile accomplishment, similar to a pin for donating blood. These can be worn without destroying the Service policy of presenting a certain image to the public.

The Service violated the Act, and Article 5 of the National Agreement, by permitting uniformed employees to wear the "attitude makes the difference" buttons while prohibiting union buttons. The "attitude" buttons are much larger and gaudier than the union buttons and constituted a much greater distraction from any consistent image. The fact that the attitude buttons were intended to promote a specific internal program, the Employee Involvement Program, does not explain why these buttons were worn by carriers in contact with the public, where the image was most important. Nor does it matter that the Employee Involvement Program was a joint effort between the Service and the Union.

By banning the union buttons while permitting the "attitude" buttons, the Service enforced its rule in a discriminatory manner and destroyed any "special circumstance" that could have justified its prohibition. Consequently, the ban violated the Service's obligation under the National Labor Relations Act and also Article 5 of the National Agreement.

THE AWARD

The grievance filed on May 22, 1983 on behalf of Branch 1280 is sustained. The Service is directed to refrain from prohibiting the wearing of union buttons whenever it permits

the wearing of any items other than stars and bars, safe driving awards or other insignia which recognize special accomplishments.

Neil N. Bernstein
Arbitrator

Dated: March 11, 1987

September 15, 1978

FINAL RESOLUTION

In the Matter between:

UNITED STATES POSTAL SERVICE

-and-

AMERICAN POSTAL WORKERS UNION, AFL-CIO

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

On August 28, 1978, the above parties entered into the following Agreement:

> The parties hereto agree to resolve their dispute over the terms of their collective bargaining agreement as follows:
>
> The Director of the Federal Mediation and Conciliation Service will appoint an individual who will mediate the dispute between the parties. The parties will thereafter diligently cooperate with this individual to resolve the dispute. However, if no agreement is reached as to the terms of Articles 6 and 9 of the tentative agreement of July 21, 1978, then the individual appointed shall issue a decision only on those remaining unresolved issues with respect to the terms of Articles 6 and 9 of the tentative agreement within 15 days of the date the mediation commences. The terms of all other articles of the tentative agreement reached on July 21, 1978, shall be made a part of the final agreement of the parties or the final binding decision of the individual appointed. The appointed individual's decision shall be final and binding upon the parties.

The undersigned was appointed by the Director of the Federal Mediation and Conciliation Service pursuant to the terms of this Agreement. He began his task on Friday, September 1, and, in full compliance with the terms of the Agreement, the parties cooperated diligently with the undersigned in an attempt to resolve the dispute within the 15-day period.

However, no agreement having been reached as to the terms of Articles VI and IX of the tentative agreement of July 21, 1978, the following final and binding decision is made with respect to those Articles:

ARTICLE VI

(1) Each employee who is employed in the regular work force as of the date of this Award, 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 VII 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 XII, except as such right may be modified by agreement or by final resolution pursuant to the provisions of (4) below. Should the exercise of the employer's right to lay off employees require the application of the provisions of Chater 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.

(4) The parties shall engage in good faith discussions to reach agreement, consistent with this decision and consistent with Chapter 35 of Title 5, United States Code, on further details as to the employees' and employer's rights and the rules and procedures to be followed in the implementation of Article VI. If, at the expiration of 90 days after the date of this decision, the parties have unresolved issues as to the employees' and employer's rights and the rules and procedures to be followed in the implementation of Article VI, then the undersigned shall have an additional 60 days thereafter within which to conduct such investigation of the remaining issues as he deems appropriate and issue a decision on such unresolved issues as to the employees' and employer's rights and the rules and procedures to be

followed in the implementation of Article VI. The terms of any such agreement reached by the parties or any such supplemental decision of the undersigned shall become part of this decision and be final and binding upon the parties.

ARTICLE IX

(1) Effective November 4, 1978, the current cost of living adjustment of $1,528 per annum, with proportional application to hourly rate employees, will be added to basic annual salaries.

(2) The Current Cost of Living Adjustment formula will be continued on an uncapped basis with the following modification:

a) The "National Consumer Price Index for Urban and Clerical Workers—Revised" will be used.
b) The base Index will be the Consumer Price Index for the month of June 1978.

(3) The base annual salary, with proportional application to hourly rate employees, for all grades and steps for those employees covered under the terms and conditions of this Agreement shall be increased as follows:

Effective July 21, 1978—$500 per annum;
Effective July 21, 1979—3% per annum, applied to the base annual salary in effect on July 20, 1979.
Effective July 21, 1980—$500 per annum.

(4) All other provisions of Article IX which were the subject of a tentative agreement on July 21, 1978, shall remain unchanged except as revision in language or figures is necessary to reflect the rulings in (1) through (3) above.

The terms of all other articles of the tentative agreement reached on July 21, 1978, are made a part of this final and binding decision.

SIGNED:

James J. Healy

JAMES J. HEALY

Washington, D.C.
September 15, 1978

FINAL RESOLUTION

In the Matter between:

UNITED STATES POSTAL SERVICE	
- and -	
AMERICAN POSTAL WORKERS UNION, AFL-CIO NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP DIVISION of the LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	ARTICLE VI

In an official ruling dated September 15, 1978, the undersigned made several findings with respect to Article VI, one of which provided as follows:

> The parties shall engage in good faith discussions to reach agreement, consistent with this decision and consistent with Chapter 35 of Title 5, United States Code, on further details as to the employees' and employer's rights and the rules and procedures to be followed in the implementation of Article VI. If, at the expiration of 90 days after the date of this decision, the parties have unresolved issues as to the employees' and employer's rights and the rules and procedures to be followed in the implementation of Article VI, then the undersigned shall have an additional 60 days thereafter within which to conduct such investigation of the remaining issues as he deems appropriate and issue a decision on such unresolved issues as to the employees' and employer's rights and the rules and procedures to be followed in the implementation of Article VI. The terms of any such agreement reached by the parties or any such supplemental decision of the undersigned shall become part of this decision and be final and binding upon the parties.

The parties were unable to reach agreement within 90 days after September 15, and therefore the unresolved issues were referred to the undersigned for decision. Meetings were held with the parties in January and February 1979. By agreement, the time for submission of the final decision was extended to February 27, 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 VI are a part of the September 15, 1978 Final Resolution and shall be final and binding upon the parties:

A. COVERAGE

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 VII) 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.

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."

3. Non-protected employees achieving protected status.

(a) A non-protected employee achieves protected status upon completion of six years of continuous service in the 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 X of the Agreement.

(3) Leave without pay for performing Union business as provided for in Article XXIV 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.

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.

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.

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.

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.

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 an 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

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

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 in inverse order of craft seniority as defined in the Agreement.

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.

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.

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 a 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

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.

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.

E. PROTECTIVE BENEFITS

1. Severance pay. Employees who are separated because of a layoff or a 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.

F. UNION REPRESENTATION RIGHTS

1. The interpretation and application of the provisions of this Award shall be grievable under Article XV. Any such grievance may be introduced at the Regional level and shall be subject to priority arbitration.

2. The Employer shall provide to the affected Union(s) a quarterly report on all reassignments, layoffs 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.

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 by that employee of protected status.

SIGNED:

James J. Healy

James J. Healy

Dated: February 26, 1979

December 23, 1974

Mr. Emmet Andrews
Director, Industrial Relations
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Dear Mr. Andrews:

This is in response to your letter dated December 10, 1974, concerning a guarantee of four hours pay for part-time flexible employees who were not scheduled to work any hours during a pay period.

The Postal Service, in keeping with the intent of Article VI of the National Agreement, has taken the position that part-time flexible employees in offices with 200 or more man years of employment are to be scheduled to work a minimum of four (4) hours each pay period. Part-time flexible employees in those offices with less than 200 man years of employment are to be scheduled to work a minimum of two (2) hours each pay period.

In those instances where the employees in question were not scheduled for duty during a pay period, they would be entitled to receive two or four hours pay whichever is applicable.

If you have any further questions regarding this matter, please feel free to contact this office.

Sincerely,

Brian J. Gillespie, Director
Office of Programs and Policies
Labor Relations Department

Reg. Dir., Labor Relations

bcc: J. Gildea, D. Charters
Subject, Chron, Reading, Bland:bjw:12-19-74

NATIONAL ARBITRATION
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

In the Matter of Arbitration between UNITED STATES POSTAL SERVICE and AMERICAN POSTAL WORKERS UNION, AFL-CIO and NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO as Intervenor and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO as Intervenor	Q06C-4Q-C 09250752

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Patrick M. Devine, Manager, Contract Administration; Neftali "Nefty" Pluguez, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Anton G. Hajjar, Attorney (O'Donnell, Schwartz & Anderson, P.C)

National Postal Mail Handlers Union, AFL-CIO: Mady Gilson, Attorney; Bruce R. Lerner, Attorney; Daniel A. Zibel, Attorney (Bredhoff & Kaiser, P.L.L.C.)

National Association of Letter Carriers, AFL-CIO: Keith E. Secular, Attorney (Cohen, Weiss and Simon, L.L.P.)

Place of Hearing:	USPS Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C.
Date of Hearing:	April 25, 2012
Date of Award:	August 1, 2012
Relevant Contract Provisions:	Article 6; Sections (1), (2) ; Article 14, Sections 1, 4.D; MOU re Layoff Protection
Contract Year :	2006-2010 ; 2010-2015
Type of Grievance :	Contract Interpretation

Award Summary

There were two issues in this case: (1) whether the grievance was arbitrable ; (2) if so, whether the Layoff Protection MOU in the 2010-2015 Agreement protects an employee who has transferred out of the APWU bargaining unit into another unit covered by the Healy Award of September 15, 1978. The USPS arguments that the grievance was not arbitrable because (1) premature, (2) barred by Article 4, (3) APWU cannot advocate on behalf of employees it does not represent, and (4) no interpretive issue was presented, were rejected. On the merits, I concluded that APWU's position that the Layoff Protection MOU continued to apply to an employee transferred into another bargaining unit would present such practical problems of contract administration and personnel management for USPS that it should not be adopted in the absence of persuasive evidence that USPS and APWU intended its application in those circumstances. Such evidence was found to be lacking. Accordingly, the grievance was denied.

Stephen B. Goldberg, Arbitrator

I. STIPULATED ISSUE

Whether each employee in the regular work force as of November 20, 2010, and who has not acquired the protection provided under Article 6 is protected henceforth against any involuntary layoff or force reduction during the term of the National Agreement (November 21, 2010, through May 20, 2015) although that employee has transferred out of the APWU bargaining unit and into another unit covered by the Healy Award of September 15, 1978.[1]

II. SUMMARY OF RELEVANT EVIDENCE

In 1978, the American Postal Workers Union (APWU), the National Postal Mail Handlers Union (NPMHU), and the National Association of Letter Carriers (NALC), which at that time jointly bargained with the Postal Service as the Postal Labor Negotiating Committee, were parties to an interest arbitration proceeding which resulted in the issuance by Arbitrator James J. Healy of what has become known as the "Healy Award". That Award provided protection against involuntary layoffs or force reduction to individuals employed in the regular workforce as of September 15, 1978, the date of the Award, as well as to all such employees who became employed after the date of the Award and who achieved six years of continuous service with the Postal Service. The Healy Award was codified in Article 6 of the 1978 Agreements between USPS and each of the unions which were members of the Postal Labor Negotiating

[1] Although the original dispute leading to this arbitration related to the interpretation of the Layoff Protection MOU in the 2006-2010 National Agreement, the Postal Service and the APWU stipulated that the Arbitrator's decision was to interpret the language of the Layoff Protection MOU in the 2010-2015 National Agreement. The language of the two MOUs is the same with the exception of the years each is in effect.

In the course of this decision, I shall at times refer to the Layoff Protection MOU simply as "the MOU", since no other MOU is relevant to this case. Similarly, while the MOU protects employees against both involuntary layoff and force reduction, I will typically refer to layoff protection as encompassing both involuntary layoff and force reduction.

Committee (APWU, NPMHU, and NALC, and has remained in each of their contracts since 1978.

By 1987, NPMHU had ceased participating in joint bargaining with APWU and NALC. During its separate negotiations with the Postal Service that year, NPMHU sought two relevant changes to its National Agreement. First, it proposed amending Article 6 to provide that the protections of the Healy Award would apply to each individual employed in the regular workforce as of July 20, 1987 (instead of the date of the Healy Award), irrespective of length of prior service. Second, NPMHU sought no-layoff protection for future employees after one year of service, rather than the six-year requirement contained in the Healy Award. The Postal Service counter-proposed a Memorandum of Understanding which granted protection for the term of the National Agreement against layoff and force reduction for all employees in the regular work force who were employed as of the date of the Agreement. This MOU, which is the predecessor of the MOU involved in the instant case, was accepted by NPMHU, and remained in effect until July 20, 1990.

The Joint Bargaining Committee, which at that time consisted of APWU and NALC, subsequently made a proposal to USPS that was similar to the original NPMHU proposal ("to amend Article 6 to prohibit layoffs for those not already covered by no layoff protection"), and ultimately entered into a Layoff Protection MOU similar to that which had been accepted by NPMHU.

In the years that followed the expiration of the 1987-90 Agreements between USPS and the three unions, the Layoff Protection MOU, modified only as to its effective and expiration dates, was in all APWU and NPMHU contracts through 2006-2010, with the sole exception of 1994, when those two unions, still bargaining jointly with USPS, went to post-impasse interest

arbitration and were not awarded the Layoff Protection MOU. NALC, in contrast, has not had the benefit of the Layoff Protection MOU in any contract subsequent to the expiration of the 1987-90 Agreement.

At present, the Layoff Protection MOU is found in the 2010-2015 APWU contract. Inasmuch, however, as NPMHU now bargains separately from APWU, and the MOU in the 2006-2011 NPMHU Agreement expired on November 20, 2011, and a successor agreement has not yet been entered into, employees in the bargaining unit represented by NPMHU are without the protections of the MOU. Also without the protections of the MOU are those employees in the bargaining unit represented by NALC, who, as previously noted, have not had the benefit of the MOU since 1990.

The controversy giving rise to the instant arbitration appears to have arisen for the first time on April 17, 2009, when William Burrus, at that time APWU President, sent the following letter to USPS Contract Administrator John Dockins:

> We discussed this date the application and interpretation of the "Layoff Protection" Memorandum appearing on page 286 of the APWU 2006-2010 Collective Bargaining Agreement. The issue is the definition of the word "employee" as included in the Memorandum.
>
> It is the position of the union that employee is defined as one who was employed in the APWU bargaining unit on November 20, 2006; continues employment until lay off procedures are implemented for non protected employees or who achieves the required six years of employment for lifetime protection. This definition of employee is unaffected by the change of assignment or craft so if prior to the expiration of the 2006 national agreement, a protected employee is reassigned to a craft that is not protected by the provisions, such employee would continue the protection of the Memorandum.
>
> As you are aware, "protected" status, temporary or permanent, is unaffected by the reassignment of employees from one bargaining unit or craft to another.

A contrary interpretation would result in an employee who was employed within a craft that did not negotiate a Layoff Protection Memorandum achieving such protection by virtue of his/her transfer to the APWU craft during the term of the 2006 national agreement.

Due to excessing and reassignments, many junior APWU represented employees have been reassigned outside the APWU crafts. In the event that lay off is necessary it will be essential that we identify covered and non covered employees.

Please respond with your interpretation of the referenced provision so that the union can take appropriate action.

Mr. Dockins' June 3, 2009, response stated, in relevant part:

Dear Bill:

This responds to your April 17 letter regarding the Memorandum of Understanding (MOU) Re: Layoff Protection, which is printed on page 286 of the 2006 USPS/APWU Collective Bargaining Agreement. In particular, you request to know the Postal Service's definition of the word "employee" as used in the MOU. In sum, it is the APWU's position that once an employee obtains the protective status against layoff under the MOU, you opine that the employee has that protection forever, even if the employee transferred out of or is reassigned to a non-APWU bargaining unit position.

The Postal Service does not agree. It is the Postal Service's position that once an employee leaves, voluntarily or involuntarily, from an APWU-represented position, that employee is not covered by any of the provisions of that collective bargaining agreement. Put another way, application of this particular MOU is limited to those APWU-represented craft employees covered under the parties' 2006 National Agreement, just as would be the case with other provisions of the Agreement. In the Postal Service's view, this position is supported, among other things, by the plain reading of Article 1, Section 2, of the National Agreement which states:

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

7. Rural letter carriers;

8 *Mailhandlers; or*
9. *Letter carriers.*

> Accordingly once an employee is reassigned to any of the above positions, the terms of the 2006 APWU Agreement, including the MOU Re Layoff Protection would not apply. . . .

Mr. Dockins' response was followed by two letters from Mr. Burrus to Doug Tulino, USPS Vice President, Labor Relations. The first of those letters, dated June 5, 2009, and captioned "Dispute over the application of the No Layoff Memorandum", stated:

> Dear Mr. Tulino:
>
> I received your June 3, 2009 response to my interpretive inquiry regarding the application of the 2006 Memorandum protecting the APWU represented employees who had not achieved no lay off protection on the date of the agreement. I disagree with your response of June 3, 2009.
>
> Pursuant to the provisions of the 2006 national agreement, this is to initiate a Step 4 grievance. The union's position is as outlined in my April 17 letter. I am available to discuss this matter at your convenience consistent with the terms of the national agreement.
>
> You may contact Robin Bailey of my staff at 202-842-4248 for a mutually agreeable date for discussions.

The next Burrus-Tulino letter, dated July 6, 2009, was captioned, "Appeal to Arbitration, National Dispute", referred to the Layoff Protection Memorandum, and stated:

> Dear Mr. Tulino:
>
> Consistent with the terms of the Collective Bargaining Agreement (CBA), this is to appeal to arbitration the dispute over the above referenced issue.
>
> The parties have met at Step 4 on this issue; however the Postal Service has failed to respond in writing of its understanding of the issue and to render a Step 4 decision. The Postal Service has failed to provide a written response and at the time of this appeal, I am unaware of the USPS' understanding of the issue and will be informed for the first time in arbitration.

There is no evidence of further discussion or exchange of written material concerning the Layoff Protection Memorandum between July 6, 2009, and the April 25, 2012, hearing in this matter.

III. RELEVANT CONTRACT PROVISIONS

ARTICLE 6
NO LAYOFFS OR REDUCTION IN FORCE

(1) Each employee who is employed in the regular workforce 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. ...

[See Memo, page 281]

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

Re: Layoff Protection

Each employee who is employed in the regular work force as of November 20, 2006, and who has not acquired the protection provided under Article 6 shall be protected

henceforth against any involuntary layoff or force reduction during the term of this Agreement. It is the intent of this Memorandum of Understanding to provide job security to each such employee during the term of this Agreement; however, in the event Congress repeals or significantly relaxes the Private Express Statutes this memorandum shall expire upon the enactment of such legislation. In addition, nothing in this Memorandum of Understanding shall diminish the rights of any bargaining-unit employees under Article 6.

Since this Memorandum of Understanding is being entered into on a nonprecedential basis, it shall terminate for all purposes at midnight, November 20, 2010, and may not be cited or used in any subsequent dispute resolution proceedings.

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

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. ...

Section 4.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 at the Step 4 level by either party. Such a dispute 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 either party. 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 dispute in Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter. . . .

IV. DISCUSSION

A. Arbitrability

1. Prematurity

USPS asserts that the grievance should be dismissed because it is not arbitrable. Initially, according to USPS, the grievance is premature – it raises no issue ripe for resolution...

APWU, on the other hand, asserts that:

> The correct interpretation of this MOU presents an issue of utmost importance to the members of the APWU bargaining unit as the Postal Service goes through a traumatic transition. . . . The Postal Service is redeploying its facilities and workforce in dramatic fashion. As the Postal Service declares large numbers of APWU-represented employees such as clerks excess to its needs and reassigns them under Article 12, these employees must decide whether to seek and accept voluntary transfers out of the APWU unit and into those represented by the National Postal Mail Handlers Union . . . or the National Association of Letter Carriers . . . , where they will start a new period of seniority, or to be involuntarily reassigned, often to distant locations and perhaps on different tours, often at great cost to their personal and family lives. The decision is especially momentous for those who have not achieved Article 6 protection from layoffs in all three units . . . According to the Postal Service, the no-layoff MOU . . . does not apply to these employees, making them vulnerable to seniority-based layoffs because they will have to start a new period of seniority in their new crafts in accordance with the NALC and NPMHU National Agreements. If they choose not to transfer voluntarily, the Postal Service asserts the right to negate their APWU-negotiated no layoff protections by the simple expedient of involuntarily reassigning them out of the APWU unit. . . .

The USPS response to APWU's assertion is that in the history of the USPS no clerk has ever been laid off, that it has given no notice or indication that any clerk is being considered for layoff, and that APWU has presented no evidence to the contrary.

Although USPS is correct in pointing out that APWU presented no evidence of imminent harm to APWU-represented employees that would flow from an arbitral acceptance of the USPS interpretation of the MOU, there is nothing in Article 15 – or generally in the administration of collective bargaining agreements - that requires evidence of imminent harm as a condition

precedent to filing or arbitrating a grievance. Article 15, Section 1, provides that "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 . . ." The instant grievance clearly involves the interpretation of an MOU that is part of the Agreement, hence the prematurity objection to arbitrability is without merit.

2. Article 15.4.D

According to USPS, at the time APWU appealed the instant matter to arbitration – July 6, 2009 – several of the pre-arbitration requirements of Article 15.4.D had not been met. There had been no Step 4 meeting, there had been no exchange of the post-Step 4 meeting statements in which each party is to provide the other with "its understanding of the issues involved and the facts giving rise to such issues", and APWU had not defined a precise interpretive issue. Furthermore, USPS asserts, the sole interpretive issue and contentions relating to that issue set out in Mr. Burrus' April 17 letter to Mr. Dockins dealt with the MOU, not with Article 6 or the Healy Award. Hence, USPS concludes, relying on various national interpretive arbitration decisions:

> Because the APWU failed to present Article 6 in its filing, the grievance should be dismissed in its entirety. In the event the grievance is not dismissed, the decision should be limited to the application of the Layoff Protection MOU as expressly communicated between the parties in the correspondence between Burrus and Dockins.

Stated otherwise, it is the USPS position that the arbitrator should either dismiss the grievance as not arbitrable or, at very least, preclude APWU from relying on Article 6 or the Healy Award.

The argument that the grievance should be dismissed due to APWU's failure to cite Article 6 in its July 6 filing for arbitration or in its letters of April 17 or June 3 is without merit. To be sure, APWU did not refer to Article 6 in its pre-arbitration letters or its appeal to arbitration, but it did set out a precise interpretive issue – whether an employee who was

employed in the APWU bargaining unit on November 20, 2006, and thus benefits from the protections of the MOU, loses MOU protection if he/she is transferred to a bargaining unit not covered by the MOU. As far as setting out a "precise interpretive issue" is concerned, no more than that is necessary to comply with Article 15.4.D.[2]

Dealing with the USPS argument that APWU's failure to refer to Article 6 or the Healy Award in its pre-arbitration statement of the precise interpretive issues to be decided bars APWU from relying on either of them in this arbitration requires a clear understanding of the manner and extent to which APWU relies on Article 6 and the Healy Award.

In order to develop such an understanding, I here set out a summary of the APWU contentions relating to Article 6 and the Healy Award as they are understood by USPS (Brief, pp. 10-11):

> The Layoff Protection MOU should be read together with Article 6 of the National Agreement to determine the intent. The wording of Article 6 and the Layoff Protection MOU have close parallels so the familiar rule of contract interpretation codified in the Restatement (Second) of the Law of Contracts, § 202.2, applies, "A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together." Reading the Layoff Protection MOU with Article 6, means there is a third way to obtain job security in the form of no-layoff and no-RIF. The same Article 6 protection vests or accrues to the individual regular work force then on the rolls for the duration of the contract; whether they stay in the APWU crafts or leave it. The JCIM also references the Layoff Protection MOU

[2] The decision of Arbitrator Linda Byars in HOC-NA-C38 (June 24, 2009), on which USPS relies, is not inconsistent with this conclusion. In that case, the Union failed, at any time prior to arbitration, to identify a contract provision or language in support of its claim. It was under those circumstances that Arbitrator Byars held that the Union could not rely on Article 12 for the first time at arbitration. And, since that was the only contract provision on which the Union relied, Arbitrator Byars further held that the grievance must be dismissed under Article 15 for failure to present an interpretive issue. In the instant case, however, the Union clearly notified USPS that it was relying on the Layoff Protection MOU.

As for the USPS contention that there had been no Step 4 meeting and no exchange of 15 day letters, Mr. Burrus stated in his July 6 Appeal to Arbitration that there had been a Step 4 meeting and that it was the Postal Service that had failed to provide a written statement or a Step 4 decision. Inasmuch as USPS does not rely on these asserted APWU failures as a grounds for dismissing the grievance, I shall make no effort to resolve the factual discrepancy, other than to note that there is no record evidence contradicting Mr. Burrus' assertions.

> under Article 6 so they go together. Further, the "Notes:" section found on page viii in the National Agreement creates a "Bridge" for Article 6 into all bargaining units covered by the Healy Award.
>
> The Layoff Protection MOU applies only to APWU represented employees even though the term regular workforce is defined identically for the APWU, NALC and the NPMHU for the purposes of Article 6. This may lead to greater protections granted to employees formerly employed by the APWU; however the Postal Service has an obligation to comply with all contracts. If the Postal Service has taken on contradictory obligations, the solution to the problem should not be to rob APWU represented employees from their MOU protections, even if it limits the ability of the Postal Service to conduct a layoff or RIF.

It is apparent that, even as USPS understands APWU's contentions, APWU does not rely on the Healy Award as the source of the no layoff protections it seeks in this arbitration. The Healy Award is referred to only to describe the bargaining units other than APWU in which a transferred employee receives Article 6 protection. Indeed, the Stipulated Issue refers to the Healy Award for that limited purpose.

Nor does APWU assert that the layoff protections it here seeks flow from Article 6. Rather, it argues that both Article 6 and the MOU deal with layoff protections, hence that one of the elements to be considered in interpreting the MOU is Article 6. Thus, APWU states, quoting from the Restatement of Contracts, that "A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together". Looking to Article 6 for guidance in interpreting the MOU is not at all the same as relying on Article 6 to establish the transferable layoff protections that APWU seeks here. There is nothing in Article 15 to the contrary.

None of the cases relied upon by USPS compels a contrary conclusion. The first such case is NC-E-11359 (1/25/84), in which Arbitrator Ben Aaron wrote:

> It is now well settled that parties to an arbitration under a National Agreement between the Postal Service and a signatory Union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed.
>
> The reason for the rule is obvious: neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which it has not previously considered and for which it has had no time to prepare rebuttal evidence

> and argument. The spirit of the rule, however, should not be diminished by excessively technical construction. The evidence establishes to my satisfaction that [the grievants] were aware from the outset of the reason for [the Postal Service's actions]. NALC is therefore in no position to claim surprise by the testimony and argument offered by the Postal Service during the arbitration hearing. Accordingly, I conclude that on this point NALC's objections must be overruled.

USPS, similar to NALC in the above case, is in no position to claim surprise by virtue of APWU's reference to Article 6 in support of its interpretation of the MOU. USPS is surely familiar with the traditional principles of contract interpretation set out in the Restatement of Contracts, and so often relied upon by Arbitrator Carlton Snow.[3]. One of the core principles of the Restatement, referred to above, is that "A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together". In light of that principle, it was entirely foreseeable that APWU would seek to support its interpretation of the MOU by reference to Article 6, which, like the MOU, deals with layoff protections. The failure of APWU to notify USPS in advance that it would refer to Article 6 thus does not bar it from doing so, any more than it would be barred from relying on the bargaining history of the MOU or the parties' practice in implementing the MOU because it had not notified USPS that it would do so. Each party is obliged to notify the other of the Agreement provisions on which it will rely and the position that it will take with regard to those provisions, but it need not notify the other party of every principle of contract interpretation on which it will rely in support of its position. To hold otherwise would do violence to Arbitrator Aaron's warning that "The spirit of the rule . . . should not be diminished by excessively technical construction". It would also make Article 15 a trap for the unwary, rather than a valuable means of protecting against the last-minute presentation of arguments not reasonably foreseeable by the other party.

Nothing in the facts of the cases relied upon by USPS is inconsistent with the forgoing conclusion. For example, in Case No. N8-W-0406 (9/21/81), referred to by Arbitrator Snow in B90N-4B-C 94027390 (8/20/96), Arbitrator Mittenthal refused to allow the Postal Service to rely on Article XIII to defeat the Union's claim because:

> [T]he Postal Service made no mention of Article XIII in Steps 2, 3, or 4. Its reliance on this contract provision did not surface until the arbitration hearing itself.

[3] See, e.g. Case No. 194N-4I-D 96027608 (April 8, 1998)

In the instant case, however, APWU is not relying on Article 6 to provide it with the transferable layoff rights it claims. Those rights, according to APWU, flow entirely from the MOU, with Article 6 being cited solely to aid in the interpretation of the MOU, not as an independent source of the claimed rights. Nothing in the Mittenthal decision bars APWU from using Article 6 in this fashion.

In another Mittenthal case relied upon by USPS (H4C-NA-C 30 (1/29/90), the Union's grievance conceded that simultaneous scheduling was permitted under Article 8 in certain situations. The Union's interpretive issue was not whether the Postal Service had a right to simultaneously schedule, but the circumstances under which that right could legitimately be exercised. Then, according to Arbitrator Mittenthal:

> At the arbitration hearing, APWU counsel argued that simultaneous scheduling is not permitted under Article 8 in any situation. This was a radical change of position, a one hundred and eighty degree turn. The grievance admitted the existence of a Management right which counsel now denies. For four years, both parties had apparently assumed the existence of that right. The APWU cannot be allowed to change the essential thrust of the grievance at the arbitration hearing. Its action is tantamount to the filing of an entirely new grievance at the hearing.

The Union's change in position, as described by Arbitrator Mittenthal – taking one contract interpretation position during the grievance procedure and reversing its position at arbitration – is far removed from APWU's raising for the first time at arbitration an entirely foreseeable principle of contract interpretation.

In sum, neither the arguments made by USPS nor the cases on which it relies support its position that APWU should be barred from asserting that Article 6 may be considered in support of the same contract claim that APWU raised during the grievance procedure – that the layoff protections provided by the MOU survive an employee's transfer from the APWU bargaining unit to another unit covered by the Healy Award.

3. APWU Cannot Advocate on Behalf of Employees It Does Not Represent

The next USPS arbitrability challenge is that APWU is here claiming rights on behalf of employees it does not represent. There is a certain plausibility to that argument inasmuch as the right that APWU is claiming – the transferability of MOU layoff protections – would not be enjoyed until the employee in question had left the APWU bargaining unit. On the other hand, the employees for whom APWU is claiming the right to carry layoff protections into other units are currently represented by APWU. Hence, APWU is empowered to seek protections for those employees that will survive a transfer into another unit. Whether the MOU provides such protections is a separate question – to be dealt with momentarily - but the existence of that question does not bar APWU from seeking transferable layoff protections for employees it currently represents.

The cases on which USPS relies in support of the argument that APWU is barred from seeking post-transfer layoff protections for employees it currently represents are clearly distinguishable. In H4C-NA-C 106 (July 25, 1994), Arbitrator Carlton Snow held that APWU could not complain of alleged USPS discrimination against handicapped employees before those employees became members of the APWU bargaining unit. In H1N-3D-C 40171 (April 13, 1987), Arbitrator Neil Bernstein held that NALC could not prosecute a grievance seeking compensation on behalf of an employee who served as an NALC representative, but who was not and never had been in the NALC bargaining unit. In H4C-NA-C 34 (August 12, 1992), Arbitrator Richard Mittenthal held that APWU could not challenge subchapter 450 of the ELM because that subchapter dealt solely with employees not included in any collective bargaining unit. In sum, while a union cannot use the grievance procedure to seek rights for employees it has never represented or to enforce rights that matured before they began to represent those employees, none of the cases cited by USPS bar APWU from seeking to establish rights for employees it currently represents, even though those rights would not be enjoyed until the employees had left the APWU unit.[4]

[4] USPS also asserts that the grievance is not arbitrable because it presents no genuine interpretive issue. That assertion is dealt with at page 20, note 6.

B. Merits of the Grievance

It is a fundamental principle of American labor law, too well-accepted to require citation, that a union which has been certified as the exclusive bargaining representative of employees in a particular bargaining unit bargains on behalf of those employees only, and is without authority to enter into agreements on behalf of employees in other bargaining units whom it does not represent.

It is equally clear that, as a general rule, benefits that have been negotiated by a union on behalf of employees in a bargaining unit represented by that union apply to those employees only as long as they remain in that bargaining unit. An employee who leaves one bargaining unit to join another does not generally carry with him/her contractual rights that were negotiated on his/her behalf in the former unit, but is rather covered by the contract in the unit which he/she joins, and is entitled to only the benefits contained in the latter contract.

To be sure, the general rule that an employee's rights under a collective bargaining contract do not travel with the employee if he/she moves to a different bargaining unit covered by a different contract can be overridden by an employer and union who wish to negotiate rights that will continue in effect after the employee has left the bargaining unit. There is, however, the practical problem that it may be difficult or impossible for an employer to comply with a commitment to provide enforceable rights to an employee entering another bargaining unit with which the employer has a collective bargaining contract without either violating the contract rights of employees in the transferee unit or being forced to engage in unproductive conduct in order to comply with its commitments under both contracts. Suppose, for example, that an APWU-represented employee is transferred to an NPMHU unit which does not have the Layoff Protection MOU. Suppose further that USPS decides that it is overstaffed in the NPMHU unit and that effective management of its resources requires it to lay off 10 employees in the NPMHU unit. Under the NPMHU contract, such layoffs must take place in inverse order of seniority. Yet, according to the APWU, the former APWU-represented employee, despite being the least senior employee in the NPMHU unit due to his/her recent transfer to that unit, cannot be laid off without violating the MOU. On the other hand, if that employee is not laid off, and USPS lays off a more senior employee in order to reduce the unit size by 10, USPS will have violated the NPMHU contract.

According to APWU – as well as Intervenor NPMHU - that situation does not pose an insuperable problem for USPS. It could, they assert, accord MOU protection to the former APWU employee without violating the NPMHU contract by either forgoing the planned layoff entirely or by allowing the former APWU employee to return to the APWU unit, laying off the nine least senior NPMHU-represented employees. Combining those nine layoffs with the return of the former APWU employee to the APWU unit would effectively reduce the NPMHU employee complement by ten without having done violence to either the NPMHU contract or the layoff protections of the MOU as it is interpreted by APWU.

The difficulty with this solution, however, is that it would require USPS either to retain nine more employees in the NPMHU unit than it believes necessary (by forgoing the planned layoff) or to add an additional employee to the APWU unit (by returning the former APWU-represented employee to the APWU unit), which it also believes unnecessary. There is no cost-free escape from the problems presented for USPS if it is found to have agreed with APWU to provide for the layoff protections of the MOU to continue in effect after an APWU represented employee has gone to another bargaining unit. In light of the entirely foreseeable problems created for USPS if it were to have agreed to portable no layoff protections, I am unwilling to assume, in the absence of persuasive evidence to the contrary, that it has agreed to such protections.

APWU's response to the foregoing analysis, expressed by the Arbitrator in a tentative fashion at the hearing, was:

> As for the Arbitrator's reluctance to conclude that the Postal Service would enter into agreements which might hamper execution of future personnel moves, the APWU pointed out that the Postal Service has done so before, as in the situation described in the award of Arbitrator Carlton Snow [194N-4I-D 96027608 (April 8, 1998)], in which the Postal Service agreed with the NALC to provide work in other crafts to city letter carriers whose occupational drivers' licenses had been suspended or revoked. Arbitrator Snow held that the Postal Service must honor both the APWU and NALC contracts and if the result was that affected city letter carriers could not be accommodated under the APWU contract, they must remain employed as city letter carriers notwithstanding the fact that their licenses had been suspended or revoked.

Arbitrator Snow's decision, however, provides little support for the APWU positions that (1) the Postal Service should be found in the instant case to have agreed to layoff protections that an APWU-represented employee could carry with him/her into another bargaining unit, and (2) finding the existence of such an agreement does not create such significant problems for USPS that the Arbitrator should be reluctant to so find. As for (1), a significant difference between the instant case and that before Arbitrator Snow is that in the latter case USPS conceded that it had agreed with NALC to provide transfer rights into the APWU unit that might conflict with the APWU contract, but argued that subsequent events should operate to relieve it of that agreement.[5] USPS makes no such concession here, instead vigorously arguing that it did not agree with APWU to provide transferable no layoff protections. As for (2), while Arbitrator Snow did not order USPS to engage in conduct violative of the APWU contract (temporary cross-craft transfers to positions not first offered to employees in the APWU unit), he did order, in lieu of such transfers, that USPS place all affected NALC employees on leave with pay until such time as work was available for them. The consequence of USPS having been found to make an agreement with one union (NALC) that it could not carry out without violating the contract of another union (APWU) was that it was required to pay the employees who were the beneficiaries of its agreement with NALC, even though those employees could perform no productive work for USPS. An employer who knows or should know that such may be the consequences of a promise to provide rights to employees in one bargaining unit that they will carry into another bargaining unit will be unlikely to make such a promise, warranting the conclusion that such a promise ought not to be found to have been made here absent persuasive evidence warranting such a finding.

Turning next to whether such evidence exists in this case, APWU asserts that it is clear on the face of the MOU that it provides employees with layoff protection even after they have transferred into another bargaining unit. APWU points out that the MOU states that it "henceforth" protects each employee in the regular work force from layoffs or RIFs in order "to provide job security to each employee during the term of [the] Agreement". The only limitation on employee protection against layoffs is that it expires when the Agreement expires; there is

[5] W.R. Grace & Co. v. Rubber Workers, 461 U.S. 757 (1983), is distinguishable on the same grounds. There, too, the Company conceded that it had entered into conflicting obligations under its collective bargaining agreement and its conciliation agreement with EEOC, but argued that it should be relieved on public policy grounds of its obligations under the collective bargaining agreement.

no provision stripping employees of their layoff protections if and when they transfer into a different bargaining unit.

From the USPS perspective, it is clear on the face of the MOU that it does not apply to employees who have transferred from the APWU bargaining unit into another bargaining unit because there is no language in the MOU providing transfer rights. Since no such rights are provided, the parties did not intend to provide them, and the analysis can and should stop there.

Neither of these arguments is persuasive. The MOU is silent on the transferability of employee layoff protections. It doesn't say that they do survive, as USPS points out, but it equally doesn't say that they do not survive, as APWU points out. Accordingly, in order to discern the meaning of the MOU, one must go beyond its language and apply standard rules of contract interpretation.[6]

Among the rules of contract interpretation on which APWU relies is that "A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together"[7]. As noted in the discussion of arbitrability (pp. 12-13), APWU asserts that the MOU must be interpreted in light of Article 6, and argues that doing so supports its position in this case. The APWU argument begins with what it calls the undisputed fact that APWU employees carry Article 6 protection against layoffs with them if they transfer to other Healy Award bargaining units. APWU next points out that the language of the MOU, other than its limited duration, is essentially the same language as is contained in Article 6. Each provides protection against involuntary layoff or force reduction, and each expresses the intent to provide job security to the employee, albeit the duration of the protection is different - during the employee's work lifetime in Article 6, during the term of the Agreement in the MOU. In using essentially the same language in the MOU as in Article 6, APWU argues, it was the parties' intent to provide the same – albeit limited to the duration of the Agreement - protections in the MOU for employees not protected under Article 6 as they had provided during their work lifetimes for

[6] The conclusion that the MOU is not clear on its face regarding the transferability of layoff protections disposes of the USPS argument that the grievance is not arbitrable because it fails to present an interpretive issue. As Arbitrator Carlton Snow pointed out (H7N-1A-C 25966 August 12, 1992):

> An 'interpretive issue' exists when there is a reasonable conflict about the meaning to be attributed to the symbols of expression used by the other party. That is, an 'interpretive issue' exists when there is a legitimate dispute about the meaning of the language contained in the contract.

[7] Restatement (Second) of the Law of Contracts, Sec. 202.

employees protected by Article 6. Among those rights, APWU asserts, is that the employee retains protection against layoffs if transferred to another Healy Award bargaining unit.

One problem with the APWU argument lies in its basic assumption - that APWU employees carry Article 6 protection against layoffs with them if they transfer to another Healy Award bargaining unit. While it is undisputed that an APWU-represented employee who is protected against layoffs under Article 6, and who transfers into another Healy Award bargaining unit, is equally protected against layoffs while in the latter unit, it is far from clear that the source of that protection is APWU Article 6, rather than Article 6 of the Agreement covering the bargaining unit into which the employee transfers.

The fact that employees in all three Healy Award bargaining units have the same Article 6 protections means that, as a practical matter, there has been no need for the parties to have tested the source of those rights as applied to a transferred employee – whether they came from Article 6 of the APWU unit which the employee has left or from Article 6 of the contract covering employees in the Healy Award unit to which the employee has been transferred. It is sufficiently unusual, however, for contractual rights to be carried over from one bargaining unit to another that I am unwilling to find, absent clear supporting evidence, that the source of Article 6 layoff protection for a formerly APWU-represented employee who transfers into an NALC or NPMHU unit covered by a Layoff Protection MOU is the APWU Agreement, rather than the Agreement covering employees in the transferee unit. There is no such evidence in this case. And, absent a finding that Article 6 in the USPS-APWU contract provides a right against layoffs to APWU employees who transfer to other Healy Award bargaining units, the APWU argument that the MOU provides such rights because it is virtually identical to APWU Article 6 must fail.[8]

Furthermore, even if Article 6 in the APWU Agreement were interpreted as applicable to employees who transferred to a different bargaining unit, it does not necessarily follow that the MOU applies to employees who do so. APWU and USPS know how to indicate that some contract clauses apply across crafts, and did so in the Bridge Memo with respect to Articles 7,

[8] APWU raises a number of additional arguments in support of its position that since Article 6 no layoff protections apply when an employee is transferred from one bargaining unit to another, MOU rights are similarly transferable. None of those arguments, however, whether they rest on Article 7.1, USPS-APWU Joint Contract Interpretation Manuals, or the June 15, 1979, APWU Overview of the Healy Award, deal with what I have found to be a fundamental weakness in the APWU argument – the absence of persuasive evidence that Article 6 layoff protections for APWU-represented employees who transfer into a different bargaining unit find their source in the APWU Agreement rather than from the application of Article 6 in the Agreement applicable to the transferee unit.

12, and 13. Similarly, as APWU points out, the Note at page viii of the 2006-2010 Agreement provides that Article 6 applies to all bargaining units covered by the Healy Award (though it does not indicate which Article 6 applies in the event an employee is transferred– that in the Agreement of the transferor union or that in the Agreement of the transferee union). What is important for our purposes, however, is that neither in the Note nor anywhere else in the Agreement did the parties indicate that the USPS – APWU MOU applies to all bargaining units.[9]

APWU asserts that if its MOU is not interpreted as allowing APWU-represented employees to carry layoff protection with them on being transferred to a different bargaining unit, the Postal Service could negate their layoff protection by the simple expedient of involuntarily excessing them into other units – even if the latter are covered by a similar MOU, as could happen if NPMHU and/or NALC obtain such an MOU as a result of their current negotiations with the Postal Service. That, states APWU, "is the kind of absurd result that is inconsistent with the rules of contract interpretation" (Tr. 89).

There are a number of responses to this APWU assertion. In the first place, saying that it is unthinkable that APWU-represented employees should lose their MOU rights against layoff as the result of an involuntary transfer assumes that such rights were intended to be transferable – the very question at issue here. Secondly, if NPMHU and NALC were to obtain an MOU in all respects identical to the APWU MOU, and an APWU-represented employee were transferred into either the NPMHU or NALC unit, that employee would be protected from layoff under one MOU or another, and it would make no practical difference which MOU provided that

[9] The 2009 exchange of letters between APWU president William Burrus and John Dockins, USPS Manager of Contract Interpretation, in which each set out his view of the post-transfer survival of MOU rights, is of little value in determining the appropriate interpretation of the 2006-2010 MOU. Initially, the parties' expression of their differing views took place long after the 2006-2010 Agreement was negotiated, hence casts no light on their understanding of the 2006-2010 version of the MOU at the time they agreed to it. Furthermore, subsequent to the Burrus-Dockins exchange of views and the 2009 filing of the instant grievance, the parties did not discuss the survivability of MOU rights in the course of bargaining the 2010-2015 Agreement. (At least there is no evidence they did so.) Rather, it appears that they were content to leave the resolution of that issue to arbitration. Under these circumstances, there is nothing in the bargaining history of either the 2006-2010 Agreement or the 2010-2015 Agreement that sheds light on the parties' understanding of the MOU at the time those Agreements were negotiated.

Also without value in interpreting the survivability of MOU rights is a 1999-2000 exchange of correspondence between William Burrus, at that time APWU Executive Vice President, and Peter Sgro, then USPS Acting Manager of Contract Administration. While APWU asserts that Mr. Sgro at that time accepted the APWU view regarding survivability of layoff protections under the MOU, that issue was not raised either in Mr. Burrus' letter to Mr. Sgro or in Mr. Sgro's response.

protection, as is currently the case when an employee is transferred from one bargaining unit protected by Article 6 to another unit protected by Article 6. Finally, if NPMHU and/or NALC were to negotiate no-layoff MOUs that were different from that in the APWU Agreement, for example with different effective dates, an employee transferring from the APWU unit into the NPMHU or NALC unit would have the protections of the MOU in the unit to which he/she was transferred, whether those protections were superior or inferior to those provided by the APWU MOU. There is nothing absurd about that result; it is the consequence of the general rule that a union typically bargains only for those employees in the bargaining unit it represents, and when employees leave that unit for another, they are covered by the contract in effect for the latter unit, not the former.

V. AWARD

There were two issues in this case : (1) whether the grievance was arbitrable ; (2) if so, whether the Layoff Protection MOU in the 2010-2015 Agreement protects an employee who has transferred out of the APWU bargaining unit into another unit covered by the Healy Award of September 15, 1978. The USPS arguments that the grievance was not arbitrable because (1) premature, (2) barred by Article 4, (3) APWU cannot advocate on behalf of employees it does not represent, and (4) no interpretive issue was presented, were rejected. On the merits, I concluded that APWU's position that the Layoff Protection MOU continued to apply to an employee transferred into another bargaining unit would present such practical problems of contract administration and personnel management for USPS that it should not be adopted in the absence of persuasive evidence that USPS and APWU intended its application in those circumstances. Such evidence was found to be lacking. Accordingly, the grievance is denied.

Stephen B. Goldberg, Arbitrator

August 1, 2012

SENIOR ASSISTANT POSTMASTER GENERAL
EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

June 22, 1976

MEMORANDUM TO: Regional Postmasters General

SUBJECT: Utilization of Casual Employees

As a result of a number of grievances received by this office, it is necessary to reaffirm the responsibilities of the U. S. Postal Service pursuant to the provisions of the National Agreement regarding the utilization of casual employees. The provisions in Article VII, Section 1 B 1 of the 1975 National Agreement state in part, "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 casuals."

This provision requires that the employer make every effort to ensure that qualified and available part-time employees with flexible schedules are given priority in work assignments over casual employees. Exceptions to this priority could occur, for example, (a) if both the part-time flexible and the casual employee are needed at the same time, (b) where the utilization of a part-time flexible required overtime on any given day or where it is projected that the part-time flexible will otherwise be scheduled for 40 hours during the service week, or (c) if the part-time flexible employee is not qualified or immediately available when the work is needed to be performed.

Furthermore, in keeping with the intent of the National Agreement that casuals are to be utilized as a supplemental work force, every effort should be made based on individual circumstance to utilize part-time flexible employees across craft lines (see Article VII, Section 2) in lieu of utilizing casual employees.

Please ensure that local officials are made aware of these guidelines concerning the utilization of casual employees.

James V. P. Conway

cc: Regional Directors, L&LR
Mr. Rolger
Mr. Dorney

In the Matter of the Arbitration between AMERICAN POSTAL WORKERS UNION, AFL-CIO -and- UNITED STATES POSTAL SERVICE	Arbitration Case Nos. AC-C-13, 148 AC-C-14, 767 (Dodge City, Kansas) OPINION AND AWARD

APPEARANCES:

For the Postal Service - D. Richard Froelke, Esq.

For the APWU - Cafferky, Powers, Jordan & Lewis
by: Alexander A. Spinrad, Esq.

BACKGROUND:

The American Postal Workers Union, AFL-CIO (APWU) filed a series of grievances charging that the United States Postal Service (USPS) had violated Article VII, Section 1(B)(1) of the National Agreement by allegedly using casual employees instead of part time regular employees in the Dodge City, Kansas Post Office. These grievances requested that the part-time flexible employees be made whole for the time lost to casuals. After the Postal Service denied all the grievances, they were consolidated for the purpose of presenting them to the Arbitrator. A hearing was held in Washington, DC, on August 13, 1979. Thereafter, by agreement, post-hearing briefs were filed. The Parties agreed that the matter was properly processed through the steps of the grievance procedure and was before the duly designated Arbitrator for final and binding determination.

THE ISSUE:

Although these Parties did not agree upon the specific word-

ing of a definition of the matter placed in issue by the grievances filed by the Union, it is apparent from the contentions raised that the Union has questioned whether the USPS violated the terms of Article VII, Section 1(B)1 by the manner in which part-time flexible employees, hereinafter known as flexees or PTF's were scheduled as contrasted with casual employees at the Dodge City Post Office during the specific work periods placed under consideration in this proceeding. If the PTF's were improperly scheduled or the casuals were scheduled to work at times when PTF's should have been employed, then the Union requested that the PTF's be made whole for the wages lost because of this improper scheduling.

STATEMENT OF THE CASE:

Article VII, Section 1(B)1 of the July 21, 1975 National Agreement in effect at the time that this grievance was filed reads in pertinent part as follows:

> B. Supplemental Work Force. The supplemental work force shall be comprised of two categories of employees which are as follows:
>
> 1. Casuals. 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. 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... (underlining denotes new matter in this Agreement)

The actual language quoted above, as well as the history of the evolution of that provision from the earlier agreements, even those predating the Postal Reorganization Act, indicates that the Parties have been in agreement that part-time flexible employees, as a part of the career work force, should be given definite and specific preference in

granting of employment opportunities by the Postal Service over members of the casual work force. Such casual employees should not be used in a manner detrimental to the employment opportunity afforded to PTF's.

Specifically, in the Dodge City case presently before us, the Union contended during certain service weeks in September and October of 1975 the USPS scheduled PTF's and casuals so those casual employees were granted the opportunity to work before PTF's had worked 40 hours and when PTF'S were still available to work at the straight time rate.

The Postal Service did not contest the claim of the Union that Section 1(B)1 intended to grant a priority in employment to part-timers in preference to casuals. The Postal Service urged that the period covered by these consolidated grievances be examined in the light of the actual scheduling that was accomplished by the Dodge City Post Office to see if the priority contemplated by the terms of the Agreement was afforded to the PTF's over the casuals at that installation.

OPINION:

At the outset it must be stated that the general principles which the APWU demanded that the Postal Authorities follow at the Dodge City Post Office are required by the terms of the present provisions of Article VII, Section 1(B)1 quoted above. The casuals may only be used as a supplemental work force . Those casual employees may not be employed in lieu of PTF's. Finally, those in charge of scheduling the work force are required to make every effort to utilize the qualified and available PTF's at straight time rates before they contemplate the use of and schedule any casuals.

However, a reading of the present language in the Agreement under review and the history of how that language evolved through modi-

fication of the provisions dealing with the employment of casuals in successive agreements, does not lead to the conclusion that the National Agreement requires that all PTF's at an installation must receive 40 hours at straight time before any casual employees may be scheduled. Despite the alleged inference to that effect urged by the APWU, there is no support for imposing such a requirement in the present language as it portrays the intent of the parties in this regard.

Nor does the language of Section 1(B)1 prevent the Service from making rational decisions regarding the scheduling of the casual work force to handle certain work for which its limited qualifications make its use more appropriate . It does not prevent consideration of the work load and composition of that work load during the entire service week rather than on a day by day basis.

During the weeks under examination in this proceeding, the Postal Authorities made certain assumptions that at the beginning of the week and at the end employees with scheme knowledge and higher qualifications would be needed whereas during the middle part of the week work not requiring scheme knowledge and only calling for lesser skills and qualifications could be handled by casual employees. For that reason, the weekly work schedules called for PTF's to work the beginning of the week and to be called in at the end, if additional supplemental work force was required. Such a scheduling practice certainly can be justified because supervision must use the work force as efficiently and productively as possible. However, when such a practice consistently jeopardized the ability of PTF's to secure a full week's work because sufficient work was not available for them at the end of the week, then a continuation of the practice must be regarded as a violation of the

contractual mandate to assure PTF'S available work at straight time rates before resorting to the utilization of casuals.

An examination of the weekly schedules in the weeks during which the Union claimed Section 1(B)1 was violated does not reveal that such a scheduling practice as is described in the paragraph above was the principal reason why certain PTF's did not get 40 hours while casuals were employed. In a relatively few instances this failure may be attributed to a miscalculation of the amount of work remaining toward the end of the service week.

Two other reasons account for the majority of occasions when PTF's were not scheduled for a full 40 hour week and casuals worked a signifigant number of hours. One of these was the conscious effort of the Postal Authorities at Dodge City to provide each PTF with two consecutive days off each week. When this was the cause of the failure to full utilize the PTF's in lieu of casuals this violation at Dodge City must be excused. There is no question that this effort to so schedule the PTF'S was done to meet their request and with the knowledge and condonation of the Union. None of the grievances referred to in this proceeding was based upon the failure to employ any individual PTF rather than permitting that employee to have two consecutive days off. If and when the Postal Service is put on notice that full utilization of the PTF's at straight time hours should take preference over granting consecutive days off, then this practice should give way to a schedule which grants the required priority to the employment of PTF's and disregards the days in the service week on which they shall not be scheduled.

The second cause of less than full utilization of PTF's for the maximum number of straight time hours was the decision of the Service not

to schedule an individual part-timer to return to work until or unless that employee had a period of adequate rest following his or her last assignment. Here again, the record does not reveal that any specific grievance was bottomed on the failure to bring back to work an employee who would have been required to report just two, four or even six hours after his or her last tour of duty. Obviously, the Local Union felt that such consideration shown to these employees was justified or that using that these PTF's to continuously cover split shifts should not be required.

It must also be noted that in several instances where the Local Union attempted to establish that one PTF or another could have been called in in place of the employment of a casual, the evidence presented by the Service established that these PTF's could not be reached or declined the proffered assignment.

The record also revealed that in each of the weeks questioned by the Union in this proceeding, and characterized in the transcript as its best case, the PTF's did work a substantial number of hours more than the casuals. It is true that in these weeks the PTF's did not achieve 40 hours of work for each of them and in a few cases a casual even worked more hours than a PTF. At the same time, on average, in the weeks under review, the PTF's did work a substantially greater number of hours than did any individual casual employee. It must also be assumed that in all the other weeks, during the three month period in 1966, the PTF's did get 40 hours and the casuals only handled whatever supplemental work that remained.

The Union did not argue in this case that the Dodge City Postal Authorities scheduled casuals so as to avoid an obligation to maximize the use of regular and part-time career employees. In fact

the record indicated that an additional PTF was added to the payroll at the time that these protested scheduling practices were in use. The Employer's arguments concerning such a charge were not responsive to any specific complaint lodged by the Union in any of the grievances consolidated for hearing in this proceeding.

Granting the Employer's contention that scheduling is "an inexact science", the language of the 1975 Agreement still imposed upon the Employer an obligation to schedule his PTF's and casuals so that the PTF's received priority and were given every opportunity to work, at straight time rates, before the schedule considered the employment of casual employees to supplement their efforts. Leaving aside the obviously accepted practice of scheduling so PTF's received two consecutive days off and only when the PTF had an opportunity to secure reasonable rest before reporting once again for work, as these practices were observed at Dodge City, this record, for the reasons stated above, did reveal less than full compliance with the spirit and the letter of the restrictions on managerial prerogatives in scheduling imposed by Section 1(B)1.

A restatement of those requirements, to highlight a possible lack of observance, will be set forth in the Award below. However, because the scheduling practices at Dodge City, as they are set out in this record, did not indicate a conscious effort to circumvent the restrictions imposed in the Agreement nor a flagrant disregard for such restrictions during the entire period under review, an hour for hour make whole remedy in the isolated "best cases" cited by the Union does not appear in order. To so provide would also lend some color of right to the contention of the Local Union Officials, as expressed in their

testimony, that PTF's are guaranteed 40 hours of work at straight time rates before any casual employees may be scheduled. It would also subject this Award to be construed as requiring that all PTF's be scheduled for 40 hours at the beginning of the week before the local scheduling authorities had any license to schedule casuals only later in that service week. Such severe restrictions upon the discretion of those responsible for the weekly schedule, for reasons outlined earlier, are not required by the present language contained in Section 1(B)1.

A W A R D

1. In the event that those responsible for constructing the schedule for the service week with some regularity consistently underestimate the work which will remain at the end of the week for part-time career employees, so that casuals are employed at the beginning or during the middle of the week and part-timers do not achieve a 40-hour week, this practice must be regarded as in violation of the requirements of Section 1(B)1 of Article VII. This must be the case despite the Employer's claim that these part-timers were being scheduled so that their skills and scheme knowledge would be available for the work expected to remain at the end of the service week. Whereas this consideration is a legitimate one, it cannot be employed to regularly avoid the obligation to provide for the maximum employment of career part-timers at straight time rates.

2. The Employer, in scheduling, must disregard any expressed preference of career part-timers to receive two consecutive days off, avoidance of split shift assignments, and utilize career part-time flexible employees instead of casuals at the beginning or end of a scheduled shift in all instances when such part-timers have secured reasonable rest so as to maximize their employment at straight time rates before available hours of work are assigned to casuals. Where such limitations upon the requirements of Section 1(B)1 are openly and notoriously countenanced by Local Union Officials, as they were at least in part at Dodge City, evidence of such condonation may estop the Local Union from prosecuting a grievance based upon such practice.

3. Although, as noted in the Opinion above, this series of grievances, consolidated for hearing in this proceeding, must be sustained in part because the Union did establish that the Employer did not, in each and every instance discussed, "make every effort to insure that qualified and available part time flexible employees (were) utilized at the straight time rate prior to assigning such work to casuals" the request for a make whole remedy, on an hour for hour basis for the PTF's adversely affected, must be denied. An entitlement to such reimbursement does not automatically follow a failure to grant each PTF 40 hours of work at straight time rates before any casual is scheduled. Every PTF is also not entitled to such a remedy because of an occasional and reasonable miscalculation of the need for his or her services during the course of the week being scheduled.

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
December 20, 1979

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: B90M-1B-C 94052048
Class Action 94046
Hartford, CT 06101-9994

Dear John:

On several occasions, the most recent being July 27, 2007, we met to discuss the above-captioned grievance pending national arbitration of our contractual grievance procedure.

The issue in this grievance is whether the union is limited to using certain specifically negotiated reports for enforcement of Article 7.1.B of the USPS-NPMHU National Agreement.

The parties continue to disagree as to whether report (AAW996P1) referenced in the Letter of Intent on the bottom of page 120 in the 2000-2004 National Agreement, was negotiated for informational purposes only or for enforcement of the National Agreement. The parties reserve the right to address that issue separately from the disposition of this case.

Aside from our dispute regarding the AAW996P1 report, the parties agree that the information that can be used by either party to prove compliance with or violation of Article 7.1B of the National Agreement is not limited to such negotiated reports provided the information is relevant and consistent with the provisions of Articles 17 and 31, the National Labor Relations Act, and any other applicable laws and regulations. Disputes about the relevance of information will be resolved in the grievance procedure, before the NLRB, or in any other appropriate forum.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case consistent with the provisions of the Memorandum of Understanding re: Step 4 Procedures.

Time limits at this level were extended by mutual consent.

Sincerely,

Sandra J. Savoie
Acting Manager
Contract Administration (NPMHU)

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 8/8/07

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020.**

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before they may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2, the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5-27-20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W. Suite 500
Washington, DC 20036-4304

Re: Q84M-4Q-C 77002202
Formerly (H4M-NA-C 53)
Class Action
Washington, DC 20260-4100

Dear Mr. Hegarty:

Recently, our representatives met in pre arbitration discussion regarding the above captioned case, which is presently pending national level arbitration.

The issue in this grievance is whether the language in Article 7.2 C & D of the National Agreement prohibits cross craft assignments to duties at lower wage levels.

After a review of this matter, we agreed to the following settlement of this dispute:

- In those circumstances where cross craft assignments are permitted under Article 7.2.C & D, employees from other crafts may not be assigned to work in lower wage levels in the Mail Handler Craft.
- All grievances currently pending on this issue shall be considered closed upon the signing of this agreement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve this case, thereby removing this grievance from the pending national arbitration case listing.

Sandra J. Savoie
Manager, Contract Administration
(NPMHU) and EAP/WEI Programs

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 9-4-08

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

H8S-5F-C 8027

Case No. (A8-W-0656)

Hearings Held October 23, 1981 and January 8, 1982

Before Richard I. Bloch, Esq.

APPEARANCES:

For the Union

James Adams

For the Postal Service

Donald Freebairn

OPINION

Facts

Grievant G. Robertson, a member of the Special Delivery Craft, here contests Management's failure to call him in for overtime work on November 23, 1979. He was not scheduled for work that day and, it is undisputed, Management made no effort to call him in. Instead, a part-time flexible City Carrier was assigned to perform Special Delivery functions for a total of 6.35 hours at straight time.[1]

[1]The parties stipulate to the following facts:

1. On November 23, 1979, FTR Special Delivery Carrier Robertson

The contention here is that Management violated the Labor Agreement in two respects. First, the Union says Management improperly allowed a member of the Carrier Craft, (James Groce), to cross over into the Special Delivery Craft. This, it claims, was a violation of Article VII of the Labor Agreement. Additionally, it is claimed that Management erred in failing to offer the overtime work in the Special Delivery Craft to the Grievant, who was on the overtime desired list and was available for the work.

(continuation of Footnote #1 from p. 1)

was non-scheduled.

2. No attempt was made by management to call in the grievant on his nonscheduled day.

3. On November 23, 1979, PTF City Carrier Groce was utilized for 6.35 hours on straight time delivering special delivery mail.

4. G. Robertson was considered eligible for overtime during the fourth quarter, 1979.

5. There were 46.6 hours of overtime utilized in the City Carrier Craft in the General Mail Facility on November 23, 1979.

6. There were 7.16 hours of overtime utilized in the Special Delivery Craft by Special Delivery Messengers only at the GMF on November 23, 1979.

7. No nonscheduled letter carrier was brought in on his day off to perform overtime work in the Letter Carrier Craft on November 23, 1979.

Issue

Did Management's actions constitute a violation of either Articles VII or VIII of the National Agreement?

Union Position

The Union maintains that Management may cross Craft lines only in accordance with certain provisions of the Labor Agreement. However, there were no provisions applicable to the circumstances of this case, it is claimed. Accordingly, it was improper to utilize the Carrier for Special Delivery tasks. As a result, Grievant was deprived of an overtime assignment which, according to Article VIII of the Labor Agreement, should have been offered him.

Relevant Contract Provisions

ARTICLE VII
EMPLOYEE CLASSIFICATIONS

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.

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 estab-

lishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

ARTICLE VIII
HOURS OF WORK

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:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article XXX, Local Implementation.

Analysis

Special Delivery Carriers under this Labor Agreement are contractually distinct from City Letter Carriers.[2] Section 2

[2]The distinction among crafts is recognized, for example, in Section 2 -- Employment and Work Assignments. Paragraph A specifies that "Normally, work in different crafts, occupational groups or levels will not be combined into one job."

deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable.[3] Paragraph B states:

> 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.

This mutually-agreed upon provision specifies that the eventuality of "insufficient work" on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour work day. Section C presents a variation:

> 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.

This clause refers primarily to a situation where "exceptionally heavy work" occurs in another occupational work group, as opposed to the "insufficient work" discussed in Paragraph B. Section C provides that, when such heavy workload occurs, and when there is at the same time a light load

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[3]Other sections, inapplicable to this case, also provide some flexibility in terms of crossing craft lines. See Article XIII.

in another group, craft lines may be crossed.

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 needs 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 face of pressing circumstances. There is no evidence that the provisions have been applied in a contrary manner in Colorado Springs.

Thus interpreted, the question becomes purely one of fact: Did the circumstances here at issue justify Management's invoking Section 2(B) or 2(C) in order to cross craft lines on the day in question?

From the testimony and by Management's candid acknowledgement, it is apparent that Section 2(C) is inapplicable to this situation. There was neither an "exceptionally heavy workload" in the Special Delivery Craft nor a "light workload" in the Letter Carrier group. The sole question, then, is whether one may reasonably find there was "insufficient work" for letter carriers on the day in question so as to warrant re-assigning employee Groce to the Special Delivery Group.

Under the circumstances, there having been a crossing of craft lines, it is appropriate that Management provide justification for the action. Its contention is as follows.

Scheduling for the week in question was completed, as is the normal case, on Wednesday of the preceding week (November 14). Included in the staffing calculations was the fact that the Thanksgiving holiday would fall on Thursday, November 22. The day in question was November 23, the next full work day. All available routes were covered that day by regularly scheduled personnel. In addition, however, the supervisor speculated that, the day after the holiday, there might be sick calls, emergency annual leave or other absences. Accordingly, he scheduled two additional letter carriers.

The supervisor arrived at 6:45 a.m. on the 23rd and found, contrary to his expectations, that there had been no sick calls in the Letter Carrier Craft and that, moreover, the volume in Special Delivery was higher than normal. The supervisor determined that bringing in two scheduled afternoon Special Delivery Messengers two hours early would adequately compensate for the increased load. Then, having assigned one of the two extra Letter Carriers to carrying bumps or assisting on other routes, he assigned the remaining Carrier, Mr. Groce, to Special Delivery work. As stipulated by the parties, Mr. Groce worked 6.35 hours in that capacity.

For the reasons that follow, the finding is that this assignment was improper. Particular care should be employed

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extra personnel was unreasonable or
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Groce in the Letter Carrier Craft. In the overall, the finding is that the supervisor's decision was based not so much on the fact of "insufficient" work in the Letter Carrier Craft as on his conclusion that the "extra" Carrier could be generally utilized more effectively in the Special Delivery ranks. This approach was not consistent with the contractual requisites. To be sure, all routes had been covered in the Letter Carrier group and there were two additional employees available that day. However, it is also true that some forty-six hours of overtime were performed in the Letter Carrier group. There is some dispute as to whether this overtime arose later in the day as a result of difficulty in completing snow-covered routes. It is also apparent, however, that the storm had occurred some days earlier and that, in terms of foreseeability, one might have expected that help would be required. Moreover, while Management contends that assigning Groce to the Letter Carriers would

simply have been "make work," it would also appear that the supervisor believed, early on, that calling in two Special Delivery carriers two hours early for the afternoon shift would adequately account for those needs. Therefore, the assignment across craft lines to the Special Delivery Craft could also have been seen, at that point, as "make work."

In retrospect, one may conclude both that the assignment across craft lines in these particular circumstances was improper and that, assuming the need in that craft, the eligible employee should have been called in on overtime. Accordingly, the Union's request for overtime payment will be sustained to the extent of the violation.

A final comment is here in order. Nothing in this Opinion should be construed as requiring that supervisory judgments in these matters be anything more than reasonably rendered under the facts available at the time. Hindsight may often provide a better perspective but will not necessarily require the conclusion that the assignment was wrong. In each case, the particular facts and circumstances must be scrutinized. But one must proceed on the premise that crossing craft lines is prohibited and that the contractual exceptions are not to be invoked unless clearly met. In this case, the evidence relevant to this particular fact situation

fails to sustain Management's responsibility of showing "insufficient" work in the Letter Carrier unit.

AWARD

The grievance is granted. G. Robertson was improperly denied overtime pay on the day in question and shall be granted 6.35 hours' pay at overtime rates.

Richard I. Bloch, Umpire

April 7, 1982

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

December 4, 1991

MEMORANDUM FOR REGIONAL DIRECTORS, HUMAN RESOURCES
REGIONAL MANAGERS, LABOR RELATIONS
FIELD DIRECTORS, HUMAN RESOURCES

SUBJECT: Crossing Crafts While Withholding Positions Pursuant to Article 12

Recently there have been several inquiries regarding crossing crafts while withholding positions pursuant to Article 12.

Article 7, Section 2, Employment and Work Assignments, clarifies management's right to assign work to employees when work is not available within the craft or within the employee's job description and to assign employees from one occupational group to another. However, withholding positions pursuant to Article 12.5.B.1 does not automatically create a light or heavy workload in work assignments or a craft; nor does it provide license to indiscriminately cross crafts merely to maximize efficient personnel usage. In accordance with Article 7.2, it must be shown that there was "insufficient work" on a given occasion or, alternatively, that work was "exceptionally heavy" in one occupational group and light in another.

If you have any further questions at this point, please call Mr. Vegliante of my staff at PEN (202) 268-3811.

Sherry A. Cagnoli

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

H8S-5F-C 8027

Case No. (A8-W-0656)

Hearings Held October 23, 1981 and January 8, 1982

Before Richard I. Bloch, Esq.

APPEARANCES:

For the Union

James Adams

For the Postal Service

Donald Freebairn

OPINION

Facts

Grievant G. Robertson, a member of the Special Delivery Craft, here contests Management's failure to call him in for overtime work on November 23, 1979. He was not scheduled for work that day and, it is undisputed, Management made no effort to call him in. Instead, a part-time flexible City Carrier was assigned to perform Special Delivery functions for a total of 6.35 hours at straight time.[1]

[1]The parties stipulate to the following facts:

1. On November 23, 1979, FTR Special Delivery Carrier Robertson

The contention here is that Management violated the Labor Agreement in two respects. First, the Union says Management improperly allowed a member of the Carrier Craft, (James Groce), to cross over into the Special Delivery Craft. This, it claims, was a violation of Article VII of the Labor Agreement. Additionally, it is claimed that Management erred in failing to offer the overtime work in the Special Delivery Craft to the Grievant, who was on the overtime desired list and was available for the work.

(continuation of Footnote #1 from p. 1)

was non-scheduled.

2. No attempt was made by management to call in the grievant on his nonscheduled day.

3. On November 23, 1979, PTF City Carrier Groce was utilized for 6.35 hours on straight time delivering special delivery mail.

4. G. Robertson was considered eligible for overtime during the fourth quarter, 1979.

5. There were 46.6 hours of overtime utilized in the City Carrier Craft in the General Mail Facility on November 23, 1979.

6. There were 7.16 hours of overtime utilized in the Special Delivery Craft by Special Delivery Messengers only at the GMF on November 23, 1979.

7. No nonscheduled letter carrier was brought in on his day off to perform overtime work in the Letter Carrier Craft on November 23, 1979.

Issue

Did Management's actions constitute a violation of either Articles VII or VIII of the National Agreement?

Union Position

The Union maintains that Management may cross Craft lines only in accordance with certain provisions of the Labor Agreement. However, there were no provisions applicable to the circumstances of this case, it is claimed. Accordingly, it was improper to utilize the Carrier for Special Delivery tasks. As a result, Grievant was deprived of an overtime assignment which, according to Article VIII of the Labor Agreement, should have been offered him.

Relevant Contract Provisions

ARTICLE VII
EMPLOYEE CLASSIFICATIONS

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.

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 estab-

lishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

ARTICLE VIII
HOURS OF WORK

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:

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B. Lists will be established by craft, section, or tour in accordance with Article XXX, Local Implementation.

Analysis

Special Delivery Carriers under this Labor Agreement are contractually distinct from City Letter Carriers.[2] Section 2

[2]The distinction among crafts is recognized, for example, in Section 2 -- Employment and Work Assignments. Paragraph A specifies that "Normally, work in different crafts, occupational groups or levels will not be combined into one job."

deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable.[3] Paragraph B states:

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This mutually-agreed upon provision specifies that the eventuality of "insufficient work" on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour work day. Section C presents a variation:

> 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.

This clause refers primarily to a situation where "exceptionally heavy work" occurs in another occupational work group, as opposed to the "insufficient work" discussed in Paragraph B. Section C provides that, when such heavy workload occurs, and when there is at the same time a light load

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[3]Other sections, inapplicable to this case, also provide some flexibility in terms of crossing craft lines. See Article XIII.

in another group, craft lines may be crossed.

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 needs 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

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Thus interpreted, the question becomes purely one of fact: Did the circumstances here at issue justify Management's invoking Section 2(B) or 2(C) in order to cross craft lines on the day in question?

From the testimony and by Management's candid acknowledgement, it is apparent that Section 2(C) is inapplicable to this situation. There was neither an "exceptionally heavy workload" in the Special Delivery Craft nor a "light workload" in the Letter Carrier group. The sole question, then, is whether one may reasonably find there was "insufficient work" for letter carriers on the day in question so as to warrant re-assigning employee Groce to the Special Delivery Group.

Under the circumstances, there having been a crossing of craft lines, it is appropriate that Management provide justification for the action. Its contention is as follows.

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The supervisor arrived at 6:45 a.m. on the 23rd and found, contrary to his expectations, that there had been no sick calls in the Letter Carrier Craft and that, moreover, the volume in Special Delivery was higher than normal. The supervisor determined that bringing in two scheduled afternoon Special Delivery Messengers two hours early would adequately compensate for the increased load. Then, having assigned one of the two extra Letter Carriers to carrying bumps or assisting on other routes, he assigned the remaining Carrier, Mr. Groce, to Special Delivery work. As stipulated by the parties, Mr. Groce worked 6.35 hours in that capacity.

For the reasons that follow, the finding is that this assignment was improper. Particular care should be employed

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A final comment is here in order. Nothing in this Opinion should be construed as requiring that supervisory judgments in these matters be anything more than reasonably rendered under the facts available at the time. Hindsight may often provide a better perspective but will not necessarily require the conclusion that the assignment was wrong. In each case, the particular facts and circumstances must be scrutinized. But one must proceed on the premise that crossing craft lines is prohibited and that the contractual exceptions are not to be invoked unless clearly met. In this case, the evidence relevant to this particular fact situation

fails to sustain Management's responsibility of showing "insufficient" work in the Letter Carrier unit.

AWARD

The grievance is granted. G. Robertson was improperly denied overtime pay on the day in question and shall be granted 6.35 hours' pay at overtime rates.

Richard I. Bloch, Umpire

April 7, 1982

National Postal Mail Handlers Union

Paul V. Hogrogian
National President

Michael J. Hora
National Secretary-Treasurer

June Harris
Vice President
Central Region

John A. Gibson
Vice President
Eastern Region

David E. Wilkin
Vice President
Northeastern Region

Lawrence B. Sapp
Vice President
Southern Region

Don J. Sneesby
Vice President
Western Region

To: **Local Presidents**
Regional Directors/Representatives
National Executive Board

Re: **200 Man-Year Report**

Dear Sisters and Brothers:

Attached is a copy of the 200 man-year report that we have received from the Postal Service for the 2019 National Agreement. This report shows the man-years of each office. The number of man-years is determined by the total number of paid hours accumulated by career employees in an office, including bargaining units in addition to the NPMHU.

Normally, the number of man-years is calculated using career work hours during the 26 pay periods immediately preceding the term of the current National Agreement, which is then divided by 2080 to obtain the number of man-years for each office; however, for purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018.

Once identified, the man years for each office will remain constant for the term of the National Agreement. Please review the attached report for accuracy, and if you disagree with the document, please contact the CAD immediately.

Fraternally,

Teresa Harmon

Teresa Harmon
Manager, Contract Administration

cc: Paul Hogrogian, National President
Michael J. Hora, National Secretary-Treasurer
NCAD

BID CLUSTER MAN YEAR DESIGNATIONS - Based on Paid Hours from PP20 2017 (beginning September 16, 2017) through PP19 2018 (ending September 14, 2018)

Data Source: EDW / Accounting / Payroll / Paid Hours (includes NALC, APWU, NPMHU >> Career Only)

Area	PFC	PFC NAME	Finance	Office	STATE	AREA NAME	LFIN	BCID	MY DESIGNATION
B	6	CARIBBEAN PFC	42-8459	DMDU CANTANO ANNEX	PR	NORTHEAST	42-8459	BC428460	200
B	6	CARIBBEAN PFC	42-8460	SAN JUAN PO	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8461	SAN JUAN PR P&DC	PR	NORTHEAST	42-8461	BC428460	200
B	6	CARIBBEAN PFC	42-8462	SAN JUAN PR VMF	PR	NORTHEAST	42-8462	BC428460	200
B	6	CARIBBEAN PFC	42-8463	CARIBBEAN CS DISTRICT	PR	NORTHEAST	42-8463	BC428460	200
B	6	CARIBBEAN PFC	42-8465	SAN JUAN AMF	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8466	SJU-MOWS SAN JUAN BR	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8468	SJU-PUERTA DE TIERRA STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8469	SJU-RIO PIEDRAS STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8470	SJU-SANTURCE STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8471	SJU-FERNANDEZ JUNCOS STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8472	SJU-LOIZA STREET STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8473	SJU-BARRIO OBRERO STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8474	SJU-HATO REY STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8475	SJU-CAPARRA HEIGHTS STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8476	SJU-65TH INFANTRY STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8477	SJU-CUPEY STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8478	SJU-AIRPORT STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8479	SJU-PLAZA LAS AMERICAS STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8480	SJU-MINILLAS STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8481	SJU-BAYAMON GARDENS STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8482	SJU-BAYAMON MAIN BR	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8483	SJU-CATANO STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8484	SJU-TRUJILLO ALTO STA	PR	NORTHEAST	42-8460	BC428460	200
B	6	CARIBBEAN PFC	42-8487	PONCE AUX VMF OF SAN JUAN PR	PR	NORTHEAST	42-8487	BC428460	200
B	6	CARIBBEAN PFC	42-8488	SAN JUAN CFS	PR	NORTHEAST	42-8460	BC428460	200
B	20	GREATER BOSTON P	24-0001	BOS-AUBURNDALE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20	GREATER BOSTON P	24-0002	BOS-BELMONT BR	MA	NORTHEAST	24-0799	BC240799	200

B	20 GREATER BOSTON P	24-0003	BOS-WAVERLY BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0004	BOS-BROOKLINE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0005	BOS-BROOKLINE VILLAGE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0006	BOS-CHESTNUT HILL BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0007	BOS-LEXINGTON BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0008	BOS-NEEDHAM BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0009	BOS-NEEDHAM HEIGHTS BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0010	BOS-NEWTON CENTER BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0011	BOS-NEWTON HIGHLANDS BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0012	BOS-NEWTON UPPER FALLS BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0013	BOS-NEWTONVILLE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0014	BOS-BOSTON COLLEGE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0015	BOS-NEWTON LOWER FALLS BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0016	BOS-NEWTOWN BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0017	BOS-NONANTUM BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0018	BOS-WABAN BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0019	BOS-WALTHAM BRANCH	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0020	BOS-NORTH WALTHAM BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0021	BOS-SOUTH WALTHAM BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0022	BOS-WATERTOWN BRANCH	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0023	BOS-EAST WATERTOWN BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0024	BOS-WELLESLEY BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0025	BOS-WELLESLEY HILLS BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0027	BOS-BABSON PARK BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0028	BOS-WEST NEWTON BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0029	BOS-WESTON BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0030	BOS-ALLSTON STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0031	BOS-SOLDIERS FIELD STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0033	BOS-BRAINTREE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0034	BOS-BRIGHTON STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0035	BOS-EAST WEYMOUTH BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0036	BOS-HYDE PARK STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0038	BOS-READVILLE STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0039	BOS-JAMAICA PLAIN STA	MA	NORTHEAST	24-0799	BC240799	200

B	20 GREATER BOSTON P	24-0040	BOS-MATTAPAN STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0041	BOS-MILTON BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0042	BOS-MILTON VILLAGE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0043	BOS-NORTH QUINCY BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0044	BOS-NORTH WEYMOUTH BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0045	BOS-QUINCY BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0046	BOS-ROSLINDALE STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0047	BOS-SOUTH WEYMOUTH BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0048	BOS-WEST ROXBURY STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0049	BOS-WEYMOUTH BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0050	BOS-WOLLASTON BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0052	BOS-ARLINGTON BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0053	BOS-EAST ARLINGTON BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0054	BOS-ARLINGTON HEIGHTS BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0055	BOS-CHELSEA CARRIER ANNEX	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0056	BOS-CHELSEA BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0057	BOS-EVERETT BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0058	BOS-E BOSTON-WINTHROP CAR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0059	BOS-WINTHROP BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0060	BOS-EAST BOSTON STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0061	BOS-REVERE CARRIER ANNEX	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0062	BOS-REVERE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0063	BOS-BEACH BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0064	BOS-MALDEN BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0065	BOS-MELROSE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0066	BOS-MEDFORD BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0067	BOS-TUFTS UNIVERSITY BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0069	BOS-WEST MEDFORD BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0070	BOS-UNION SQUARE	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0071	BOS-WEST SOMERVILLE BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0072	BOS-WINTER HILL BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0073	BOS-STONEHAM BR	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0074	BOS-BACK BAY ANX STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0075	BOS-DORCHESTER FC STA	MA	NORTHEAST	24-0799	BC240799	200

B	20 GREATER BOSTON P	24-0076	BOS-DORCHESTER CENTER STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0077	BOS-FENWAY CARRIER ANX	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0078	BOS-ASTOR STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0079	BOS-FORT POINT STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0080	BOS-JOHN F KENNEDY STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0082	BOS-CHARLES STREET STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0083	BOS-CHARLESTOWN STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0084	BOS-HANOVER STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0086	BOS-MILK STREET STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0087	BOS-LAFAYETTE STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0089	BOS-STATE HOUSE STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0090	BOS-KENMORE STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0092	BOS-PRUDENTIAL CENTER STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0093	BOS-ROXBURY STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0094	BOS-CATHEDRAL STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0095	BOS-GROVE HALL STATION	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0096	BOS-MISSION HILL STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0097	BOS-UPHAMS CORNER STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0098	BOS-SOUTH BOSTON STA	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0501	BOSTON-CUSTOMER RETENTION	MA	NORTHEAST	24-0501	BC240799	200
B	20 GREATER BOSTON P	24-0798	GREATER BOSTON CS DISTRICT	MA	NORTHEAST	24-0798	BC240799	200
B	20 GREATER BOSTON P	24-0799	BOSTON PO	MA	NORTHEAST	24-0799	BC240799	200
B	20 GREATER BOSTON P	24-0800	BOSTON MA VMF	MA	NORTHEAST	24-0800	BC240799	200
B	20 GREATER BOSTON P	24-0801	BOSTON MA P&DC	MA	NORTHEAST	24-0801	BC240799	200
B	20 GREATER BOSTON P	24-0805	CHELSEA AUX VMF OF BOSTON MA	MA	NORTHEAST	24-0805	BC240799	200
B	20 GREATER BOSTON P	24-0952	BROCKTON PO	MA	NORTHEAST	24-0952	BC240952	200
B	20 GREATER BOSTON P	24-0953	BROCKTON MA P&DC	MA	NORTHEAST	24-0953	BC240952	200
B	20 GREATER BOSTON P	24-0954	BROCKTON MA VMF	MA	NORTHEAST	24-0954	BC240952	200
B	20 GREATER BOSTON P	24-4591	MIDDLESEX-ESSEX MA P&DC	MA	NORTHEAST	24-4591	BC244593	200
B	20 GREATER BOSTON P	24-4600	MA DISTRICT SUPPORT	MA	NORTHEAST	24-4600	BC240799	200
B	20 GREATER BOSTON P	24-9588	WOBURN PO	MA	NORTHEAST	24-9588	BC249588	200
B	20 GREATER BOSTON P	24-9622	WORCESTER PO	MA	NORTHEAST	24-9622	BC249622	200
B	20 GREATER BOSTON P	24-9623	CENTRAL MA P&DC	MA	NORTHEAST	24-9623	BC249622	200
B	20 GREATER BOSTON P	24-9624	WORCESTER MA VMF	MA	NORTHEAST	24-9624	BC249622	200

B	20	GREATER BOSTON P	24-9626	WORCESTER CFS	MA	NORTHEAST	24-9622	BC249622	200
B	20	GREATER BOSTON P	24-9627	WOR-WEST SIDE STA	MA	NORTHEAST	24-9622	BC249622	200
B	20	GREATER BOSTON P	24-9628	WOR-QUINSIGAMOND STA	MA	NORTHEAST	24-9622	BC249622	200
B	20	GREATER BOSTON P	24-9629	WOR-GREENDALE STA	MA	NORTHEAST	24-9622	BC249622	200
B	20	GREATER BOSTON P	24-9630	WOR-WEBSTER SQ STA	MA	NORTHEAST	24-9622	BC249622	200
B	20	GREATER BOSTON P	24-9631	WOR-MAIN STREET STA	MA	NORTHEAST	24-9622	BC249622	200
B	20	GREATER BOSTON P	24-9632	WOR-LINCOLN CONVEN CTR STA	MA	NORTHEAST	24-9622	BC249622	200
B	20	GREATER BOSTON P	24-9633	WOR-MIDTOWN MALL STA	MA	NORTHEAST	24-9622	BC249622	200
B	40	NORTHERN NEW EN	22-6900	PORTLAND PO	ME	NORTHEAST	22-6900	BC226900	200
B	40	NORTHERN NEW EN	22-6901	SOUTHERN ME P&DC	ME	NORTHEAST	22-6901	BC226900	200
B	40	NORTHERN NEW EN	22-6902	PORTLAND ME VMF	ME	NORTHEAST	22-6902	BC226900	200
B	40	NORTHERN NEW EN	22-6903	NO NEW ENGLAND CS DISTRICT	ME	NORTHEAST	22-6903	BC226900	200
B	40	NORTHERN NEW EN	22-6905	MAINE DIST SUPPORT	ME	NORTHEAST	22-6905	BC226900	200
B	40	NORTHERN NEW EN	22-6906	POR-DOWNTOWN STA	ME	NORTHEAST	22-6900	BC226900	200
B	40	NORTHERN NEW EN	22-6907	POR-STATION A	ME	NORTHEAST	22-6900	BC226900	200
B	40	NORTHERN NEW EN	22-6908	POR-SOUTH PORTLAND BR	ME	NORTHEAST	22-6900	BC226900	200
B	40	NORTHERN NEW EN	22-6909	POR-PEAKS ISLAND BR	ME	NORTHEAST	22-6900	BC226900	200
B	40	NORTHERN NEW EN	22-6910	POR-MAIN OFFICE CR STA	ME	NORTHEAST	22-6900	BC226900	200
B	40	NORTHERN NEW EN	22-6911	POR-SOUTH PORTLAND ANX	ME	NORTHEAST	22-6900	BC226900	200
B	40	NORTHERN NEW EN	32-4800	MANCHESTER PO	NH	NORTHEAST	32-4800	BC324800	200
B	40	NORTHERN NEW EN	32-4801	MANCHESTER NH P&DC	NH	NORTHEAST	32-4801	BC324800	200
B	40	NORTHERN NEW EN	32-4802	MANCHESTER NH VMF	NH	NORTHEAST	32-4802	BC324800	200
B	40	NORTHERN NEW EN	32-4806	NH/VT DISTRICT SUPPORT	NH	NORTHEAST	32-4806	BC324800	200
B	40	NORTHERN NEW EN	32-4810	MAN-BEDFORD FSTA	NH	NORTHEAST	32-4800	BC324800	200
B	40	NORTHERN NEW EN	32-4811	MAN-DOWNTOWN FSTA	NH	NORTHEAST	32-4800	BC324800	200
B	40	NORTHERN NEW EN	32-4812	MAN-WEST DDU STA	NH	NORTHEAST	32-4800	BC324800	200
B	40	NORTHERN NEW EN	32-4813	MAN-SOUTH DDU STA	NH	NORTHEAST	32-4800	BC324800	200
B	40	NORTHERN NEW EN	32-4814	MAN-HOOKSETT FSTA	NH	NORTHEAST	32-4800	BC324800	200
B	40	NORTHERN NEW EN	32-5522	NASHUA NH P&DC	NH	NORTHEAST	32-5522	BC325522	200
B	60	CONNECTICUT VALLI	08-0520	BRADLEY AMF	CT	NORTHEAST	08-0520	BC083366	200
B	60	CONNECTICUT VALLI	08-0578	BRIDGEPORT PO	CT	NORTHEAST	08-0578	BC080578	200
B	60	CONNECTICUT VALLI	08-0579	BPT-BARNUM STA	CT	NORTHEAST	08-0578	BC080578	200
B	60	CONNECTICUT VALLI	08-0580	BPT-BAYVIEW STA	CT	NORTHEAST	08-0578	BC080578	200
B	60	CONNECTICUT VALLI	08-0584	BPT-NOBLE STA	CT	NORTHEAST	08-0578	BC080578	200

B	60	CONNECTICUT VALLI	08-0585	BPT-STRATFORD BR	CT	NORTHEAST	08-0578	BC080578	200
B	60	CONNECTICUT VALLI	08-0586	BPT STFD POSTAL STORE	CT	NORTHEAST	08-0578	BC080578	200
B	60	CONNECTICUT VALLI	08-0590	BPT TRUMBULL PS STORE	CT	NORTHEAST	08-0578	BC080578	200
B	60	CONNECTICUT VALLI	08-3348	HFD-BISHOPS CORNER BR	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3349	HFD-BLUE HILLS STA	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3350	HFD-EAST HARTFORD BR	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3351	HFD-ELMWOOD BR	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3352	HFD-LASALLE RD BR	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3353	HFD-MURPHY RD ANX	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3354	HFD-NEWINGTON BR	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3355	HFD-OLD STATE HOUSE STA	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3356	HFD-SILVER LANE STA	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3357	HFD-UNITY PLAZA STA	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3358	HFD-WASHINGTON ST STA	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3359	HFD-WETHERSFIELD STA	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3362	HFD-BRADLEY AIRPORT STA	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3366	HARTFORD PO	CT	NORTHEAST	08-3366	BC083366	200
B	60	CONNECTICUT VALLI	08-3367	HARTFORD CT P&DC	CT	NORTHEAST	08-3367	BC083366	200
B	60	CONNECTICUT VALLI	08-3368	HARTFORD CT VMF	CT	NORTHEAST	08-3368	BC083366	200
B	60	CONNECTICUT VALLI	08-3369	CONN VALLEY CS DISTRICT	CT	NORTHEAST	08-3369	BC083366	200
B	60	CONNECTICUT VALLI	08-4712	NHV-ALLINGTOWN BR	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4713	NHV-AMITY STA	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4715	NHV-EAST HAVEN CARRIER ANX	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4716	NHV-FAIR HAVEN STA	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4717	NHV-FEDERAL STA	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4718	NHV-HAMDEN BR	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4719	NHV-KILBY STA	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4720	NHV-MT CARMEL-HAMDEN BR	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4722	NHV-WEST HAVEN STA	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4723	NHV-WESTVILLE STA	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4724	NHV-WHITNEYVILLE BR	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4725	NHV-YALE STA	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4726	NEW HAVEN PO	CT	NORTHEAST	08-4726	BC084726	200
B	60	CONNECTICUT VALLI	08-4727	SOUTHERN CT P&DC	CT	NORTHEAST	08-4727	BC084726	200

B	60 CONNECTICUT VALLI	08-4728	NEW HAVEN CT VMF	CT	NORTHEAST	08-4728	BC084726	200
B	60 CONNECTICUT VALLI	08-7713	STM-ATLANTIC ST STA	CT	NORTHEAST	08-7718	BC087718	200
B	60 CONNECTICUT VALLI	08-7714	STM-WEST AVENUE CARRIER STATION	CT	NORTHEAST	08-7718	BC087718	200
B	60 CONNECTICUT VALLI	08-7715	STM-GLENBROOK STA	CT	NORTHEAST	08-7718	BC087718	200
B	60 CONNECTICUT VALLI	08-7716	STM-WEST AVE STA	CT	NORTHEAST	08-7718	BC087718	200
B	60 CONNECTICUT VALLI	08-7717	STM-RIDGEWAY FSTA	CT	NORTHEAST	08-7718	BC087718	200
B	60 CONNECTICUT VALLI	08-7718	STAMFORD PO	CT	NORTHEAST	08-7718	BC087718	200
B	60 CONNECTICUT VALLI	08-7719	STAMFORD CT P&DC	CT	NORTHEAST	08-7719	BC087718	200
B	60 CONNECTICUT VALLI	08-7720	STAMFORD CT VMF	CT	NORTHEAST	08-7720	BC087718	200
B	60 CONNECTICUT VALLI	08-8704	WATERBURY PO	CT	NORTHEAST	08-8704	BC088704	200
B	60 CONNECTICUT VALLI	08-8705	WATERBURY CT VMF	CT	NORTHEAST	08-8705	BC088704	200
B	60 CONNECTICUT VALLI	08-8707	WTB-EAST END STA	CT	NORTHEAST	08-8704	BC088704	200
B	60 CONNECTICUT VALLI	08-8708	WTB-LAKEWOOD STA	CT	NORTHEAST	08-8704	BC088704	200
B	60 CONNECTICUT VALLI	08-8709	WTB-PLAZA STA	CT	NORTHEAST	08-8704	BC088704	200
B	60 CONNECTICUT VALLI	08-8710	WTB-PROSPECT BR	CT	NORTHEAST	08-8704	BC088704	200
B	60 CONNECTICUT VALLI	08-8711	WTB-WOLCOTT BR	CT	NORTHEAST	08-8704	BC088704	200
B	60 CONNECTICUT VALLI	24-7820	SPRINGFIELD PO	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	24-7822	SPRINGFIELD NDC	MA	NORTHEAST	24-7822	BC247820	200
B	60 CONNECTICUT VALLI	24-7824	SPRINGFIELD MA VMF	MA	NORTHEAST	24-7824	BC247820	200
B	60 CONNECTICUT VALLI	24-7827	PITTSFIELD AUX VMF OF SPRINGFIELD	MA	NORTHEAST	24-7827	BC247820	200
B	60 CONNECTICUT VALLI	24-7830	SPR-MAIN STREET STA	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	24-7831	SPR-COLONIAL STA	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	24-7833	SPR-FOREST PARK STA	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	24-7834	SPR-INDIAN ORCHARD ST	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	24-7835	SPR-MASON SQUARE	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	24-7837	SPR-TOWER SQUARE	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	24-7838	SPR-BRIGHTWOOD STA	MA	NORTHEAST	24-7820	BC247820	200
B	60 CONNECTICUT VALLI	43-7140	PROVIDENCE PO	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7141	PROVIDENCE RI P&DC	RI	NORTHEAST	43-7141	BC437140	200
B	60 CONNECTICUT VALLI	43-7142	PROVIDENCE RI VMF	RI	NORTHEAST	43-7142	BC437140	200
B	60 CONNECTICUT VALLI	43-7151	PVD-ANNEX FSTA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7153	PVD-CENTREDALE FINANCE BR	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7154	PVD-CORLISS PARK STA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7156	PVD-CRANSTON FINANCE UNIT	RI	NORTHEAST	43-7140	BC437140	200

B	60 CONNECTICUT VALLI	43-7160	PVD-EAST SIDE FSTA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7162	PVD-ELMWOOD STA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7163	PVD-FRIAR STA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7164	PVD-GARDEN CITY BR	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7166	PVD-JOHNSTON BR	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7167	PVD-MAIN OFFICE BOXES	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7168	PVD-NORTH STA CARRIERS	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7169	PVD-NORTH FSTA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7170	PVD-OLNEYVILLE STA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7171	PVD-RIVERSIDE BR	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7172	PVD-RIVERSIDE CARRIERS	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7173	PVD-RUMFORD BR	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7175	PVD-SMITHFIELD BR	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7176	PVD-WASHINGTON PARK STA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7177	PVD-WEYBOSSET HILL STA	RI	NORTHEAST	43-7140	BC437140	200
B	60 CONNECTICUT VALLI	43-7178	PVD-EAST PROV FINANCE UNIT	RI	NORTHEAST	43-7140	BC437140	200
B	70 NORTHERN NJ PFC	33-3870	JERSEY CITY PO	NJ	NORTHEAST	33-3870	BC333870	200
B	70 NORTHERN NJ PFC	33-3871	JCY-BERGEN NORTH STA	NJ	NORTHEAST	33-3870	BC333870	200
B	70 NORTHERN NJ PFC	33-3872	JCY-BERGEN SOUTH STA	NJ	NORTHEAST	33-3870	BC333870	200
B	70 NORTHERN NJ PFC	33-3873	JCY-JOURNAL SQUARE STA	NJ	NORTHEAST	33-3870	BC333870	200
B	70 NORTHERN NJ PFC	33-3874	JCY-HUDSON CITY STA	NJ	NORTHEAST	33-3870	BC333870	200
B	70 NORTHERN NJ PFC	33-5099	CUSTOMER CARE CENTER - NJ	NJ	NORTHEAST	33-5099	BC335685	200
B	70 NORTHERN NJ PFC	33-5663	NWK-SPRINGFIELD AVE STA	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5664	NWK-IRONBOUND STA	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5665	NWK-VAILSBURG STA	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5666	NWK-ROSEVILLE STA	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5667	NWK-BELLEVILLE CARRIER ANX	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5668	NWK-IRVINGTON BR	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5669	NWK-SOUTH STA	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5670	NEWARK PO	NJ	NORTHEAST	33-5670	BC335670	200
B	70 NORTHERN NJ PFC	33-5674	NEWARK NJ VMF	NJ	NORTHEAST	33-5674	BC335670	200
B	70 NORTHERN NJ PFC	33-5685	NEW BRUNSWICK PO	NJ	NORTHEAST	33-5685	BC335685	200
B	70 NORTHERN NJ PFC	33-5950	NORTHRN NJ METRO P&DC	NJ	NORTHEAST	33-5950	BC335950	200
B	70 NORTHERN NJ PFC	33-5978	GREATER NEWARK NJ P&DC	NJ	NORTHEAST	33-5978	BC335978	200

B	70	NORTHERN NJ PFC	33-5980	DVD BLDG NJ P&DC	NJ	NORTHEAST	33-5980 BC335980	200
B	70	NORTHERN NJ PFC	33-5981	KEARNY NJ VMF	NJ	NORTHEAST	33-5981 BC335980	200
B	100	NEW YORK PFC	35-0901	BRX-HUNTS POINT STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0902	BRX-WOODLAWN STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0903	BRX-WILLIAMSBRIDGE STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0904	BRX-WEST FARMS STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0905	BRX-WESTCHESTER STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0906	BRX-WAKEFIELD STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0907	BRX-TREMONT STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0908	BRX-THROGGS NECK STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0909	BRX-SOUNDVIEW STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0911	BRX-RIVERDALE STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0912	BRX-PARKCHESTER STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0913	BRX-MOTT HAVEN STATION	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0914	BRX-MORRIS HEIGHTS STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0916	BRX-MORRISANIA STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0917	BRX-KINGSBRIDGE STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0918	BRX-JEROME STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0919	BRX-HUB STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0921	BRX-HIGHBRIDGE STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0922	BRX-FORDHAM STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0923	BRX-CORNELL STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0924	BRX-CO-OP CITY STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0926	BRX-CITY ISLAND STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0927	BRX-BOULEVARD STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0928	BRX-BAYCHESTER STA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0929	BRX-GPO/CARRIERS ANX	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0931	BRX-SPUYTEN DUYVIL FSTA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0932	BRX-GPO/WINDOW SERVICES FSTA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0934	BRX-VAN COTT FSTA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0936	BRX-UNIVERSITY HEIGHTS FSTA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0937	BRX-STADIUM FSTA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0938	BRX-PILGRIM FSTA	NY	NORTHEAST	35-0982 BC350982	200
B	100	NEW YORK PFC	35-0939	BRX-PARKWAY FSTA	NY	NORTHEAST	35-0982 BC350982	200

B	100 NEW YORK PFC	35-0942	BRX-MOUNT CARMEL FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0943	BRX-MOSHOLU FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0944	BRX-MORRIS PARK FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0946	BRX-MELCOURT FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0947	BRX-HILLSIDE FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0948	BRX-FIELDSTON FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0949	BRX-ESPLANADE FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0951	BRX-EINSTEIN FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0953	BRX-CRANFORD FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0954	BRX-DRIESER LOOP FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0956	BRX-CLASON POINT FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0957	BRX-CASTLE HILL FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0958	BRX-BOTANICAL FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0959	BRX-ALLERTON FSTA	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-0982	BRONX PO	NY	NORTHEAST	35-0982	BC350982	200
B	100 NEW YORK PFC	35-5815	MANHATTAN MAIL COLLECTION UNIT	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-5824	NEW YORK CS DISTRICT	NY	NORTHEAST	35-5824	BC355824	200
B	100 NEW YORK PFC	35-5825	NEW YORK PO	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-5826	MANHATTAN NY VMF	NY	NORTHEAST	35-5826	BC355824	200
B	100 NEW YORK PFC	35-5831	MORGAN NY P&DC	NY	NORTHEAST	35-5831	BC355824	200
B	100 NEW YORK PFC	35-5837	NEW YORK (FDR) NY VMF	NY	NORTHEAST	35-5837	BC355824	200
B	100 NEW YORK PFC	35-9601	NYC-BOWLING GREEN STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9602	NYC-CANAL STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9603	NYC-CHEROKEE FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9604	NYC-CHINATOWN STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9605	NYC-CHURCH STREET STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9606	NYC-COOPER STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9607	NYC-FDR STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9608	NYC-TRINITY STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9609	NYC-GRACIE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9610	NYC-GRAND CENTRAL STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9611	NYC-HELLGATE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9612	NYC-ROOSEVELT ISLAND FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9613	NYC-KNICKERBOCKER STA	NY	NORTHEAST	35-5825	BC355824	200

B	100 NEW YORK PFC	35-9614	NYC-LENOX HILL STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9615	NYC-MADISON SQUARE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9616	NYC-MURRAY HILL STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9617	NYC-PECK SLIP STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9618	NYC-PETER STUYVESANT STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9619	NYC-PITT FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9620	NYC-PRINCE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9622	NYC-THOMPKINS SQUARE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9623	NYC-TRIBOROUGH STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9626	NYC-YORKVILLE FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9627	NYC-WALL STREET STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9628	NYC-JAMES A FARLEY STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9629	NYC-ANSONIA STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9630	NYC-APPRAISERS STORE FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9631	NYC-AUDUBON STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9632	NYC-BRYANT FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9633	NYC-CATHEDRAL STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9634	NYC-COLLEGE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9635	NYC-COLONIAL PARK STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9636	NYC-COLUMBIA UNIVERSITY FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9637	NYC-COLUMBUS CIRCLE FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9639	NYC-FORT GEORGE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9640	NYC-FORT WASHINGTON STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9641	NYC-GREELEY SQUARE FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9642	NYC-HAMILTON GRANGE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9643	NYC-PARK WEST FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9644	NYC-INWOOD STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9645	NYC-LINCOLNTON STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9646	NYC-LONDON TERRACE FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9647	NYC-MANHATTANVILLE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9648	NYC-MIDTOWN STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9649	NYC-CPPF MORGAN P&D ANX	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9650	NYC-MORNINGSIDE ANX	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9651	NYC-OLD CHELSEA STA	NY	NORTHEAST	35-5825	BC355824	200

B	100 NEW YORK PFC	35-9652	NYC-PATCHIN FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9653	NYC-PLANETARIUM STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9654	NYC-PORT AUTHORITY FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9655	NYC-RADIO CITY STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9656	NYC-ROCKEFELLER CENTER FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9657	NYC-TIMES SQUARE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9658	NYC-VILLAGE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9659	NYC-WASHINGTON BRIDGE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9660	NYC-WEST VILLAGE FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9661	NYC-PORT AUTHORITY CC FSTA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9667	NYC-FDR PARCEL POST ANX	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9668	NYC-WHITEHALL STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9670	NYC-HANOVER FINANCE STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9671	NYC-LENOX HILL NORTH CR STA	NY	NORTHEAST	35-5825	BC355824	200
B	100 NEW YORK PFC	35-9672	NYC-LENOX HILL SOUTH CR STA	NY	NORTHEAST	35-5825	BC355824	200
B	105 WESTCHESTER PFC	35-5585	MOUNT VERNON PO	NY	NORTHEAST	35-5585	BC355585	200
B	105 WESTCHESTER PFC	35-5586	WESTCHESTER NY VMF	NY	NORTHEAST	35-5586	BC355585	200
B	105 WESTCHESTER PFC	35-9093	WESTCHESTER NY P&DC	NY	NORTHEAST	35-9093	BC355585	200
B	105 WESTCHESTER PFC	35-9545	YONKERS PO	NY	NORTHEAST	35-9545	BC359545	200
B	105 WESTCHESTER PFC	35-9546	YON-GREYSTONE CARRIER ANX	NY	NORTHEAST	35-9545	BC359545	200
B	105 WESTCHESTER PFC	35-9547	YON-EAST STA	NY	NORTHEAST	35-9545	BC359545	200
B	105 WESTCHESTER PFC	35-9548	YON-SOUTH STA	NY	NORTHEAST	35-9545	BC359545	200
B	105 WESTCHESTER PFC	35-9549	YON-HASTINGS ON HUDSON BR	NY	NORTHEAST	35-9545	BC359545	200
B	105 WESTCHESTER PFC	35-9551	YON-TUCKAHOE BR	NY	NORTHEAST	35-9545	BC359545	200
B	105 WESTCHESTER PFC	35-9552	YON-BRONXVILLE BR	NY	NORTHEAST	35-9545	BC359545	200
B	105 WESTCHESTER PFC	35-9553	YON-CENTUCK STA	NY	NORTHEAST	35-9545	BC359545	200
B	110 TRIBORO PFC	35-0801	BKN-KENSINGTON STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0802	BKN-BLYTHBOURNE STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0803	BKN-BAY RIDGE STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0804	BKN-BUSHWICK STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0806	BKN-GREENPOINT STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0807	BKN-GRAVESEND STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0808	BKN-CONEY ISLAND STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0809	BKN-JAMES E DAVIS STA	NY	NORTHEAST	35-0995	BC350995	200

B	110 TRIBORO PFC	35-0877	BKN-TIMES PLAZA STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0878	BKN-CADMAN PLAZA STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0879	BKN-RUGBY STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0880	BKN-PARKVILLE STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0881	BKN-PRATT STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0882	BKN-METROPOLITAN STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0883	BKN-EAST NEW YORK STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0884	BKN-NEW LOTS STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0886	BKN-FORT HAMILTON STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0887	BKN-VANDEVEER STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0888	BKN-WILLIAMSBURG STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0889	BKN-BROWNSVILLE STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0891	BKN-ST JOHNS PLACE STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0892	BKN-BATH BEACH STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0893	BKN-VAN BRUNT STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0894	BKN-BREVOORT STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0971	BKN-FLATBUSH STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0972	BKN-DYKER HEIGHTS STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0973	BKN-HOMECREST CARRIER ANX	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0974	BKN-MIDWOOD STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0986	BKN-RED HOOK STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0987	BKN-BUSH TERMINAL STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0988	BKN-STUYVESANT STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0989	BKN-RYDER CARRIER ANX	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0991	BKN-BAY STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0992	BKN-CANARSIE STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0993	BKN-WYCKOFF HEIGHTS STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0994	BKN-ADELPHI STA	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0995	BROOKLYN PO	NY	NORTHEAST	35-0995	BC350995	200
B	110 TRIBORO PFC	35-0996	BROOKLYN NY P&DC	NY	NORTHEAST	35-0996	BC350995	200
B	110 TRIBORO PFC	35-0997	BROOKLYN NY VMF	NY	NORTHEAST	35-0997	BC350995	200
B	110 TRIBORO PFC	35-2877	FLG-WHITESTONE STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2878	FLG-LINDEN HILL STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2879	FLG-COLLEGE POINT STA	NY	NORTHEAST	35-2895	BC352895	200

B	110 TRIBORO PFC	35-2881	FLG-MAIN OFFICE STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2882	FLG-STATION A STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2883	FLG-BAYSIDE CARRIER ANX	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2884	FLG-LITTLE NECK STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2885	FLG-OAKLAND GARDENS STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2886	FLG-FRESH MEADOWS STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2887	FLG-KEW GARDENS HILLS STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2888	FLG-CORONA/ELMHURST CARRIER AN	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2889	FLG-EAST ELMHURST STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2891	FLG-JACKSON HEIGHTS STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2892	FLG-REGO PARK STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2893	FLG-FOREST HILLS STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2894	FLG-WOODSIDE STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2895	FLUSHING PO	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2896	QUEENS NY VMF	NY	NORTHEAST	35-2896	BC352895	200
B	110 TRIBORO PFC	35-2897	FLG-MASPETH STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2898	FLG-MIDDLE VILLAGE STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-2899	FLG-RIDGEWOOD STA	NY	NORTHEAST	35-2895	BC352895	200
B	110 TRIBORO PFC	35-4170	JAMAICA PO	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4171	JAM-CAMBRIA HEIGHTS STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4172	JAM-ST ALBANS STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4173	JAM-SPRINGFIELD GARDENS STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4174	JAM-HOWARD BEACH STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4176	JAM-KEW GARDENS STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4177	JAM-OZONE PARK CARRIER ANX	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4178	JAM-RICHMOND HILL STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4179	JAM-SOUTH RICHMOND HILL STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4181	JAM-SOUTH OZONE PARK STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4182	JAM-WOODHAVEN STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4183	JAM-ROSEDALE STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4184	JAM-HOLLIS STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4186	JAM-BELLEROSE STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4187	JAM-QUEENS VILLAGE STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4188	JAM-JFK AIRPORT STA	NY	NORTHEAST	35-4170	BC354170	200

B	110 TRIBORO PFC	35-4189	JAM-ROCHDALE VILLAGE CARRIER ANX	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4191	JAM-ARCHER AVENUE STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4192	JAM-MAIN OFFICE STA	NY	NORTHEAST	35-4170	BC354170	200
B	110 TRIBORO PFC	35-4830	LONG ISLAND CITY PO	NY	NORTHEAST	35-4830	BC354830	200
B	110 TRIBORO PFC	35-4832	LIC-ASTORIA STA	NY	NORTHEAST	35-4830	BC354830	200
B	110 TRIBORO PFC	35-4836	LIC-STEINWAY STA	NY	NORTHEAST	35-4830	BC354830	200
B	110 TRIBORO PFC	35-4837	LIC-SUNNYSIDE STA	NY	NORTHEAST	35-4830	BC354830	200
B	110 TRIBORO PFC	35-4838	LIC-WOOLSEY STA	NY	NORTHEAST	35-4830	BC354830	200
B	110 TRIBORO PFC	35-4839	LIC-BROADWAY STA	NY	NORTHEAST	35-4830	BC354830	200
B	110 TRIBORO PFC	35-4840	LIC-MAIN OFFICE STA	NY	NORTHEAST	35-4830	BC354830	200
B	110 TRIBORO PFC	35-6886	QUEENS NY P&DC	NY	NORTHEAST	35-6886	BC352895	200
B	110 TRIBORO PFC	35-6888	TRIBORO CS DISTRICT	NY	NORTHEAST	35-6888	BC350995	200
B	110 TRIBORO PFC	35-8170	STATEN ISLAND PO	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8171	STATEN ISLAND NY VMF	NY	NORTHEAST	35-8171	BC358170	200
B	110 TRIBORO PFC	35-8173	STI-ST GEORGE STA	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8174	STI-PORT RICHMOND STA	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8175	STI-MARINERS HARBOR CARRIER ANX	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8176	STI-STAPLETON STA	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8177	STI-ROSEBANK STA	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8178	STI-NEW DORP STA	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8179	STI-TOTTENVILLE STA	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8181	STI-WEST NEW BRIGHTON STA	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8182	STI-SOUTH SHORE CARRIER ANX	NY	NORTHEAST	35-8170	BC358170	200
B	110 TRIBORO PFC	35-8183	STI-MAIN OFFICE STA	NY	NORTHEAST	35-8170	BC358170	200
B	117 LONG ISLAND PFC	35-0978	BETHPAGE NY P&DC	NY	NORTHEAST	35-0978	BC350978	200
B	117 LONG ISLAND PFC	35-3775	HICKSVILLE PO	NY	NORTHEAST	35-3775	BC353775	200
B	117 LONG ISLAND PFC	35-3776	HICKSVILLE NY VMF	NY	NORTHEAST	35-3776	BC353775	200
B	117 LONG ISLAND PFC	35-3777	HXS-PLAINVIEW BR	NY	NORTHEAST	35-3775	BC353775	200
B	117 LONG ISLAND PFC	35-3778	HXS-OLD BETHPAGE BR	NY	NORTHEAST	35-3775	BC353775	200
B	117 LONG ISLAND PFC	35-4833	LONG ISLAND CS DISTRICT	NY	NORTHEAST	35-4833	BC353775	200
B	117 LONG ISLAND PFC	35-5311	MID-ISLAND NY P&DC	NY	NORTHEAST	35-5311	BC353775	200
B	117 LONG ISLAND PFC	35-9138	WEST NASSAU NY P&DC	NY	NORTHEAST	35-9138	BC359138	200
B	117 LONG ISLAND PFC	35-9139	WESTERN NASSAU NY VMF	NY	NORTHEAST	35-9139	BC359138	200
B	120 ALBANY PFC	35-0051	ALB-ACADEMY	NY	NORTHEAST	35-0060	BC350060	200

B	120	ALBANY PFC	35-0054	ALB-CAPITOL	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0057	ALB-CARRIER ANX	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0058	ALB-COLONIE CENTER	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0060	ALBANY PO	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0061	ALBANY NY P&DC	NY	NORTHEAST	35-0061	BC350060	200
B	120	ALBANY PFC	35-0062	ALBANY NY VMF	NY	NORTHEAST	35-0062	BC350060	200
B	120	ALBANY PFC	35-0063	ALBANY CS DISTRICT	NY	NORTHEAST	35-0063	BC350060	200
B	120	ALBANY PFC	35-0066	ALB-ESP	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0067	ALB-FORT ORANGE	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0069	ALB-GMF STORE	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0071	ALB-KIMBERLY SQUARE	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0074	ALB-STUYVESANT	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0076	ALB-TERMINAL	NY	NORTHEAST	35-0060	BC350060	200
B	120	ALBANY PFC	35-0077	UTICA AUX VMF OF ALBANY NY	NY	NORTHEAST	35-0077	BC350060	200
B	120	ALBANY PFC	35-8354	SYR-COLVIN STA	NY	NORTHEAST	35-8360	BC358360	200
B	120	ALBANY PFC	35-8356	SYR-DEWITT BR	NY	NORTHEAST	35-8360	BC358360	200
B	120	ALBANY PFC	35-8357	SYR-DOWNTOWN STA	NY	NORTHEAST	35-8360	BC358360	200
B	120	ALBANY PFC	35-8360	SYRACUSE PO	NY	NORTHEAST	35-8360	BC358360	200
B	120	ALBANY PFC	35-8361	SYRACUSE NY P&DC	NY	NORTHEAST	35-8361	BC358360	200
B	120	ALBANY PFC	35-8362	SYRACUSE NY VMF	NY	NORTHEAST	35-8362	BC358360	200
B	120	ALBANY PFC	35-8367	SYR-FRANKLIN SQUARE STA	NY	NORTHEAST	35-8360	BC358360	200
B	120	ALBANY PFC	35-8370	SYR-ONONDAGA BR	NY	NORTHEAST	35-8360	BC358360	200
B	120	ALBANY PFC	35-8371	SYR-SOLVAY BR	NY	NORTHEAST	35-8360	BC358360	200
B	120	ALBANY PFC	35-8372	SYR-TEALL STA	NY	NORTHEAST	35-8360	BC358360	200
B	962	NORTHEAST AREA PI	33-3869	NEW JERSEY NDC	NJ	NORTHEAST	33-3869	BC333869	200
B	962	NORTHEAST AREA PI	35-0185	NEW YORK INTL SVC CTR	NY	NORTHEAST	35-0185	BC350185	200
C	80	SOUTH JERSEY PFC	09-6820	WILMINGTON PO	DE	EASTERN	09-6820	BC096820	200
C	80	SOUTH JERSEY PFC	09-6821	DELAWARE DE P&DC	DE	EASTERN	09-6821	BC096820	200
C	80	SOUTH JERSEY PFC	09-6822	WILMINGTON DE VMF	DE	EASTERN	09-6822	BC096820	200
C	80	SOUTH JERSEY PFC	09-6823	WLM-MARSHALLTON BR	DE	EASTERN	09-6820	BC096820	200
C	80	SOUTH JERSEY PFC	09-6824	WLM-NEWPORT BR	DE	EASTERN	09-6820	BC096820	200
C	80	SOUTH JERSEY PFC	09-6825	WLM-EDGEMOOR BR	DE	EASTERN	09-6820	BC096820	200
C	80	SOUTH JERSEY PFC	09-6826	WLM-LANCASTER AVE	DE	EASTERN	09-6820	BC096820	200
C	80	SOUTH JERSEY PFC	09-6827	WLM-TALLEYVILLE BR	DE	EASTERN	09-6820	BC096820	200

C	80	SOUTH JERSEY PFC	09-6828	WLM-RODNEY SQUARE STA	DE	EASTERN	09-6820	BC096820	200
C	80	SOUTH JERSEY PFC	33-1260	CAMDEN PO	NJ	EASTERN	33-1260	BC331260	200
C	80	SOUTH JERSEY PFC	33-7929	SO JERSEY NJ P&DC	NJ	EASTERN	33-7929	BC337929	200
C	80	SOUTH JERSEY PFC	33-7931	BELLMAWR NJ VMF	NJ	EASTERN	33-7931	BC337929	200
C	80	SOUTH JERSEY PFC	33-8550	TRENTON PO	NJ	EASTERN	33-8550	BC338550	200
C	80	SOUTH JERSEY PFC	33-8551	TRENTON NJ VMF	NJ	EASTERN	33-8551	BC338550	200
C	80	SOUTH JERSEY PFC	33-8552	TRENTON NJ P&DC	NJ	EASTERN	33-8552	BC338550	200
C	80	SOUTH JERSEY PFC	33-8553	TRE-CIRCLE BR	NJ	EASTERN	33-8550	BC338550	200
C	80	SOUTH JERSEY PFC	33-8554	TRE-DOWNTOWN STA	NJ	EASTERN	33-8550	BC338550	200
C	80	SOUTH JERSEY PFC	33-8555	TRE-FORT DIX BR	NJ	EASTERN	33-8550	BC338550	200
C	80	SOUTH JERSEY PFC	33-8556	TRE-VILLA PARK STA	NJ	EASTERN	33-8550	BC338550	200
C	80	SOUTH JERSEY PFC	33-8557	TRE-WEST TRENTON BR	NJ	EASTERN	33-8550	BC338550	200
C	140	WESTERN NEW YOR	35-1001	BFL-NIAGARA SQUARE STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1002	BFL-ELLICOTT STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1003	BFL-EASTSIDE STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1004	BFL-NORTHSIDE STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1007	BFL-BROADWAY-FILLMORE STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1008	BFL-WESTSIDE STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1009	BFL-CENTRAL PARK STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1011	BFL-KENMORE BR	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1012	BFL-LACKAWANNA BR	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1013	BFL-BLASDELL BR	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1014	BFL-SOUTHSIDE STA	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1016	BFL-WILLIAMSVILLE BR	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1017	BFL-HILER	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1018	BFL-WEST SENECA BR	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1019	BFL-CHEEKTOWAGA BR	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1021	BFL-AMHERST BR	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1023	BFL-COLLECTIONS	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1025	BUFFALO PO	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1026	BUFFALO NY P&DC	NY	EASTERN	35-1026	BC351025	200
C	140	WESTERN NEW YOR	35-1027	BUFFALO NY VMF	NY	EASTERN	35-1027	BC351025	200
C	140	WESTERN NEW YOR	35-1031	BFL-MAIN OFF WINDOWS	NY	EASTERN	35-1025	BC351025	200
C	140	WESTERN NEW YOR	35-1032	BFL ADMINISTRATION	NY	EASTERN	35-1032	BC351025	200

C	140 WESTERN NEW YOR	35-1034	ELMIRA AUX VMF OF ROCHESTER NY	NY	EASTERN	35-1034	BC357105	200
C	140 WESTERN NEW YOR	35-1037	BFL-CAYUGA RETAIL	NY	EASTERN	35-1025	BC351025	200
C	140 WESTERN NEW YOR	35-7101	NORTHWEST ROCHESTER NY P&DC	NY	EASTERN	35-7101	BC357101	200
C	140 WESTERN NEW YOR	35-7102	ROC-DOWNTOWN STA	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7105	ROCHESTER PO	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7106	ROCHESTER NY P&DC	NY	EASTERN	35-7106	BC357105	200
C	140 WESTERN NEW YOR	35-7107	ROCHESTER NY VMF	NY	EASTERN	35-7107	BC357105	200
C	140 WESTERN NEW YOR	35-7111	ROC-IRONDEQUOIT BR	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7112	ROC-LEXINGTON STA	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7113	ROC-WESTGATE BR	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7115	ROC-BEECHWOOD STA	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7116	ROC-BRIGHTON STA	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7118	ROC-GREECE BR	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7119	ROC-LOEHMANN'S PLZ BR	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7120	ROC-PANORAMA BR	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7122	ROC-MAIN OFF WINDOW	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7123	ROC-GMF CARRIER UNIT	NY	EASTERN	35-7105	BC357105	200
C	140 WESTERN NEW YOR	35-7126	ROC-ADMINISTRATIVE	NY	EASTERN	35-7105	BC357105	200
C	150 WESTERN PENNSYL\	41-2542	ERIE PA P&DC	PA	EASTERN	41-2542	BC412544	200
C	150 WESTERN PENNSYL\	41-2544	ERIE PO	PA	EASTERN	41-2544	BC412544	200
C	150 WESTERN PENNSYL\	41-2545	ERIE PA VMF	PA	EASTERN	41-2545	BC412544	200
C	150 WESTERN PENNSYL\	41-2549	ERI-DOWNTOWN STA	PA	EASTERN	41-2544	BC412544	200
C	150 WESTERN PENNSYL\	41-2550	ERI-SOUTH ERIE STA	PA	EASTERN	41-2544	BC412544	200
C	150 WESTERN PENNSYL\	41-2551	ERI-PRESQUE ISLE BR	PA	EASTERN	41-2544	BC412544	200
C	150 WESTERN PENNSYL\	41-4078	JOHNSTOWN PA P&DC-INSHD	PA	EASTERN	41-4078	BC414080	200
C	150 WESTERN PENNSYL\	41-4080	JOHNSTOWN PO	PA	EASTERN	41-4080	BC414080	200
C	150 WESTERN PENNSYL\	41-4081	JOHNSTOWN AUX VMF OF WASHINGT	PA	EASTERN	41-4081	BC414080	200
C	150 WESTERN PENNSYL\	41-4083	ALTOONA AUX VMF OF WASHINGTON	PA	EASTERN	41-4083	BC414080	200
C	150 WESTERN PENNSYL\	41-5464	MINERAL POINT PO	PA	EASTERN	41-4080	BC414080	200
C	150 WESTERN PENNSYL\	41-6602	PENNWOOD PLACE PA P&DC	PA	EASTERN	41-6602	BC416602	200
C	150 WESTERN PENNSYL\	41-6605	WESTERN PA CS DISTRICT	PA	EASTERN	41-6605	BC416608	200
C	150 WESTERN PENNSYL\	41-6608	PITTSBURGH PO	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6609	PITTSBURGH PA P&DC	PA	EASTERN	41-6609	BC416608	200
C	150 WESTERN PENNSYL\	41-6611	PITTSBURGH PA VMF	PA	EASTERN	41-6611	BC416608	200

C	150 WESTERN PENNSYL\	41-6613	PIT-ALLEGHENY STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6617	PIT-BLAWNOX BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6618	PIT-BLOOMFIELD STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6621	PIT-BROOKLINE STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6624	PIT-CASTLE SHANNON BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6625	PIT-CEDARHURST BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6628	PIT-E LIBERTY STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6629	PIT-ETNA BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6632	PIT-GRANT ST STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6633	PIT-GREENTREE BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6634	PIT-HAZELWOOD STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6637	PIT-MCKNIGHT BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6639	PIT-MONROEVILLE BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6643	PIT-MT OLIVER BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6647	PIT-OAKLAND STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6650	PIT-PENN HILLS BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6654	PIT-PLEASANT HILLS BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6657	PIT-SHARPSBURG BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6658	PIT-SOUTH HILLS BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6661	PIT-SWISSVALE BR	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6662	PIT-UPPER ST CLAIR STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6673	PIT-WOODS RUN STA	PA	EASTERN	41-6608	BC416608	200
C	150 WESTERN PENNSYL\	41-6677	EAST LIBERTY AUX VMF OF PITTSBURG	PA	EASTERN	41-6677	BC416608	200
C	150 WESTERN PENNSYL\	41-6678	GREENTREE AUX VMF OF PITTSBURGH	PA	EASTERN	41-6678	BC416608	200
C	150 WESTERN PENNSYL\	41-6679	PENN HILLS AUX VMF OF PITTSBURGH	PA	EASTERN	41-6679	BC416608	200
C	150 WESTERN PENNSYL\	41-6681	WARRENDALE (NDC) AUX VMF OF PITT	PA	EASTERN	41-6681	BC416608	200
C	170 CENTRAL PENNSYLV.	41-0128	ALLENTOWN PO	PA	EASTERN	41-0128	BC410128	200
C	170 CENTRAL PENNSYLV.	41-3484	HARRISBURG PO	PA	EASTERN	41-3484	BC413484	200
C	170 CENTRAL PENNSYLV.	41-3485	HARRISBURG PA P&DC	PA	EASTERN	41-3485	BC413484	200
C	170 CENTRAL PENNSYLV.	41-3486	HARRISBURG PA VMF	PA	EASTERN	41-3486	BC413484	200
C	170 CENTRAL PENNSYLV.	41-3489	SCRANTON PA VMF	PA	EASTERN	41-3489	BC413484	200
C	170 CENTRAL PENNSYLV.	41-3492	HBG-SWATARA BR	PA	EASTERN	41-3484	BC413484	200
C	170 CENTRAL PENNSYLV.	41-3493	HBG-LOWER PAXTON BR	PA	EASTERN	41-3484	BC413484	200
C	170 CENTRAL PENNSYLV.	41-3494	HBG-STEELTON BR	PA	EASTERN	41-3484	BC413484	200

C	170 CENTRAL PENNSYLV	41-3495	HBG-UPTOWN BR	PA	EASTERN	41-3484	BC413484	200
C	170 CENTRAL PENNSYLV	41-3496	HBG-FEDERAL SQUARE STA	PA	EASTERN	41-3484	BC413484	200
C	170 CENTRAL PENNSYLV	41-3497	WILLIAMSPORT AUX VMF OF HARRISB	PA	EASTERN	41-3497	BC413484	200
C	170 CENTRAL PENNSYLV	41-4214	HARRISBURG PA STC	PA	EASTERN	41-4214	BC413484	200
C	170 CENTRAL PENNSYLV	41-4408	LANCASTER PO	PA	EASTERN	41-4408	BC414408	200
C	170 CENTRAL PENNSYLV	41-4409	LANCASTER PA P&DC	PA	EASTERN	41-4409	BC414408	200
C	170 CENTRAL PENNSYLV	41-4410	LANCASTER PA VMF	PA	EASTERN	41-4410	BC414408	200
C	170 CENTRAL PENNSYLV	41-4413	LNC-CARRIER ANX	PA	EASTERN	41-4408	BC414408	200
C	170 CENTRAL PENNSYLV	41-4414	READING AUX VMF OF LANCASTER PA	PA	EASTERN	41-4414	BC414408	200
C	170 CENTRAL PENNSYLV	41-4581	LEHIGH VALLEY PA VMF	PA	EASTERN	41-4581	BC414583	200
C	170 CENTRAL PENNSYLV	41-4583	LEHIGH VALLEY PA P&DC	PA	EASTERN	41-4583	BC414583	200
C	170 CENTRAL PENNSYLV	41-6928	READING PO	PA	EASTERN	41-6928	BC416928	200
C	170 CENTRAL PENNSYLV	41-6929	RDG-DOWNTOWN STA	PA	EASTERN	41-6928	BC416928	200
C	170 CENTRAL PENNSYLV	41-6930	RDG-READING STA	PA	EASTERN	41-6928	BC416928	200
C	170 CENTRAL PENNSYLV	41-6931	RDG-SHILLINGTON BR	PA	EASTERN	41-6928	BC416928	200
C	170 CENTRAL PENNSYLV	41-6933	RDG-SINKING SPRINGS BR	PA	EASTERN	41-6928	BC416928	200
C	170 CENTRAL PENNSYLV	41-6935	RDG-WYOMISSING BR	PA	EASTERN	41-6928	BC416928	200
C	170 CENTRAL PENNSYLV	41-7540	SCRANTON PO	PA	EASTERN	41-7540	BC417540	200
C	170 CENTRAL PENNSYLV	41-7541	SCR-DOWNTOWN STA	PA	EASTERN	41-7540	BC417540	200
C	170 CENTRAL PENNSYLV	41-7542	SCRANTON PA P&DC	PA	EASTERN	41-7542	BC417540	200
C	170 CENTRAL PENNSYLV	41-7543	SCR-WEST STA	PA	EASTERN	41-7540	BC417540	200
C	170 CENTRAL PENNSYLV	41-7545	SCR-STEAMTOWN STA	PA	EASTERN	41-7540	BC417540	200
C	170 CENTRAL PENNSYLV	41-7546	SCR-DUNMORE BR	PA	EASTERN	41-7540	BC417540	200
C	170 CENTRAL PENNSYLV	41-7547	SCR-TAYLOR BR	PA	EASTERN	41-7540	BC417540	200
C	170 CENTRAL PENNSYLV	41-7548	SCR-MAIN OFFICE DELIVERY	PA	EASTERN	41-7540	BC417540	200
C	190 PHILADELPHIA METF	41-0501	PHILADELPHIA-CUSTOMER RETENTION	PA	EASTERN	41-0501	BC416544	200
C	190 PHILADELPHIA METF	41-1625	SOUTHEASTERN PA VMF	PA	EASTERN	41-1625	BC416088	200
C	190 PHILADELPHIA METF	41-6085	TRI COUNTY CFS	PA	EASTERN	41-6088	BC416088	200
C	190 PHILADELPHIA METF	41-6087	NRS-TRI-COUNTY BRANCH	PA	EASTERN	41-6088	BC416088	200
C	190 PHILADELPHIA METF	41-6088	NORRISTOWN PO	PA	EASTERN	41-6088	BC416088	200
C	190 PHILADELPHIA METF	41-6089	NRS-EAGLEVILLE DEL UNIT	PA	EASTERN	41-6088	BC416088	200
C	190 PHILADELPHIA METF	41-6090	NRS-KING OF PRUSSIA BR	PA	EASTERN	41-6088	BC416088	200
C	190 PHILADELPHIA METF	41-6544	PHILADELPHIA PO	PA	EASTERN	41-6544	BC416544	200
C	190 PHILADELPHIA METF	41-6547	PHILADELPHIA PA VMF	PA	EASTERN	41-6547	BC416544	200

C	190	PHILADELPHIA METF	41-6551	PHI-MAIN OFFICE STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6552	HUNT PARK/GERMANTOWN PA VMF	PA	EASTERN	41-6552	BC416544	200
C	190	PHILADELPHIA METF	41-6553	PHILADELPHIA NDC AUX VMF OF PHIL/	PA	EASTERN	41-6553	BC416544	200
C	190	PHILADELPHIA METF	41-6556	PHI-BOULEVARD STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6557	PHI-BUSTLETON STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6558	PHI-GERMANTOWN STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6559	PHI-EAST FALLS STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6561	PHI-EAST GERMANTOWN STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6562	PHI-OVERBROOK STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6563	PHI-FAIRMOUNT STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6565	PHI-FOX CHASE STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6566	PHI-FRANKFORD STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6567	PHI-WEST PARK STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6569	PHI-HOLMESBURG STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6570	PHI-HUNTING PARK STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6571	PHI-KENSINGTON STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6572	PHI-KINGSESSING STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6573	PHI-LOGAN STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6574	PHI-MANAYUNK STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6575	PHI-MARKET SQUARE STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6579	PHI-PASCHALL STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6581	PHI-POINT BREEZE STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6582	PHI-RICHMOND STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6583	PHI-N PHILADELPHIA STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6585	PHI-ROXBOROUGH STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6586	PHI-SCHUYLKILL STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6587	PHI-SOUTHWARK STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6589	PHI-SPRING GARDEN STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6590	PHI-TACONY STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6591	PHI-TORRESDALE STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6593	PHI-WEST MARKET STA	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-6594	PHI-WILLIAM PENN RETAIL	PA	EASTERN	41-6544	BC416544	200
C	190	PHILADELPHIA METF	41-7965	PHILADELPHIA PA P&DC	PA	EASTERN	41-7965	BC416544	200
C	250	APPALACHIAN PFC	51-7716	ROANOKE PO	VA	EASTERN	51-7716	BC517716	200

C	250 APPALACHIAN PFC	51-7717	ROANOKE VA P&DC	VA	EASTERN	51-7717	BC517716	200
C	250 APPALACHIAN PFC	51-7718	ROANOKE VA VMF	VA	EASTERN	51-7718	BC517716	200
C	250 APPALACHIAN PFC	51-7719	ROA-CARRIER ANX	VA	EASTERN	51-7716	BC517716	200
C	250 APPALACHIAN PFC	51-7720	ROA-CAVE SPRING BR	VA	EASTERN	51-7716	BC517716	200
C	250 APPALACHIAN PFC	51-7721	ROA-GRANDIN ROAD STA	VA	EASTERN	51-7716	BC517716	200
C	250 APPALACHIAN PFC	51-7722	ROA-HOLLINS BR	VA	EASTERN	51-7716	BC517716	200
C	250 APPALACHIAN PFC	51-7723	ROA-MELROSE ST	VA	EASTERN	51-7716	BC517716	200
C	250 APPALACHIAN PFC	51-7724	LYNCHBURG AUX VMF OF ROANOKE V	VA	EASTERN	51-7724	BC517716	200
C	250 APPALACHIAN PFC	55-1458	CHARLESTON PO	WV	EASTERN	55-1458	BC551458	200
C	250 APPALACHIAN PFC	55-1459	CHARLESTON WV P&DC	WV	EASTERN	55-1459	BC551458	200
C	250 APPALACHIAN PFC	55-1460	CHARLESTON WV VMF	WV	EASTERN	55-1460	BC551458	200
C	250 APPALACHIAN PFC	55-1463	CRW-CROSS LANES BR	WV	EASTERN	55-1458	BC551458	200
C	250 APPALACHIAN PFC	55-1466	HUNTINGTON AUX VMF OF CHARLEST	WV	EASTERN	55-1466	BC551458	200
C	250 APPALACHIAN PFC	55-1467	CRW-SISSONVILLE BR	WV	EASTERN	55-1458	BC551458	200
C	250 APPALACHIAN PFC	55-1468	CRW-SOUTH CHARLESTON BR	WV	EASTERN	55-1458	BC551458	200
C	250 APPALACHIAN PFC	55-1469	CRW-STONEWALL STA	WV	EASTERN	55-1458	BC551458	200
C	370 TENNESSEE PFC	47-1560	CHATTANOOGA PO	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1562	CHATTANOOGA TN P&DC	TN	EASTERN	47-1562	BC471560	200
C	370 TENNESSEE PFC	47-1564	CHA-EAST RIDGE BR	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1565	CHA-EASTGATE STA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1566	CHA-RED BANK BR	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1567	CHA-SOUTH STA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1569	CHA-EAST STA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1570	CHA-HIGHLAND PARK STA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1571	CHA-CHICKAMAUGA FSTA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1572	CHA-MURRAY LAKE HILLS STA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1573	CHA-GMF WINDOW	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1574	CHA-DOWNTOWN STA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-1575	CHA-NORTH STA	TN	EASTERN	47-1560	BC471560	200
C	370 TENNESSEE PFC	47-4626	KNO-NORTHWEST CARRIER ANX	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4627	KNO-HALLS STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4628	KNO-CEDAR BLUFF STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4629	KNO-FOUNTAIN CITY STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4630	KNO-FARRAGUT FSTA	TN	EASTERN	47-4632	BC474632	200

C	370 TENNESSEE PFC	47-4631	KNO-GMF WINDOW SERVICE	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4632	KNOXVILLE PO	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4634	KNOXVILLE TN P&DC	TN	EASTERN	47-4634	BC474632	200
C	370 TENNESSEE PFC	47-4635	KNO-CONCORD BR	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4636	KNO-SOUTH STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4637	KNO-NORWOOD FSTA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4638	KNO-DOWNTOWN STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4639	KNO-BURLINGTON STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4640	KNO-NORTH STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-4641	KNO-WEST STA	TN	EASTERN	47-4632	BC474632	200
C	370 TENNESSEE PFC	47-5664	MEMPHIS PO	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-5666	MEMPHIS TN P&DC	TN	EASTERN	47-5666	BC475664	200
C	370 TENNESSEE PFC	47-5667	MEMPHIS TN VMF	TN	EASTERN	47-5667	BC475664	200
C	370 TENNESSEE PFC	47-5670	MEMPHIS WHITE STATION AUX VMF C	TN	EASTERN	47-5670	BC475664	200
C	370 TENNESSEE PFC	47-5671	MEMPHIS NDC AUX VMF OF MEMPHIS	TN	EASTERN	47-5671	BC475664	200
C	370 TENNESSEE PFC	47-6144	NASHVILLE PO	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6145	NASHVILLE TN P&DC	TN	EASTERN	47-6145	BC476144	200
C	370 TENNESSEE PFC	47-6147	NASHVILLE TN VMF	TN	EASTERN	47-6147	BC476144	200
C	370 TENNESSEE PFC	47-6148	TENNESSEE CS DISTRICT	TN	EASTERN	47-6148	BC476144	200
C	370 TENNESSEE PFC	47-6150	NAS-DONELSON STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6151	NAS-WOODBINE STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6152	NAS-BELLEVUE BR	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6153	NAS-EAST STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6154	NAS-MELROSE STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6155	NAS-GLENVIEW STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6156	NAS-GMF WINDOW	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6157	NAS-ACKLEN STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6158	NAS-GREEN HILLS STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6159	NAS-WEST STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6160	NAS-BELLE MEADE STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6161	NAS-CHURCH STREET STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6162	NAS-NORTHEAST STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6163	NAS-SOUTH STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6164	NAS-BROADWAY STA	TN	EASTERN	47-6144	BC476144	200

C	370 TENNESSEE PFC	47-6165	NAS-METRO STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6166	NAS-ARCADE STA	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6167	NAS-JERE BAXTER BR	TN	EASTERN	47-6144	BC476144	200
C	370 TENNESSEE PFC	47-6168	JOHNSON CITY AUX VMF OF KNOXVILL	TN	EASTERN	47-6168	BC474632	200
C	370 TENNESSEE PFC	47-6169	CHATTANOOGA TN VMF	TN	EASTERN	47-6169	BC471560	200
C	370 TENNESSEE PFC	47-6170	KNOXVILLE TN VMF	TN	EASTERN	47-6170	BC474632	200
C	370 TENNESSEE PFC	47-8029	TENNESSEE SUPPORT	TN	EASTERN	47-8029	BC476144	200
C	370 TENNESSEE PFC	47-9500	MEM-AMC STA	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9501	MEM-BARTLETT	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9503	MEM-COLLECTIONS	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9504	MEM-COLONIAL FIN UNIT	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9506	MEM-CROSSTOWN CARR AN	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9507	MEM-CROSSTOWN FINANCE	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9508	MEM-DESOTO/FRONT ST CARR ANNEX	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9509	MEM-EAST FINANCE UNIT	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9510	MEM-EAST/LAMAR CARR A	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9511	MEM-FRAYSER	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9512	MEM-PEABODY PLACE FIN UNIT	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9513	MEM-HICKORY HILL	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9514	MEM-HIGHLAND HEIGHTS	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9515	MEM-HOLIDAY CITY	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9516	MEM-HOLLYWD/BINGHMPTN	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9517	MEM-LAMAR FIN UNIT	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9518	MEM-LEE FINANCE UNIT	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9519	MEM-MAIN OFC WNDW SVC	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9520	MEM-MALLORY	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9521	MEM-MENDENHALL	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9522	MEM-NORTH	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9523	MEM-RALEIGH	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9524	MEM-RIVERSIDE FINANCE	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9525	MEM-WHITE STATION	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9526	MEM-WHITEHAVEN STA	TN	EASTERN	47-5664	BC475664	200
C	370 TENNESSEE PFC	47-9527	MEM-HACKS CROSS FINANCE UNIT	TN	EASTERN	47-5664	BC475664	200
C	400 KENTUCKIANA PFC	17-2651	EVANSVILLE PO	IN	EASTERN	17-2651	BC172651	200

C	400 KENTUCKIANA PFC	17-2652	EVANSVILLE IN VMF	IN	EASTERN	17-2652	BC172651	200
C	400 KENTUCKIANA PFC	17-2653	EVANSVILLE IN P&DC	IN	EASTERN	17-2653	BC172651	200
C	400 KENTUCKIANA PFC	17-2654	EVN-DIAMOND VALLEY STA	IN	EASTERN	17-2651	BC172651	200
C	400 KENTUCKIANA PFC	17-2655	EVN-LAWNDALE STA	IN	EASTERN	17-2651	BC172651	200
C	400 KENTUCKIANA PFC	17-2656	EVN-RIVER CITY STA	IN	EASTERN	17-2651	BC172651	200
C	400 KENTUCKIANA PFC	17-2657	EVN-WEST WABASH STA	IN	EASTERN	17-2651	BC172651	200
C	400 KENTUCKIANA PFC	20-4600	LEXINGTON PO	KY	EASTERN	20-4600	BC204600	200
C	400 KENTUCKIANA PFC	20-4601	LEXINGTON KY P&DC	KY	EASTERN	20-4601	BC204600	200
C	400 KENTUCKIANA PFC	20-4602	LEXINGTON KY VMF	KY	EASTERN	20-4602	BC204600	200
C	400 KENTUCKIANA PFC	20-4605	LEX-BEAUMONT STA	KY	EASTERN	20-4600	BC204600	200
C	400 KENTUCKIANA PFC	20-4606	LEX-BLUE GRASS STA	KY	EASTERN	20-4600	BC204600	200
C	400 KENTUCKIANA PFC	20-4607	LEX-BRENTWOOD STA	KY	EASTERN	20-4600	BC204600	200
C	400 KENTUCKIANA PFC	20-4608	LEX-GARDENSIDE STA	KY	EASTERN	20-4600	BC204600	200
C	400 KENTUCKIANA PFC	20-4609	LEX-LIBERTY ROAD STA	KY	EASTERN	20-4600	BC204600	200
C	400 KENTUCKIANA PFC	20-4773	LOUISVILLE CFS	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4786	KENTUCKIANA CS DISTRICT	KY	EASTERN	20-4786	BC204788	200
C	400 KENTUCKIANA PFC	20-4788	LOUISVILLE PO	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4789	LOUISVILLE KY P&DC	KY	EASTERN	20-4789	BC204788	200
C	400 KENTUCKIANA PFC	20-4790	LOUISVILLE KY VMF	KY	EASTERN	20-4790	BC204788	200
C	400 KENTUCKIANA PFC	20-4793	LOU-ANNSHIRE ANX	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4794	LOU-DOWNTOWN STA	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4795	LOU-FERN CREEK BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4797	LOU-HIKES POINT STA	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4798	LOU-IROQUOIS STA	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4799	LOU-JEFFERSONTOWN BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4801	LOU-LYNDON BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4802	LOU-MARTIN LUTHER KING STA	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4803	LOU-MIDDLETOWN BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4804	LOU-OKOLONA BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4805	LOU-PLEASURE RIDGE PK BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4806	LOU-SAINT MATTHEWS BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4807	LOU-SHELBY BR	KY	EASTERN	20-4788	BC204788	200
C	400 KENTUCKIANA PFC	20-4809	LOU-SHIVELY BR	KY	EASTERN	20-4788	BC204788	200
C	440 NORTHERN OHIO PF	38-0084	AKRON PO	OH	EASTERN	38-0084	BC380084	200

C	440	NORTHERN OHIO PF	38-0085	AKRON OH P&DC	OH	EASTERN	38-0085	BC380084	200
C	440	NORTHERN OHIO PF	38-0086	AKRON OH VMF	OH	EASTERN	38-0086	BC380084	200
C	440	NORTHERN OHIO PF	38-0090	AKR-SOUTH ARLINGTON STA	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0092	AKR-NORTH HILL STA	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0094	AKR-KENMORE STA	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0095	AKR-FIVE POINTS STA	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0096	AKR-FIRESTONE PARK STA	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0097	AKR-FAIRLAWN BR	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0099	AKR-ELLET STA	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0101	AKR-COPLEY BR	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0102	AKR-MAIN OFFICE STA	OH	EASTERN	38-0084	BC380084	200
C	440	NORTHERN OHIO PF	38-0103	MANSFIELD AUX VMF OF AKRON OH	OH	EASTERN	38-0103	BC380084	200
C	440	NORTHERN OHIO PF	38-0104	CANTON OH VMF	OH	EASTERN	38-0104	BC380084	200
C	440	NORTHERN OHIO PF	38-0501	AKRON-CUSTOMER RETENTION	OH	EASTERN	38-0501	BC380084	200
C	440	NORTHERN OHIO PF	38-1323	CANTON PO	OH	EASTERN	38-1323	BC381323	200
C	440	NORTHERN OHIO PF	38-1324	CAN-NORTH CANTON STA	OH	EASTERN	38-1323	BC381323	200
C	440	NORTHERN OHIO PF	38-1325	CAN-NEWMARKET STA	OH	EASTERN	38-1323	BC381323	200
C	440	NORTHERN OHIO PF	38-1326	CAN-NE WATERWORKS STA	OH	EASTERN	38-1323	BC381323	200
C	440	NORTHERN OHIO PF	38-1327	CAN-COUNTRY FAIR STA	OH	EASTERN	38-1323	BC381323	200
C	440	NORTHERN OHIO PF	38-1328	CAN-JACKSON-BELDEN STA	OH	EASTERN	38-1323	BC381323	200
C	440	NORTHERN OHIO PF	38-1331	CAN-MAIN OFFICE STA	OH	EASTERN	38-1323	BC381323	200
C	440	NORTHERN OHIO PF	38-1646	CLE-AMF FIN	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1647	CLE-BAY VILLAGE BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1648	CLE-BEACHLAND STA	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1649	CLE-BEACHWOOD BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1650	CLE-BEDFORD BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1651	CLE-BRIGGS BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1652	CLE-BROADVIEW HTS BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1653	CLE-BROOKLYN BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1655	CLE-CLEVELAND HTS BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1656	CLE-COLLINWOOD STA	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1657	CLE-CRANWOOD STA	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1658	CLE-EAST CLEVELAND BR	OH	EASTERN	38-1666	BC381666	200
C	440	NORTHERN OHIO PF	38-1660	CLE-EUCLID BR	OH	EASTERN	38-1666	BC381666	200

C	440 NORTHERN OHIO PF	38-1661	CLE-FAIRVIEW PARK BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1662	CLE-GARFIELD HTS BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1665	CLE-GLENVILLE BRATENAHL BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1666	CLEVELAND PO	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1667	CLEVELAND OH VMF	OH	EASTERN	38-1667	BC381666	200
C	440 NORTHERN OHIO PF	38-1668	CLE-INDEPENDENCE BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1669	CLE-LAKEWOOD BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1670	CLEVELAND OH P&DC	OH	EASTERN	38-1670	BC381666	200
C	440 NORTHERN OHIO PF	38-1675	CLE-LYNHURST/MAYFIELD BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1677	CLE-MIDPARK BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1678	CLE-NEWBURG STA	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1679	CLE-NOBLE STA	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1681	CLE-NORTH ROYALTON BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1682	CLE-OLMSTED FALLS BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1683	CLE-PARMA BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1684	CLE-PEARLBROOK STA	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1685	CLE-PURITAS PARK BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1686	CLE-RICHMOND HTS BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1688	CLE-ROCKY RIVER BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1689	CLE-SHAKER HTS STA	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1690	CLE-SOLON BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1691	CLE-SOUTH EUCLID BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1692	CLE-STATION A BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1693	CLE-STATION B BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1695	CLE-STRONGSVILLE BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1696	CLE-WEST PARK STA	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1697	CLE-WESTLAKE BR	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1698	CLE-MO FIN	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1699	CLE-CARRIER ANX	OH	EASTERN	38-1666	BC381666	200
C	440 NORTHERN OHIO PF	38-1700	PARMA OH VMF	OH	EASTERN	38-1700	BC381666	200
C	440 NORTHERN OHIO PF	38-1702	SHAKER HEIGHTS OH VMF	OH	EASTERN	38-1702	BC381666	200
C	440 NORTHERN OHIO PF	38-8260	TOLEDO PO	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8261	TOLEDO OH P&DC	OH	EASTERN	38-8261	BC388260	200
C	440 NORTHERN OHIO PF	38-8262	TOLEDO OH VMF	OH	EASTERN	38-8262	BC388260	200

C	440 NORTHERN OHIO PF	38-8263	TOL-FRANKLIN PARK STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8264	TOL-REYNOLDS CORNERS STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8265	TOL-POINT PLACE BRA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8266	TOL-STA A	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8268	TOL-OREGON BR	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8269	TOL-ROSSFORD BR	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8270	TOL-WEST TOLEDO STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8271	TOL-KENWOOD STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8272	TOL-WERNERT STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8273	TOL-SOUTH TOLEDO STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8275	TOL-MIDTOWN STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8276	TOL-OLD WEST END STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8277	TOL-CENTRAL STA	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-8278	TOL-TOLEDO MAIN STATION	OH	EASTERN	38-8260	BC388260	200
C	440 NORTHERN OHIO PF	38-9219	YOUNGSTOWN PO	OH	EASTERN	38-9219	BC389219	200
C	440 NORTHERN OHIO PF	38-9220	YOUNGSTOWN OH VMF	OH	EASTERN	38-9220	BC389219	200
C	440 NORTHERN OHIO PF	38-9221	YOUNGSTOWN P&DF	OH	EASTERN	38-9221	BC389219	200
C	440 NORTHERN OHIO PF	38-9222	YNG-POLAND STA	OH	EASTERN	38-9219	BC389219	200
C	440 NORTHERN OHIO PF	38-9223	YNG-NORTHSIDE STA	OH	EASTERN	38-9219	BC389219	200
C	440 NORTHERN OHIO PF	38-9224	YNG-CORNERSBURG STA	OH	EASTERN	38-9219	BC389219	200
C	440 NORTHERN OHIO PF	38-9225	YNG-BOARDMAN STA	OH	EASTERN	38-9219	BC389219	200
C	440 NORTHERN OHIO PF	38-9227	YNG-AUSTINTOWN STA	OH	EASTERN	38-9219	BC389219	200
C	440 NORTHERN OHIO PF	38-9228	YNG-MAIN OFFICE STA	OH	EASTERN	38-9219	BC389219	200
C	440 NORTHERN OHIO PF	38-9229	WARREN AUX VMF OF YOUNGSTOWN	OH	EASTERN	38-9229	BC389219	200
C	440 NORTHERN OHIO PF	41-2553	NEW CASTLE AUX VMF OF YOUNGSTO	OH	EASTERN	41-2553	BC389219	200
C	450 OHIO VALLEY PFC	38-0521	DAYTON-CUSTOMER RETENTION	OH	EASTERN	38-0521	BC382093	200
C	450 OHIO VALLEY PFC	38-1603	CINCINNATI PO	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1605	CINCINNATI OH P&DC	OH	EASTERN	38-1605	BC381603	200
C	450 OHIO VALLEY PFC	38-1606	CINCINNATI OH VMF	OH	EASTERN	38-1606	BC381603	200
C	450 OHIO VALLEY PFC	38-1611	CIN-ANDERSON BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1614	CIN-CORRYVILLE STA	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1615	CIN-GROESBECK BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1616	CIN-LOCKLAND BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1618	CIN-MID CITY STA	OH	EASTERN	38-1603	BC381603	200

C	450 OHIO VALLEY PFC	38-1619	CIN-MT HEALTHY BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1620	CIN-MT WASHINGTON STA	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1621	CIN-MURRAY BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1622	CIN-NORWOOD BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1623	CIN-PARKDALE BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1624	CIN-PRICE HILL STA	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1625	CIN-SHARONVILLE BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1626	CIN-ST BERNARD BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1627	CIN-SYCAMORE BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1628	CIN-SYMMES BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1629	CIN-TAFT BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1632	CIN-WESTWOOD BR	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1633	CIN-WESTERN HILLS STA	OH	EASTERN	38-1603	BC381603	200
C	450 OHIO VALLEY PFC	38-1634	SHARONVILLE OH VMF	OH	EASTERN	38-1634	BC381603	200
C	450 OHIO VALLEY PFC	38-1635	NORWOOD OH VMF	OH	EASTERN	38-1635	BC381603	200
C	450 OHIO VALLEY PFC	38-1639	SPRINGDALE ANNEX	OH	EASTERN	38-1639	BC381603	200
C	450 OHIO VALLEY PFC	38-1744	COL-MAIN OFFICE CR UNITS	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1745	COL-EAST CARRIER STA	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1746	COL-WEST CARRIER STA	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1747	COL-BEECHWOLD STA	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1748	COL-BEXLEY BR	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1755	COL-EASTLAND CARRIER ANX	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1758	COL-GAHANNA CARRIER ANX	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1760	COL-GERMAN VILLAGE CARRIER ANX	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1768	COL-LIVINGSTON STA	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1769	COL-WESTLAND CARRIER STA	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1772	COL-NORTHLAND CARRIER ANX	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1774	COL-NORTHWEST CARRIER ANX	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1776	COL-OAKLAND PARK BR	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1781	COL-SOUTH COLUMBUS STA	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1784	COL-UNIVERSITY STA	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1786	COL-UPPER ARLINGTON BR	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1787	COL-WEST WORTHINGTON BR	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1789	COL-WHITEHALL CARRIER ANX	OH	EASTERN	38-1792	BC381792	200

C	450 OHIO VALLEY PFC	38-1790	COL-WORTHINGTON CARRIER ANX	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1792	COLUMBUS PO	OH	EASTERN	38-1792	BC381792	200
C	450 OHIO VALLEY PFC	38-1793	COLUMBUS OH P&DC	OH	EASTERN	38-1793	BC381792	200
C	450 OHIO VALLEY PFC	38-1794	COLUMBUS OH VMF	OH	EASTERN	38-1794	BC381792	200
C	450 OHIO VALLEY PFC	38-2093	DAYTON PO	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2094	DAYTON OH P&DC	OH	EASTERN	38-2094	BC382093	200
C	450 OHIO VALLEY PFC	38-2095	DAYTON OH VMF	OH	EASTERN	38-2095	BC382093	200
C	450 OHIO VALLEY PFC	38-2097	DAY-WEST CARROLLTON BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2098	DAY-TROTWOOD BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2099	DAY-BEAVERCREEK BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2100	DAY-KETTERING BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2101	DAY-WRIGHT BROTHERS STA	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2102	DAY-WASHINGTON TOWNSHIP BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2103	DAY-DAYTON VIEW STA	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2104	DAY-NORTHRIDGE STA	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2105	DAY-FOREST PARK BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2106	DAY-P L DUNBAR BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2108	DAY-WRIGHT PATTERSON BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2109	DAY-DABEL BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2110	DAY-HUBER HEIGHTS BR	OH	EASTERN	38-2093	BC382093	200
C	450 OHIO VALLEY PFC	38-2111	DAY-NORTH DAYTON STA	OH	EASTERN	38-2093	BC382093	200
C	963 EASTERN AREA PFC	38-1604	CINCINNATI NDC	OH	EASTERN	38-1604	BC381604	200
C	963 EASTERN AREA PFC	41-6545	PHILADELPHIA NDC	PA	EASTERN	41-6545	BC416545	200
C	963 EASTERN AREA PFC	41-6607	PITTSBURGH NDC	PA	EASTERN	41-6607	BC416607	200
C	963 EASTERN AREA PFC	47-5665	MEMPHIS NDC	TN	EASTERN	47-5665	BC475665	200
E	500 HAWKEYE PFC	18-0495	ATKINS PO	IA	WESTERN	18-1503	BC181503	200
E	500 HAWKEYE PFC	18-1502	CEDAR RAPIDS P&DC	IA	WESTERN	18-1502	BC181503	200
E	500 HAWKEYE PFC	18-1503	CEDAR RAPIDS PO	IA	WESTERN	18-1503	BC181503	200
E	500 HAWKEYE PFC	18-1505	CEDAR RAPIDS IA VMF	IA	WESTERN	18-1505	BC181503	200
E	500 HAWKEYE PFC	18-1510	CDR-WEST STA	IA	WESTERN	18-1503	BC181503	200
E	500 HAWKEYE PFC	18-1511	CDR-NORTHEAST STA	IA	WESTERN	18-1503	BC181503	200
E	500 HAWKEYE PFC	18-2412	DES MOINES PO	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2414	DES MOINES IA P&DC	IA	WESTERN	18-2414	BC182412	200
E	500 HAWKEYE PFC	18-2415	DES MOINES IA VMF	IA	WESTERN	18-2415	BC182412	200

E	500 HAWKEYE PFC	18-2416	HAWKEYE CS DISTRICT	IA	WESTERN	18-2416	BC182412	200
E	500 HAWKEYE PFC	18-2417	HAWKEY DIST SUPPORT	IA	WESTERN	18-2417	BC182412	200
E	500 HAWKEYE PFC	18-2420	DSM-MAIN OFFICE STA	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2423	DSM-ASH CREEK STA	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2424	DSM-BEAVERDALE STA	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2425	DSM-CAPITAL SQUARE STA	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2428	DSM-EAST SIDE CARRIER ANX	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2433	DSM-PLEASANT HILL BR	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2434	DSM-SOUTH DES MOINES STA	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2435	DSM-UNIVERSITY STA	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2436	DSM-URBANDALE BR	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2437	DSM-WEST DES MOINES BR	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2438	DSM-WEST SUBURBAN STA	IA	WESTERN	18-2412	BC182412	200
E	500 HAWKEYE PFC	18-2440	SIOUX CITY AUX VMF OF DES MOINES	IA	WESTERN	18-2440	BC182412	200
E	500 HAWKEYE PFC	18-3015	FAIRFAX PO	IA	WESTERN	18-1503	BC181503	200
E	500 HAWKEYE PFC	18-8748	SWISHER PO	IA	WESTERN	18-1503	BC181503	200
E	500 HAWKEYE PFC	18-9261	WALFORD PO	IA	WESTERN	18-1503	BC181503	200
E	553 NORTHLAND PFC	26-2590	DULUTH PO	MN	WESTERN	26-2590	BC262590	200
E	553 NORTHLAND PFC	26-2591	DUL-CIVIC CENTER STA	MN	WESTERN	26-2590	BC262590	200
E	553 NORTHLAND PFC	26-2592	DUL-LAKESIDE STA	MN	WESTERN	26-2590	BC262590	200
E	553 NORTHLAND PFC	26-2593	DUL-MILLER HILL STA	MN	WESTERN	26-2590	BC262590	200
E	553 NORTHLAND PFC	26-2595	DULUTH MN P&DC	MN	WESTERN	26-2595	BC262590	200
E	553 NORTHLAND PFC	26-2596	DUL-MOUNT ROYAL STA	MN	WESTERN	26-2590	BC262590	200
E	553 NORTHLAND PFC	26-2597	DUL-PROCTOR BR	MN	WESTERN	26-2590	BC262590	200
E	553 NORTHLAND PFC	26-2598	DUL-WEST DULUTH STA	MN	WESTERN	26-2590	BC262590	200
E	553 NORTHLAND PFC	26-6301	MIN-BLAINE BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6302	MIN-BLOOMINGTON BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6303	MIN-BROOKLYN CTR BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6304	MIN-BROOKLYN PARK BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6305	MIN-BUTLER QUARTER STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6306	MIN-COLUMBIA HEIGHTS BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6307	MIN-COMMERCE STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6308	MIN-COON RAPIDS BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6309	MIN-CRYSTAL BR	MN	WESTERN	26-6360	BC266360	200

E	553 NORTHLAND PFC	26-6311	MIN-DIAMOND LAKE STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6312	MIN-DINKYTOWN STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6313	MIN-EAST SIDE STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6314	MIN-EDINA BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6315	MIN-ELMWOOD BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6316	MIN-FRIDLEY BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6317	MIN-FRIDLEY CARRIER ANX	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6318	MIN-GOLDEN VALLEY BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6319	MIN-LAKE STREET STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6320	MIN-CENTRAL FORWARDING UNIT	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6321	MIN-LOOP STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6322	MIN-LORING STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6323	MIN-LOST LAKE BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6324	MIN-LOWRY AVENUE STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6325	MIN-MINNEHAHA STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6326	MIN-NOKOMIS STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6327	MIN-NORMANDALE BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6329	MIN-PLYMOUTH BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6331	MIN-POWDERHORN STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6332	MIN-RICHFIELD BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6333	MIN-ROBBINSDALE BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6334	MIN-ST LOUIS PARK BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6335	MIN-THOMAS E BURNETT JR BR	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6336	MIN-UNIVERSITY STA	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6337	MIN-WEST EDINA CARRIER ANX	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6360	MINNEAPOLIS PO	MN	WESTERN	26-6360	BC266360	200
E	553 NORTHLAND PFC	26-6362	MINNEAPOLIS MN P&DC	MN	WESTERN	26-6362	BC266360	200
E	553 NORTHLAND PFC	26-6364	MINNEAPOLIS MN VMF	MN	WESTERN	26-6364	BC266360	200
E	553 NORTHLAND PFC	26-6365	NORTHLAND CS DISTRICT	MN	WESTERN	26-6365	BC266360	200
E	553 NORTHLAND PFC	26-6377	DULUTH AUX VMF OF MINNEAPOLIS M	MN	WESTERN	26-6377	BC266360	200
E	553 NORTHLAND PFC	26-6379	BLOOMINGTON AUX VMF OF MINNEA	MN	WESTERN	26-6379	BC266360	200
E	553 NORTHLAND PFC	26-8331	STP-TWIN CITIES AMF STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8332	STP-MAIN OFFICE STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8333	STP-APPLE VALLEY BR	MN	WESTERN	26-8360	BC268360	200

E	553 NORTHLAND PFC	26-8334	STP-COMO STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8335	STP-DAYTONS BLUFF STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8336	STP-SEEGER SQUARE FSTA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8337	STP-EAGAN BR	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8338	STP-EASTERN HEIGHTS STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8339	STP-ELWAY POSTAL STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8341	STP-INDUSTRIAL STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8342	STP-MENDOTA BR	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8343	STP-MN TRANSFER STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8344	STP-NEW BRIGHTON BR	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8345	STP-NORTH ST PAUL BR	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8346	STP-NORTH ST PAUL ANX	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8348	STP-RICE STREET STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8349	STP-RIVERVIEW STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8351	STP-ROSEVILLE BR	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8353	STP-WEST ST PAUL BR	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8355	STP-WHITE BEAR STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8356	STP-WOODBURY BR	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8357	STP-CLIFF LAKE FINANCE STA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8358	STP-VADNAIS HEIGHTS FSTA	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8359	STP-VADNAIS HEIGHTS ANX	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8360	SAINT PAUL PO	MN	WESTERN	26-8360	BC268360	200
E	553 NORTHLAND PFC	26-8361	SAINT PAUL MN P&DC	MN	WESTERN	26-8361	BC268360	200
E	553 NORTHLAND PFC	26-8362	SAINT PAUL MN VMF	MN	WESTERN	26-8362	BC268360	200
E	553 NORTHLAND PFC	26-8363	TWIN CITIES L&DC	MN	WESTERN	26-8363	BC268360	200
E	570 DAKOTAS PFC	29-0771	BILLINGS MT VMF	MT	WESTERN	29-0771	BC290774	200
E	570 DAKOTAS PFC	29-0772	BILLINGS P&DC	MT	WESTERN	29-0772	BC290774	200
E	570 DAKOTAS PFC	29-0774	BILLINGS PO	MT	WESTERN	29-0774	BC290774	200
E	570 DAKOTAS PFC	29-0780	BIL-DOWNTOWN STA	MT	WESTERN	29-0774	BC290774	200
E	570 DAKOTAS PFC	29-0781	BIL-RONALD REAGAN STA	MT	WESTERN	29-0774	BC290774	200
E	570 DAKOTAS PFC	29-0782	BIL-CENTENNIAL STA	MT	WESTERN	29-0774	BC290774	200
E	570 DAKOTAS PFC	29-0783	BIL-PIONEER STA	MT	WESTERN	29-0774	BC290774	200
E	570 DAKOTAS PFC	37-3053	FARGO P&DF	ND	WESTERN	37-3053	BC373056	200
E	570 DAKOTAS PFC	37-3056	FARGO PO	ND	WESTERN	37-3056	BC373056	200

E	570 DAKOTAS PFC	37-3058	FAR-PRAIRIEWOOD STA	ND	WESTERN	37-3056	BC373056	200
E	570 DAKOTAS PFC	37-3059	FAR-TROLLWOOD ANX	ND	WESTERN	37-3056	BC373056	200
E	570 DAKOTAS PFC	46-7860	SIOUX FALLS SD P&DC	SD	WESTERN	46-7860	BC467866	200
E	570 DAKOTAS PFC	46-7861	SIO-DOWNTOWN STA	SD	WESTERN	46-7866	BC467866	200
E	570 DAKOTAS PFC	46-7862	SIO-SOUTHWEST ANX	SD	WESTERN	46-7866	BC467866	200
E	570 DAKOTAS PFC	46-7865	SIO-MEADOWS RETAIL STA	SD	WESTERN	46-7866	BC467866	200
E	570 DAKOTAS PFC	46-7866	SIOUX FALLS PO	SD	WESTERN	46-7866	BC467866	200
E	570 DAKOTAS PFC	46-7868	SIOUX FALLS SD VMF	SD	WESTERN	46-7868	BC467866	200
E	640 MID-AMERICA PFC	19-8355	SHAWNEE MISSION PO	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8357	SHA-BLUE VALLEY BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8358	SHA-BROOKRIDGE BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8359	SHA-INDIAN CREEK BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8361	SHA-LENEXA BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8362	SHA-MONTICELLO BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8363	SHA-OVERLAND PARK BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8364	SHA-OXFORD CARRIER ANX	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8365	SHA-PRAIRIE VILLAGE BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	19-8366	SHA-SHAWNEE BR	KS	WESTERN	19-8355	BC198355	200
E	640 MID-AMERICA PFC	28-4218	KCMO PO	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4219	KCMO MO P&DC	MO	WESTERN	28-4219	BC284218	200
E	640 MID-AMERICA PFC	28-4220	KCMO MO VMF	MO	WESTERN	28-4220	BC284218	200
E	640 MID-AMERICA PFC	28-4222	KCM-BARRY WOODS CARRIER ANX	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4225	KCM-EXECUTIVE PARK STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4226	KCM-GLADSTONE STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4227	KCM-HICKMAN MILLS STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4229	KCM-HODGE PARK STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4231	KCM-JAMES CREWS STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4232	KCM-LONGVIEW STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4233	KCM-MARTIN CITY STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4234	KCM-NORTH KANSAS CITY STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4235	KCM-PARKVILLE STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4236	KCM-PARKWAY STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4237	KCM-RAYTOWN STA	MO	WESTERN	28-4218	BC284218	200
E	640 MID-AMERICA PFC	28-4238	KCM-RIVERSIDE STA	MO	WESTERN	28-4218	BC284218	200

E	640	MID-AMERICA PFC	28-4239	KCM-SOUTH TROOST STA	MO	WESTERN	28-4218	BC284218	200
E	640	MID-AMERICA PFC	28-4243	KCM-WALDO STA	MO	WESTERN	28-4218	BC284218	200
E	640	MID-AMERICA PFC	28-4244	KCM-WESTPORT STA	MO	WESTERN	28-4218	BC284218	200
E	640	MID-AMERICA PFC	28-4245	KCM-MAIN OFFICE STA	MO	WESTERN	28-4218	BC284218	200
E	640	MID-AMERICA PFC	28-7530	SPRINGFIELD PO	MO	WESTERN	28-7530	BC287530	200
E	640	MID-AMERICA PFC	28-7531	SPR-GLENSTONE STA	MO	WESTERN	28-7530	BC287530	200
E	640	MID-AMERICA PFC	28-7533	SPR-SOUTHWEST CARRIER ANX	MO	WESTERN	28-7530	BC287530	200
E	640	MID-AMERICA PFC	28-7534	SPR-GREISEMER CARRIER ANX	MO	WESTERN	28-7530	BC287530	200
E	640	MID-AMERICA PFC	28-7535	SPRINGFIELD P&DC	MO	WESTERN	28-7535	BC287530	200
E	680	CENTRAL PLAINS PFC	19-4822	NATIONAL PRINTING CENTER	KS	WESTERN	19-4822	BC198932	200
E	680	CENTRAL PLAINS PFC	19-5099	CUSTOMER CARE CENTER - KS	KS	WESTERN	19-5099	BC199713	200
E	680	CENTRAL PLAINS PFC	19-5766	MATL DIST CTR -TOPEKA	KS	WESTERN	19-5766	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8527	NATNAL MATERIAL CUST SVC CENTER	KS	WESTERN	19-8527	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8932	TOPEKA PO	KS	WESTERN	19-8932	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8933	TOP-MAIN OFFICE	KS	WESTERN	19-8932	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8934	TOPEKA KS VMF	KS	WESTERN	19-8934	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8935	TOP-GAGE CENTER STA	KS	WESTERN	19-8932	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8936	TOP-HICREST STA	KS	WESTERN	19-8932	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8938	TOP-NORTH TOPEKA STA	KS	WESTERN	19-8932	BC198932	200
E	680	CENTRAL PLAINS PFC	19-8939	TOP-SHERWOOD STA	KS	WESTERN	19-8932	BC198932	200
E	680	CENTRAL PLAINS PFC	19-9713	WICHITA PO	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9714	WICHITA KS P&DC	KS	WESTERN	19-9714	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9715	WIC-CHISHOLM STA	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9716	WIC-CORPORATE HILLS STA	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9717	WICHITA KS VMF	KS	WESTERN	19-9717	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9718	WIC-DELANO STA	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9719	WIC-DOWNTOWN STA	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9721	WIC-MUNGER STA	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9722	WIC-NORTH STA	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	19-9723	WIC-RIVER CITY STA	KS	WESTERN	19-9713	BC199713	200
E	680	CENTRAL PLAINS PFC	30-1140	BOYS TOWN PO	NE	WESTERN	30-1140	BC306645	200
E	680	CENTRAL PLAINS PFC	30-5160	LINCOLN PO	NE	WESTERN	30-5160	BC305160	200
E	680	CENTRAL PLAINS PFC	30-5161	LNK-CHENEY RIDGE STA	NE	WESTERN	30-5160	BC305160	200
E	680	CENTRAL PLAINS PFC	30-5162	LNK-INDIAN VILLAGE STA	NE	WESTERN	30-5160	BC305160	200

E	680	CENTRAL PLAINS PF(	30-5163	LNK-COLLEGE VIEW STA	NE	WESTERN	30-5160	BC305160	200
E	680	CENTRAL PLAINS PF(	30-5165	LINCOLN P&DF	NE	WESTERN	30-5165	BC305160	200
E	680	CENTRAL PLAINS PF(	30-5166	LNK-MAIN OFFICE	NE	WESTERN	30-5160	BC305160	200
E	680	CENTRAL PLAINS PF(	30-5168	LNK-NORTHVIEW ANX	NE	WESTERN	30-5160	BC305160	200
E	680	CENTRAL PLAINS PF(	30-6640	OMA-AMES STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6641	OMA-BENSON STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6642	OMA-BOYSTOWN STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6643	OMA-ELMWOOD PARK STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6645	OMAHA PO	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6646	OMAHA NE P&DC	NE	WESTERN	30-6646	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6647	OMAHA NE VMF	NE	WESTERN	30-6647	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6649	OMA-FLORENCE STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6650	OMA-MAIN OFFICE	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6651	OMA-MILLARD BR	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6653	OMA-NORTHWEST BR	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6654	OMA-PAPILLION BR	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6655	OMA-RALSTON BR	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6656	OMA-SADDLE CREEK STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6657	OMA-SOUTH OMAHA STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6658	OMA-STONEYRIDGE ANX	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6659	OMA-WEST OMAHA STA	NE	WESTERN	30-6645	BC306645	200
E	680	CENTRAL PLAINS PF(	30-6661	LINCOLN AUX VMF OF OMAHA NE	NE	WESTERN	30-6661	BC306645	200
E	800	COLORADO/WYOMI	07-0489	AUR-MAIN OFFICE STA	CO	WESTERN	07-0495	BC070495	200
E	800	COLORADO/WYOMI	07-0490	AUR-ALTURA STA	CO	WESTERN	07-0495	BC070495	200
E	800	COLORADO/WYOMI	07-0491	AUR-FLETCHER STA	CO	WESTERN	07-0495	BC070495	200
E	800	COLORADO/WYOMI	07-0492	AUR-HOFFMAN HEIGHTS STA	CO	WESTERN	07-0495	BC070495	200
E	800	COLORADO/WYOMI	07-0493	AUR-TOWER STA	CO	WESTERN	07-0495	BC070495	200
E	800	COLORADO/WYOMI	07-0494	AUR-GATEWAY STA	CO	WESTERN	07-0495	BC070495	200
E	800	COLORADO/WYOMI	07-0495	AURORA PO	CO	WESTERN	07-0495	BC070495	200
E	800	COLORADO/WYOMI	07-1806	COS-MAIN OFFICE STA	CO	WESTERN	07-1818	BC071818	200
E	800	COLORADO/WYOMI	07-1807	COS-ANTARES STA	CO	WESTERN	07-1818	BC071818	200
E	800	COLORADO/WYOMI	07-1808	COS-BRIARGATE STA	CO	WESTERN	07-1818	BC071818	200
E	800	COLORADO/WYOMI	07-1809	COS-CHEYENNE MT STA	CO	WESTERN	07-1818	BC071818	200
E	800	COLORADO/WYOMI	07-1810	COS-CIMARRON HILLS STA	CO	WESTERN	07-1818	BC071818	200

E	800 COLORADO/WYOMI	07-1811	COS-FORT CARSON BR	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1812	COS-GMF STA	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1813	COS-NORTH END STA	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1814	COS-ROCKRIMMON STA	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1815	COS-TEMPLETON STA	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1816	COS-SECURITY BR	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1817	COS-WEST END STA	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1818	COLORADO SPRINGS PO	CO	WESTERN	07-1818	BC071818	200
E	800 COLORADO/WYOMI	07-1819	COLORADO SPRINGS CO VMF	CO	WESTERN	07-1819	BC071818	200
E	800 COLORADO/WYOMI	07-1820	COLORADO SPRINGS P&DC	CO	WESTERN	07-1820	BC071818	200
E	800 COLORADO/WYOMI	07-2330	DEN-GENERAL MAIL FACILITY	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2331	DEN-ALCOTT STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2332	DEN-BEAR VALLEY STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2333	DEN-CAPITOL HILL STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2334	DEN-DENVER DOWNTOWN STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2335	DEN-EDGEWATER BR	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2336	DEN-GLENDALE BR	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2337	DEN-LAKEWOOD BR	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2338	DEN-MILE HIGH STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2339	DEN-MONTBELLO STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2340	DEN-MONTCLAIR STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2341	DEN-NORTH PECOS STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2342	DEN-NORTHGLENN BR	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2343	DEN-NORTHVIEW ANX	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2344	DEN-PARK HILL STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2345	DEN-SOUTH DENVER STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2347	DEN-STOCKYARDS STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2348	DEN-SULLIVAN STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2349	DEN-SUNNYSIDE STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2350	DEN-THORNTON BR	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2351	DEN-UNIVERSITY PARK STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2352	DEN-WELLSHIRE STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2353	DEN-WESTWOOD STA	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2355	COLORADO/WYOMING CS DISTRICT	CO	WESTERN	07-2355	BC072358	200

E	800 COLORADO/WYOMI	07-2356	DENVER CO VMF	CO	WESTERN	07-2356	BC072358	200
E	800 COLORADO/WYOMI	07-2358	DENVER PO	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2359	DENVER CO P&DC	CO	WESTERN	07-2359	BC072358	200
E	800 COLORADO/WYOMI	07-2371	DEN - DENVER CFS	CO	WESTERN	07-2358	BC072358	200
E	800 COLORADO/WYOMI	07-2373	DENVER SPRUCE VMF	CO	WESTERN	07-2373	BC072358	200
E	800 COLORADO/WYOMI	07-2374	GRAND JUNCTION AUX VMF OF DENVI	CO	WESTERN	07-2374	BC072358	200
E	800 COLORADO/WYOMI	07-5580	LITTLETON PO	CO	WESTERN	07-5580	BC075580	200
E	800 COLORADO/WYOMI	07-5581	LIT-CENTENNIAL BR	CO	WESTERN	07-5580	BC075580	200
E	800 COLORADO/WYOMI	07-5582	LIT-COLUMBINE HILLS BR	CO	WESTERN	07-5580	BC075580	200
E	800 COLORADO/WYOMI	07-5583	LIT-HIGHLANDS RANCH BR	CO	WESTERN	07-5580	BC075580	200
E	800 COLORADO/WYOMI	07-5584	LIT-KEN CARYL BR	CO	WESTERN	07-5580	BC075580	200
E	800 COLORADO/WYOMI	07-5585	LIT-MAIN OFFICE STA	CO	WESTERN	07-5580	BC075580	200
E	840 SALT LAKE CITY PFC	15-0925	BOISE PO	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0926	BOISE ID P&DC	ID	WESTERN	15-0926	BC150925	200
E	840 SALT LAKE CITY PFC	15-0927	BOISE ID VMF	ID	WESTERN	15-0927	BC150925	200
E	840 SALT LAKE CITY PFC	15-0929	BOI-FIVE MILE STA	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0930	BOI-BORAH STA	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0931	BOI-COLE VILLAGE	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0932	BOI-COLLISTER STA	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0933	BOI-GARDEN CITY STA	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0934	BOI-OREGON TRAIL STA	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0935	BOI-OVERLAND STA	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	15-0936	BOI-MAIN OFFICE STA	ID	WESTERN	15-0925	BC150925	200
E	840 SALT LAKE CITY PFC	49-7786	SALT LAKE CITY PO	UT	WESTERN	49-7786	BC497786	200
E	840 SALT LAKE CITY PFC	49-7787	SOUTH JORDAN UT VMF	UT	WESTERN	49-7787	BC497786	200
E	840 SALT LAKE CITY PFC	49-7788	SALT LAKE CITY CS DISTRICT	UT	WESTERN	49-7788	BC497786	200
E	840 SALT LAKE CITY PFC	49-7789	SALT LAKE CITY UT P&DC	UT	WESTERN	49-7789	BC497786	200
E	840 SALT LAKE CITY PFC	49-7791	SALT LAKE CITY UT REC	UT	WESTERN	49-7791	BC497786	200
E	840 SALT LAKE CITY PFC	49-7792	SAL-AIRPORT STA	UT	WESTERN	49-7786	BC497786	200
E	840 SALT LAKE CITY PFC	49-7793	SAL-COTTONWOOD BR	UT	WESTERN	49-7786	BC497786	200
E	840 SALT LAKE CITY PFC	49-7794	SAL-DOWNTOWN STA	UT	WESTERN	49-7786	BC497786	200
E	840 SALT LAKE CITY PFC	49-7795	SALT LAKE CITY ASF	UT	WESTERN	49-7795	BC497786	200
E	840 SALT LAKE CITY PFC	49-7796	SAL-FOOTHILL STA	UT	WESTERN	49-7786	BC497786	200
E	840 SALT LAKE CITY PFC	49-7797	SAL-HOLLADAY BR	UT	WESTERN	49-7786	BC497786	200

E	840	SALT LAKE CITY PFC	49-7798	SAL-KEARNS BR	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7799	SAL-MILLCREEK BR	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7800	SAL-MURRAY BR	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7801	SAL-NORTHWEST STA	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7802	SAL-SOUTH SALT LAKE BR	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7803	SAL-SUGARHOUSE STA	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7804	SAL-WEST VALLEY BR	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7805	SAL-MAIN OFFICE STA	UT	WESTERN	49-7786	BC497786	200
E	840	SALT LAKE CITY PFC	49-7806	SALT LAKE CITY UT VMF	UT	WESTERN	49-7806	BC497786	200
E	840	SALT LAKE CITY PFC	49-7807	OGDEN AUX VMF OF SALT LAKE CITY U	UT	WESTERN	49-7807	BC497786	200
E	852	ARIZONA PFC	03-5217	MESA PO	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5218	MES-DESERT STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5219	MES-DOBSON STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5220	MES-FALCON FIELD STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5221	MES-FOUR PEAKS STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5222	MES-MOUNTAIN VIEW STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5224	MES-SHERWOOD STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5225	MES-SUPERSTITION SPRINGS STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-5226	MES-MAIN OFFICE STA	AZ	WESTERN	03-5217	BC035217	200
E	852	ARIZONA PFC	03-6364	PHOENIX PO	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6365	PHOENIX AZ P&DC	AZ	WESTERN	03-6365	BC036364	200
E	852	ARIZONA PFC	03-6367	PHOENIX AZ VMF	AZ	WESTERN	03-6367	BC036364	200
E	852	ARIZONA PFC	03-6370	WEST VALLEY AZ P&DC	AZ	WESTERN	03-6370	BC036364	200
E	852	ARIZONA PFC	03-6371	PHX-AHWATUKEE STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6372	PHX-ARCADIA STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6373	PHX-BOULDER HILLS STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6374	PHX-CACTUS STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6375	PHX-CAPITOL STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6376	PHX-DOWNTOWN FINANCE UNIT	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6379	PHX-MARYVALE STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6381	PHX-MOWCOLLAMF	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6382	PHX-NORTHEAST STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6383	PHX-NORTHWEST STA	AZ	WESTERN	03-6364	BC036364	200
E	852	ARIZONA PFC	03-6384	PHX-OSBORN STA	AZ	WESTERN	03-6364	BC036364	200

E	852 ARIZONA PFC	03-6385	PHX-PECOS STA	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6386	PHX-RIO SALADO FACLTY	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6387	PHX-SHAW BUTTE STA	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6388	PHX-SIERRA ADOBE STA	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6389	PHX-SOUTH MOUNTAIN STA	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6390	PHX-SUNNYSLOPE STA	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6391	PHX-WASHINGTON STA	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6392	PHX-DAISY MOUNTAIN STA	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-6393	PHOENIX CFS	AZ	WESTERN	03-6364	BC036364	200
E	852 ARIZONA PFC	03-7660	SCO-AIR PARK STA	AZ	WESTERN	03-7659	BC037659	200
E	852 ARIZONA PFC	03-7661	SCO-FOUNTAIN HILLS STA	AZ	WESTERN	03-7659	BC037659	200
E	852 ARIZONA PFC	03-7662	SCO-HOPI STA	AZ	WESTERN	03-7659	BC037659	200
E	852 ARIZONA PFC	03-7663	SCO-KACHINA STA	AZ	WESTERN	03-7659	BC037659	200
E	852 ARIZONA PFC	03-7665	SCO-MAIN OFFICE STA	AZ	WESTERN	03-7659	BC037659	200
E	852 ARIZONA PFC	03-8880	TUCSON PO	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8881	TUCSON AZ P&DC	AZ	WESTERN	03-8881	BC038880	200
E	852 ARIZONA PFC	03-8882	TUCSON AZ VMF	AZ	WESTERN	03-8882	BC038880	200
E	852 ARIZONA PFC	03-8883	TUC-CASAS ADOBES	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8885	TUC-CORONADO STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8886	TUC-DESERT FOOTHILLS STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8888	TUC-FORT LOWELL STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8889	TUC-KINO STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8891	TUC-MISSION STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8892	TUC-MOUNTAIN VIEW STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8893	TUC-ORO VALLEY BR	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8894	TUC-RINCON STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8895	TUC-SAN XAVIER ANX	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8896	TUC-SILVERBELL STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8897	TUC-SUN STA	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	03-8898	TUC-OLD PUEBLO ANX	AZ	WESTERN	03-8880	BC038880	200
E	852 ARIZONA PFC	34-0118	ALBUQUERQUE NM ASF	NM	WESTERN	34-0118	BC340147	200
E	852 ARIZONA PFC	34-0127	ABQ-MAIN OFFICE STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0128	ABQ-ACADEMY STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0129	ABQ-AIRPORT STA	NM	WESTERN	34-0147	BC340147	200

E	852 ARIZONA PFC	34-0130	ABQ-ALAMEDA STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0131	ABQ-DOWNTOWN STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0132	ABQ-COTTONWOOD STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0133	ABQ-FIVE POINTS STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0134	ABQ-FOOTHILLS STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0135	ABQ-GALLERIA STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0136	ABQ-HIGHLAND STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0137	ABQ-KIRTLAND AFB BR	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0138	ABQ-MANZANO STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0139	ABQ-NORTH VALLEY CARRIER ANX	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0140	ABQ-OLD ALBUQUERQUE STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0141	ABQ-OLD TOWN PLAZA STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0142	ABQ-RICHARD PINO STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0143	ABQ-RIO RANCHO BR	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0144	ABQ-STEVE SCHIFF STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0145	ABQ-UNIVERSITY STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0146	ABQ-UPTOWN STA	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0147	ALBUQUERQUE PO	NM	WESTERN	34-0147	BC340147	200
E	852 ARIZONA PFC	34-0148	ALBUQUERQUE NM P&DC	NM	WESTERN	34-0148	BC340147	200
E	852 ARIZONA PFC	34-0149	ALBUQUERQUE NM VMF	NM	WESTERN	34-0149	BC340147	200
E	890 NEVADA-SIERRA PFC	31-4880	LAS VEGAS PO	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4881	LAS VEGAS NV P&DC	NV	WESTERN	31-4881	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4882	LAS VEGAS MPA	NV	WESTERN	31-4882	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4883	NEVADA-SIERRA CS DISTRICT	NV	WESTERN	31-4883	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4884	LAS VEGAS NV VMF	NV	WESTERN	31-4884	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4885	LAS-CROSSROADS STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4886	LAS-DOWNTOWN RTL	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4887	LAS-EAST LAS VEGAS STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4889	LAS-EMERALD STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4890	LAS-GARSIDE STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4891	LAS-HUNTRIDGE STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4892	LAS-JAMES C BROWN RTL	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4893	LAS-KING STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4894	LAS-PARADISE VALLEY STA	NV	WESTERN	31-4880	BC314880	200

E	890 NEVADA-SIERRA PFC	31-4895	LAS-RED ROCK VISTA STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4896	LAS-SILVERADO STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4897	LAS-SPRING VALLEY STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4899	LAS-SUMMERLIN STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4901	LAS-SUNRISE ANX	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4902	LAS-TOPAZ STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4903	LAS-WINTERWOOD STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-4904	LAS-WESTRIDGE STA	NV	WESTERN	31-4880	BC314880	200
E	890 NEVADA-SIERRA PFC	31-7280	RENO PO	NV	WESTERN	31-7280	BC317280	200
E	890 NEVADA-SIERRA PFC	31-7281	RENO NV VMF	NV	WESTERN	31-7281	BC317280	200
E	890 NEVADA-SIERRA PFC	31-7282	RENO NV P&DC	NV	WESTERN	31-7282	BC317280	200
E	890 NEVADA-SIERRA PFC	31-7286	REN-DOWNTOWN STA	NV	WESTERN	31-7280	BC317280	200
E	890 NEVADA-SIERRA PFC	31-7287	REN-PEAVINE STA	NV	WESTERN	31-7280	BC317280	200
E	890 NEVADA-SIERRA PFC	31-7288	REN-SIERRA STA	NV	WESTERN	31-7280	BC317280	200
E	890 NEVADA-SIERRA PFC	31-7289	REN-STEAMBOAT STA	NV	WESTERN	31-7280	BC317280	200
E	890 NEVADA-SIERRA PFC	31-7290	REN-WASHINGTON STA	NV	WESTERN	31-7280	BC317280	200
E	965 WESTERN AREA PFC	07-2357	DENVER NDC	CO	WESTERN	07-2357	BC072357	200
E	965 WESTERN AREA PFC	18-2413	DES MOINES NDC	IA	WESTERN	18-2413	BC182413	200
E	965 WESTERN AREA PFC	19-4654	KCKS NDC	KS	WESTERN	19-4654	BC194654	200
E	965 WESTERN AREA PFC	26-6361	MINN-SAINT PAUL NDC	MN	WESTERN	26-6361	BC266361	200
E	965 WESTERN AREA PFC	54-7617	SEATTLE NDC	WA	WESTERN	54-7617	BC547617	200
E	970 PORTLAND PFC	40-0501	PORTLAND-CUSTOMER RETENTION	OR	WESTERN	40-0501	BC406784	200
E	970 PORTLAND PFC	40-2848	EUGENE PO	OR	WESTERN	40-2848	BC402848	200
E	970 PORTLAND PFC	40-2849	EUGENE OR VMF	OR	WESTERN	40-2849	BC402848	200
E	970 PORTLAND PFC	40-2850	EUGENE OR P&DC	OR	WESTERN	40-2850	BC402848	200
E	970 PORTLAND PFC	40-2851	EUG-RIVER ROAD STA	OR	WESTERN	40-2848	BC402848	200
E	970 PORTLAND PFC	40-2852	EUG-WESTSIDE STA	OR	WESTERN	40-2848	BC402848	200
E	970 PORTLAND PFC	40-2854	EUG-SOUTHSIDE STA	OR	WESTERN	40-2848	BC402848	200
E	970 PORTLAND PFC	40-2855	EUG-MAIN OFFICE STA	OR	WESTERN	40-2848	BC402848	200
E	970 PORTLAND PFC	40-6754	POR-AIRPORT RETAIL STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6755	POR-EAST PORTLAND STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6757	POR-MILWAUKIE BR	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6758	POR-TIGARD BR	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6759	POR-BROOKLYN STA	OR	WESTERN	40-6784	BC406784	200

E	970 PORTLAND PFC	40-6760	POR-WATERFRONT STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6761	POR-FOREST PARK STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6762	POR-CENTRAL STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6763	POR-KENTON STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6764	POR-ROSE CITY PARK STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6765	POR-WEST SLOPE BR	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6766	POR-EASTPORT (LENTS) RETAIL ANX	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6767	POR-OAK GROVE BR	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6768	POR-MIDWAY STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6769	POR-PARKROSE STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6770	POR-CRESTON STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6772	POR-PIEDMONT STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6773	POR-SELLWOOD RETAIL STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6774	POR-RIVER DISTRICT DCU	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6775	POR-MULTNOMAH STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6776	POR-LENTS DCU	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6777	POR-HOLLADAY PARK STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6778	POR-ST JOHNS STA	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6779	POR-SELLWOOD DCU	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6784	PORTLAND PO	OR	WESTERN	40-6784	BC406784	200
E	970 PORTLAND PFC	40-6785	PORTLAND OR P&DC	OR	WESTERN	40-6785	BC406784	200
E	970 PORTLAND PFC	40-6786	PORTLAND OR VMF	OR	WESTERN	40-6786	BC402848	200
E	970 PORTLAND PFC	40-6787	PORTLAND CS DISTRICT	OR	WESTERN	40-6787	BC406784	200
E	970 PORTLAND PFC	40-7392	SALEM PO	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7393	SALEM OR VMF	OR	WESTERN	40-7393	BC402848	200
E	970 PORTLAND PFC	40-7395	SAL-VISTA STA	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7396	SAL-HOLLYWOOD STA	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7397	SAL-PRINGLE PK PLAZA STA	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7398	SAL-KEIZER BR	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7399	SAL-WEST SALEM STA	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7400	SAL-BROOKS BR	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7401	SAL-HLYWOOD ANX	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	40-7402	SAL-OAK PARK BR	OR	WESTERN	40-7392	BC407392	200
E	970 PORTLAND PFC	54-0547	VANCOUVER AUX VMF OF PORTLAND	OR	WESTERN	54-0547	BC406784	200

E	970 PORTLAND PFC	54-8820	VANCOUVER PO	WA	WESTERN	54-8820	BC548820	200
E	970 PORTLAND PFC	54-8821	VAN-ORCHARDS FINANCE UNIT	WA	WESTERN	54-8820	BC548820	200
E	970 PORTLAND PFC	54-8822	VAN-DOWNTOWN FINANCE UNIT	WA	WESTERN	54-8820	BC548820	200
E	970 PORTLAND PFC	54-8823	VAN-EAST VANCOUVER DCU	WA	WESTERN	54-8820	BC548820	200
E	970 PORTLAND PFC	54-8824	VAN-CASCADE PARK FINANCE UNIT	WA	WESTERN	54-8820	BC548820	200
E	980 SEATTLE PFC	54-7599	SEA-TERMINAL OPERATIONS STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7600	SEA-BAINBRIDGE STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7601	SEA-BALLARD FSTA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7603	SEA-BALLARD CARRIER ANX	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7604	SEA-BITTERLAKE STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7605	SEA-BROADWAY STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7606	SEA-BURIEN STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7608	SEA-COLUMBIA STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7609	SEA-DES MOINES STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7610	SEA-EAST UNION STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7611	SEA-FEDERAL FSTA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7612	SEA-GEORGETOWN STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7613	SEA-GREENWOOD FSTA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7616	SEATTLE PO	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7618	SEATTLE WA P&DC	WA	WESTERN	54-7618	BC547616	200
E	980 SEATTLE PFC	54-7620	SEATTLE WA VMF	WA	WESTERN	54-7620	BC547616	200
E	980 SEATTLE PFC	54-7621	SEATTLE CS DISTRICT	WA	WESTERN	54-7621	BC547616	200
E	980 SEATTLE PFC	54-7626	SEA-INTERBAY CARRIER ANX	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7627	SEA-INTERNATIONAL STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7628	SEA-LAKE CITY STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7629	SEA-MAGNOLIA FSTA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7631	SEA-MIDTOWN STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7632	SEA-NORTH CITY STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7633	SEA-NORTHGATE FSTA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7634	SEA-PIONEER SQUARE FSTA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7636	SEA-QUEEN ANNE STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7637	SEA-RIVERTON HEIGHTS STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7638	SEA-SEAFIRST FSTA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7639	SEA-SKYWAY STA	WA	WESTERN	54-7616	BC547616	200

E	980 SEATTLE PFC	54-7640	SEA-TERM STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7641	SEA-TUKWILA STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7642	SEA-UNIVERSITY STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7643	SEA-WALLINGFORD STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7645	SEA-WEDGWOOD STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7646	SEA-WEST SEATTLE STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7647	SEA-WESTWOOD STA	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7648	FEDERAL AUX VMF OF SEATTLE WA	WA	WESTERN	54-7648	BC547616	200
E	980 SEATTLE PFC	54-7649	SEATTLE PRIORITY MAIL ANX	WA	WESTERN	54-7649	BC547616	200
E	980 SEATTLE PFC	54-7651	LYNWOOD WA VMF	WA	WESTERN	54-7651	BC547616	200
E	980 SEATTLE PFC	54-7652	SEATTLE CFS	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-7661	SEA-SEATTLE CARRIER ANX	WA	WESTERN	54-7616	BC547616	200
E	980 SEATTLE PFC	54-8050	SPOKANE PO	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8051	SPOKANE WA VMF	WA	WESTERN	54-8051	BC548050	200
E	980 SEATTLE PFC	54-8053	SPO-DISHMAN FSTA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8054	SPOKANE WA P&DC	WA	WESTERN	54-8054	BC548050	200
E	980 SEATTLE PFC	54-8055	SPO-HAYS PARK STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8057	SPO-HILLYARD STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8059	SPO-LIBERTY PARK STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8060	SPO-MANITO STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8061	SPO-METRO CARRIER ANX	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8062	SPO-NORTHPOINTE DCU	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8063	SPO-SPOKANE VALLEY BR	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8064	SPO-PARKWATER FSTA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8065	SPO-REGAL STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8066	SPO-RIVERSIDE STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8067	SPO-ROSEWOOD FSTA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8068	SPO-SHADLE/GARLAND STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8069	SPO-SUNSET HILL STA	WA	WESTERN	54-8050	BC548050	200
E	980 SEATTLE PFC	54-8070	PASCO AUX VMF OF SPOKANE WA	WA	WESTERN	54-8070	BC548050	200
E	980 SEATTLE PFC	54-8330	TACOMA PO	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8331	TACOMA WA VMF	WA	WESTERN	54-8331	BC548330	200
E	980 SEATTLE PFC	54-8332	TACOMA WA P&DC	WA	WESTERN	54-8332	BC548330	200
E	980 SEATTLE PFC	54-8333	TAC-TCCF EAST	WA	WESTERN	54-8330	BC548330	200

E	980 SEATTLE PFC	54-8334	TAC-DOWNTOWN STA	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8337	TAC-PROCTOR STA	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8338	TAC-UNIVERSITY PLACE BR	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8339	TAC-M L KING JR STA	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8340	TAC-LINCOLN STA	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8341	TAC-FORT LEWIS BR	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8342	TAC-PARKLAND BR	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8343	TAC-EVERGREEN STA	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8345	TAC-STEILACOOM BR	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8346	TAC-LAKEWOOD BR	WA	WESTERN	54-8330	BC548330	200
E	980 SEATTLE PFC	54-8350	TAC-FIFE CARRIER ANX	WA	WESTERN	54-8330	BC548330	200
E	995 ALASKA PFC	02-0307	ANCHORAGE CFS	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0312	ANCHORAGE PO	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0313	ANCHORAGE AK P&DC	AK	WESTERN	02-0313	BC020312	200
E	995 ALASKA PFC	02-0314	ANCHORAGE AK VMF	AK	WESTERN	02-0314	BC020312	200
E	995 ALASKA PFC	02-0315	ALASKA CS DISTRICT	AK	WESTERN	02-0315	BC020312	200
E	995 ALASKA PFC	02-0317	ANCHORAGE AMF	AK	WESTERN	02-0317	BC020312	200
E	995 ALASKA PFC	02-0320	ANC-EASTCHESTER STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0321	ANC-ELMENDORF BR	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0322	ANC-FT RICHARDSON	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0323	ANC-HUFFMAN STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0324	ANC-LAKE OTIS STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0325	ANC-MAIN OFFICE STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0326	ANC-MIDTOWN STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0327	ANC-MULDOON STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0328	ANC-POSTAL STORE STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0329	ANC-RUSSIAN JACK STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0330	ANC-SAND LAKE STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0331	ANC-SPENARD STA	AK	WESTERN	02-0312	BC020312	200
E	995 ALASKA PFC	02-0333	FAIRBANKS AUX VMF OF ANCHORAGE	AK	WESTERN	02-0333	BC020312	200
F	900 LOS ANGELES PFC	05-3686	TORRANCE CA VMF	CA	PACIFIC	05-3686	BC057872	200
F	900 LOS ANGELES PFC	05-4114	LBC-BIXBY STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4115	LBC-CARSON BR	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4116	LBC-DOWNTOWN STA	CA	PACIFIC	05-4482	BC054482	200

F	900 LOS ANGELES PFC	05-4117	LBC-EAST LONG BEACH STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4118	LBC-SIGNAL HILL STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4119	LBC-LOMA CARRIER ANX	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4120	LBC-NORTH CARRIER ANX	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4121	LBC-PACIFIC STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4122	LBC-SPRING CARRIER ANX	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4123	LBC-BELMONT SHORE POST	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4124	LBC-BRYANT STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4125	LBC-CABRILLO STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4126	LBC-NO LONG BEACH STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4127	LBC-SO BAY PAVILION STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4128	LBC-TRADE CENTER STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4129	LBC-VIKING STA	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4130	LBC-SELF SERVICE POST	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4133	LBC-DISTRICT ADMIN	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4482	LONG BEACH PO	CA	PACIFIC	05-4482	BC054482	200
F	900 LOS ANGELES PFC	05-4484	LONG BEACH CA VMF	CA	PACIFIC	05-4484	BC054482	200
F	900 LOS ANGELES PFC	05-4501	LAX-AIRPORT STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4502	LAX-ALAMEDA STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4503	LAX-BARRINGTON STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4504	LAX-BICENTENNIAL STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4505	LAX-BOYLE STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4508	LAX-COL. WASHINGTON STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4509	LAX-COMMERCE STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4510	LAX-CRENSHAW STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4511	LAX-DOCKWEILER STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4513	LAX-EAGLE ROCK STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4514	LAX-EAST LOS ANGELES STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4515	LAX-EDENDALE STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4517	LAX-FOY STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4519	LAX-GLASSELL STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4525	LAX-GREENMEAD STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4526	LAX-GRIFFITH STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4528	LOS ANGELES CS DISTRICT	CA	PACIFIC	05-4528	BC054530	200

F	900 LOS ANGELES PFC	05-4530	LOS ANGELES PO	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4531	LOS ANGELES CA P&DC	CA	PACIFIC	05-4531	BC054530	200
F	900 LOS ANGELES PFC	05-4532	LOS ANGELES CA VMF	CA	PACIFIC	05-4532	BC054530	200
F	900 LOS ANGELES PFC	05-4534	LAX-HANCOCK STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4535	LAX-HAZARD STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4537	LAX-HOLLYWOOD STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4538	LAX-JULIAN DIXON STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4539	LAX-LINCOLN ANX	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4540	LAX-LOS FELIZ STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4541	LAX-LUGO STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4543	LAX-MAR VISTA STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4544	LAX-MARKET STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4545	LAX-NAT KING COLE STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4546	LAX-PALMS STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4547	LAX-PICO HEIGHTS STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4549	LAX-PREUSS STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4550	LAX-RANCHO PARK STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4551	LAX-RIMPAU STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4552	LAX-SANFORD STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4553	LAX-SUNSET STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4554	LAX-VERNON STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4555	LAX-VILLAGE STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4556	LAX-WAGNER STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4557	LAX-WEST ADAMS STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4558	LAX-WEST HOLLYWOOD FINANCE	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4559	LAX-WEST LOS ANGELES ANX	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4561	LAX-WESTCHESTER STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4567	LAX-MAIN OFFICE STA	CA	PACIFIC	05-4530	BC054530	200
F	900 LOS ANGELES PFC	05-4574	LOS ANGELES CA (WEST) VMF	CA	PACIFIC	05-4574	BC054530	200
F	900 LOS ANGELES PFC	05-5099	CUSTOMER CARE CENTER - CA	CA	PACIFIC	05-5099	BC054530	200
F	900 LOS ANGELES PFC	05-7872	TORRANCE PO	CA	PACIFIC	05-7872	BC057872	200
F	900 LOS ANGELES PFC	05-7874	TOR-NORTH TORRANCE STA	CA	PACIFIC	05-7872	BC057872	200
F	913 SIERRA COASTAL PF(	05-0462	BAKERSFIELD PO	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-0463	BAK-EAST BAKERSFIELD STA	CA	PACIFIC	05-0462	BC050462	200

F	913 SIERRA COASTAL PF(	05-0464	BAKERSFIELD CA P&DC	CA	PACIFIC	05-0464	BC050462	200
F	913 SIERRA COASTAL PF(	05-0465	BAK-BRUNDAGE STA	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-0466	BAKERSFIELD CA VMF	CA	PACIFIC	05-0466	BC050462	200
F	913 SIERRA COASTAL PF(	05-0467	BAK-HILLCREST ANX	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-0468	BAK-STOCKDALE ANX	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-0469	BAK-SOUTH BAKERSFIELD STA	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-0470	BAK-CAMINO MEDIA STA	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-0471	BAK-OILDALE CARRIER ANX	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-0472	BAK-DOWNTOWN STA	CA	PACIFIC	05-0462	BC050462	200
F	913 SIERRA COASTAL PF(	05-3012	GLENDALE PO (CA)	CA	PACIFIC	05-3012	BC053012	200
F	913 SIERRA COASTAL PF(	05-3013	GLE-LA CRESCENTA BR	CA	PACIFIC	05-3012	BC053012	200
F	913 SIERRA COASTAL PF(	05-3014	GLE-GRAND CENTRAL STA	CA	PACIFIC	05-3012	BC053012	200
F	913 SIERRA COASTAL PF(	05-3015	GLE-TROPICO STA	CA	PACIFIC	05-3012	BC053012	200
F	913 SIERRA COASTAL PF(	05-3016	GLE-NORTH GLENDALE STA	CA	PACIFIC	05-3012	BC053012	200
F	913 SIERRA COASTAL PF(	05-3017	GLE-VERDUGO VIEJO STA	CA	PACIFIC	05-3012	BC053012	200
F	913 SIERRA COASTAL PF(	05-5448	NORTH HOLLYWOOD PO	CA	PACIFIC	05-5448	BC055448	200
F	913 SIERRA COASTAL PF(	05-5449	NOH-CHANDLER STA	CA	PACIFIC	05-5448	BC055448	200
F	913 SIERRA COASTAL PF(	05-5450	NOH-STUDIO CITY BR	CA	PACIFIC	05-5448	BC055448	200
F	913 SIERRA COASTAL PF(	05-5862	PASADENA PO	CA	PACIFIC	05-5862	BC055862	200
F	913 SIERRA COASTAL PF(	05-5864	PAS-EAST PASADENA STA	CA	PACIFIC	05-5862	BC055862	200
F	913 SIERRA COASTAL PF(	05-5865	PAS-SAN MARINO BR	CA	PACIFIC	05-5862	BC055862	200
F	913 SIERRA COASTAL PF(	05-5866	PAS-JACKIE ROBINSON STA	CA	PACIFIC	05-5862	BC055862	200
F	913 SIERRA COASTAL PF(	05-5867	PASADENA CFS	CA	PACIFIC	05-5862	BC055862	200
F	913 SIERRA COASTAL PF(	05-5870	PASADENA CA MAIL PROCESSING ANN	CA	PACIFIC	05-5870	BC055862	200
F	913 SIERRA COASTAL PF(	05-6942	SANTA BARBARA PO	CA	PACIFIC	05-6942	BC056942	200
F	913 SIERRA COASTAL PF(	05-6943	OXNARD CA VMF	CA	PACIFIC	05-6943	BC056942	200
F	913 SIERRA COASTAL PF(	05-6944	SANTA BARBARA CA P&DC	CA	PACIFIC	05-6944	BC056942	200
F	913 SIERRA COASTAL PF(	05-6945	SBC-EAST BEACH CARRIER ANX	CA	PACIFIC	05-6942	BC056942	200
F	913 SIERRA COASTAL PF(	05-6946	SBC-GOLETA BR	CA	PACIFIC	05-6942	BC056942	200
F	913 SIERRA COASTAL PF(	05-6947	SBC-SAN ROQUE STA	CA	PACIFIC	05-6942	BC056942	200
F	913 SIERRA COASTAL PF(	05-8100	VAN NUYS PO	CA	PACIFIC	05-8100	BC058100	200
F	913 SIERRA COASTAL PF(	05-8101	SANTA CLARITA CA P&DC	CA	PACIFIC	05-8101	BC058100	200
F	913 SIERRA COASTAL PF(	05-8102	SIERRA COASTAL CS DISTRICT	CA	PACIFIC	05-8102	BC058100	200
F	913 SIERRA COASTAL PF(	05-8104	SANTA CLARITA CA VMF	CA	PACIFIC	05-8104	BC058100	200

F	913 SIERRA COASTAL PF(	05-8105	VAN NUYS FSS MAIL PROCESSING ANX	CA	PACIFIC	05-8105	BC058100	200
F	913 SIERRA COASTAL PF(	05-8109	VAN-CIVIC CENTER VAN NUYS STA	CA	PACIFIC	05-8100	BC058100	200
F	913 SIERRA COASTAL PF(	05-8111	VAN-SHERMAN OAKS BR	CA	PACIFIC	05-8100	BC058100	200
F	913 SIERRA COASTAL PF(	05-8114	VAN-ENCINO BR	CA	PACIFIC	05-8100	BC058100	200
F	913 SIERRA COASTAL PF(	05-8115	VAN-PANORAMA CITY BR	CA	PACIFIC	05-8100	BC058100	200
F	913 SIERRA COASTAL PF(	05-8116	PASADENA CA VMF	CA	PACIFIC	05-8116	BC055862	200
F	913 SIERRA COASTAL PF(	05-8123	VAN NUYS CA VMF	CA	PACIFIC	05-8123	BC055862	200
F	920 SAN DIEGO PFC	05-5157	MORENO VALLEY CA P&DC	CA	PACIFIC	05-5157	BC055157	200
F	920 SAN DIEGO PFC	05-6552	RIVERSIDE PO	CA	PACIFIC	05-6552	BC056552	200
F	920 SAN DIEGO PFC	05-6553	RIV-DOWNTOWN STA	CA	PACIFIC	05-6552	BC056552	200
F	920 SAN DIEGO PFC	05-6554	RIV-ARLINGTON STA	CA	PACIFIC	05-6552	BC056552	200
F	920 SAN DIEGO PFC	05-6555	RIV-RUBIDOUX STA	CA	PACIFIC	05-6552	BC056552	200
F	920 SAN DIEGO PFC	05-6725	SBC-DEL ROSA STA	CA	PACIFIC	05-6744	BC056744	200
F	920 SAN DIEGO PFC	05-6727	SBC-UPTOWN STA	CA	PACIFIC	05-6744	BC056744	200
F	920 SAN DIEGO PFC	05-6728	SBC-NORTHPARK STA	CA	PACIFIC	05-6744	BC056744	200
F	920 SAN DIEGO PFC	05-6729	SBC-WESTSIDE STA	CA	PACIFIC	05-6744	BC056744	200
F	920 SAN DIEGO PFC	05-6730	SDC-SAN DIEGO DOWNTOWN STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6733	SDC-HILLCREST STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6734	SDC-CITY HEIGHTS STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6735	SDC-POINT LOMA STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6736	SDC-OCEAN BEACH STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6737	SDC-PACIFIC BEACH STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6738	SDC-LINDA VISTA STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6739	SDC-SOUTHEAST STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6740	SDC-ENCANTO STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6741	SDC-ANDREW JACKSON STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6742	SDC-WILLIAM TAFT STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6743	SDC-CORONADO BR	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6744	SAN BERNARDINO PO	CA	PACIFIC	05-6744	BC056744	200
F	920 SAN DIEGO PFC	05-6745	SAN BERNARDINO CA P&DC	CA	PACIFIC	05-6745	BC056744	200
F	920 SAN DIEGO PFC	05-6746	SDC-NAVAJO STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6747	SDC-GRANTVILLE STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6748	SDC-SORRENTO VALLEY STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6749	SAN BERNADINO CA VMF	CA	PACIFIC	05-6749	BC056744	200

F	920 SAN DIEGO PFC	05-6751	SDC-UNIVERSITY CITY STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6752	SDC-SERRA MESA STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6754	SDC-MIRA MESA STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6755	SDC-RANCHO PENASQUITOS STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6757	SDC-PARADISE HILLS STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6758	SDC-MIDWAY MAIN OFFICE WNDW	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6759	SDC-OTAY MESA ANX	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6760	SDC-SAN YSIDRO STA	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6761	SDC-CARMEL MOUNTAIN PSTL STR	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6763	SDC-RIVERFRONT ANX	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6764	SDC-RANCHO BERNARDO ANX	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6765	SDC-CARMEL VALLEY ANX	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6766	SDC-SCRIPPS RANCH ANX	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6768	SAN DIEGO PO	CA	PACIFIC	05-6768	BC056768	200
F	920 SAN DIEGO PFC	05-6769	SAN DIEGO CA VMF	CA	PACIFIC	05-6769	BC056768	200
F	920 SAN DIEGO PFC	05-6770	MARGARET SELLERS CA P&DC	CA	PACIFIC	05-6770	BC056768	200
F	920 SAN DIEGO PFC	05-6776	SAN DIEGO CS DISTRICT	CA	PACIFIC	05-6776	BC056768	200
F	920 SAN DIEGO PFC	05-6874	HESPERIA AUX VMF OF SAN BERNADIN	CA	PACIFIC	05-6874	BC056744	200
F	926 SANTA ANA PFC	05-0107	LA PUENTE CA VMF	CA	PACIFIC	05-0107	BC050108	200
F	926 SANTA ANA PFC	05-0108	ALHAMBRA PO	CA	PACIFIC	05-0108	BC050108	200
F	926 SANTA ANA PFC	05-0109	INDUSTRY CA P&DC	CA	PACIFIC	05-0109	BC050108	200
F	926 SANTA ANA PFC	05-0111	ALH-SOUTH STA	CA	PACIFIC	05-0108	BC050108	200
F	926 SANTA ANA PFC	05-0112	POMONA CA VMF	CA	PACIFIC	05-0112	BC050108	200
F	926 SANTA ANA PFC	05-0222	ANAHEIM PO	CA	PACIFIC	05-0222	BC050222	200
F	926 SANTA ANA PFC	05-0223	ANA-ANAHEIM HILLS STA	CA	PACIFIC	05-0222	BC050222	200
F	926 SANTA ANA PFC	05-0224	ANAHEIM CA P&DC	CA	PACIFIC	05-0224	BC050222	200
F	926 SANTA ANA PFC	05-0226	ANA-BROOKHURST CENTER STA	CA	PACIFIC	05-0222	BC050222	200
F	926 SANTA ANA PFC	05-0227	ANA-CANYON STA	CA	PACIFIC	05-0222	BC050222	200
F	926 SANTA ANA PFC	05-0229	ANA-HOLIDAY STA	CA	PACIFIC	05-0222	BC050222	200
F	926 SANTA ANA PFC	05-0230	ANA-SUNKIST STA	CA	PACIFIC	05-0222	BC050222	200
F	926 SANTA ANA PFC	05-3594	HUNTINGTON BEACH PO	CA	PACIFIC	05-3594	BC053594	200
F	926 SANTA ANA PFC	05-3595	HBC-BEACH CENTER STA	CA	PACIFIC	05-3594	BC053594	200
F	926 SANTA ANA PFC	05-3596	HBC-IDA JEAN HAXTON STA	CA	PACIFIC	05-3594	BC053594	200
F	926 SANTA ANA PFC	05-3710	IRVINE PO	CA	PACIFIC	05-3710	BC053710	200

F	926 SANTA ANA PFC	05-3711	IRV-HARVEST STA	CA	PACIFIC	05-3710	BC053710	200
F	926 SANTA ANA PFC	05-3712	IRV-NORTHWOOD STA	CA	PACIFIC	05-3710	BC053710	200
F	926 SANTA ANA PFC	05-4050	LAGUNA BEACH PO	CA	PACIFIC	05-4050	BC054050	200
F	926 SANTA ANA PFC	05-4051	LAG-ALISO VIEJO CARRIER ANX	CA	PACIFIC	05-4050	BC054050	200
F	926 SANTA ANA PFC	05-4052	LAG-LAGUNA HILLS BR	CA	PACIFIC	05-4050	BC054050	200
F	926 SANTA ANA PFC	05-4190	LA PUENTE PO	CA	PACIFIC	05-4190	BC054190	200
F	926 SANTA ANA PFC	05-6927	SNA-DIAMOND STATION	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6928	SNA-CFS	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6929	SNA-BRISTOL STA	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6931	SNA-FOUNTAIN VALLEY BR	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6932	SNA-KING STA	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6933	SNA-SOUTH MAIN STA	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6935	SNA-SPURGEON STA	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6936	SANTA ANA PO	CA	PACIFIC	05-6936	BC056936	200
F	926 SANTA ANA PFC	05-6937	SANTA ANA CA P&DC	CA	PACIFIC	05-6937	BC056936	200
F	926 SANTA ANA PFC	05-6938	SANTA ANA CA (HUNTINGTON BEACH)	CA	PACIFIC	05-6938	BC056936	200
F	926 SANTA ANA PFC	05-6939	SANTA ANA CS DISTRICT	CA	PACIFIC	05-6939	BC056936	200
F	926 SANTA ANA PFC	05-6941	MISSION VIEJO CA VMF	CA	PACIFIC	05-6941	BC056936	200
F	926 SANTA ANA PFC	05-6958	ANAHEIM CA VMF	CA	PACIFIC	05-6958	BC050222	200
F	926 SANTA ANA PFC	05-7057	NORTH GRAND DDC	CA	PACIFIC	05-7057	BC056936	200
F	940 SAN FRANCISCO PFC	05-0501	SAN FRANCISCO-CUSTOMER RETENTIC	CA	PACIFIC	05-0501	BC056786	200
F	940 SAN FRANCISCO PFC	05-5440	NORTH BAY PO	CA	PACIFIC	05-5440	BC056786	200
F	940 SAN FRANCISCO PFC	05-6783	SAN FRANCISCO CS DISTRICT	CA	PACIFIC	05-6783	BC056786	200
F	940 SAN FRANCISCO PFC	05-6786	SAN FRANCISCO PO	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6787	SAN FRANCISCO CA VMF	CA	PACIFIC	05-6787	BC056786	200
F	940 SAN FRANCISCO PFC	05-6789	SAN FRANCISCO CA P&DC	CA	PACIFIC	05-6789	BC056786	200
F	940 SAN FRANCISCO PFC	05-6793	SAN FRAN INTL SVC CTR	CA	PACIFIC	05-6793	BC056786	200
F	940 SAN FRANCISCO PFC	05-6800	SFC-18TH ST RTL STR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6801	SFC-AIRPORT BR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6802	SFC-BAYVIEW STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6803	SFC-BERNAL STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6805	SFC-BRANNAN RTL STR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6806	SFC-CHINATOWN STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6807	SFC-CIVIC CENTER STA	CA	PACIFIC	05-6786	BC056786	200

F	940 SAN FRANCISCO PFC	05-6808	SFC-CLAYTON STREET STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6809	SFC-DIAMOND HEIGHTS RTL STR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6811	SFC-TOWNSEND CARRIER ANNEX	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6812	SFC-EXCELSIOR STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6813	SFC-FEDERAL BUILDING STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6814	SFC-FOX PLAZA STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6815	SFC-GATEWAY STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6816	SFC-GEARY STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6817	SFC-GOLDEN GATE STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6818	SFC-IRVING ST RTL STR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6819	SFC-LAKESHORE PLAZA RTL STR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6820	SFC-MARINA GREEN RTL STR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6821	SFC-MARINA STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6823	SFC-MCLAREN STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6824	SFC-MISSION STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6825	SFC-NAPOLEON ST ANX	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6826	SFC-NOE VALLEY STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6827	SFC-NORTH BEACH STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6829	SFC-P & DC FINANCE STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6831	SFC-PARKSIDE STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6832	SFC-PINE STREET STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6839	SAN MATEO CA VMF	CA	PACIFIC	05-6839	BC056786	200
F	940 SAN FRANCISCO PFC	05-6841	SFC-PRESIDIO STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6842	SFC-RINCON FINANCE STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6843	SFC-MACY'S #57 STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6844	SFC-STEINER STREET STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6845	SFC-SUNSET STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6847	SFC-SUTTER POSTAL RTL STR	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6848	SFC-VISITACION STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6849	SFC-WEST PORTAL STA	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6850	SFC-NORTH BEACH ANX	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6851	SFC-MENDELL CARRIER ANNEX	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6853	SFC-BRYANT ST ANX	CA	PACIFIC	05-6786	BC056786	200
F	940 SAN FRANCISCO PFC	05-6894	SAN MATEO PO	CA	PACIFIC	05-6894	BC056894	200

F	940	SAN FRANCISCO PFC	05-6996	SANTA ROSA PO	CA	PACIFIC	05-6996	BC056996	200
F	940	SAN FRANCISCO PFC	05-6997	SRA-CARRIER ANX	CA	PACIFIC	05-6996	BC056996	200
F	940	SAN FRANCISCO PFC	05-6998	SRA-CODDINGTOWN STA	CA	PACIFIC	05-6996	BC056996	200
F	945	BAY-VALLEY PFC	05-0642	BERKELEY PO	CA	PACIFIC	05-0642	BC050642	200
F	945	BAY-VALLEY PFC	05-0643	BER-DDU	CA	PACIFIC	05-0642	BC050642	200
F	945	BAY-VALLEY PFC	05-0644	BER-ELMWOOD STA	CA	PACIFIC	05-0642	BC050642	200
F	945	BAY-VALLEY PFC	05-0645	BER-BERKELEY STA A	CA	PACIFIC	05-0642	BC050642	200
F	945	BAY-VALLEY PFC	05-2864	FREMONT PO	CA	PACIFIC	05-2864	BC052864	200
F	945	BAY-VALLEY PFC	05-2865	FRE-DDU	CA	PACIFIC	05-2864	BC052864	200
F	945	BAY-VALLEY PFC	05-2866	FRE-IRVINGTON STA	CA	PACIFIC	05-2864	BC052864	200
F	945	BAY-VALLEY PFC	05-3336	HAYWARD PO	CA	PACIFIC	05-3336	BC053336	200
F	945	BAY-VALLEY PFC	05-3337	HAY-CASTRO VALLEY BR	CA	PACIFIC	05-3336	BC053336	200
F	945	BAY-VALLEY PFC	05-5508	OAKLAND PO	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5509	OAKLAND CA P&DC	CA	PACIFIC	05-5509	BC055508	200
F	945	BAY-VALLEY PFC	05-5510	OAKLAND CA VMF	CA	PACIFIC	05-5510	BC055508	200
F	945	BAY-VALLEY PFC	05-5511	BAY-VALLEY CS DISTRICT	CA	PACIFIC	05-5511	BC055508	200
F	945	BAY-VALLEY PFC	05-5512	OAK-NORTH OAKLAND STA	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5515	OAK-LAUREL STA	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5516	OAK-WEST GRAND CARRIER ANX	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5517	OAK-PIEDMONT STA	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5518	OAK-EMERYVILLE STA	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5519	OAK-EASTMONT STA	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5521	OAK-AIRPORT STA	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5522	OAK-CIVIC CENTER STA	CA	PACIFIC	05-5508	BC055508	200
F	945	BAY-VALLEY PFC	05-5523	HAYWARD CA VMF	CA	PACIFIC	05-5523	BC053336	200
F	945	BAY-VALLEY PFC	05-6834	SAN JOSE PO	CA	PACIFIC	05-6834	BC056834	200
F	945	BAY-VALLEY PFC	05-6835	SAN JOSE CA P&DC	CA	PACIFIC	05-6835	BC056834	200
F	945	BAY-VALLEY PFC	05-6836	SAN JOSE CA VMF	CA	PACIFIC	05-6836	BC056834	200
F	945	BAY-VALLEY PFC	05-6854	SJC-WILLOW GLEN STA	CA	PACIFIC	05-6834	BC056834	200
F	945	BAY-VALLEY PFC	05-6855	SJC-WESTGATE STA	CA	PACIFIC	05-6834	BC056834	200
F	945	BAY-VALLEY PFC	05-6856	SJC-BAYSIDE STA	CA	PACIFIC	05-6834	BC056834	200
F	945	BAY-VALLEY PFC	05-6857	SJC-PARKMOOR STA	CA	PACIFIC	05-6834	BC056834	200
F	945	BAY-VALLEY PFC	05-6859	SJC-ST JAMES PARK STA	CA	PACIFIC	05-6834	BC056834	200
F	945	BAY-VALLEY PFC	05-6860	SJC-SEVEN TREES STA	CA	PACIFIC	05-6834	BC056834	200

F	945 BAY-VALLEY PFC	05-6861	SJC-HILLVIEW STA	CA	PACIFIC	05-6834	BC056834	200
F	945 BAY-VALLEY PFC	05-6862	SJC-ALMADEN VALLEY STA	CA	PACIFIC	05-6834	BC056834	200
F	945 BAY-VALLEY PFC	05-6863	SJC-CAMBRIAN PARK STA	CA	PACIFIC	05-6834	BC056834	200
F	945 BAY-VALLEY PFC	05-6865	SJC-ROBERTSVILLE STA	CA	PACIFIC	05-6834	BC056834	200
F	945 BAY-VALLEY PFC	05-6866	SJC-BERRYESSA STA	CA	PACIFIC	05-6834	BC056834	200
F	945 BAY-VALLEY PFC	05-6867	SJC-FOOTHILL STA	CA	PACIFIC	05-6834	BC056834	200
F	945 BAY-VALLEY PFC	05-6869	SJC-BLOSSOM HILL STA	CA	PACIFIC	05-6834	BC056834	200
F	956 SACRAMENTO PFC	05-2886	FRESNO PO	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-2887	FRESNO CA VMF	CA	PACIFIC	05-2887	BC052886	200
F	956 SACRAMENTO PFC	05-2888	FRESNO CA P&DC	CA	PACIFIC	05-2888	BC052886	200
F	956 SACRAMENTO PFC	05-2891	FRE-DOWNTOWN STA	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-2893	FRE-CLINTER STA	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-2894	FRE-CEDAR STA	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-2895	FRE-HUGHES STA	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-2896	FRE-CARDWELL STA	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-2897	FRE-WOODWARD PARK STA	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-2898	FRE-PINEDALE STA	CA	PACIFIC	05-2886	BC052886	200
F	956 SACRAMENTO PFC	05-6676	SACRAMENTO CS DISTRICT	CA	PACIFIC	05-6676	BC056678	200
F	956 SACRAMENTO PFC	05-6677	SACRAMENTO CA VMF	CA	PACIFIC	05-6677	BC056678	200
F	956 SACRAMENTO PFC	05-6678	SACRAMENTO PO	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6679	SACRAMENTO CA P&DC	CA	PACIFIC	05-6679	BC056678	200
F	956 SACRAMENTO PFC	05-6681	SAC-ARDEN BRANCH	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6685	SAC-COLONIAL STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6687	SAC-DEL PASO HEIGHTS STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6688	SAC-ELKHORN CARRIER ANX	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6689	SAC-FLORIN STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6690	SAC-FOOTHILL FARMS STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6691	SAC-FORT SUTTER STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6692	SAC-LAND PARK STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6693	SAC-OAK PARK STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6694	SAC-PARKWAY STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6695	SAC-PERKINS STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6697	SAC-TOWN & COUNTRY STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6698	SAC-ROYAL OAKS CARRIER UNIT	CA	PACIFIC	05-6678	BC056678	200

F	956 SACRAMENTO PFC	05-6699	SAC-CFS	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6700	REDDING AUX VMF OF SACRAMENTO	CA	PACIFIC	05-6700	BC056678	200
F	956 SACRAMENTO PFC	05-6707	WEST SACRAMENTO CA VMF	CA	PACIFIC	05-6707	BC056678	200
F	956 SACRAMENTO PFC	05-6709	SAC-BROADWAY STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6710	SAC-CAMELLIA STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6711	SAC-DOWNTOWN PLAZA STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-6712	SAC-NORTH NATOMAS STA	CA	PACIFIC	05-6678	BC056678	200
F	956 SACRAMENTO PFC	05-7519	STK-MAIN OFFICE STA	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7520	STK-ARCH ANX	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7521	STK-HAMMER RANCH STA	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7522	STK-CALAVERAS STA	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7523	STK-EAST STOCKTON STA	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7524	STOCKTON PO	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7525	STK-DELTA STA	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7527	STOCKTON CA VMF	CA	PACIFIC	05-7527	BC057524	200
F	956 SACRAMENTO PFC	05-7528	STK-HOMESTEAD STA	CA	PACIFIC	05-7524	BC057524	200
F	956 SACRAMENTO PFC	05-7529	STK-TUXEDO STA	CA	PACIFIC	05-7524	BC057524	200
F	967 HONOLULU PFC	14-2400	HONOLULU PO	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2401	HONOLULU HI P&DC	HI	PACIFIC	14-2401	BC142400	200
F	967 HONOLULU PFC	14-2402	HONOLULU HI VMF	HI	PACIFIC	14-2402	BC142400	200
F	967 HONOLULU PFC	14-2403	HONOLULU CS DISTRICT	HI	PACIFIC	14-2403	BC142400	200
F	967 HONOLULU PFC	14-2405	HNL-WAIKIKI STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2406	HNL-SAND ISLAND CARRIER ANX	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2407	HNL-KAPALAMA STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2408	HNL-WAIALAE-KAHALA STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2409	HNL-MAKIKI STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2410	HNL-DOWNTOWN STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2411	HNL-HAWAII KAI STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2412	HNL-MAIN OFFICE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2413	HNL-AINA HAINA FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2414	HNL-ALA MOANA FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2415	HNL-FORT SHAFTER FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2416	HNL-JBP HICKAM FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2417	HNL-KAIMUKI FINANCE STA	HI	PACIFIC	14-2400	BC142400	200

F	967 HONOLULU PFC	14-2418	HNL-MOILIILI FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2419	HNL-JBP MOU 1 FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2421	HNL-JBP MOU 3 FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2422	HNL-TRIPLER FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2423	HNL-UPTOWN FINANCE STA	HI	PACIFIC	14-2400	BC142400	200
F	967 HONOLULU PFC	14-2430	HONOLULU CFS	HI	PACIFIC	14-2400	BC142400	200
F	975 PACIFIC AREA PFC	05-4521	LA INTL SVC CTR	CA	PACIFIC	05-4521	BC054521	200
F	975 PACIFIC AREA PFC	05-4529	LOS ANGELES NDC	CA	PACIFIC	05-4529	BC054529	200
F	975 PACIFIC AREA PFC	05-6785	SAN FRANCISCO NDC	CA	PACIFIC	05-6785	BC056785	200
G	320 GULF ATLANTIC PFC	11-3224	GNV - NORTHWEST STA	FL	SOUTHERN	11-3225	BC113225	200
G	320 GULF ATLANTIC PFC	11-3225	GAINESVILLE PO	FL	SOUTHERN	11-3225	BC113225	200
G	320 GULF ATLANTIC PFC	11-3227	GNV-GMF STA	FL	SOUTHERN	11-3225	BC113225	200
G	320 GULF ATLANTIC PFC	11-3228	GNV-MAIN ST STA	FL	SOUTHERN	11-3225	BC113225	200
G	320 GULF ATLANTIC PFC	11-3229	GNV-UNIVERSITY STA	FL	SOUTHERN	11-3225	BC113225	200
G	320 GULF ATLANTIC PFC	11-3250	GAINESVILLE P&DF	FL	SOUTHERN	11-3250	BC113225	200
G	320 GULF ATLANTIC PFC	11-4351	GFA DISTRICT CRAFT	FL	SOUTHERN	11-4351	BC114380	200
G	320 GULF ATLANTIC PFC	11-4380	JACKSONVILLE PO	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4382	JACKSONVILLE FL P&DC	FL	SOUTHERN	11-4382	BC114380	200
G	320 GULF ATLANTIC PFC	11-4383	JACKSONVILLE FL VMF	FL	SOUTHERN	11-4383	BC114380	200
G	320 GULF ATLANTIC PFC	11-4384	GULF ATLANTIC CS DISTRICT	FL	SOUTHERN	11-4384	BC114380	200
G	320 GULF ATLANTIC PFC	11-4387	GAINESVILLE AUX VMF OF JACKSONVIL	FL	SOUTHERN	11-4387	BC114380	200
G	320 GULF ATLANTIC PFC	11-4389	TALLAHASEE AUX VMF OF JACKSONVIL	FL	SOUTHERN	11-4389	BC114380	200
G	320 GULF ATLANTIC PFC	11-4400	JAX-ARLINGTON STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4401	JAX-ATLANTIC BCH STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4402	JAX-BALDWIN STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4403	JAX-BAYMEADOWS DDC	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4404	JAX-CARVER STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4407	JAX-GMF MAIN OFC PSTL STR	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4408	JAX-JAX BEACH STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4409	JAX-LAKE FOREST STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4410	JAX-LAKE SHORE STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4411	JAX-MANDARIN PSTL STR	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4413	JAX-MONUMENT PSTL STR	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4414	JAX-MURRAY HILL STA	FL	SOUTHERN	11-4380	BC114380	200

G	320 GULF ATLANTIC PFC	11-4415	JAX-GATEWAY CARRIER ANX	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4416	JAX-NAS MAYPORT FSTA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4417	JAX-NAVAL AIR FSTA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4418	JAX-NORTH JAX STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4419	JAX-NW ST JOHNS FSTA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4420	JAX-POTTSBURG PSTL STR	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4421	JAX-SOUTH JAX STA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4422	JAX-SOUTHPOINT PSTL STR	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4423	JAX-EDDIE MAE STEWARD FSTA	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-4424	JAX-WESTLAND PSTL STR	FL	SOUTHERN	11-4380	BC114380	200
G	320 GULF ATLANTIC PFC	11-7410	PENSACOLA PO	FL	SOUTHERN	11-7410	BC117410	200
G	320 GULF ATLANTIC PFC	11-7411	PENSACOLA FL P&DC	FL	SOUTHERN	11-7411	BC117410	200
G	320 GULF ATLANTIC PFC	11-7413	PENSACOLA FL VMF	FL	SOUTHERN	11-7413	BC117410	200
G	320 GULF ATLANTIC PFC	11-7414	PNS-EAST HILL STA	FL	SOUTHERN	11-7410	BC117410	200
G	320 GULF ATLANTIC PFC	11-7415	PNS-DOWNTOWN STA	FL	SOUTHERN	11-7410	BC117410	200
G	320 GULF ATLANTIC PFC	11-7416	PNS-MYRTLE GROVE BR	FL	SOUTHERN	11-7410	BC117410	200
G	320 GULF ATLANTIC PFC	11-7417	PNS-NOBLES STA	FL	SOUTHERN	11-7410	BC117410	200
G	320 GULF ATLANTIC PFC	11-7418	PNS-WARRINGTON BR	FL	SOUTHERN	11-7410	BC117410	200
G	320 GULF ATLANTIC PFC	11-7419	PANAMA CITY AUX VMF OF PENSACOL	FL	SOUTHERN	11-7419	BC117410	200
G	320 GULF ATLANTIC PFC	11-8891	TLH-CENTERVILLE STA	FL	SOUTHERN	11-8895	BC118895	200
G	320 GULF ATLANTIC PFC	11-8892	TLH-GMF STA	FL	SOUTHERN	11-8895	BC118895	200
G	320 GULF ATLANTIC PFC	11-8893	TLH-LAKE JACKSON STA	FL	SOUTHERN	11-8895	BC118895	200
G	320 GULF ATLANTIC PFC	11-8894	TLH-WESTSIDE STA	FL	SOUTHERN	11-8895	BC118895	200
G	320 GULF ATLANTIC PFC	11-8895	TALLAHASSEE PO	FL	SOUTHERN	11-8895	BC118895	200
G	320 GULF ATLANTIC PFC	11-8896	TLH - LEON STA	FL	SOUTHERN	11-8895	BC118895	200
G	320 GULF ATLANTIC PFC	11-8898	TALLAHASSE FL P&DC	FL	SOUTHERN	11-8898	BC118895	200
G	320 GULF ATLANTIC PFC	12-0473	AUGUSTA PO	GA	SOUTHERN	12-0473	BC120473	200
G	320 GULF ATLANTIC PFC	12-0476	AUGUSTA GA P&DC	GA	SOUTHERN	12-0476	BC120473	200
G	320 GULF ATLANTIC PFC	12-0487	AUG-FOREST HILLS STA	GA	SOUTHERN	12-0473	BC120473	200
G	320 GULF ATLANTIC PFC	12-0488	AUG-MARTINEZ BR	GA	SOUTHERN	12-0473	BC120473	200
G	320 GULF ATLANTIC PFC	12-0489	AUG-PEACH ORCHARD STA	GA	SOUTHERN	12-0473	BC120473	200
G	320 GULF ATLANTIC PFC	12-0490	AUG-MAIN OFFICE STA	GA	SOUTHERN	12-0473	BC120473	200
G	320 GULF ATLANTIC PFC	12-0492	AUGUSTA AUX VMF OF GREENVILLE SC	GA	SOUTHERN	12-0492	BC120473	200
G	320 GULF ATLANTIC PFC	12-5489	MACON PO	GA	SOUTHERN	12-5489	BC125489	200

G	320 GULF ATLANTIC PFC	12-5490	MACON GA P&DC	GA	SOUTHERN	12-5490	BC125489	200
G	320 GULF ATLANTIC PFC	12-5491	MACON GA VMF	GA	SOUTHERN	12-5491	BC125489	200
G	320 GULF ATLANTIC PFC	12-5493	MAC-PIO NONO STA	GA	SOUTHERN	12-5489	BC125489	200
G	320 GULF ATLANTIC PFC	12-5495	MAC-SOUTH MACON STA	GA	SOUTHERN	12-5489	BC125489	200
G	320 GULF ATLANTIC PFC	12-5496	MAC-ZEBULON BR	GA	SOUTHERN	12-5489	BC125489	200
G	320 GULF ATLANTIC PFC	12-5497	MAC-MAIN OFFICE STA	GA	SOUTHERN	12-5489	BC125489	200
G	320 GULF ATLANTIC PFC	12-7810	SAVANNAH PO	GA	SOUTHERN	12-7810	BC127810	200
G	320 GULF ATLANTIC PFC	12-7811	SAV-BINGVILLE STA	GA	SOUTHERN	12-7810	BC127810	200
G	320 GULF ATLANTIC PFC	12-7812	SAVANNAH GA VMF	GA	SOUTHERN	12-7812	BC127810	200
G	320 GULF ATLANTIC PFC	12-7813	SAV-EASTSIDE STA	GA	SOUTHERN	12-7810	BC127810	200
G	320 GULF ATLANTIC PFC	12-7814	SAV-OGLETHORPE STA	GA	SOUTHERN	12-7810	BC127810	200
G	320 GULF ATLANTIC PFC	12-7815	SAV-MAIN OFFICE STA	GA	SOUTHERN	12-7810	BC127810	200
G	320 GULF ATLANTIC PFC	12-7816	SAV-SOUTHSIDE STA	GA	SOUTHERN	12-7810	BC127810	200
G	320 GULF ATLANTIC PFC	12-7817	SAV-TELFAIR SQUARE STA	GA	SOUTHERN	12-7810	BC127810	200
G	320 GULF ATLANTIC PFC	12-7818	WAYCROSS AUX VMF OF SAVANNAH G	GA	SOUTHERN	12-7818	BC127810	200
G	330 SOUTH FLORIDA PFC	11-0855	BOCA RATON PO	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-0856	BOC-WOODLANDS STA	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-0858	BOC-WEST BOCA CARRIER ANX	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-0859	BOC-RIO BR	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-0860	BOC-WEST BR	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-0862	BOC-PALMETTO CARRIER ANX	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-0863	BOC-PALMETTO PARK BR	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-0864	BOC-DOWNTOWN STA	FL	SOUTHERN	11-0855	BC110855	200
G	330 SOUTH FLORIDA PFC	11-3030	FORT LAUDERDALE PO	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3033	FORT LAUDERDALE FL VMF	FL	SOUTHERN	11-3033	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3041	FTL-ALRIDGE STA	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3042	FTL-CAUSEWAY PSTL STR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3043	FTL-COLEE FSTA	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3044	FTL-CORAL RIDGE FSTA	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3046	FTL-DAVIE BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3047	FTL-EVERGLADES BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3048	FTL-FT LAUDERDALE MAIN OFC	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3049	FTL-GALT OCEAN MILE FSTA	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3050	FTL-GATEWAY FSTA	FL	SOUTHERN	11-3030	BC113030	200

G	330 SOUTH FLORIDA PFC	11-3051	FTL-INVERRARY BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3052	FTL-LAUDERRIDGE CARRIER ANNEX	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3053	FTL-MELROSE VISTA BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3054	FTL-MO CARRIER ANX	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3056	FTL-OAKLAND PARK BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3057	FTL-PLANTATION BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3058	FTL-SABAL PALM PSTL STR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3059	FTL-SAWGRASS PSTL STR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3061	FTL-SOUTHSIDE STA	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3062	FTL-SUNRISE BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3063	FTL-TAMARAC BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3064	FTL-WESTON BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3065	FTL-WESTSIDE BR	FL	SOUTHERN	11-3030	BC113030	200
G	330 SOUTH FLORIDA PFC	11-3117	FORT PIERCE AUX VMF OF WEST PALM	FL	SOUTHERN	11-3117	BC119453	200
G	330 SOUTH FLORIDA PFC	11-3825	HIALEAH PO	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3826	HIA-BRIGHT STA	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3827	HIA-CARRIER ANX	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3828	HIA-LAKES STA	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3829	HIA-MIAMI GARDENS BR	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3830	HIA-PALMETTO LAKES BR	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3831	HIA-PROMENADE BR	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3832	HIA-MAIN OFFICE STA	FL	SOUTHERN	11-3825	BC113825	200
G	330 SOUTH FLORIDA PFC	11-3990	HOLLYWOOD PO	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-3991	HOL-WEST HOLLYWOOD HILLS STA	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-3992	HOL-CHAPEL LAKES BR	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-3993	HOL-FLAMINGO BR	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-3994	HOL-HILLCREST PSTL STA	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-3995	HOL-MIRAMAR BR	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-3996	HOL-PEMBROKE PINES BR	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-3998	HOL-MAIN OFFICE STA	FL	SOUTHERN	11-3990	BC113990	200
G	330 SOUTH FLORIDA PFC	11-5841	MIA-MILAM DAIRY ANNEX	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5847	SF DIST CRAFT - PM MI	FL	SOUTHERN	11-5847	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5850	MIAMI PO	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5851	MIAMI FL P&DC	FL	SOUTHERN	11-5851	BC115908	200

G	330 SOUTH FLORIDA PFC	11-5853	MIAMI FL VMF	FL	SOUTHERN	11-5853	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5855	MIAMI INTL SVC CTR	FL	SOUTHERN	11-5855	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5860	MIA-ALLAPATTAH STA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5861	MIA-AVE OF AMERICAS PSTL STR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5862	MIA-AVENTURA FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5863	MIA-WEST CARRIER ANX	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5864	MIA-BRICKELL PSTL STR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5865	MIA-BUENA VISTA CARRIER ANX	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5866	MIA-COCONUT GROVE STA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5867	MIA-CORAL GABLES BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5868	MIA-COUNTRY LAKES BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5869	MIA-COUNTY LINE ANX	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5870	MIA-DORAL BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5872	MIA-FLAGLER STA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5873	MIA-FATHER FELIX VARELA BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5874	MIA-GOULDS FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5875	MIA-GRATIGNY BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5876	MIA-HIBISCUS ANX	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5877	MIA-JOSE MARTI STA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5878	MIA-KENDALL BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5879	MIA-KEY BISCAYNE BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5881	MIA-LITTLE RIVER STA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5882	MIA-LUDLAM BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5883	MIA-MARTIN LUTHER KING STA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5884	MIA-METRO PSTL STR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5885	MIA-MIAMI SHORES FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5886	MIA-MIAMI SPRINGS FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5887	MIA-MILAM DAIRY BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5888	MIA-MIRACLE MILE PSTL STR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5889	MIA-NORLAND BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5890	MIA-NORTH MIAMI BEACH BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5891	MIA-NORTH MIAMI BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5892	MIA-OJUS FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5893	MIA-OLYMPIA HEIGHTS BR	FL	SOUTHERN	11-5850	BC115908	200

G	330 SOUTH FLORIDA PFC	11-5894	MIA-PERRINE PSTL STR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5895	MIA-PINECREST PSTL STR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5896	MIA-QUAIL HEIGHTS BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5898	MIA-SHENANDOAH FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5899	MIA-SNAPPER CREEK BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5900	MIA-KENDALL CARRIER ANNEX	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5901	MIA-SOUTH MIAMI BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5902	MIA-SUNNY ISLES FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5903	MIA-SUNSET BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5904	MIA-TAMIAMI STA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5905	MIA-TOWN & COUNTRY PSTL STR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5906	MIA-ULETA FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5907	MIA-WEST DADE FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5908	MIA-MIAMI GMF FSTA	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-5909	MIA-BLUE LAGOON BR	FL	SOUTHERN	11-5850	BC115908	200
G	330 SOUTH FLORIDA PFC	11-6812	ROYAL PALM FL P&DC	FL	SOUTHERN	11-6812	BC116812	200
G	330 SOUTH FLORIDA PFC	11-7635	POMPANO BEACH PO	FL	SOUTHERN	11-7635	BC117635	200
G	330 SOUTH FLORIDA PFC	11-7636	POM-ATLANTIC BR	FL	SOUTHERN	11-7635	BC117635	200
G	330 SOUTH FLORIDA PFC	11-7637	POM-COCONUT CREEK BR	FL	SOUTHERN	11-7635	BC117635	200
G	330 SOUTH FLORIDA PFC	11-7638	POM-CORAL SPRINGS BR	FL	SOUTHERN	11-7635	BC117635	200
G	330 SOUTH FLORIDA PFC	11-7640	POM-MARGATE BR	FL	SOUTHERN	11-7635	BC117635	200
G	330 SOUTH FLORIDA PFC	11-7642	POM-TROPICAL REEF STA	FL	SOUTHERN	11-7635	BC117635	200
G	330 SOUTH FLORIDA PFC	11-7643	POM-MAIN OFFICE STA	FL	SOUTHERN	11-7635	BC117635	200
G	330 SOUTH FLORIDA PFC	11-9441	WPB-CITY PLACE STA	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9442	WPB-DOWNTOWN STA	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9443	WPB-HAVERHILL BR	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9445	WPB-LAKE PARK BR	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9446	WPB-MOWU	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9447	WPB-N PALM BEACH BR	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9448	WPB-NORTHWOOD STA	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9449	WPB-PALM BEACH GDNS BR	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9450	WPB-PALM BCH GDNS MAL	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9451	WPB-PALMS CEN CARR ANX	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9452	WPB-PALMS WEST BR	FL	SOUTHERN	11-9465	BC119453	200

G	330 SOUTH FLORIDA PFC	11-9454	WPB-RIVIERA BEACH BR	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9455	WPB-ROYAL PALM BCH BR	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9456	WPB-SINGER ISLAND BR	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9458	WPB-WELLINGTON STA	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9459	WPB-WELLINGTON CARRIER ANX	FL	SOUTHERN	11-9465	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9463	CF PC DIST SUPP-WPB	FL	SOUTHERN	11-9463	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9466	WEST PALM BEACH FL P&DC	FL	SOUTHERN	11-9466	BC119453	200
G	330 SOUTH FLORIDA PFC	11-9467	WEST PALM BEACH FL VMF	FL	SOUTHERN	11-9467	BC119453	200
G	335 SUNCOAST PFC	11-0501	ST PETERSBURG-CUSTOMER RETENTIC	FL	SOUTHERN	11-0501	BC118250	200
G	335 SUNCOAST PFC	11-0511	TAMPA-CUSTOMER RETENTION	FL	SOUTHERN	11-0511	BC118925	200
G	335 SUNCOAST PFC	11-1665	CLEARWATER PO	FL	SOUTHERN	11-1665	BC111665	200
G	335 SUNCOAST PFC	11-1666	CLW-BEACH STA	FL	SOUTHERN	11-1665	BC111665	200
G	335 SUNCOAST PFC	11-1667	CLW-CLEVELAND STA	FL	SOUTHERN	11-1665	BC111665	200
G	335 SUNCOAST PFC	11-1668	CLW-HIGHPOINT BR	FL	SOUTHERN	11-1665	BC111665	200
G	335 SUNCOAST PFC	11-1670	CLW-SUNSET POINT BR	FL	SOUTHERN	11-1665	BC111665	200
G	335 SUNCOAST PFC	11-1671	CLW-COUNTRYSIDE PSTL STR	FL	SOUTHERN	11-1665	BC111665	200
G	335 SUNCOAST PFC	11-1672	CLW-MAIN POST OFFICE STA	FL	SOUTHERN	11-1665	BC111665	200
G	335 SUNCOAST PFC	11-1678	CLEARWATER FL VMF	FL	SOUTHERN	11-1678	BC111665	200
G	335 SUNCOAST PFC	11-3075	FORT MYERS PO	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-3077	FT MYERS FL P&DC	FL	SOUTHERN	11-3077	BC113075	200
G	335 SUNCOAST PFC	11-3078	FORT MYERS FL VMF	FL	SOUTHERN	11-3078	BC113075	200
G	335 SUNCOAST PFC	11-3081	FMY-CAPE CENTRAL BR	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-3082	FMY-DOWNTOWN STA	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-3083	FMY-6 MILE CYPRESS CARRIER ANX	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-3085	FMY-NORTH FT MYERS STA	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-3086	FMY-TICE PSTL STR	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-3088	FMY-CAPE SOUTH PSTL STR	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-3089	FMY-MAIN POST OFFICE STA	FL	SOUTHERN	11-3075	BC113075	200
G	335 SUNCOAST PFC	11-5605	MANASOTA FL P&DC	FL	SOUTHERN	11-5605	BC115605	200
G	335 SUNCOAST PFC	11-5790	MELBOURNE PO	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5791	MEL-APOLLO ANX	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5792	MEL-PALM BAY WEST BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5793	MEL-SATELLITE BEACH BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5794	MEL-SUNTREE BR	FL	SOUTHERN	11-5790	BC115790	200

G	335 SUNCOAST PFC	11-5795	MEL-WEST MELBOURNE BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5796	MEL-PALM BAY BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5797	MEL-MELBOURNE BEACH STA	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5798	MEL-INDIALANTIC BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5799	MEL-EAU GALLIE BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5800	MEL-MAIN OFFICE STA	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5801	MEL-INTERCHANGE SQUARE BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5802	MEL-PATRICK AIR FORCE BASE BR	FL	SOUTHERN	11-5790	BC115790	200
G	335 SUNCOAST PFC	11-5817	MELBOURNE FL VMF	FL	SOUTHERN	11-5817	BC115790	200
G	335 SUNCOAST PFC	11-6270	NAPLES PO	FL	SOUTHERN	11-6270	BC116270	200
G	335 SUNCOAST PFC	11-6271	NPS-COCO RIVER STA	FL	SOUTHERN	11-6270	BC116270	200
G	335 SUNCOAST PFC	11-6272	NPS-EAST NAPLES CARRIER ANX	FL	SOUTHERN	11-6270	BC116270	200
G	335 SUNCOAST PFC	11-6273	NPS-GOLDEN GATE CARRIER ANX	FL	SOUTHERN	11-6270	BC116270	200
G	335 SUNCOAST PFC	11-6274	NPS-DOWNTOWN PSTL STR	FL	SOUTHERN	11-6270	BC116270	200
G	335 SUNCOAST PFC	11-6276	NPS-GOLDEN GATE PSTL STR	FL	SOUTHERN	11-6270	BC116270	200
G	335 SUNCOAST PFC	11-6277	NPS-MAIN POST OFFICE STA	FL	SOUTHERN	11-6270	BC116270	200
G	335 SUNCOAST PFC	11-6913	DISTRICT SUPPORT-ORL	FL	SOUTHERN	11-6913	BC116938	200
G	335 SUNCOAST PFC	11-6916	ORLANDO FL P&DC	FL	SOUTHERN	11-6916	BC116938	200
G	335 SUNCOAST PFC	11-6917	ORLANDO FL VMF	FL	SOUTHERN	11-6917	BC116938	200
G	335 SUNCOAST PFC	11-6920	SEMINOLE FL P&DC	FL	SOUTHERN	11-6920	BC116920	200
G	335 SUNCOAST PFC	11-6921	ORL-ALAFAYA CARRIER ANX	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6922	ORL-ARTHUR KENNEDY STA	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6923	ORL-AZALEA PARK BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6924	ORL-COLLEGE PARK STA	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6925	ORL-COLONIALTOWN FINANCE STA	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6926	ORL-DIXIE VILLAGE STA	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6927	ORL-DOWNTOWN STA	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6928	ORL-GORE STREET ANX	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6929	ORL-HERNDON STA	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6930	ORL-HIAWASSEE BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6931	ORL-LEE VISTA STA	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6932	ORL-LOCKHART BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6933	ORL-MAIN OFC WINDOW U	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6934	ORL-MALL ANX	FL	SOUTHERN	11-6915	BC116938	200

G	335 SUNCOAST PFC	11-6935	ORL-ORLO VISTA BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6936	ORL-PINE CASTLE BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6937	ORL-PINE HILLS BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6938	ORL-POSTMASTR & STAFF	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6939	ORL-SAND LAKE BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6940	ORL-SOUTH CREEK BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6942	ORL-UNION PARK BRANCH	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6943	ORL-VENTURA BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-6944	ORL-ALAFAYA BR	FL	SOUTHERN	11-6915	BC116938	200
G	335 SUNCOAST PFC	11-8250	SAINT PETERSBURG PO	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8253	SPT-CROSSROADS STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8254	SPT-EUCLID STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8255	SPT-GATEWAY STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8256	SPT-GULFWINDS STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8257	SPT-MADEIRA BEACH BR	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8258	SAINT PETERSBURG FL VMF	FL	SOUTHERN	11-8258	BC118250	200
G	335 SUNCOAST PFC	11-8259	SPT-NORTHSIDE STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8260	SPT-OPEN AIR STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8261	SPT-MIDTOWN STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8262	SPT-ST PETE BEACH BR	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8263	SPT-MAIN POST OFFICE STA	FL	SOUTHERN	11-8250	BC118250	200
G	335 SUNCOAST PFC	11-8430	SARASOTA PO	FL	SOUTHERN	11-8430	BC118430	200
G	335 SUNCOAST PFC	11-8431	SAR-GLENGARRY STA	FL	SOUTHERN	11-8430	BC118430	200
G	335 SUNCOAST PFC	11-8432	SAR-GULFGATE BR	FL	SOUTHERN	11-8430	BC118430	200
G	335 SUNCOAST PFC	11-8433	SAR-SARASOTA CARRIER ANX	FL	SOUTHERN	11-8430	BC118430	200
G	335 SUNCOAST PFC	11-8434	SAR-SOUTHGATE STA	FL	SOUTHERN	11-8430	BC118430	200
G	335 SUNCOAST PFC	11-8438	SARASOTA FL VMF	FL	SOUTHERN	11-8438	BC118430	200
G	335 SUNCOAST PFC	11-8906	YBOR CITY FL P&DC	FL	SOUTHERN	11-8906	BC118925	200
G	335 SUNCOAST PFC	11-8914	TPA-COMMERCE STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8915	TPA-CARROLLWOOD BR	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8917	TPA-EHRLICH STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8919	TPA-FOREST HILLS STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8920	TPA-HILLDALE CARRIER ANX	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8921	TPA-HILLDALE STA	FL	SOUTHERN	11-8925	BC118925	200

G	335 SUNCOAST PFC	11-8922	TPA-HYDE PARK CARRIER ANX	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8923	TPA-INTERBAY STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8925	TAMPA PO	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8926	TAMPA FL P&DC	FL	SOUTHERN	11-8926	BC118925	200
G	335 SUNCOAST PFC	11-8927	DISTRICT SUPPORT-TPA	FL	SOUTHERN	11-8927	BC118925	200
G	335 SUNCOAST PFC	11-8928	TAMPA FL VMF	FL	SOUTHERN	11-8928	BC118925	200
G	335 SUNCOAST PFC	11-8931	TPA-NEW TAMPA STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8932	TPA-NORTHDALE CARRIER ANX	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8933	TPA-PALM RIVER CARRIER ANX	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8935	TPA-PENINSULA STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8936	TPA-PRODUCE STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8938	TPA-SEMINOLE HEIGHTS STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8939	TPA-SULPHUR SPRINGS STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8943	TPA-CARRIER ANX	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8944	TPA-MOWU	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8945	TPA-WEST TAMPA STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8946	TPA-TEMPLE TERRACE BR	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8947	TPA-TOWN N COUNTRY BR	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8948	TPA-YBOR STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8949	TPA-TAMPA CFS	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8951	DISTRICT SUPPORT-FMY	FL	SOUTHERN	11-8951	BC113075	200
G	335 SUNCOAST PFC	11-8953	DISTRICT SUPPORT-MAN	FL	SOUTHERN	11-8953	BC115605	200
G	335 SUNCOAST PFC	11-8954	DISTRICT SUPPORT-SPT	FL	SOUTHERN	11-8954	BC118250	200
G	335 SUNCOAST PFC	11-8957	TPA-FALKENBURG PSTL STR	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8958	TPA-MACDILL AFB STA	FL	SOUTHERN	11-8925	BC118925	200
G	335 SUNCOAST PFC	11-8960	SPRING HILL AUX VMF OF CLEARWATE	FL	SOUTHERN	11-8960	BC111665	200
G	350 ALABAMA PFC	01-0780	BIRMINGHAM PO	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0781	BIRMINGHAM AL P&DC	AL	SOUTHERN	01-0781	BC010780	200
G	350 ALABAMA PFC	01-0782	BIRMINGHAM AL VMF	AL	SOUTHERN	01-0782	BC010780	200
G	350 ALABAMA PFC	01-0783	ALABAMA CS DISTRICT	AL	SOUTHERN	01-0783	BC010780	200
G	350 ALABAMA PFC	01-0784	DISTRICT OFFICE CRAFT	AL	SOUTHERN	01-0784	BC010780	200
G	350 ALABAMA PFC	01-0791	BHM-DOWNTOWN CARRIER ANX	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0792	BHM-GREEN SPRINGS CARRIER ANX	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0793	BHM-HOOVER BR	AL	SOUTHERN	01-0780	BC010780	200

G	350 ALABAMA PFC	01-0794	BHM-CAHABA HEIGHTS BR	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0795	BHM-CENTER POINT BR	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0796	BHM-CRESTLINE BR	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0797	BHM-EAST LAKE FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0798	BHM-ENSLEY STA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0799	BHM-FAIRVIEW STA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0800	BHM-IRONDALE BR	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0801	BHM-MEADOW BROOK STA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0802	BHM-MIDFIELD BR	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0804	BHM-FORESTDALE STA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0805	BHM-TARRANT BR	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0806	BHM-WEST END STA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0807	BHM-WOODLAWN STA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0809	BHM-GREEN SPRINGS FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0810	BHM-VESTAVIA FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0811	BHM-BLUFF PARK FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0812	BHM-HOMEWOOD FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0813	BHM-MOUNTAIN BROOK FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0814	BHM-NORTH BIRMINGHAM FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-0815	BHM-SOUTH HIGHLANDS FSTA	AL	SOUTHERN	01-0780	BC010780	200
G	350 ALABAMA PFC	01-4240	HUNTSVILLE PO	AL	SOUTHERN	01-4240	BC014240	200
G	350 ALABAMA PFC	01-4242	HUNTSVILLE AL VMF	AL	SOUTHERN	01-4242	BC014240	200
G	350 ALABAMA PFC	01-4243	HSV-DOWNTOWN STA	AL	SOUTHERN	01-4240	BC014240	200
G	350 ALABAMA PFC	01-4244	HSV-WEST STA	AL	SOUTHERN	01-4240	BC014240	200
G	350 ALABAMA PFC	01-4245	HSV-MASTIN LAKE STA	AL	SOUTHERN	01-4240	BC014240	200
G	350 ALABAMA PFC	01-4246	HSV-WYNN DRIVE STA	AL	SOUTHERN	01-4240	BC014240	200
G	350 ALABAMA PFC	01-4247	HSV-HAYSLAND STA	AL	SOUTHERN	01-4240	BC014240	200
G	350 ALABAMA PFC	01-4248	FLORENCE AUX VMF OF HUNTSVILLE A	AL	SOUTHERN	01-4248	BC014240	200
G	350 ALABAMA PFC	01-4249	HSV-REDSTONE ARSENAL FSTA	AL	SOUTHERN	01-4240	BC014240	200
G	350 ALABAMA PFC	01-4250	HUNTSVILLE P&DF	AL	SOUTHERN	01-4250	BC014240	200
G	350 ALABAMA PFC	01-5600	MOBILE PO	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5601	MOBILE AL VMF	AL	SOUTHERN	01-5601	BC015602	200
G	350 ALABAMA PFC	01-5602	MOBILE AL P&DC	AL	SOUTHERN	01-5602	BC015602	200
G	350 ALABAMA PFC	01-5603	MOB-MIDTOWN STA	AL	SOUTHERN	01-5600	BC015602	200

G	350 ALABAMA PFC	01-5604	MOB-BAYSIDE STA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5605	MOB-LOOP STA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5606	MOB-SPRINGHILL STA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5607	MOB-COTTAGE HILL STA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5608	MOB-PRICHARD BR	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5609	MOB-TOWNE WEST STA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5611	MOB-TILLMANS CORNER STA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5612	MOB-AIRPORT STA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5613	MOB-PLAZA DE MALAGA FSTA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5614	MOB-CRICHTON FSTA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5615	MOB-CHICKASAW FSTA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5616	MOB-BEL AIR FSTA	AL	SOUTHERN	01-5600	BC015602	200
G	350 ALABAMA PFC	01-5626	MGY-GREEN LANTERN FSTA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5627	MGY-MAXWELL AFB FSTA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5628	MGY-EASTBROOK FSTA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5629	MGY-CAROLYN FSTA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5630	MONTGOMERY PO	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5631	MONTGOMERY AL P&DC	AL	SOUTHERN	01-5631	BC015630	200
G	350 ALABAMA PFC	01-5632	MONTGOMERY AL VMF	AL	SOUTHERN	01-5632	BC015630	200
G	350 ALABAMA PFC	01-5633	MGY-DOWNTOWN STA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5634	MGY-CLOVERLAND STA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5636	MGY-WESTSIDE STA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5637	MGY-SOUTH STA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5638	MGY-LAGOON PARK STA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5639	MGY-SHAKESPEARE STA	AL	SOUTHERN	01-5630	BC015630	200
G	350 ALABAMA PFC	01-5641	DOTHAN AUX VMF OF MONTGOMERY	AL	SOUTHERN	01-5641	BC015630	200
G	390 MISSISSIPPI PFC	27-3783	JACKSON PO	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3784	JACKSON MS P&DC	MS	SOUTHERN	27-3784	BC273783	200
G	390 MISSISSIPPI PFC	27-3785	JACKSON MS VMF	MS	SOUTHERN	27-3785	BC273783	200
G	390 MISSISSIPPI PFC	27-3789	JCK-BYRAM BR	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3790	JCK-RICHLAND BR	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3791	JCK-FLOWOOD BR	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3792	JCK-SOUTHWEST STA	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3793	JCK-CANDLESTICK STA	MS	SOUTHERN	27-3783	BC273783	200

G	390 MISSISSIPPI PFC	27-3794	JCK-DELTA STA	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3795	JCK-FONDREN STA	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3796	JCK-LEFLEUR STA	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3797	JCK-NORTH STA	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3798	JCK-PEARL BR	MS	SOUTHERN	27-3783	BC273783	200
G	390 MISSISSIPPI PFC	27-3800	JCK- WESTLAND STA	MS	SOUTHERN	27-3783	BC273783	200
G	700 LOUISIANA PFC	21-0624	BATON ROUGE PO	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0625	BATON ROUGE LA P&DC	LA	SOUTHERN	21-0625	BC210624	200
G	700 LOUISIANA PFC	21-0626	BATON ROUGE LA VMF	LA	SOUTHERN	21-0626	BC210624	200
G	700 LOUISIANA PFC	21-0627	BTR-AUDUBON STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0628	BTR-BROADVIEW STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0629	BTR-COMMERCE PARK STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0630	BTR-ISTROUMA STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0631	BTR-OLD HAMMOND STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0632	BTR-SCOTLANDVILLE STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0633	BTR-SOUTHEAST STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0634	BTR-WOODLAWN STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-0635	BTR-DOWNTOWN STA	LA	SOUTHERN	21-0624	BC210624	200
G	700 LOUISIANA PFC	21-4977	LAFAYETTE LA P&DC	LA	SOUTHERN	21-4977	BC214979	200
G	700 LOUISIANA PFC	21-4979	LAFAYETTE PO	LA	SOUTHERN	21-4979	BC214979	200
G	700 LOUISIANA PFC	21-4980	LAFAYETTE AUX VMF OF BATON ROUG	LA	SOUTHERN	21-4980	BC214979	200
G	700 LOUISIANA PFC	21-4981	LAF-BERTRAND STA	LA	SOUTHERN	21-4979	BC214979	200
G	700 LOUISIANA PFC	21-4982	LAF-ENERGY CENTER STA	LA	SOUTHERN	21-4979	BC214979	200
G	700 LOUISIANA PFC	21-4983	LAF-JEFFERSON ST STA	LA	SOUTHERN	21-4979	BC214979	200
G	700 LOUISIANA PFC	21-4984	LAKE CHARLES AUX VMF OF BATON RC	LA	SOUTHERN	21-4984	BC210624	200
G	700 LOUISIANA PFC	21-6051	METAIRIE PO	LA	SOUTHERN	21-6051	BC216051	200
G	700 LOUISIANA PFC	21-6052	MET-JOHNSON ST STA	LA	SOUTHERN	21-6051	BC216051	200
G	700 LOUISIANA PFC	21-6053	MET-PARK MANOR STA	LA	SOUTHERN	21-6051	BC216051	200
G	700 LOUISIANA PFC	21-6565	NEW ORLEANS PO	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6567	NEW ORLEANS LA P&DC	LA	SOUTHERN	21-6567	BC216565	200
G	700 LOUISIANA PFC	21-6570	NEW ORLEANS LA VMF	LA	SOUTHERN	21-6570	BC216565	200
G	700 LOUISIANA PFC	21-6571	NOR-ALGIERS STA A	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6572	NOR-BYWATER STA	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6573	NOR-CARROLLTON STA	LA	SOUTHERN	21-6565	BC216565	200

G	700 LOUISIANA PFC	21-6574	NOR-CENTRAL CARRIER STA	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6576	NOR-ELMWOOD STA	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6577	NOR-LAKE FOREST STA	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6580	NOR-UPTOWN STA	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6581	NOR-MAIN OFFICE STA	LA	SOUTHERN	21-6565	BC216565	200
G	700 LOUISIANA PFC	21-6582	GRETNA AUX VMF OF NEW ORLEANS I	LA	SOUTHERN	21-6582	BC216565	200
G	700 LOUISIANA PFC	21-7950	SHV-MAIN OFFICE STA	LA	SOUTHERN	21-7956	BC217956	200
G	700 LOUISIANA PFC	21-7951	SHV-HUNTINGTON STA	LA	SOUTHERN	21-7956	BC217956	200
G	700 LOUISIANA PFC	21-7952	SHV-INDUSTRIAL STA	LA	SOUTHERN	21-7956	BC217956	200
G	700 LOUISIANA PFC	21-7953	SHV-LYNBROOK STA	LA	SOUTHERN	21-7956	BC217956	200
G	700 LOUISIANA PFC	21-7954	SHV-MERIWETHER STA	LA	SOUTHERN	21-7956	BC217956	200
G	700 LOUISIANA PFC	21-7955	SHV-SOUTHFIELD STA	LA	SOUTHERN	21-7956	BC217956	200
G	700 LOUISIANA PFC	21-7956	SHREVEPORT PO	LA	SOUTHERN	21-7956	BC217956	200
G	700 LOUISIANA PFC	21-7957	SHREVEPORT LA P&DC	LA	SOUTHERN	21-7957	BC217956	200
G	700 LOUISIANA PFC	21-7958	SHREVEPORT LA VMF	LA	SOUTHERN	21-7958	BC217956	200
G	700 LOUISIANA PFC	21-7959	ALEXANDRIA AUX VMF OF SHREVEPOR	LA	SOUTHERN	21-7959	BC217956	200
G	700 LOUISIANA PFC	27-3145	GULFPORT AUX VMF OF NEW ORLEAN	LA	SOUTHERN	27-3145	BC216565	200
G	720 ARKANSAS PFC	04-5122	LITTLE ROCK CFS	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5130	LITTLE ROCK PO	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5131	LITTLE ROCK AR P&DC	AR	SOUTHERN	04-5131	BC045130	200
G	720 ARKANSAS PFC	04-5132	LITTLE ROCK AR VMF	AR	SOUTHERN	04-5132	BC045130	200
G	720 ARKANSAS PFC	04-5136	LIT-ASHER STA	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5137	LIT-BRADY ANX	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5138	LIT-CHENAL STA	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5139	LIT-FOREST PARK STA	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5140	LIT-INDUSTRIAL STA	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5141	LIT-OTTER CREEK STA	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5143	LIT-SOUTHSIDE STA	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5144	LIT-WESTSIDE STA	AR	SOUTHERN	04-5130	BC045130	200
G	720 ARKANSAS PFC	04-5145	LIT-MAIN OFFICE STA	AR	SOUTHERN	04-5130	BC045130	200
G	730 OKLAHOMA PFC	39-6120	OKC-PENN 89 STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6121	OKC-HEFNER STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6122	OKC-BRITTON STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6123	OKC-SOUTHEAST STA	OK	SOUTHERN	39-6138	BC396138	200

G	730 OKLAHOMA PFC	39-6124	OKC-MARTIN LUTHER KING STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6126	OKC-CENTER CITY STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6128	OKC-FARLEY RETAIL UNIT	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6129	OKC-MIDWEST CITY BR	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6130	OKC-MOORE BR	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6132	OKC-SHARTEL STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6133	OKC-SOUTHWEST STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6135	OKC-39TH STREET STA	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6137	OKLAHOMA CITY OK VMF	OK	SOUTHERN	39-6137	BC396138	200
G	730 OKLAHOMA PFC	39-6138	OKLAHOMA CITY PO	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6139	OKLAHOMA CITY OK P&DC	OK	SOUTHERN	39-6139	BC396138	200
G	730 OKLAHOMA PFC	39-6140	OKC-VILLAGE BR	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6141	OKC-WESTSIDE ANX	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6143	OKC-SANTE FE ANX	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6144	OKC-WARR ACRES BR	OK	SOUTHERN	39-6138	BC396138	200
G	730 OKLAHOMA PFC	39-6145	LAWTON AUX VMF OF OKLAHOMA CIT	OK	SOUTHERN	39-6145	BC396138	200
G	730 OKLAHOMA PFC	39-8336	TUL-DOWNTOWN STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8337	TUL-CHIMNEY HILLS ANX	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8339	TUL-WEST TULSA STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8340	TUL-NORTHEAST STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8341	TUL-DONALDSON STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8342	TUL-EASTSIDE STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8343	TUL-NORTHSIDE STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8345	TUL-SHERIDAN STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8346	TUL-ROBERT W JENKINS STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8347	TUL-SOUTHEAST STA	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8349	TULSA PO	OK	SOUTHERN	39-8349	BC398349	200
G	730 OKLAHOMA PFC	39-8350	TULSA OK P&DC	OK	SOUTHERN	39-8350	BC398349	200
G	730 OKLAHOMA PFC	39-8351	TULSA OK VMF	OK	SOUTHERN	39-8351	BC398349	200
G	752 DALLAS PFC	48-0501	DALLAS-CUSTOMER RETENTION	TX	SOUTHERN	48-0501	BC482270	200
G	752 DALLAS PFC	48-2200	DAL-MAIN OFFICE STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2202	DAL-DFW FINANCE	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2203	DAL-BENT TREE STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2204	DAL-BEVERLY HILLS STA	TX	SOUTHERN	48-2270	BC482270	200

G	752 DALLAS PFC	48-2206	DAL-BROOKHOLLOW STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2207	DAL-CAESAR CLARK STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2208	DAL-DOWNTOWN STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2209	DAL-FARMERS BR	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2211	DAL-HIGHLAND HILLS STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2213	DAL-JOE POOL STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2214	DAL-JUANITA CRAFT STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2215	DAL-KLEBERG STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2216	DAL-LAKE HIGHLANDS STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2217	DAL-MEDRANO STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2218	DAL-LAKEWOOD STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2219	DAL-NORTHAVEN STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2221	DAL-NORTHWEST STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2222	DAL-OAKLAWN STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2223	DAL-PARKDALE STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2224	DAL-PLEASANT GROVE STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2225	DAL-PRESTON STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2226	DAL-PRESTONWOOD STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2227	DAL-RICHLAND STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2228	DAL-SPRING VALLEY STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2229	DAL-STATION A	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2230	DAL-UNIVERSITY STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2231	DAL-VICKERY STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2232	DAL-WHITE ROCK STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2233	DAL-ROBERT E PRICE STA	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2241	DALLAS CFS	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2266	DALLAS TX VMF	TX	SOUTHERN	48-2266	BC482270	200
G	752 DALLAS PFC	48-2270	DALLAS PO	TX	SOUTHERN	48-2270	BC482270	200
G	752 DALLAS PFC	48-2273	NORTH TEXAS TX P&DC	TX	SOUTHERN	48-2273	BC482273	200
G	752 DALLAS PFC	48-2274	DALLAS TX P&DC	TX	SOUTHERN	48-2274	BC482270	200
G	752 DALLAS PFC	48-2281	GARLAND TX VMF	TX	SOUTHERN	48-2281	BC482270	200
G	752 DALLAS PFC	48-2282	SPRING VALLEY TX VMF	TX	SOUTHERN	48-2282	BC482270	200
G	752 DALLAS PFC	48-2283	COPPELL TX VMF	TX	SOUTHERN	48-2283	BC482270	200
G	752 DALLAS PFC	48-4360	IRVING PO	TX	SOUTHERN	48-4360	BC484360	200

G	752 DALLAS PFC	48-4361	IRV-VALLEY RANCH STA	TX	SOUTHERN	48-4360	BC484360	200
G	752 DALLAS PFC	48-4363	IRV-CENTRAL STA	TX	SOUTHERN	48-4360	BC484360	200
G	752 DALLAS PFC	48-4366	IRV-MAIN OFFICE STA	TX	SOUTHERN	48-4360	BC484360	200
G	760 FORT WORTH PFC	48-0014	ABILENE P&DF	TX	SOUTHERN	48-0014	BC480015	200
G	760 FORT WORTH PFC	48-0015	ABILENE PO	TX	SOUTHERN	48-0015	BC480015	200
G	760 FORT WORTH PFC	48-0016	ABL-SOUTHERN HILLS STA	TX	SOUTHERN	48-0015	BC480015	200
G	760 FORT WORTH PFC	48-0017	ABL- MAIN POST OFFICE	TX	SOUTHERN	48-0015	BC480015	200
G	760 FORT WORTH PFC	48-0225	AMARILLO PO	TX	SOUTHERN	48-0225	BC480225	200
G	760 FORT WORTH PFC	48-0227	AMA- MAIN POST OFFICE	TX	SOUTHERN	48-0225	BC480225	200
G	760 FORT WORTH PFC	48-0228	AMA-LONE STAR STA	TX	SOUTHERN	48-0225	BC480225	200
G	760 FORT WORTH PFC	48-0229	AMA-JORDAN STA	TX	SOUTHERN	48-0225	BC480225	200
G	760 FORT WORTH PFC	48-0230	AMARILLO TX P&DC	TX	SOUTHERN	48-0230	BC480225	200
G	760 FORT WORTH PFC	48-0331	ARL-MELEAR STA	TX	SOUTHERN	48-0335	BC480335	200
G	760 FORT WORTH PFC	48-0332	ARL-BARDIN RD STA	TX	SOUTHERN	48-0335	BC480335	200
G	760 FORT WORTH PFC	48-0333	ARL-OAKWOOD STA	TX	SOUTHERN	48-0335	BC480335	200
G	760 FORT WORTH PFC	48-0334	ARL-WATSON COMMUNITY STA	TX	SOUTHERN	48-0335	BC480335	200
G	760 FORT WORTH PFC	48-0335	ARLINGTON PO	TX	SOUTHERN	48-0335	BC480335	200
G	760 FORT WORTH PFC	48-0337	ARL-MAIN POST OFFICE	TX	SOUTHERN	48-0335	BC480335	200
G	760 FORT WORTH PFC	48-1270	BUSHLAND PO	TX	SOUTHERN	48-0225	BC480225	200
G	760 FORT WORTH PFC	48-3220	FT WORTH PO	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3221	FT WORTH TX P&DC	TX	SOUTHERN	48-3221	BC483220	200
G	760 FORT WORTH PFC	48-3222	FORT WORTH TX VMF	TX	SOUTHERN	48-3222	BC483220	200
G	760 FORT WORTH PFC	48-3225	FWT-POLY STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3226	FWT-ALLIANCE STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3227	FWT- JACK D WATSON FINANCE	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3228	FWT-WHITE SETTLEMENT STATION	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3229	FWT-EIGHTH AVE STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3231	FWT-RIVERSIDE STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3232	FWT-OAKS BR	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3233	FWT-SEMINARY HILL STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3234	FWT-RIDGLEA STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3236	FWT-HALTOM CITY BR	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3237	FWT-NO RICHLAND HILLS BRANCH	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3238	FWT-GLENCREST STA	TX	SOUTHERN	48-3220	BC483220	200

G	760 FORT WORTH PFC	48-3239	FWT-HANDLEY STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3240	FWT-BENBROOK BR	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3241	FWT-MSGT. KENNETH N MACK STATIO	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3242	FWT-LAKE WORTH BR	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3243	FWT-SOUTHEAST BR	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3244	FWT-AMON CARTER STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3246	FWT-STOCK YARDS STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3247	FWT-TRINITY RIVER STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3248	FWT-CITYVIEW STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3249	FWT-DOWNTOWN STA	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3251	FWT-NORTH CARRIER ANX	TX	SOUTHERN	48-3220	BC483220	200
G	760 FORT WORTH PFC	48-3252	ARLINGTON TX VMF	TX	SOUTHERN	48-3252	BC483220	200
G	760 FORT WORTH PFC	48-3253	WICHITA FALLS AUX VMF OF FORT WC	TX	SOUTHERN	48-3253	BC483220	200
G	760 FORT WORTH PFC	48-3256	ABILENE AUX VMF OF FORT WORTH T)	TX	SOUTHERN	48-3256	BC483220	200
G	760 FORT WORTH PFC	48-3257	SAN ANGELO AUX VMF OF FORT WOR'	TX	SOUTHERN	48-3257	BC483220	200
G	760 FORT WORTH PFC	48-3258	AMARILLO AUX VMF OF LUBBOCK TX	TX	SOUTHERN	48-3258	BC483220	200
G	760 FORT WORTH PFC	48-3259	LUBBOCK TX VMF	TX	SOUTHERN	48-3259	BC483220	200
G	760 FORT WORTH PFC	48-5389	LUB-DOWNTOWN STA	TX	SOUTHERN	48-5395	BC485395	200
G	760 FORT WORTH PFC	48-5391	LUB-SUNSET STA	TX	SOUTHERN	48-5395	BC485395	200
G	760 FORT WORTH PFC	48-5392	LUB-LOUISVILLE CARRIER ANNEX	TX	SOUTHERN	48-5395	BC485395	200
G	760 FORT WORTH PFC	48-5393	LUB-FREEDOM STA	TX	SOUTHERN	48-5395	BC485395	200
G	760 FORT WORTH PFC	48-5394	LUB-SINGER STA	TX	SOUTHERN	48-5395	BC485395	200
G	760 FORT WORTH PFC	48-5395	LUBBOCK PO	TX	SOUTHERN	48-5395	BC485395	200
G	760 FORT WORTH PFC	48-5396	LUB-MONTEREY STA	TX	SOUTHERN	48-5395	BC485395	200
G	760 FORT WORTH PFC	48-5397	LUBBOCK TX P&DC	TX	SOUTHERN	48-5397	BC485395	200
G	760 FORT WORTH PFC	48-6556	ODESSA AUX VMF OF LUBBOCK TX	TX	SOUTHERN	48-6556	BC483220	200
G	760 FORT WORTH PFC	48-9165	TYE PO	TX	SOUTHERN	48-0015	BC480015	200
G	770 HOUSTON PFC	48-0032	HOU-FOXBROOK FINANCE STA	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0033	HOU-CORNERSTONE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0034	HOU-DENVER HARBOR	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0036	HOU-GREENS NORTH	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0038	HOU-JENSEN DRIVE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0039	HOU-NORTH SHEPHERD	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0040	HOU-ROY ROYALL	TX	SOUTHERN	48-4145	BC484145	200

G	770 HOUSTON PFC	48-0041	HOU-WESTFIELD	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0042	HOU-WILLOW PLACE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0123	HOU-ALBERT THOMAS	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0124	HOU-BROADWAY	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0125	HOU-FOSTER PLACE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0126	HOU-GENOA	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0127	HOU-GRANVILLE ELDER	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0128	HOU-M L KING	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0129	HOU-NASSAU BAY	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0130	HOU-PARK PLACE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0131	HOU-WINDMILL	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0173	HOU-ADDICKS BARKER	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0174	HOU-ANSON JONES	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0175	HOU-BEAR CREEK	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0176	HOU-COPPERFIELD	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0177	HOU-FAIRBANKS	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0178	HOU-FLEETWOOD	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0179	HOU-GARDEN OAKS	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0180	HOU-GPO WINDOW UNIT	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0182	HOU-JAMES GRIFFITH	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0183	HOU-LONG POINT	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0184	HOU-MEMORIAL PARK	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0185	HOU-OAK FOREST	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0186	HOU-T W HOUSE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0372	HOU-ASHFORD WEST	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0373	HOU-ASTRODOME	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0374	HOU-BEECHNUT	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0375	HOU-CFS	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0376	HOU-D S SHATZ	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0377	HOU-GALLERIA FIN	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0378	HOU-JOHN DUNLOP	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0379	HOU-RICH HILL	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0380	HOU-SAGE STATION	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0381	HOU-WESTBRAE	TX	SOUTHERN	48-4145	BC484145	200

G	770 HOUSTON PFC	48-0382	HOU-WESTCHASE FIN	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-0610	BEAUMONT PO	TX	SOUTHERN	48-0610	BC480610	200
G	770 HOUSTON PFC	48-0611	BMT-TOBE HAHN STA	TX	SOUTHERN	48-0610	BC480610	200
G	770 HOUSTON PFC	48-0612	BEAUMONT P&DF	TX	SOUTHERN	48-0612	BC480610	200
G	770 HOUSTON PFC	48-0613	BMT-SOUTH END STA	TX	SOUTHERN	48-0610	BC480610	200
G	770 HOUSTON PFC	48-0614	BMT-DOWNTOWN STA	TX	SOUTHERN	48-0610	BC480610	200
G	770 HOUSTON PFC	48-0616	BMT-LUMBERTON STA	TX	SOUTHERN	48-0610	BC480610	200
G	770 HOUSTON PFC	48-1368	HOU-ALMEDA	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1369	HOU-CIVIC CENTER	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1370	HOU-EASTWOOD	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1371	HOU-GREENBRIAR	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1372	HOU-HARRISBURG	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1373	HOU-JULIUS MELCHER	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1374	HOU-MEDICAL CENTER	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1375	HOU-RIVER OAKS	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1376	HOU-SAM HOUSTON	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1377	HOU-SAM HOUSTON FIN	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1379	HOU-SOUTHMORE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1380	HOU-SPECIAL DELIVERY	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1382	HOU-UNIVERSITY	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1383	HOU-WESLAYAN FIN	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1384	HOU-WESTBURY	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1385	HOU-WILLIAM RICE	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-1397	HOU-DE MOSS	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-4141	HOUSTON N ANNEX	TX	SOUTHERN	48-4141	BC484143	200
G	770 HOUSTON PFC	48-4143	N HOUSTON TX P&DC	TX	SOUTHERN	48-4143	BC484143	200
G	770 HOUSTON PFC	48-4145	HOUSTON PO	TX	SOUTHERN	48-4145	BC484145	200
G	770 HOUSTON PFC	48-4146	HOUSTON TX VMF	TX	SOUTHERN	48-4146	BC484145	200
G	770 HOUSTON PFC	48-4151	BEAUMONT AUX VMF OF HOUSTON T	TX	SOUTHERN	48-4151	BC484145	200
G	770 HOUSTON PFC	48-4152	GREENS NORTH TX VMF	TX	SOUTHERN	48-4152	BC484145	200
G	770 HOUSTON PFC	48-4154	PARK PLACE TX VMF	TX	SOUTHERN	48-4154	BC484145	200
G	770 HOUSTON PFC	48-4155	BEAR CREEK TX VMF	TX	SOUTHERN	48-4155	BC484145	200
G	770 HOUSTON PFC	48-6475	NORTH ADMINISTRATIVE	TX	SOUTHERN	48-6475	BC484143	200
G	770 HOUSTON PFC	48-8565	SPRING PO	TX	SOUTHERN	48-8565	BC488565	200

G	770 HOUSTON PFC	48-8566	SPR-KLEIN STA	TX	SOUTHERN	48-8565	BC488565	200
G	770 HOUSTON PFC	48-8567	SPR-WOODLANDS METRO STA	TX	SOUTHERN	48-8565	BC488565	200
G	770 HOUSTON PFC	48-8568	SPR-PANTHER CREEK STA	TX	SOUTHERN	48-8565	BC488565	200
G	780 RIO GRANDE PFC	48-0402	AUS-GMF STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0403	AUS-AUSTIN DTN STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0404	AUS-BALCONES STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0405	AUS-BLUEBONNET STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0406	AUS-CENTRAL PARK STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0407	AUS-CHIMNEY CORNERS STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0408	AUS-EAST AUSTIN STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0409	AUS-LAKE TRAVIS STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0411	AUS-MOCKINGBIRD STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0412	AUS-NORTH AUSTIN STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0413	AUS-NORTHCROSS STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0414	AUS-NORTHEAST AUSTIN STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0415	AUS-OAK HILL STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0416	AUS-SE AUSTIN STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0417	AUS-SOUTH CONGRESS STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0418	AUS-UNIVERSITY FINANCE STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0419	AUS-WESTLAKE STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0420	AUSTIN PO	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-0421	AUSTIN TX P&DC	TX	SOUTHERN	48-0421	BC480420	200
G	780 RIO GRANDE PFC	48-0422	AUSTIN TX VMF	TX	SOUTHERN	48-0422	BC480420	200
G	780 RIO GRANDE PFC	48-0423	AUS-McNEIL STA	TX	SOUTHERN	48-0420	BC480420	200
G	780 RIO GRANDE PFC	48-2020	CRP-DOWNTOWN STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2021	CRP-FLOUR BLUFF STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2022	CRP-GULFWAY STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2023	CRP-HECTOR P GARCIA MPO	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2024	CRP-LAMAR PARK STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2025	CRP-PORTAIRS STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2026	CRP-ROY MILLER STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2027	CRP-SIX POINTS STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2028	CRP-SOUTHSIDE STA	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2029	CRP-STONEWALL STA	TX	SOUTHERN	48-2030	BC482030	200

G	780 RIO GRANDE PFC	48-2030	CORPUS CHRISTI PO	TX	SOUTHERN	48-2030	BC482030	200
G	780 RIO GRANDE PFC	48-2031	CORPUS CHRISTI TX P&DC	TX	SOUTHERN	48-2031	BC482030	200
G	780 RIO GRANDE PFC	48-2032	CORPUS CHRISTI TX VMF	TX	SOUTHERN	48-2032	BC482030	200
G	780 RIO GRANDE PFC	48-2033	MCALLEN TX VMF	TX	SOUTHERN	48-2033	BC482030	200
G	780 RIO GRANDE PFC	48-2845	EL PASO PO	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2846	EL PASO TX VMF	TX	SOUTHERN	48-2846	BC482845	200
G	780 RIO GRANDE PFC	48-2847	EL PASO TX P&DC	TX	SOUTHERN	48-2847	BC482845	200
G	780 RIO GRANDE PFC	48-2848	ELP-CORONADO STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2849	ELP-DOWNTOWN STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2851	ELP-FIVE POINTS STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2852	ELP-FORT BLISS BR	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2853	ELP-MESA HILLS STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2854	ELP-NORTHGATE STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2855	ELP-PEBBLE HILLS STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2856	ELP-RANCHLAND STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2857	ELP-SANDY CREEK STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2858	ELP-SOCORRO STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2859	ELP-SUMMIT HEIGHTS STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2860	ELP-SUNRISE STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2861	ELP-WASHINGTON PARK STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-2862	ELP-YSLETA STA	TX	SOUTHERN	48-2845	BC482845	200
G	780 RIO GRANDE PFC	48-5454	MCALLEN TX P&DC	TX	SOUTHERN	48-5454	BC485455	200
G	780 RIO GRANDE PFC	48-5455	MCALLEN PO	TX	SOUTHERN	48-5455	BC485455	200
G	780 RIO GRANDE PFC	48-5900	MIDLAND PO	TX	SOUTHERN	48-5900	BC485900	200
G	780 RIO GRANDE PFC	48-5901	MID-CLAYDESTA STA	TX	SOUTHERN	48-5900	BC485900	200
G	780 RIO GRANDE PFC	48-5902	MID-DOWNTOWN STA	TX	SOUTHERN	48-5900	BC485900	200
G	780 RIO GRANDE PFC	48-5917	MIDLAND TX P&DC	TX	SOUTHERN	48-5917	BC485900	200
G	780 RIO GRANDE PFC	48-7949	SAT-GMF COLLECTION STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7950	SAT-AMF FINANCE STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7951	SAT-ALAMO HEIGHTS BR	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7952	SAT-ARSENAL STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7953	SAT-BEACON HILL STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7954	SAT-CEDAR ELM STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7957	SAT-FT SAM HOUSTON FINANCE STA	TX	SOUTHERN	48-7980	BC487980	200

G	780 RIO GRANDE PFC	48-7958	SAT-FRANK TEJEDA STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7959	SAT-HACKBERRY STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7960	SAT-HERITAGE STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7961	SAT-HIGHLAND HILLS STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7962	SAT-J FRANK DOBIE STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7963	SAT-ENCINO PARK STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7964	SAT-LAUREL HEIGHTS STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7966	SAT-LEON VALLEY BR	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7967	SAT-LOCKHILL STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7968	SAT-LOS JARDINES STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7969	SAT-NIMITZ STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7971	SAT-NORTH BROADWAY STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7972	SAT-NORTHEAST CARRIER ANX	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7973	SAT-S TEXAS MED CEN STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7974	SAT-SAN ANTONIO DTN FINANCE STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7976	SAT-SERNA STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7977	SAT-THOUSAND OAKS STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7979	SAT-VALLEY HI STA	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7980	SAN ANTONIO PO	TX	SOUTHERN	48-7980	BC487980	200
G	780 RIO GRANDE PFC	48-7981	SAN ANTONIO TX P&DC	TX	SOUTHERN	48-7981	BC487980	200
G	780 RIO GRANDE PFC	48-7982	SAN ANTONIO TX VMF	TX	SOUTHERN	48-7982	BC487980	200
G	976 SOUTHERN AREA PF	11-4381	JACKSONVILLE NDC	FL	SOUTHERN	11-4381	BC114381	200
G	976 SOUTHERN AREA PF	48-2269	DALLAS NDC	TX	SOUTHERN	48-2269	BC482269	200
J	460 GREATER INDIANA P	17-0430	IND-BACON STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-0846	IND-BRIGHTWOOD STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-0885	IND-BROAD RIPPLE STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-1308	IND-CASTLETON BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-1556	IND-CIRCLE CITY STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-1627	IND-CLERMONT BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-1798	IND-INDIANAPOLIS CFS	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-2091	IND-CUMBERLAND BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-2397	IND-EAGLE CREEK BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-2410	IND-EASTGATE STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-2915	FORT WAYNE PO	IN	GREAT LAKES	17-2915	BC172915	200

J	460 GREATER INDIANA P	17-2916	FWA-GABRIEL STA	IN	GREAT LAKES	17-2915	BC172915	200
J	460 GREATER INDIANA P	17-2917	FORT WAYNE IN VMF	IN	GREAT LAKES	17-2917	BC172915	200
J	460 GREATER INDIANA P	17-2918	FWA-CENTENNIAL STA	IN	GREAT LAKES	17-2915	BC172915	200
J	460 GREATER INDIANA P	17-2919	FWA-DIPLOMAT PLAZA STA	IN	GREAT LAKES	17-2915	BC172915	200
J	460 GREATER INDIANA P	17-2920	FT WAYNE IN P&DC	IN	GREAT LAKES	17-2920	BC172915	200
J	460 GREATER INDIANA P	17-2921	FWA-HAZELWOOD STA	IN	GREAT LAKES	17-2915	BC172915	200
J	460 GREATER INDIANA P	17-2922	FWA-NORTHWOOD STA	IN	GREAT LAKES	17-2915	BC172915	200
J	460 GREATER INDIANA P	17-2923	FWA-WAYNEDALE STA	IN	GREAT LAKES	17-2915	BC172915	200
J	460 GREATER INDIANA P	17-3151	IND-GARFIELD STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-3167	GARY IN VMF	IN	GREAT LAKES	17-3167	BC173168	200
J	460 GREATER INDIANA P	17-3168	GARY PO	IN	GREAT LAKES	17-3168	BC173168	200
J	460 GREATER INDIANA P	17-3170	GARY IN P&DC	IN	GREAT LAKES	17-3170	BC173168	200
J	460 GREATER INDIANA P	17-3171	GRY-FSTA	IN	GREAT LAKES	17-3168	BC173168	200
J	460 GREATER INDIANA P	17-3172	GRY-MILLER STA	IN	GREAT LAKES	17-3168	BC173168	200
J	460 GREATER INDIANA P	17-3173	GRY-TOLLESTON STA	IN	GREAT LAKES	17-3168	BC173168	200
J	460 GREATER INDIANA P	17-3174	GRY-LAKE STA	IN	GREAT LAKES	17-3168	BC173168	200
J	460 GREATER INDIANA P	17-3176	GRY-GLEN PARK STA	IN	GREAT LAKES	17-3168	BC173168	200
J	460 GREATER INDIANA P	17-3177	GRY-MERRILLVILLE BR	IN	GREAT LAKES	17-3168	BC173168	200
J	460 GREATER INDIANA P	17-4031	INDIANAPOLIS MPA	IN	GREAT LAKES	17-4031	BC174037	200
J	460 GREATER INDIANA P	17-4035	GREATER INDIANA CS DISTRICT	IN	GREAT LAKES	17-4035	BC174037	200
J	460 GREATER INDIANA P	17-4036	INDIANAPOLIS IN VMF	IN	GREAT LAKES	17-4036	BC174037	200
J	460 GREATER INDIANA P	17-4037	INDIANAPOLIS PO	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-4038	INDIANAPOLIS IN P&DC	IN	GREAT LAKES	17-4038	BC174037	200
J	460 GREATER INDIANA P	17-4040	HIGH SCHOOL RD MAIL PROCESSING A	IN	GREAT LAKES	17-4040	BC174037	200
J	460 GREATER INDIANA P	17-4044	MUNCIE AUX VMF OF INDIANAPOLIS II	IN	GREAT LAKES	17-4044	BC174037	200
J	460 GREATER INDIANA P	17-4045	LAFAYETTE AUX VMF OF INDIANAPOLI	IN	GREAT LAKES	17-4045	BC174037	200
J	460 GREATER INDIANA P	17-4669	IND-LAWRENCE BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-4900	IND-LINWOOD STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-5087	IND-MOW SVC	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-5103	IND-MAPLETON STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-5994	IND-NEW AUGUSTA BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-6308	IND-NORA BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-6456	IND-OAKLANDON BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-6737	IND-PARK FLETCHER BR	IN	GREAT LAKES	17-4037	BC174037	200

J	460 GREATER INDIANA P	17-7210	IND-RAINBOW STA	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-8191	SBN-FSTA	IN	GREAT LAKES	17-8195	BC178195	200
J	460 GREATER INDIANA P	17-8192	SBN-CHIPPEWA STA	IN	GREAT LAKES	17-8195	BC178195	200
J	460 GREATER INDIANA P	17-8193	SBN-EDISON PARK STA	IN	GREAT LAKES	17-8195	BC178195	200
J	460 GREATER INDIANA P	17-8194	SBN-OLIVE STREET STA	IN	GREAT LAKES	17-8195	BC178195	200
J	460 GREATER INDIANA P	17-8195	SOUTH BEND PO	IN	GREAT LAKES	17-8195	BC178195	200
J	460 GREATER INDIANA P	17-8197	SOUTH BEND IN P&DC	IN	GREAT LAKES	17-8197	BC178195	200
J	460 GREATER INDIANA P	17-8198	SOUTH BEND IN VMF	IN	GREAT LAKES	17-8198	BC178195	200
J	460 GREATER INDIANA P	17-8201	IND-SOUTHPORT BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-8238	IND-SPEEDWAY BR	IN	GREAT LAKES	17-4037	BC174037	200
J	460 GREATER INDIANA P	17-9151	IND-WANAMAKER BR	IN	GREAT LAKES	17-4037	BC174037	200
J	481 DETROIT PFC	25-0280	ANN ARBOR PO	MI	GREAT LAKES	25-0280	BC250280	200
J	481 DETROIT PFC	25-0281	ANN-LIBERTY STA	MI	GREAT LAKES	25-0280	BC250280	200
J	481 DETROIT PFC	25-0282	ANN-GREENROAD STA	MI	GREAT LAKES	25-0280	BC250280	200
J	481 DETROIT PFC	25-0285	ANN ARBOR MI VMF	MI	GREAT LAKES	25-0285	BC250280	200
J	481 DETROIT PFC	25-2490	DETROIT PO	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2492	DETROIT MI P&DC	MI	GREAT LAKES	25-2492	BC252490	200
J	481 DETROIT PFC	25-2495	DETROIT CS DISTRICT	MI	GREAT LAKES	25-2495	BC252490	200
J	481 DETROIT PFC	25-2496	DETROIT MI VMF	MI	GREAT LAKES	25-2496	BC252490	200
J	481 DETROIT PFC	25-2501	DET-BRIGHTMOOR STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2502	DET-COLLEGE PARK STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2503	DET-FENKELL STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2504	DET-FOX CREEK STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2505	DET-GRAND SHELBY STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2506	DET-GRATIOT STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2507	DET-GROSSE POINTE BR	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2509	DET-HARPER STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2511	DET-HIGHLAND PARK BR	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2512	DET-JEFFERSON STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2513	DET-JOYFIELD STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2514	DET-KENSINGTON STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2515	DET-LIVERNOIS STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2516	DET-MT ELLIOTT STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2517	DET-NORTH END STA	MI	GREAT LAKES	25-2490	BC252490	200

J	481 DETROIT PFC	25-2518	DET-NORTHWESTERN STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2519	DET-OAK PARK STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2521	DET-PARKGROVE STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2522	DET-REDFORD BR	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2524	DET-RIVER ROUGE BR	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2525	DET-SEVEN OAKS STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2526	DET-SPRINGWELLS STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2527	DET-STRATHMOOR STA	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2528	DET-HAMTRAMCK CARRIER ANX	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-2529	DET-OLD REDFORD CARRIER ANX	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-3290	FLINT PO	MI	GREAT LAKES	25-3290	BC253290	200
J	481 DETROIT PFC	25-3291	FLT-NORTHSIDE STA	MI	GREAT LAKES	25-3290	BC253290	200
J	481 DETROIT PFC	25-3293	FLT-BURTON SOUTHEAST STA	MI	GREAT LAKES	25-3290	BC253290	200
J	481 DETROIT PFC	25-3294	FLT-NORTHEAST BR	MI	GREAT LAKES	25-3290	BC253290	200
J	481 DETROIT PFC	25-3295	FLINT MI VMF	MI	GREAT LAKES	25-3295	BC253290	200
J	481 DETROIT PFC	25-3296	FLT-NORTHWEST STA	MI	GREAT LAKES	25-3290	BC253290	200
J	481 DETROIT PFC	25-3297	FLT-SOUTHWEST BR	MI	GREAT LAKES	25-3290	BC253290	200
J	481 DETROIT PFC	25-3298	FLT-CODY STA	MI	GREAT LAKES	25-3290	BC253290	200
J	481 DETROIT PFC	25-5099	CUSTOMER CARE CENTER - MI	MI	GREAT LAKES	25-5099	BC258230	200
J	481 DETROIT PFC	25-6410	MOUNT CLEMENS PO	MI	GREAT LAKES	25-6410	BC256410	200
J	481 DETROIT PFC	25-6411	MTC-CLINTON MACOMB CARRIER ANX	MI	GREAT LAKES	25-6410	BC256410	200
J	481 DETROIT PFC	25-8225	ROYAL OAKS CFS	MI	GREAT LAKES	25-2490	BC252490	200
J	481 DETROIT PFC	25-8230	ROYAL OAK PO	MI	GREAT LAKES	25-8230	BC258230	200
J	481 DETROIT PFC	25-8231	MICHIGAN METROPLEX MI P&DC	MI	GREAT LAKES	25-8231	BC258230	200
J	481 DETROIT PFC	25-8234	ROYAL OAK MI VMF	MI	GREAT LAKES	25-8234	BC258230	200
J	481 DETROIT PFC	25-8236	ROY-MADISON HTS STA	MI	GREAT LAKES	25-8230	BC258230	200
J	481 DETROIT PFC	25-8237	ROY-MADISON HTS CARRIER ANX	MI	GREAT LAKES	25-8230	BC258230	200
J	481 DETROIT PFC	25-9510	UTICA PO	MI	GREAT LAKES	25-9510	BC259510	200
J	481 DETROIT PFC	25-9511	UTC-UTICA BR	MI	GREAT LAKES	25-9510	BC259510	200
J	481 DETROIT PFC	25-9512	UTC-SHELBY TOWNSHIP BR	MI	GREAT LAKES	25-9510	BC259510	200
J	481 DETROIT PFC	25-9735	WARREN PO	MI	GREAT LAKES	25-9735	BC259735	200
J	493 GREATER MICHIGAN	25-3917	GRAND RAPIDS P&DF	MI	GREAT LAKES	25-3917	BC253920	200
J	493 GREATER MICHIGAN	25-3920	GRAND RAPIDS PO	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3921	GRAND RAPIDS MI P&DC	MI	GREAT LAKES	25-3921	BC253920	200

J	493 GREATER MICHIGAN	25-3922	GRR-PATTERSON ANX	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3924	GRAND RAPIDS MI VMF	MI	GREAT LAKES	25-3924	BC253920	200
J	493 GREATER MICHIGAN	25-3926	GRR-NORTHWEST BR	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3927	GRR-EAST PARIS CARRIER ANX	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3929	GRR-WYOMING BR	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3931	GRR-EAST TOWN BR	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3932	GRR-KENTWOOD BR	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3933	GRR-NORTHEAST BR	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3934	GRR-SEYMOUR SQUARE BR	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3935	GRR-LEDYARD BR	MI	GREAT LAKES	25-3920	BC253920	200
J	493 GREATER MICHIGAN	25-3936	MUSKEGON AUX VMF OF GRAND RAPI	MI	GREAT LAKES	25-3936	BC253920	200
J	493 GREATER MICHIGAN	25-4910	KALAMAZOO PO	MI	GREAT LAKES	25-4910	BC254910	200
J	493 GREATER MICHIGAN	25-4911	KZO-PARCHMENT BR	MI	GREAT LAKES	25-4910	BC254910	200
J	493 GREATER MICHIGAN	25-4913	KZO-ARCADIA CK BR	MI	GREAT LAKES	25-4910	BC254910	200
J	493 GREATER MICHIGAN	25-4914	KZO-WESTWOOD BR	MI	GREAT LAKES	25-4910	BC254910	200
J	493 GREATER MICHIGAN	25-4915	KALAMAZOO MI VMF	MI	GREAT LAKES	25-4915	BC254910	200
J	493 GREATER MICHIGAN	25-4916	KZO-KALAMAZOO HUB STA	MI	GREAT LAKES	25-4910	BC254910	200
J	493 GREATER MICHIGAN	25-5270	LANSING PO	MI	GREAT LAKES	25-5270	BC255270	200
J	493 GREATER MICHIGAN	25-5271	LANSING MI P&DC	MI	GREAT LAKES	25-5271	BC255270	200
J	493 GREATER MICHIGAN	25-5272	LAN-DOWNTOWN STA	MI	GREAT LAKES	25-5270	BC255270	200
J	493 GREATER MICHIGAN	25-5273	LAN-DELTA CARRIER ANX	MI	GREAT LAKES	25-5270	BC255270	200
J	493 GREATER MICHIGAN	25-5274	LAN-SW CARRIER ANX	MI	GREAT LAKES	25-5270	BC255270	200
J	493 GREATER MICHIGAN	25-5275	LANSING MI VMF	MI	GREAT LAKES	25-5275	BC255270	200
J	493 GREATER MICHIGAN	25-8270	SAGINAW PO	MI	GREAT LAKES	25-8270	BC258270	200
J	493 GREATER MICHIGAN	25-8271	SAG-BOARDWALK BR	MI	GREAT LAKES	25-8270	BC258270	200
J	493 GREATER MICHIGAN	25-8273	SAG-TOWNSHIP BR	MI	GREAT LAKES	25-8270	BC258270	200
J	493 GREATER MICHIGAN	25-8275	SAGINAW MI VMF	MI	GREAT LAKES	25-8275	BC258270	200
J	493 GREATER MICHIGAN	25-8276	SAG-CUMBERLAND STREET STA	MI	GREAT LAKES	25-8270	BC258270	200
J	530 LAKELAND PFC	16-6027	PALATINE IL P&DC	IL	GREAT LAKES	16-6027	BC166027	200
J	530 LAKELAND PFC	16-6774	ROCKFORD PO	IL	GREAT LAKES	16-6774	BC166774	200
J	530 LAKELAND PFC	16-6775	RKF-KILBURN STA	IL	GREAT LAKES	16-6774	BC166774	200
J	530 LAKELAND PFC	16-6777	RKF-NEW TOWNE STA	IL	GREAT LAKES	16-6774	BC166774	200
J	530 LAKELAND PFC	16-6778	ROCKFORD IL VMF	IL	GREAT LAKES	16-6778	BC166774	200
J	530 LAKELAND PFC	16-6779	RKF-LOVES PARK BR	IL	GREAT LAKES	16-6774	BC166774	200

J	530 LAKELAND PFC	56-0051	MIL-MAIN OFFICE WINDOW	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-0645	MIL-BAY VIEW STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-1025	MIL-BRADLEY STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-2355	MIL-DR ML KING JR STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-3035	MIL-FRED JOHN STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-3400	GREEN BAY PO	WI	GREAT LAKES	56-3400	BC563400	200
J	530 LAKELAND PFC	56-3401	GRB-COFRIN STA	WI	GREAT LAKES	56-3400	BC563400	200
J	530 LAKELAND PFC	56-3402	GREEN BAY WI P&DC	WI	GREAT LAKES	56-3402	BC563400	200
J	530 LAKELAND PFC	56-3403	GREEN BAY WI VMF	WI	GREAT LAKES	56-3403	BC563400	200
J	530 LAKELAND PFC	56-3425	MIL-GREENFIELD BR	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-3545	MIL-HAMPTON STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-3796	MIL-HILLTOP STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-4215	MIL-JUNEAU STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-4980	MADISON PO	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-4981	MADISON WI P&DC	WI	GREAT LAKES	56-4981	BC564980	200
J	530 LAKELAND PFC	56-4982	MAD-VERONA BR	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-4983	MADISON WI VMF	WI	GREAT LAKES	56-4983	BC564980	200
J	530 LAKELAND PFC	56-4984	MAD-MIDDLETON BR	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-4985	MAD-WESTSIDE STA	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-4986	MAD-SOUTHSIDE STA	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-4987	MAD-CAPITOL STA	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-4988	MAD-HILLDALE STA	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-4989	MADISON MAIN CARRIER ANX	WI	GREAT LAKES	56-4980	BC564980	200
J	530 LAKELAND PFC	56-5375	MIL-MID CITY STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-5470	MILW PRIORITY ANNEX	WI	GREAT LAKES	56-5470	BC568846	200
J	530 LAKELAND PFC	56-5480	MILWAUKEE PO	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-5481	MILWAUKEE WI P&DC	WI	GREAT LAKES	56-5481	BC568846	200
J	530 LAKELAND PFC	56-5483	MILWAUKEE WI VMF	WI	GREAT LAKES	56-5483	BC568846	200
J	530 LAKELAND PFC	56-5484	LAKELAND CS DISTRICT	WI	GREAT LAKES	56-5484	BC568846	200
J	530 LAKELAND PFC	56-6045	MIL-N MILWAUKEE STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-6055	MIL-NORTH SHORE BR	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-6355	MIL-PARKLAWN STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-7220	MIL-ROOT RIVER BR	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-7585	MIL-SHOREWOOD BR	WI	GREAT LAKES	56-5480	BC568846	200

J	530 LAKELAND PFC	56-8125	MIL-TEUTONIA STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-8310	MIL-TUCKAWAY STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-8715	MIL-WAUWATOSA BR	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-8765	MIL-WEST ALLIS BR	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-8830	MIL-WEST MILWAUKEE BR	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-8845	MIL-WESTERN STA	WI	GREAT LAKES	56-5480	BC568846	200
J	530 LAKELAND PFC	56-8847	MIL-COMP FORWARDING	WI	GREAT LAKES	56-5480	BC568846	200
J	604 CENTRAL ILLINOIS PI	16-0501	FOX VALLEY-CUSTOMER RETENTION	IL	GREAT LAKES	16-0501	BC162865	200
J	604 CENTRAL ILLINOIS PI	16-1274	CAROL STREAM PO	IL	GREAT LAKES	16-1274	BC161274	200
J	604 CENTRAL ILLINOIS PI	16-1275	CAROL STREAM IL P&DC	IL	GREAT LAKES	16-1275	BC161274	200
J	604 CENTRAL ILLINOIS PI	16-1276	CAROL STREAM IL VMF	IL	GREAT LAKES	16-1276	BC161274	200
J	604 CENTRAL ILLINOIS PI	16-1546	SOUTH SUBURBAN IL P&DC	IL	GREAT LAKES	16-1546	BC161544	200
J	604 CENTRAL ILLINOIS PI	16-1549	BEDFORD PARK IL VMF	IL	GREAT LAKES	16-1549	BC161544	200
J	604 CENTRAL ILLINOIS PI	16-2865	FOX VALLEY IL P&DC	IL	GREAT LAKES	16-2865	BC162865	200
J	604 CENTRAL ILLINOIS PI	16-6180	PEORIA PO	IL	GREAT LAKES	16-6180	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-6181	PEO-EAST PEORIA BR	IL	GREAT LAKES	16-6180	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-6182	PEORIA IL P&DC	IL	GREAT LAKES	16-6182	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-6183	PEO-NO UNIVERSITY STA	IL	GREAT LAKES	16-6180	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-6184	PEORIA IL VMF	IL	GREAT LAKES	16-6184	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-6185	PEO-WEST GLEN STA	IL	GREAT LAKES	16-6180	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-6187	PEO-PERSIMMON STREET STA	IL	GREAT LAKES	16-6180	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-6188	PEO-BARTONVILLE BR	IL	GREAT LAKES	16-6180	BC166180	200
J	604 CENTRAL ILLINOIS PI	16-7064	SCH-HOFFMAN ESTATES BR	IL	GREAT LAKES	16-7065	BC167065	200
J	604 CENTRAL ILLINOIS PI	16-7065	SCHAUMBURG PO	IL	GREAT LAKES	16-7065	BC167065	200
J	604 CENTRAL ILLINOIS PI	16-7066	SCH-ROSELLE BR	IL	GREAT LAKES	16-7065	BC167065	200
J	604 CENTRAL ILLINOIS PI	16-7067	SCH-WOODFIELD STA	IL	GREAT LAKES	16-7065	BC167065	200
J	606 CHICAGO PFC	16-1128	BUSSE IL P&DC	IL	GREAT LAKES	16-1128	BC161128	200
J	606 CHICAGO PFC	16-1501	CHI-ASHBURN STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1502	CHI-AUBURN PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1503	CHI-CARDISS COLLINS PSTL STR	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1504	CHI-CESAR CHAVEZ STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1505	CHI-CHARLES HAYES STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1507	CHI-CHICAGO CENTRAL ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1508	CHI-CICERO BR	IL	GREAT LAKES	16-1542	BC161542	200

J	606 CHICAGO PFC	16-1509	CHI-CLEARING STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1510	CHI-CRAGIN STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1511	CHI-DANIEL J DOFFYN STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1513	CHI-EDGEBROOK CARRIER ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1514	CHI-ELMWOOD PARK BR	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1515	CHI-ENGLEWOOD STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1516	CHI-EVERGREEN PARK BR	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1517	CHI-FT DEARBORN STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1519	CHI-GRACELAND CARRIER ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1520	CHI-GRACELAND FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1521	CHI-GRAND CROSSING CARRIER ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1522	CHI-HARWOOD HEIGHTS CARRIER ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1523	CHI-HEGEWISCH STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1525	CHI-HENRY W MCGEE STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1526	CHI-IRVING PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1527	CHI-JACKSON PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1528	CHI-JEFFERSON PARK CARRIER ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1529	CHI-JEFFERSON PARK PSTL STR	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1530	CHI-JOHN HANCOCK FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1531	CHI-JOHN J BUCHANAN STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1532	CHI-LAKEVIEW STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1533	CHI-LINCOLN PARK CARRIER ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1535	CHICAGO CS DISTRICT	IL	GREAT LAKES	16-1535	BC161542	200
J	606 CHICAGO PFC	16-1538	CHICAGO IL VMF	IL	GREAT LAKES	16-1538	BC161542	200
J	606 CHICAGO PFC	16-1542	CHICAGO POST OFFICE	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1547	CHICAGO IL P&DC	IL	GREAT LAKES	16-1547	BC161542	200
J	606 CHICAGO PFC	16-1559	CHICAGO IL WESTERN AVE VMF	IL	GREAT LAKES	16-1559	BC161542	200
J	606 CHICAGO PFC	16-1561	CHI-LINCOLN PARK PSTL STR	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1562	CHI-LOOP STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1563	CHI-MARY ALICE HENRY STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1564	CHI-MERCHANDISE MART FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1565	CHI-MORGAN PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1567	CHI-MT GREENWOOD STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1568	CHI-NANCY B JEFFERSON STA	IL	GREAT LAKES	16-1542	BC161542	200

J	606 CHICAGO PFC	16-1569	CHI-NILES BR	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1570	CHI-NORTHTOWN STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1571	CHI-NORWOOD PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1573	CHI-OHARE MAIN FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1574	CHI-OGDEN PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1575	CHI-ONTARIO ST FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1576	CHI-OTIS GRANT COLLINS STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1577	CHI-RAVENSWOOD STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1579	CHI-REV MILTON BRUNSON STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1580	CHI-RIVERDALE BR	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1581	CHI-ROBERT LEFLORE STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1582	CHI-ROBERTO CLEMENTE STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1583	CHI-ROGER P MCAULIFFE STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1585	CHI-ROGERS PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1586	CHI-ROSELAND STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1587	CHI-SOUTH WEST CARRIER ANX	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1588	CHI-STATION E FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1589	CHI-STATION T FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1591	CHI-STOCKYARDS STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1592	CHI-TWENTY SECOND ST STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1593	CHI-UPTOWN STA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1594	CHI-WACKER DR FSTA	IL	GREAT LAKES	16-1542	BC161542	200
J	606 CHICAGO PFC	16-1595	CHI-WICKER PARK STA	IL	GREAT LAKES	16-1542	BC161542	200
J	630 GATEWAY PFC	16-1428	CHAMPAIGN PO	IL	GREAT LAKES	16-1428	BC161428	200
J	630 GATEWAY PFC	16-1429	CHAMPAIGN IL VMF	IL	GREAT LAKES	16-1429	BC161428	200
J	630 GATEWAY PFC	16-1430	CHAMPAIGN IL P&DC	IL	GREAT LAKES	16-1430	BC161428	200
J	630 GATEWAY PFC	16-1431	CHM-NEIL ST STA	IL	GREAT LAKES	16-1428	BC161428	200
J	630 GATEWAY PFC	16-7414	SPRINGFIELD IL VMF	IL	GREAT LAKES	16-7414	BC167416	200
J	630 GATEWAY PFC	16-7416	SPRINGFIELD PO	IL	GREAT LAKES	16-7416	BC167416	200
J	630 GATEWAY PFC	16-7417	SPRINGFIELD IL P&DC	IL	GREAT LAKES	16-7417	BC167416	200
J	630 GATEWAY PFC	16-7418	SPF-DOWNTOWN STA	IL	GREAT LAKES	16-7416	BC167416	200
J	630 GATEWAY PFC	16-7419	SPF-SOUTHWEST STA	IL	GREAT LAKES	16-7416	BC167416	200
J	630 GATEWAY PFC	16-7420	SPF-NORTHEAST CARRIER ANX	IL	GREAT LAKES	16-7416	BC167416	200
J	630 GATEWAY PFC	28-1680	COLUMBIA MO PO	MO	GREAT LAKES	28-1680	BC281680	200

J	630 GATEWAY PFC	28-1682	COL-TIGER STA	MO	GREAT LAKES	28-1680	BC281680	200
J	630 GATEWAY PFC	28-1685	COLUMBIA MO P&DC	MO	GREAT LAKES	28-1685	BC281680	200
J	630 GATEWAY PFC	28-7140	ST LOUIS MO PO	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7142	ST LOUIS MO P&DC	MO	GREAT LAKES	28-7142	BC287140	200
J	630 GATEWAY PFC	28-7144	GATEWAY CS DISTRICT	MO	GREAT LAKES	28-7144	BC287140	200
J	630 GATEWAY PFC	28-7151	ST LOUIS METRO ANNEX	MO	GREAT LAKES	28-7151	BC287140	200
J	630 GATEWAY PFC	28-7171	STL-AFFTON BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7174	STL-BERKELEY BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7179	STL-CHOUTEAU STA	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7180	STL-CLAYTON BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7181	STL-COYLE BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7183	STL-CREVE COEUR BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7184	STL-DES PERES BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7185	STL-FERGUSON BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7186	STL-GAFFNEY BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7187	STL-GILES STA	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7188	STL-GRAVOIS STA	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7189	STL-JENNINGS BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7190	STL-KIRKWOOD DELIVERY ANX	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7191	STL-MACKENZIE POINTE BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7192	STL-MAPLEWOOD BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7193	STL-MARYVILLE GARDENS STA	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7194	STL-NORMANDY BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7195	STL-NORTH COUNTY BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7196	STL-OLDHAM STA	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7197	STL-OLIVETTE BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7199	STL-SAPPINGTON BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7200	STL-SOUTH COUNTY BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7201	STL-SOUTHWEST STA	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7202	STL-UNIVERSITY CITY BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7203	STL-WEATHERS STA	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7204	STL-WEST COUNTY BR	MO	GREAT LAKES	28-7140	BC287140	200
J	630 GATEWAY PFC	28-7205	STL-WHEELER STA	MO	GREAT LAKES	28-7140	BC287140	200
J	979 GREAT LAKES AREA I	16-0049	CHICAGO INTL SVC CTR	IL	GREAT LAKES	16-0049	BC160049	200

J	979	GREAT LAKES AREA I	16-1541	CHICAGO NDC	IL	GREAT LAKES	16-1541	BC161541	200
J	979	GREAT LAKES AREA I	25-2491	DETROIT NDC	MI	GREAT LAKES	25-2491	BC252491	200
J	979	GREAT LAKES AREA I	28-7141	ST LOUIS NDC	MO	GREAT LAKES	28-7141	BC287141	200
K	200	CAPITAL PFC	10-3549	NATIONAL POSTAL MUSEUM	DC	CAPITAL METRO	10-3549	BC105000	200
K	200	CAPITAL PFC	10-4948	WDC-L'ENFANT PLAZA STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4949	WDC-NORTH DC STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4952	WDC-RIVER TERRACE CR ANX	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4955	WDC-BROOKLAND STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4957	WDC-CARRIER SECTION 2 STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4959	WDC-COLUMBIA HEIGHTS STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4960	WDC-CONGRESS HEIGHTS STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4961	WDC-CUSTOMS HOUSE STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4965	WDC-FOGGY BOTTOM STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4966	WDC-FRIENDSHIP STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4971	WDC-LAMOND-RIGGS STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4974	WDC-EAST DC STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4978	WDC-CAPITAL WEST STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4981	WDC-CHILLIUM PLACE ANX	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4987	WDC-SOUTHWEST STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4995	WDC-WARD PLACE STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4996	WDC-ANACOSTA STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4997	WDC-GEORGETOWN ANX	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-4998	WDC-MO DELIVERY UNIT	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-5000	WASHINGTON DC PO	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-5001	CURSEEN-MORRIS DC P&DC	DC	CAPITAL METRO	10-5001	BC105000	200
K	200	CAPITAL PFC	10-5004	WASHINGTON DC VMF	DC	CAPITAL METRO	10-5004	BC105000	200
K	200	CAPITAL PFC	10-5010	GOVERNMENT MAILS - CS	DC	CAPITAL METRO	10-5010	BC105000	200
K	200	CAPITAL PFC	10-5014	WDC-PENTAGON STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	10-5017	WDC-WHITE HOUSE STA	DC	CAPITAL METRO	10-5000	BC105000	200
K	200	CAPITAL PFC	23-0675	BETHESDA PO	MD	CAPITAL METRO	23-0675	BC230675	200
K	200	CAPITAL PFC	23-0676	BET-ARLINGTON ROAD STA	MD	CAPITAL METRO	23-0675	BC230675	200
K	200	CAPITAL PFC	23-0677	BET-WEST LAKE BR	MD	CAPITAL METRO	23-0675	BC230675	200
K	200	CAPITAL PFC	23-4554	HYATTSVILLE PO	MD	CAPITAL METRO	23-4554	BC234554	200
K	200	CAPITAL PFC	23-4555	HYT-CALVERT DDC	MD	CAPITAL METRO	23-4554	BC234554	200

K	200 CAPITAL PFC	23-4556	HYT-LANDOVER HILLS BR	MD	CAPITAL METRO	23-4554	BC234554	200
K	200 CAPITAL PFC	23-7480	SOUTHERN MD GMF/PO	MD	CAPITAL METRO	23-7480	BC237481	200
K	200 CAPITAL PFC	23-7481	SO MARYLAND MD P&DC	MD	CAPITAL METRO	23-7481	BC237481	200
K	200 CAPITAL PFC	23-7482	WASHINGTON NDC	MD	CAPITAL METRO	23-7482	BC237481	200
K	200 CAPITAL PFC	23-7483	LARGO AUX VMF OF CAPITAL HTS MD	MD	CAPITAL METRO	23-7483	BC237481	200
K	200 CAPITAL PFC	23-7484	SOUTHERN MD CAPITAL BELTWAY FAC	MD	CAPITAL METRO	23-7484	BC237481	200
K	200 CAPITAL PFC	23-7485	CAPITAL HTS MD VMF	MD	CAPITAL METRO	23-7485	BC237481	200
K	200 CAPITAL PFC	23-7486	RIVERDALE AUX VMF OF CAPITAL HTS	MD	CAPITAL METRO	23-7486	BC237481	200
K	200 CAPITAL PFC	23-7884	ROCKVILLE PO	MD	CAPITAL METRO	23-7884	BC237884	200
K	200 CAPITAL PFC	23-7885	RKV-DERWOOD BR	MD	CAPITAL METRO	23-7884	BC237884	200
K	200 CAPITAL PFC	23-7887	RKV-POTOMAC BR	MD	CAPITAL METRO	23-7884	BC237884	200
K	200 CAPITAL PFC	23-7888	RKV-TWINBROOK BR	MD	CAPITAL METRO	23-7884	BC237884	200
K	200 CAPITAL PFC	23-7889	RCV-CARRIER ANX	MD	CAPITAL METRO	23-7884	BC237884	200
K	200 CAPITAL PFC	23-8478	SILVER SPRING PO	MD	CAPITAL METRO	23-8478	BC238478	200
K	200 CAPITAL PFC	23-8479	SSP-CARRIER ANX	MD	CAPITAL METRO	23-8478	BC238478	200
K	200 CAPITAL PFC	23-8480	SSP-ASPEN HILL CARRIER ANX	MD	CAPITAL METRO	23-8478	BC238478	200
K	200 CAPITAL PFC	23-8481	SSP-COLESVILLE BR	MD	CAPITAL METRO	23-8478	BC238478	200
K	200 CAPITAL PFC	23-8482	SSP-WHEATON BR	MD	CAPITAL METRO	23-8478	BC238478	200
K	200 CAPITAL PFC	23-8483	SSP-TAKOMA PARK CARRIER ANX	MD	CAPITAL METRO	23-8478	BC238478	200
K	200 CAPITAL PFC	23-8750	SUBURBAN MD PO	MD	CAPITAL METRO	23-8750	BC238751	200
K	200 CAPITAL PFC	23-8751	SUBURBAN MD P&DC	MD	CAPITAL METRO	23-8751	BC238751	200
K	200 CAPITAL PFC	23-8752	GAITHERSBURG MD VMF	MD	CAPITAL METRO	23-8752	BC238751	200
K	210 BALTIMORE PFC	23-0378	BALTIMORE PO	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0379	BALTIMORE MD P&DC	MD	CAPITAL METRO	23-0379	BC230378	200
K	210 BALTIMORE PFC	23-0381	BALTIMORE MD VMF	MD	CAPITAL METRO	23-0381	BC230378	200
K	210 BALTIMORE PFC	23-0382	HALETHORPE MD VMF	MD	CAPITAL METRO	23-0382	BC230378	200
K	210 BALTIMORE PFC	23-0385	PARKVILLE MD VMF	MD	CAPITAL METRO	23-0385	BC230378	200
K	210 BALTIMORE PFC	23-0387	BALT INC MAIL MD P&DC	MD	CAPITAL METRO	23-0387	BC230387	200
K	210 BALTIMORE PFC	23-0397	BAL-ARLINGTON STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0398	BAL-BROOKLYN CURTIS BAY BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0400	BAL-CALVERT FSTA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0401	BAL-CARROLL STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0402	BAL-CATONSVILLE BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0403	BAL-CLIFTON EAST END STA	MD	CAPITAL METRO	23-0378	BC230378	200

K	210 BALTIMORE PFC	23-0404	BAL-DRUID STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0405	BAL-DUNDALK BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0406	BAL-ESSEX BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0407	BAL-FELLS POINT STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0408	BAL-FRANKLIN STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0409	BAL-GOVANS STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0410	BAL-GWYNN OAK BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0411	BAL-HALETHORPE BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0412	BAL-HAMILTON STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0413	BAL-HAMPDEN STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0415	BAL-HIGHLANDTOWN STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0416	BAL-LOCH RAVEN BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0417	BAL-MARKET CENTER STA.	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0418	BAL-MIDDLE RIVER BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0419	BAL-MOUNT WASHINGTON STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0420	BAL-NORTHWOOD STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0421	BAL-NOTTINGHAM BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0422	BAL-PARKVILLE BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0423	BAL-PIKESVILLE-BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0424	BAL-RASPEBURG STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0425	BAL-ROSEDALE BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0426	BAL-SOUTH STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0427	BAL-TOWSON FSTA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0428	BAL-WALBROOK STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0429	BAL-WAVERLY STA	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0430	BAL-WINDSOR MILL BR	MD	CAPITAL METRO	23-0378	BC230378	200
K	210 BALTIMORE PFC	23-0431	BAL-DOWNTOWN DELIVERY ANX	MD	CAPITAL METRO	23-0378	BC230378	200
K	220 NORTHERN VIRGINI/	51-0114	ALEXANDRIA PO	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0115	ALX-BELLEVIEW BR	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0116	ALX-COMMUNITY BR	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0117	ALX-ENGLESIDE BR	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0118	ALX-FRANCONIA STA	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0119	ALX-GEORGE MASON FSTA	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0121	ALX-JEFFERSON MANOR BR	VA	CAPITAL METRO	51-0114	BC510114	200

K	220 NORTHERN VIRGINI/	51-0122	ALX-LINCOLNIA BR	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0123	ALX-PARK FAIRFAX STA	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0124	ALX-POTOMAC FSTA	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0125	ALX-TRADE CENTER STA	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0126	ALX-SEMINARY FSTA	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0127	ALX-MEMORIAL ANX	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0128	ALX-KINGSTOWNE BR	VA	CAPITAL METRO	51-0114	BC510114	200
K	220 NORTHERN VIRGINI/	51-0306	ARLINGTON PO	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0307	ARL-BUCKINGHAM STA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0308	ARL-COURTHOUSE FSTA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0309	ARL-CRYSTAL CITY FSTA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0310	ARL-EADS STA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0311	ARL-FORT MYER FSTA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0312	ARL-NORTH STA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0313	ARL-PRESTON KING STA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0314	ARL-ROSSLYN STA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0315	ARL-SHIRLINGTON FSTA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0316	ARL-SOUTH STA	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-0317	ARL-SHIRLINGTON ANX	VA	CAPITAL METRO	51-0306	BC510306	200
K	220 NORTHERN VIRGINI/	51-2703	DULLES VA VMF	VA	CAPITAL METRO	51-2703	BC516541	200
K	220 NORTHERN VIRGINI/	51-2704	DULLES VA P&DC	VA	CAPITAL METRO	51-2704	BC512704	200
K	220 NORTHERN VIRGINI/	51-2705	WASHINGTON-DULLES AMC	VA	CAPITAL METRO	51-2705	BC512704	200
K	220 NORTHERN VIRGINI/	51-6540	MERRIFIELD PO	VA	CAPITAL METRO	51-6540	BC516541	200
K	220 NORTHERN VIRGINI/	51-6541	NORTHERN VA P&DC	VA	CAPITAL METRO	51-6541	BC516541	200
K	220 NORTHERN VIRGINI/	51-6542	MERRIFIELD VA VMF	VA	CAPITAL METRO	51-6542	BC510114	200
K	220 NORTHERN VIRGINI/	51-6545	ALEXANDRIA AUX VMF OF MERRIFIELD	VA	CAPITAL METRO	51-6545	BC516541	200
K	220 NORTHERN VIRGINI/	51-6547	MERRIFIELD CFS	VA	CAPITAL METRO	51-6540	BC516541	200
K	230 RICHMOND PFC	51-6517	NOR-BERKLEY STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6518	NOR-DEBREE STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6519	NOR-FLEET FSTA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6520	NOR-LAFAYETTE STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6521	NOR-NORVIEW STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6522	NORFOLK PO	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6523	NORFOLK VA P&DC	VA	CAPITAL METRO	51-6523	BC516522	200

K	230 RICHMOND PFC	51-6524	NORFOLK VA VMF	VA	CAPITAL METRO	51-6524	BC516522	200
K	230 RICHMOND PFC	51-6525	NOR-OCEANVIEW STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6527	NOR-PAGE STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6529	NOR-THOMAS CORNER STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6530	NOR-WRIGHT STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-6531	NOR-MILAN STA	VA	CAPITAL METRO	51-6522	BC516522	200
K	230 RICHMOND PFC	51-7649	RICHMOND VA P&DC	VA	CAPITAL METRO	51-7649	BC517650	200
K	230 RICHMOND PFC	51-7650	RICHMOND PO	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7654	RICHMOND VA VMF	VA	CAPITAL METRO	51-7654	BC517650	200
K	230 RICHMOND PFC	51-7655	RIC-AMPTHILL BR	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7657	RIC-BELLEVUE BR	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7659	RIC-BON AIR BR	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7660	RIC-CAPITOL STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7661	RIC-EAST END STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7663	RIC-FOREST HILL STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7664	RIC-LAKESIDE BR	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7665	RIC-MONTROSE HEIGHTS STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7666	RIC-NORTHSIDE STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7667	RIC-POCOSHOCK CREEK LANE BR	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7669	RIC-REGENCY BR	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7670	RIC-RIDGE BR	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7671	RIC-SAUNDERS STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7672	RIC-SOUTHSIDE STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7673	RIC-STEWART STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7675	RIC-WEST END STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-7676	RIC-WESTHAMPTON STA	VA	CAPITAL METRO	51-7650	BC517650	200
K	230 RICHMOND PFC	51-9360	VIRGINIA BEACH PO	VA	CAPITAL METRO	51-9360	BC519360	200
K	230 RICHMOND PFC	51-9361	VAB-ACREDALE STA	VA	CAPITAL METRO	51-9360	BC519360	200
K	230 RICHMOND PFC	51-9362	VAB-BACKBAY STA	VA	CAPITAL METRO	51-9360	BC519360	200
K	230 RICHMOND PFC	51-9363	VAB-BAYSIDE STA	VA	CAPITAL METRO	51-9360	BC519360	200
K	230 RICHMOND PFC	51-9364	VAB-LONDON BRIDGE ANX	VA	CAPITAL METRO	51-9360	BC519360	200
K	230 RICHMOND PFC	51-9365	VAB-PRINCESS ANNE STA	VA	CAPITAL METRO	51-9360	BC519360	200
K	230 RICHMOND PFC	51-9366	VAB-SEAPINES STA	VA	CAPITAL METRO	51-9360	BC519360	200
K	230 RICHMOND PFC	51-9367	VAB-WITCHDUCK STA	VA	CAPITAL METRO	51-9360	BC519360	200

K	270 GREENSBORO PFC	36-2192	DURHAM PO	NC	CAPITAL METRO	36-2192	BC362192	200
K	270 GREENSBORO PFC	36-2193	DUR-WEST STA	NC	CAPITAL METRO	36-2192	BC362192	200
K	270 GREENSBORO PFC	36-2194	DUR-ENO VALLEY STA	NC	CAPITAL METRO	36-2192	BC362192	200
K	270 GREENSBORO PFC	36-2195	DUR-SHANNON PLAZA STA	NC	CAPITAL METRO	36-2192	BC362192	200
K	270 GREENSBORO PFC	36-2196	DUR-EAST STA	NC	CAPITAL METRO	36-2192	BC362192	200
K	270 GREENSBORO PFC	36-2197	DUR-RESEARCH TRIANGLE PARK STA	NC	CAPITAL METRO	36-2192	BC362192	200
K	270 GREENSBORO PFC	36-3192	GREENSBORO PO	NC	CAPITAL METRO	36-3192	BC363192	200
K	270 GREENSBORO PFC	36-3195	GREENSBORO NC P&DC	NC	CAPITAL METRO	36-3195	BC363192	200
K	270 GREENSBORO PFC	36-3196	GREENSBORO NC VMF	NC	CAPITAL METRO	36-3196	BC363192	200
K	270 GREENSBORO PFC	36-3201	GSO-WESTSIDE STA	NC	CAPITAL METRO	36-3192	BC363192	200
K	270 GREENSBORO PFC	36-3203	GSO-SPRING VALLEY STA	NC	CAPITAL METRO	36-3192	BC363192	200
K	270 GREENSBORO PFC	36-3204	GSO-SUMMIT STA	NC	CAPITAL METRO	36-3192	BC363192	200
K	270 GREENSBORO PFC	36-3205	GSO-MAIN OFFICE STA	NC	CAPITAL METRO	36-3192	BC363192	200
K	270 GREENSBORO PFC	36-6352	RALEIGH PO	NC	CAPITAL METRO	36-6352	BC366352	200
K	270 GREENSBORO PFC	36-6353	RALEIGH NC P&DC	NC	CAPITAL METRO	36-6353	BC366352	200
K	270 GREENSBORO PFC	36-6355	RALEIGH NC VMF	NC	CAPITAL METRO	36-6355	BC366352	200
K	270 GREENSBORO PFC	36-6356	RAL-CAPITOL STA	NC	CAPITAL METRO	36-6352	BC366352	200
K	270 GREENSBORO PFC	36-6357	RAL-BRENTWOOD STA	NC	CAPITAL METRO	36-6352	BC366352	200
K	270 GREENSBORO PFC	36-6358	RAL-AVENT FERRY STA	NC	CAPITAL METRO	36-6352	BC366352	200
K	270 GREENSBORO PFC	36-6359	RAL-NORTH RIDGE STA	NC	CAPITAL METRO	36-6352	BC366352	200
K	270 GREENSBORO PFC	36-6371	RAL-HILBURN STA	NC	CAPITAL METRO	36-6352	BC366352	200
K	270 GREENSBORO PFC	36-6373	RAL-SUNNYBROOK STA	NC	CAPITAL METRO	36-6352	BC366352	200
K	270 GREENSBORO PFC	36-8712	WINSTON-SALEM PO	NC	CAPITAL METRO	36-8712	BC368712	200
K	270 GREENSBORO PFC	36-8713	WINSTON SALEM NC VMF	NC	CAPITAL METRO	36-8713	BC368712	200
K	270 GREENSBORO PFC	36-8714	WIN-WAUGHTOWN STA	NC	CAPITAL METRO	36-8712	BC368712	200
K	270 GREENSBORO PFC	36-8715	WIN-MANOR STA	NC	CAPITAL METRO	36-8712	BC368712	200
K	270 GREENSBORO PFC	36-8716	WIN-NORTH POINT STA	NC	CAPITAL METRO	36-8712	BC368712	200
K	270 GREENSBORO PFC	36-8717	WIN-MAIN OFFICE STA	NC	CAPITAL METRO	36-8712	BC368712	200
K	280 MID-CAROLINAS PFC	36-1392	CHARLOTTE PO	NC	CAPITAL METRO	36-1392	BC361392	200
K	280 MID-CAROLINAS PFC	36-1393	CHARLOTTE NC P&DC	NC	CAPITAL METRO	36-1393	BC361392	200
K	280 MID-CAROLINAS PFC	36-1395	MID-CAROLINAS CS DISTRICT	NC	CAPITAL METRO	36-1395	BC361392	200
K	280 MID-CAROLINAS PFC	36-1396	CHARLOTTE NC VMF	NC	CAPITAL METRO	36-1396	BC361392	200
K	280 MID-CAROLINAS PFC	36-1398	CLT- NORTH TRYON STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280 MID-CAROLINAS PFC	36-1399	CLT-W T HARRIS STA	NC	CAPITAL METRO	36-1392	BC361392	200

K	280	MID-CAROLINAS PFC	36-1401	CLT-MINT HILL STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1402	CLT-IDLEWILD CARRIER ANX	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1403	CLT-INDEPENDENCE CARRIER ANX	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1404	CLT-MINUET CARRIER ANX	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1406	CLT-CARMEL STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1407	CLT-BALLANTYNE STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1411	CLT-PLAZA STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1412	CLT-PARK ROAD ANX	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1413	CLT-STEELE CREEK STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1414	CLT-OAKDALE STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1417	CLT-RANDOLPH STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1418	CLT-DOWNTOWN STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1419	CLT-YORKMONT STA	NC	CAPITAL METRO	36-1392	BC361392	200
K	280	MID-CAROLINAS PFC	36-1420	MID CAROLINA NC P&DC	NC	CAPITAL METRO	36-1420	BC361392	200
K	280	MID-CAROLINAS PFC	36-2680	FAYETTEVILLE PO	NC	CAPITAL METRO	36-2680	BC362680	200
K	280	MID-CAROLINAS PFC	36-2681	FAYETTEVILLE NC P&DC	NC	CAPITAL METRO	36-2681	BC362680	200
K	280	MID-CAROLINAS PFC	36-2682	FAYETTEVILLE NC VMF	NC	CAPITAL METRO	36-2682	BC362680	200
K	280	MID-CAROLINAS PFC	36-2683	FAY-CLIFFDALE STA	NC	CAPITAL METRO	36-2680	BC362680	200
K	280	MID-CAROLINAS PFC	36-2684	FAY-TOKAY CARR ANX	NC	CAPITAL METRO	36-2680	BC362680	200
K	280	MID-CAROLINAS PFC	36-2685	FAY-LAKEDALE STA	NC	CAPITAL METRO	36-2680	BC362680	200
K	280	MID-CAROLINAS PFC	36-2686	FAY-HAYMOUNT STA	NC	CAPITAL METRO	36-2680	BC362680	200
K	280	MID-CAROLINAS PFC	36-2687	FAY-LAFAYETTE STA	NC	CAPITAL METRO	36-2680	BC362680	200
K	280	MID-CAROLINAS PFC	36-2689	FAY-EUTAW STA	NC	CAPITAL METRO	36-2680	BC362680	200
K	280	MID-CAROLINAS PFC	36-2691	WILMINGTON AUX VMF OF FAYETTEVI	NC	CAPITAL METRO	36-2691	BC362680	200
K	280	MID-CAROLINAS PFC	36-8718	HICKORY AUX VMF OF CHARLOTTE NC	NC	CAPITAL METRO	36-8718	BC361392	200
K	290	GREATER SOUTH CA	36-1409	ASHEVILLE AUX VMF OF GREENVILLE S	SC	CAPITAL METRO	36-1409	BC453620	200
K	290	GREATER SOUTH CA	45-1480	CHARLESTON PO	SC	CAPITAL METRO	45-1480	BC451480	200
K	290	GREATER SOUTH CA	45-1481	CHS-JAMES ISLAND BR	SC	CAPITAL METRO	45-1480	BC451480	200
K	290	GREATER SOUTH CA	45-1482	NORTH CHARLESTON SC VMF	SC	CAPITAL METRO	45-1482	BC451480	200
K	290	GREATER SOUTH CA	45-1483	CHS-ST ANDREWS STA	SC	CAPITAL METRO	45-1480	BC451480	200
K	290	GREATER SOUTH CA	45-1484	CHS-ASHLEY RIVER STA	SC	CAPITAL METRO	45-1480	BC451480	200
K	290	GREATER SOUTH CA	45-1485	CHS-CROSS COUNTY BR	SC	CAPITAL METRO	45-1480	BC451480	200
K	290	GREATER SOUTH CA	45-1486	CHS-PINEHAVEN BR	SC	CAPITAL METRO	45-1480	BC451480	200
K	290	GREATER SOUTH CA	45-1487	CHS-NORTH CHARLESTON BR	SC	CAPITAL METRO	45-1480	BC451480	200

K	290 GREATER SOUTH CA	45-1488	CHS-EAST BAY STA	SC	CAPITAL METRO	45-1480	BC451480	200
K	290 GREATER SOUTH CA	45-1490	CHARLESTON SC P&DC	SC	CAPITAL METRO	45-1490	BC451480	200
K	290 GREATER SOUTH CA	45-1800	COLUMBIA PO	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-1801	COLUMBIA SC P&DC	SC	CAPITAL METRO	45-1801	BC451800	200
K	290 GREATER SOUTH CA	45-1802	COLUMBIA SC VMF	SC	CAPITAL METRO	45-1802	BC451800	200
K	290 GREATER SOUTH CA	45-1803	GREATER SC CS DISTRICT	SC	CAPITAL METRO	45-1803	BC451800	200
K	290 GREATER SOUTH CA	45-1804	CAE-MAIN OFFICE STA	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-1807	FLORENCE AUX VMF OF COLUMBIA SC	SC	CAPITAL METRO	45-1807	BC451800	200
K	290 GREATER SOUTH CA	45-1812	CAE-SANDHILLS STA	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-1813	CAE-LEESBURG BR	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-1814	CAE-DUTCH FORK BR	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-1815	CAE-FOREST ACRES BR	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-1816	CAE-NORTHEAST BR	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-1818	CAE-EDGEWOOD STA	SC	CAPITAL METRO	45-1800	BC451800	200
K	290 GREATER SOUTH CA	45-3620	GREENVILLE PO	SC	CAPITAL METRO	45-3620	BC453620	200
K	290 GREATER SOUTH CA	45-3621	GREENVILLE SC P&DC	SC	CAPITAL METRO	45-3621	BC453620	200
K	290 GREATER SOUTH CA	45-3622	GREENVILLE SC VMF	SC	CAPITAL METRO	45-3622	BC453620	200
K	290 GREATER SOUTH CA	45-3623	GVL-CALVIN STREET ANX	SC	CAPITAL METRO	45-3620	BC453620	200
K	290 GREATER SOUTH CA	45-3624	GVL-KEITH D OGLESBY STA	SC	CAPITAL METRO	45-3620	BC453620	200
K	290 GREATER SOUTH CA	45-3625	GVL-PLEASANTBURG STA	SC	CAPITAL METRO	45-3620	BC453620	200
K	290 GREATER SOUTH CA	45-3626	GVL-BEREA BR	SC	CAPITAL METRO	45-3620	BC453620	200
K	290 GREATER SOUTH CA	45-3628	SPARTANBURG AUX VMF OF GREENVII	SC	CAPITAL METRO	45-3628	BC453620	200
K	300 ATLANTA PFC	12-0405	ATLANTA MRC	GA	CAPITAL METRO	12-0405	BC120440	200
K	300 ATLANTA PFC	12-0440	ATLANTA PO	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0441	ATLANTA GA P&DC	GA	CAPITAL METRO	12-0441	BC120440	200
K	300 ATLANTA PFC	12-0442	PEACHTREE GA P&DC	GA	CAPITAL METRO	12-0442	BC120440	200
K	300 ATLANTA PFC	12-0443	ATLANTA GA VMF	GA	CAPITAL METRO	12-0443	BC120440	200
K	300 ATLANTA PFC	12-0446	NORTH METRO GA VMF	GA	CAPITAL METRO	12-0446	BC120440	200
K	300 ATLANTA PFC	12-0447	ATLANTA SUPPORT	GA	CAPITAL METRO	12-0447	BC120440	200
K	300 ATLANTA PFC	12-0452	ATL-ATLANTA MPO	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0453	ATL-BEN HILL STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0454	ATL-BRIARCLIFF PSTL STR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0455	ATL-BROADVIEW STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0456	ATL-BROOKHAVEN STA	GA	CAPITAL METRO	12-0440	BC120440	200

K	300 ATLANTA PFC	12-0457	ATL-CASCADE STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0458	ATL-CENTRAL CITY CARRIER ANX	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0459	ATL-CHAMBLEE BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0460	ATL-CIVIC CENTER PSTL STR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0461	ATL-COLLEGE PARK BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0463	ATL-CUMBERLAND CARRIER ANX	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0464	ATL-DORAVILLE BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0465	ATL-DUNWOODY BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0466	ATL-EAST ATLANTA STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0467	ATL-EAST POINT STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0468	ATL-EASTWOOD STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0469	ATL-GLENRIDGE BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0470	ATL-HAPEVILLE STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0471	ATL-HOWELL MILL PSTL STR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0472	ATL-INDUSTRIAL BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0474	ATL-LAKEWOOD STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0475	ATL-MARTECH CARRIER ANX	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0477	ATL-MIDTOWN STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0478	ATL-MORRIS BROWN STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0479	ATL-NORTH ATLANTA BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0480	ATL-NORTHRIDGE BR	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0481	ATL-NORTHSIDE CARRIER ANX	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0482	ATL-OLD NATIONAL STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0483	ATL-RALPH MCGILL CARRIER ANX	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0485	ATL-SANDY SPRINGS CARRIER ANX	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0486	ATL-WEST END STA	GA	CAPITAL METRO	12-0440	BC120440	200
K	300 ATLANTA PFC	12-0493	DECATUR AUX VMF OF ATLANTA GA	GA	CAPITAL METRO	12-0493	BC120440	200
K	300 ATLANTA PFC	12-0494	WEST END GA AUX VMF OF ATLANTA (	GA	CAPITAL METRO	12-0494	BC120440	200
K	300 ATLANTA PFC	12-0496	ATLANTA (NDC) AUX VMF OF ATLANTA	GA	CAPITAL METRO	12-0496	BC120440	200
K	300 ATLANTA PFC	12-0497	BROADVIEW AUX VMF OF NORTH MET	GA	CAPITAL METRO	12-0497	BC120440	200
K	300 ATLANTA PFC	12-0498	ATHENS AUX VMF OF NORTH METRO (	GA	CAPITAL METRO	12-0498	BC120440	200
K	300 ATLANTA PFC	12-0499	MARIETTA GA VMF	GA	CAPITAL METRO	12-0499	BC125588	200
K	300 ATLANTA PFC	12-0521	ATLANTA-CUSTOMER RETENTION	GA	CAPITAL METRO	12-0521	BC120440	200
K	300 ATLANTA PFC	12-3569	NORTH METRO GA P&DC	GA	CAPITAL METRO	12-3569	BC123569	200

K	300	ATLANTA PFC	12-5588	MARIETTA PO	GA	CAPITAL METRO	12-5588	BC125588	200
K	300	ATLANTA PFC	12-5589	MAR-WEST OAK CARRIER ANX	GA	CAPITAL METRO	12-5588	BC125588	200
K	300	ATLANTA PFC	12-5591	MAR-MOUNT BETHEL BR	GA	CAPITAL METRO	12-5588	BC125588	200
K	300	ATLANTA PFC	12-5592	MAR-SPRAYBERRY BR	GA	CAPITAL METRO	12-5588	BC125588	200
K	300	ATLANTA PFC	12-5593	MAR-WESTSIDE CARRIER ANX	GA	CAPITAL METRO	12-5588	BC125588	200
K	300	ATLANTA PFC	12-5594	MAR-MAIN OFFICE STA	GA	CAPITAL METRO	12-5588	BC125588	200
K	300	ATLANTA PFC	36-0011	CAPITAL METRO VMF GROUP 3	GA	CAPITAL METRO	36-0011	BC120440	200
K	966	CAPITAL METRO ARE	12-0439	ATLANTA NDC	GA	CAPITAL METRO	12-0439	BC120439	200
K	966	CAPITAL METRO ARE	36-3193	GREENSBORO NDC	NC	CAPITAL METRO	36-3193	BC363193	200
B	20	GREATER BOSTON P	24-0101	CAM-HARVARD SQUARE STA	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-0102	CAM-CENTRAL SQUARE MPO	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-0104	CAM-PORTER SQUARE STA	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-0105	CAM-EAST CAMBRIDGE STA	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-0106	CAM-KENDALL SQUARE STA	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-0107	CAM-MIT STA	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-0108	CAM-INMAN SQUARE STA	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-1065	CAMBRIDGE PO	MA	NORTHEAST	24-1065	BC240102	125
B	20	GREATER BOSTON P	24-2788	FRAMINGHAM PO	MA	NORTHEAST	24-2788	BC242788	125
B	20	GREATER BOSTON P	24-2789	FRAMINGHAM MA VMF	MA	NORTHEAST	24-2789	BC242788	125
B	20	GREATER BOSTON P	24-4199	LYNN PO	MA	NORTHEAST	24-4199	BC244199	125
B	20	GREATER BOSTON P	24-4200	LYN-SAUGUS STA	MA	NORTHEAST	24-4199	BC244199	125
B	20	GREATER BOSTON P	24-4201	LYN-SWAMPSCOTT STA	MA	NORTHEAST	24-4199	BC244199	125
B	20	GREATER BOSTON P	24-4202	LYN-WEST LYNN STA	MA	NORTHEAST	24-4199	BC244199	125
B	20	GREATER BOSTON P	24-4601	LYNN MA VMF	MA	NORTHEAST	24-4601	BC244199	125
B	40	NORTHERN NEW EN	22-0345	BANGOR PO	ME	NORTHEAST	22-0345	BC220345	125
B	40	NORTHERN NEW EN	22-0355	EASTERN ME P&DC	ME	NORTHEAST	22-0355	BC220345	125
B	40	NORTHERN NEW EN	22-4380	LEVANT PO	ME	NORTHEAST	22-0345	BC220345	125
B	40	NORTHERN NEW EN	50-1008	BURLINGTON PO	VT	NORTHEAST	50-1008	BC501008	125
B	40	NORTHERN NEW EN	50-1009	BUR-DMU STA	VT	NORTHEAST	50-1008	BC501008	125
B	40	NORTHERN NEW EN	50-1010	BUR-SOUTH FSTA	VT	NORTHEAST	50-1008	BC501008	125
B	40	NORTHERN NEW EN	50-1028	BURLINGTON VT P&DC	VT	NORTHEAST	50-1028	BC501008	125
B	40	NORTHERN NEW EN	50-5376	NORTH HARTLAND PO	VT	NORTHEAST	50-9352	BC509352	125
B	40	NORTHERN NEW EN	50-9352	WHITE RIVER JUNCT PO	VT	NORTHEAST	50-9352	BC509352	125
B	40	NORTHERN NEW EN	50-9353	WHITE RIVER JUNC VT P&DC	VT	NORTHEAST	50-9353	BC509352	125

B	60 CONNECTICUT VALLI	08-1666	DANBURY PO	CT	NORTHEAST	08-1666	BC081666	125
B	60 CONNECTICUT VALLI	08-5406	NORWALK PO	CT	NORTHEAST	08-5406	BC085406	125
B	60 CONNECTICUT VALLI	24-2550	FALL RIVER PO	MA	NORTHEAST	24-2550	BC242550	125
B	60 CONNECTICUT VALLI	24-2551	FALL RIVER MA VMF	MA	NORTHEAST	24-2551	BC242550	125
B	60 CONNECTICUT VALLI	24-2552	FLR-FLINT STA	MA	NORTHEAST	24-2550	BC242550	125
B	60 CONNECTICUT VALLI	24-2553	FLR-HIGHLAND STA	MA	NORTHEAST	24-2550	BC242550	125
B	60 CONNECTICUT VALLI	24-2554	FLR-SOMERSET STA	MA	NORTHEAST	24-2550	BC242550	125
B	60 CONNECTICUT VALLI	24-2555	FLR-SOUTH STA	MA	NORTHEAST	24-2550	BC242550	125
B	60 CONNECTICUT VALLI	24-5032	NEW BEDFORD PO	MA	NORTHEAST	24-5032	BC245032	125
B	60 CONNECTICUT VALLI	24-5033	NBD-ACUSHNET STA	MA	NORTHEAST	24-5032	BC245032	125
B	60 CONNECTICUT VALLI	24-5034	NBD-MOUNT PLEASANT STA	MA	NORTHEAST	24-5032	BC245032	125
B	60 CONNECTICUT VALLI	24-5035	NBD-NORTH STA	MA	NORTHEAST	24-5032	BC245032	125
B	60 CONNECTICUT VALLI	24-5036	NBD-NORTH DARTMOUTH BR	MA	NORTHEAST	24-5032	BC245032	125
B	60 CONNECTICUT VALLI	24-5037	NBD-ORCHARD STREET STA	MA	NORTHEAST	24-5032	BC245032	125
B	60 CONNECTICUT VALLI	24-5038	NBD-SOUTH DARTMOUTH BR	MA	NORTHEAST	24-5032	BC245032	125
B	60 CONNECTICUT VALLI	43-6720	PAWTUCKET PO	RI	NORTHEAST	43-6720	BC436720	125
B	60 CONNECTICUT VALLI	43-6721	PWT-CENTRAL FALLS BR	RI	NORTHEAST	43-6720	BC436720	125
B	60 CONNECTICUT VALLI	43-6722	PWT-CENTRAL FALLS CARRIERS	RI	NORTHEAST	43-6720	BC436720	125
B	60 CONNECTICUT VALLI	43-6723	PWT-CUMBERLAND BR	RI	NORTHEAST	43-6720	BC436720	125
B	60 CONNECTICUT VALLI	43-6724	PWT-DARLINGTON STA	RI	NORTHEAST	43-6720	BC436720	125
B	60 CONNECTICUT VALLI	43-6725	PWT-LINCOLN BR	RI	NORTHEAST	43-6720	BC436720	125
B	60 CONNECTICUT VALLI	43-8680	WARWICK PO	RI	NORTHEAST	43-8680	BC438680	125
B	60 CONNECTICUT VALLI	43-8682	WAR-APPONAUG STA	RI	NORTHEAST	43-8680	BC438680	125
B	60 CONNECTICUT VALLI	43-8683	WAR-PILGRIM STA	RI	NORTHEAST	43-8680	BC438680	125
B	60 CONNECTICUT VALLI	43-8684	WAR-CONIMICUT STA	RI	NORTHEAST	43-8680	BC438680	125
B	70 NORTHERN NJ PFC	33-2347	EDISON PO	NJ	NORTHEAST	33-2347	BC332347	125
B	70 NORTHERN NJ PFC	33-2348	EDI-MENLO PARK STA	NJ	NORTHEAST	33-2347	BC332347	125
B	70 NORTHERN NJ PFC	33-2349	EDI-NIXON STA	NJ	NORTHEAST	33-2347	BC332347	125
B	70 NORTHERN NJ PFC	33-2370	ELIZABETH PO	NJ	NORTHEAST	33-2370	BC332370	125
B	70 NORTHERN NJ PFC	33-2371	ELI-ROSELLE BR	NJ	NORTHEAST	33-2370	BC332370	125
B	70 NORTHERN NJ PFC	33-2372	ELI-HILLSIDE INDUSTRIAL BR	NJ	NORTHEAST	33-2370	BC332370	125
B	70 NORTHERN NJ PFC	33-3225	HACKENSACK PO	NJ	NORTHEAST	33-3225	BC333225	125
B	70 NORTHERN NJ PFC	33-3226	SOUTH HACKENSACK NJ VMF	NJ	NORTHEAST	33-3226	BC333225	125
B	70 NORTHERN NJ PFC	33-3228	HAK-HASBROUCK HEIGHTS BR	NJ	NORTHEAST	33-3225	BC333225	125

B	70	NORTHERN NJ PFC	33-3229	HAK-LEONIA BR	NJ	NORTHEAST	33-3225	BC333225	125
B	70	NORTHERN NJ PFC	33-3230	HAK-SOUTH HACKENSACK ANX	NJ	NORTHEAST	33-3225	BC333225	125
B	70	NORTHERN NJ PFC	33-3231	HAK-MAYWOOD BR	NJ	NORTHEAST	33-3225	BC333225	125
B	70	NORTHERN NJ PFC	33-5686	EDISON NJ VMF	NJ	NORTHEAST	33-5686	BC332347	125
B	70	NORTHERN NJ PFC	33-6420	PATERSON PO	NJ	NORTHEAST	33-6420	BC336420	125
B	70	NORTHERN NJ PFC	33-6421	PATERSON NJ VMF	NJ	NORTHEAST	33-6421	BC336420	125
B	70	NORTHERN NJ PFC	33-6424	PAT-SOUTH PATERSON STA	NJ	NORTHEAST	33-6420	BC336420	125
B	70	NORTHERN NJ PFC	33-6425	PAT-HAWTHORNE BR	NJ	NORTHEAST	33-6420	BC336420	125
B	70	NORTHERN NJ PFC	33-6426	PAT-HALEDON BR	NJ	NORTHEAST	33-6420	BC336420	125
B	70	NORTHERN NJ PFC	33-6427	PAT-TOTOWA BR	NJ	NORTHEAST	33-6420	BC336420	125
B	70	NORTHERN NJ PFC	33-6428	PAT-PARK STA	NJ	NORTHEAST	33-6420	BC336420	125
B	105	WESTCHESTER PFC	35-5785	NEW ROCHELLE PO	NY	NORTHEAST	35-5785	BC355785	125
B	105	WESTCHESTER PFC	35-5786	NRO-PELHAM BR	NY	NORTHEAST	35-5785	BC355785	125
B	105	WESTCHESTER PFC	35-5787	NRO-WYKAGYL STA	NY	NORTHEAST	35-5785	BC355785	125
B	105	WESTCHESTER PFC	35-9350	WHITE PLAINS PO	NY	NORTHEAST	35-9350	BC359350	125
B	105	WESTCHESTER PFC	35-9351	WHI-NORTH WHITE PLAINS STA	NY	NORTHEAST	35-9350	BC359350	125
B	120	ALBANY PFC	35-7534	SCH-GLENVILLE BR	NY	NORTHEAST	35-7535	BC357535	125
B	120	ALBANY PFC	35-7535	SCHENECTADY PO	NY	NORTHEAST	35-7535	BC357535	125
B	120	ALBANY PFC	35-7536	SCH-HERITAGE STA	NY	NORTHEAST	35-7535	BC357535	125
B	120	ALBANY PFC	35-7537	SCH-NISKAYUNA BR	NY	NORTHEAST	35-7535	BC357535	125
C	80	SOUTH JERSEY PFC	09-5170	NEWARK PO	DE	EASTERN	09-5170	BC095170	125
C	80	SOUTH JERSEY PFC	09-5172	NEW-FEDERAL STA	DE	EASTERN	09-5170	BC095170	125
C	80	SOUTH JERSEY PFC	09-5173	NEW-BEAR CARRIER ANX	DE	EASTERN	09-5170	BC095170	125
C	80	SOUTH JERSEY PFC	33-7635	SEASIDE HEIGHTS PO	NJ	EASTERN	33-8475	BC338475	125
C	80	SOUTH JERSEY PFC	33-8475	TOMS RIVER PO	NJ	EASTERN	33-8475	BC338475	125
C	150	WESTERN PENNSYLV	41-0150	ALTOONA PA P&DC	PA	EASTERN	41-0150	BC410152	125
C	150	WESTERN PENNSYLV	41-0152	ALTOONA PO	PA	EASTERN	41-0152	BC410152	125
C	170	CENTRAL PENNSYLV	41-0636	BETHLEHEM PO	PA	EASTERN	41-0636	BC410636	125
C	170	CENTRAL PENNSYLV	41-4582	LEHIGH VALLEY PO	PA	EASTERN	41-4582	BC410636	125
C	170	CENTRAL PENNSYLV	41-9260	WILKES-BARRE PO	PA	EASTERN	41-9260	BC419260	125
C	170	CENTRAL PENNSYLV	41-9492	YORK PO	PA	EASTERN	41-9492	BC419492	125
C	170	CENTRAL PENNSYLV	41-9493	YRK-DOVER BR	PA	EASTERN	41-9492	BC419492	125
C	170	CENTRAL PENNSYLV	41-9494	YRK-WEST BR	PA	EASTERN	41-9492	BC419492	125
C	170	CENTRAL PENNSYLV	41-9495	YRK-DOWNTOWN STA	PA	EASTERN	41-9492	BC419492	125

C	450	OHIO VALLEY PFC	20-1764	COVINGTON PO	KY	EASTERN	20-1764	BC201764	125
C	450	OHIO VALLEY PFC	20-1765	COV-DIXIE BR	KY	EASTERN	20-1764	BC201764	125
C	450	OHIO VALLEY PFC	20-1766	COV-ERLANGER BR	KY	EASTERN	20-1764	BC201764	125
C	450	OHIO VALLEY PFC	20-1767	COV-LATONIA BR	KY	EASTERN	20-1764	BC201764	125
C	450	OHIO VALLEY PFC	38-3367	HAMILTON PO	OH	EASTERN	38-3367	BC383367	125
C	450	OHIO VALLEY PFC	38-3369	HAM-FAIRFIELD BR	OH	EASTERN	38-3367	BC383367	125
C	450	OHIO VALLEY PFC	38-3370	HAM-ROSSVILLE BR	OH	EASTERN	38-3367	BC383367	125
E	500	HAWKEYE PFC	16-6786	ROCK ISLAND PO	IL	WESTERN	16-6786	BC166786	125
E	500	HAWKEYE PFC	16-6788	QUAD CITIES IL P&DC	IL	WESTERN	16-6788	BC166786	125
E	500	HAWKEYE PFC	18-9351	WATERLOO PO	IA	WESTERN	18-9351	BC189351	125
E	500	HAWKEYE PFC	18-9352	WATERLOO CARRIER ANX	IA	WESTERN	18-9351	BC189351	125
E	500	HAWKEYE PFC	18-9354	WATERLOO P&DF	IA	WESTERN	18-9354	BC189351	125
E	553	NORTHLAND PFC	26-4590	HOPKINS PO	MN	WESTERN	26-4590	BC264590	125
E	553	NORTHLAND PFC	26-4591	HOP-EDEN PRAIRIE BR	MN	WESTERN	26-4590	BC264590	125
E	553	NORTHLAND PFC	26-4593	HOP-MINNETONKA BR	MN	WESTERN	26-4590	BC264590	125
E	553	NORTHLAND PFC	26-8280	SAINT CLOUD PO	MN	WESTERN	26-8280	BC268280	125
E	553	NORTHLAND PFC	26-8281	STC-CENTRE PLACE STA	MN	WESTERN	26-8280	BC268280	125
E	553	NORTHLAND PFC	26-8282	STC-SAUK RAPIDS BR	MN	WESTERN	26-8280	BC268280	125
E	553	NORTHLAND PFC	26-8283	STC-WAITE PARK BR	MN	WESTERN	26-8280	BC268280	125
E	553	NORTHLAND PFC	26-8286	SAINT CLOUD P&DC	MN	WESTERN	26-8286	BC268280	125
E	553	NORTHLAND PFC	56-2490	EAU CLAIRE PO	WI	WESTERN	56-2490	BC562490	125
E	553	NORTHLAND PFC	56-2491	EAU-CARRIER ANX	WI	WESTERN	56-2490	BC562490	125
E	553	NORTHLAND PFC	56-2495	EAU CLAIRE P&DF	WI	WESTERN	56-2495	BC562490	125
E	570	DAKOTAS PFC	29-3630	GREAT FALLS BLACK EAGLE	MT	WESTERN	29-3636	BC293636	125
E	570	DAKOTAS PFC	29-3633	GREAT FALLS P&DF	MT	WESTERN	29-3633	BC293636	125
E	570	DAKOTAS PFC	29-3636	GREAT FALLS PO	MT	WESTERN	29-3636	BC293636	125
E	570	DAKOTAS PFC	29-3637	GTF-CM RUSSELL STA	MT	WESTERN	29-3636	BC293636	125
E	570	DAKOTAS PFC	29-5795	MISSOULA MPF	MT	WESTERN	29-5795	BC295796	125
E	570	DAKOTAS PFC	29-5796	MISSOULA PO	MT	WESTERN	29-5796	BC295796	125
E	570	DAKOTAS PFC	29-5797	MSO-HELLGATE STA	MT	WESTERN	29-5796	BC295796	125
E	570	DAKOTAS PFC	29-5798	MSO-MULLAN STA	MT	WESTERN	29-5796	BC295796	125
E	570	DAKOTAS PFC	37-0544	BALDWIN PO	ND	WESTERN	37-0944	BC370944	125
E	570	DAKOTAS PFC	37-0941	BISMARCK DOWNTOWN STATION	ND	WESTERN	37-0944	BC370944	125
E	570	DAKOTAS PFC	37-0944	BISMARCK PO	ND	WESTERN	37-0944	BC370944	125

E	570 DAKOTAS PFC	37-0950	BISMARCK P&DF	ND	WESTERN	37-0950	BC370944	125
E	570 DAKOTAS PFC	37-6320	MOFFIT PO	ND	WESTERN	37-0944	BC370944	125
E	640 MID-AMERICA PFC	19-4650	KCK-ARGENTINE STA	KS	WESTERN	19-4653	BC194653	125
E	640 MID-AMERICA PFC	19-4652	KCK-CIVIC CENTER STA	KS	WESTERN	19-4653	BC194653	125
E	640 MID-AMERICA PFC	19-4658	KCK-ROBERT L ROBERTS STA	KS	WESTERN	19-4653	BC194653	125
E	640 MID-AMERICA PFC	19-4659	KCK-ROSEDALE STA	KS	WESTERN	19-4653	BC194653	125
E	640 MID-AMERICA PFC	19-4660	KCK-WYANDOTTE WEST STA	KS	WESTERN	19-4653	BC194653	125
E	640 MID-AMERICA PFC	19-8356	SHAWNEE MISSION KS VMF	KS	WESTERN	19-8356	BC194653	125
E	640 MID-AMERICA PFC	28-4026	INDEPENDENCE PO	MO	WESTERN	28-4026	BC284026	125
E	640 MID-AMERICA PFC	28-4027	IND-ENGLEWOOD STA	MO	WESTERN	28-4026	BC284026	125
E	640 MID-AMERICA PFC	28-4028	IND-HARRY S TRUMAN STA	MO	WESTERN	28-4026	BC284026	125
E	800 COLORADO/WYOMI	07-0415	ARV-INDIAN TREE STA	CO	WESTERN	07-0414	BC070414	125
E	800 COLORADO/WYOMI	07-0416	ARV-MAIN OFFICE STA	CO	WESTERN	07-0414	BC070414	125
E	800 COLORADO/WYOMI	07-0883	BLD-VALMONT STA	CO	WESTERN	07-0882	BC070882	125
E	800 COLORADO/WYOMI	07-0885	BLD-HIMAR STA	CO	WESTERN	07-0882	BC070882	125
E	800 COLORADO/WYOMI	07-0886	BLD-MAIN OFFICE STA	CO	WESTERN	07-0882	BC070882	125
E	800 COLORADO/WYOMI	07-2880	ENGLEWOOD PO	CO	WESTERN	07-2880	BC072880	125
E	800 COLORADO/WYOMI	07-2881	ENG-DOWNTOWN STA	CO	WESTERN	07-2880	BC072880	125
E	800 COLORADO/WYOMI	07-2882	ENG-GREENWOOD VILLAGE BR	CO	WESTERN	07-2880	BC072880	125
E	800 COLORADO/WYOMI	07-2884	ENG-MAIN OFFICE STA	CO	WESTERN	07-2880	BC072880	125
E	800 COLORADO/WYOMI	07-3168	FORT COLLINS PO	CO	WESTERN	07-3168	BC073168	125
E	800 COLORADO/WYOMI	07-3170	FTC-OLD TOWN STA	CO	WESTERN	07-3168	BC073168	125
E	800 COLORADO/WYOMI	07-3834	GRAND JCT PO	CO	WESTERN	07-3834	BC073834	125
E	800 COLORADO/WYOMI	07-3835	GDJ-FRUITVALE STA	CO	WESTERN	07-3834	BC073834	125
E	800 COLORADO/WYOMI	07-3836	GRAND JUNCTION MPF	CO	WESTERN	07-3836	BC073834	125
E	800 COLORADO/WYOMI	07-3837	GDJ-GRAND JUNCTION CARRIER ANX	CO	WESTERN	07-3834	BC073834	125
E	800 COLORADO/WYOMI	07-5616	LOMA PO	CO	WESTERN	07-3834	BC073834	125
E	800 COLORADO/WYOMI	07-7452	PUEBLO PO	CO	WESTERN	07-7452	BC077452	125
E	800 COLORADO/WYOMI	07-7453	PBL-BELMONT STA	CO	WESTERN	07-7452	BC077452	125
E	800 COLORADO/WYOMI	07-7454	PBL-MIDTOWN STA	CO	WESTERN	07-7452	BC077452	125
E	800 COLORADO/WYOMI	07-7455	PBL-SUNSET STA	CO	WESTERN	07-7452	BC077452	125
E	800 COLORADO/WYOMI	07-7456	PBL-MAIN OFFICE STA	CO	WESTERN	07-7452	BC077452	125
E	800 COLORADO/WYOMI	57-1557	CASPER MPF	WY	WESTERN	57-1557	BC571558	125
E	800 COLORADO/WYOMI	57-1558	CASPER PO	WY	WESTERN	57-1558	BC571558	125

E	800 COLORADO/WYOMI	57-1672	CHEYENNE PO	WY	WESTERN	57-1672	BC571672	125
E	800 COLORADO/WYOMI	57-1673	CHEYENNE P&DC	WY	WESTERN	57-1673	BC571672	125
E	840 SALT LAKE CITY PFC	49-6494	OGDEN PO	UT	WESTERN	49-6494	BC496494	125
E	840 SALT LAKE CITY PFC	49-6495	OGD-BEN LOMOND STA	UT	WESTERN	49-6494	BC496494	125
E	840 SALT LAKE CITY PFC	49-6496	OGD-MOUNT OGDEN STA	UT	WESTERN	49-6494	BC496494	125
E	840 SALT LAKE CITY PFC	49-7173	PROVO P&DC	UT	WESTERN	49-7173	BC497174	125
E	840 SALT LAKE CITY PFC	49-7174	PROVO PO	UT	WESTERN	49-7174	BC497174	125
E	840 SALT LAKE CITY PFC	49-7176	PRO-MAIN OFFICE STA	UT	WESTERN	49-7174	BC497174	125
E	852 ARIZONA PFC	03-3478	GLENDALE PO (AZ)	AZ	WESTERN	03-3478	BC033478	125
E	852 ARIZONA PFC	03-3479	GLE-ARROWHEAD STA	AZ	WESTERN	03-3478	BC033478	125
E	852 ARIZONA PFC	03-3480	GLE-DOWNTOWN STA	AZ	WESTERN	03-3478	BC033478	125
E	852 ARIZONA PFC	03-8269	SUN CITY PO	AZ	WESTERN	03-8269	BC038269	125
E	852 ARIZONA PFC	03-8270	SUN-SURPRISE BR	AZ	WESTERN	03-8269	BC038269	125
E	852 ARIZONA PFC	03-8271	SUN-SUN CITY WEST BR	AZ	WESTERN	03-8269	BC038269	125
E	852 ARIZONA PFC	03-8436	TEMPE PO	AZ	WESTERN	03-8436	BC038436	125
E	852 ARIZONA PFC	03-8437	TEM-APACHE STA	AZ	WESTERN	03-8436	BC038436	125
E	852 ARIZONA PFC	03-8438	TEM-RETAIL STR	AZ	WESTERN	03-8436	BC038436	125
E	852 ARIZONA PFC	03-8439	TEM-SOUTH STA	AZ	WESTERN	03-8436	BC038436	125
E	890 NEVADA-SIERRA PFC	31-4080	HENDERSON PO	NV	WESTERN	31-4080	BC314080	125
E	890 NEVADA-SIERRA PFC	31-4081	HEN-VALLE VERDE STA	NV	WESTERN	31-4080	BC314080	125
E	890 NEVADA-SIERRA PFC	31-4082	HEN-SEVEN HILLS STA	NV	WESTERN	31-4080	BC314080	125
E	890 NEVADA-SIERRA PFC	31-6200	NORTH LAS VEGAS PO	NV	WESTERN	31-6200	BC316200	125
E	890 NEVADA-SIERRA PFC	31-6201	NOR-MEADOW MESA STA	NV	WESTERN	31-6200	BC316200	125
E	890 NEVADA-SIERRA PFC	31-8240	SPARKS PO	NV	WESTERN	31-8240	BC318240	125
E	890 NEVADA-SIERRA PFC	31-8241	SPA-SUN VALLEY FINANCE UNIT	NV	WESTERN	31-8240	BC318240	125
E	890 NEVADA-SIERRA PFC	31-8242	SPA-VISTA STA	NV	WESTERN	31-8240	BC318240	125
E	970 PORTLAND PFC	40-0688	BEAVERTON PO	OR	WESTERN	40-0688	BC400688	125
E	970 PORTLAND PFC	40-0689	BEA-ALOHA BR	OR	WESTERN	40-0688	BC400688	125
E	970 PORTLAND PFC	40-0690	BEA-EVERGREEN ANX	OR	WESTERN	40-0688	BC400688	125
E	970 PORTLAND PFC	40-5408	MEDFORD PO	OR	WESTERN	40-5408	BC405408	125
E	970 PORTLAND PFC	40-5409	MEDFORD OR P&DC	OR	WESTERN	40-5409	BC405408	125
E	970 PORTLAND PFC	40-5410	MED-CENTRAL POINT BR	OR	WESTERN	40-5408	BC405408	125
E	970 PORTLAND PFC	40-5411	MED-WHITE CITY BR	OR	WESTERN	40-5408	BC405408	125
E	970 PORTLAND PFC	40-5412	MED-CARRIER ANNEX	OR	WESTERN	40-5408	BC405408	125

E	980 SEATTLE PFC	54-0490	AUBURN PO	WA	WESTERN	54-0490	BC540490	125
E	980 SEATTLE PFC	54-0491	AUB-FEDERAL WAY FINANCE STA	WA	WESTERN	54-0490	BC540490	125
E	980 SEATTLE PFC	54-0492	AUB-TWIN LAKES STA	WA	WESTERN	54-0490	BC540490	125
E	980 SEATTLE PFC	54-0493	AUB-MAIN OFFICE STA	WA	WESTERN	54-0490	BC540490	125
E	980 SEATTLE PFC	54-0501	SEATTLE-CUSTOMER RETENTION	WA	WESTERN	54-0501	BC542772	125
E	980 SEATTLE PFC	54-0602	BELLEVUE PO	WA	WESTERN	54-0602	BC540602	125
E	980 SEATTLE PFC	54-0603	BEL-CROSSROADS STA	WA	WESTERN	54-0602	BC540602	125
E	980 SEATTLE PFC	54-0604	BEL-MIDLAKES STA	WA	WESTERN	54-0602	BC540602	125
E	980 SEATTLE PFC	54-0605	BEL-MAIN OFFICE STA	WA	WESTERN	54-0602	BC540602	125
E	980 SEATTLE PFC	54-0606	BEL-CARRIER ANX	WA	WESTERN	54-0602	BC540602	125
E	980 SEATTLE PFC	54-2774	EVE-HUB STA	WA	WESTERN	54-2772	BC542772	125
E	980 SEATTLE PFC	54-2776	EVE-MAIN OFFICE STA	WA	WESTERN	54-2772	BC542772	125
E	980 SEATTLE PFC	54-6146	OLYMPIA PO	WA	WESTERN	54-6146	BC546146	125
E	980 SEATTLE PFC	54-6147	OLY-LACEY BR	WA	WESTERN	54-6146	BC546146	125
E	980 SEATTLE PFC	54-6148	OLY-HUB STA	WA	WESTERN	54-6146	BC546146	125
E	980 SEATTLE PFC	54-6149	OLY-TUMWATER BR	WA	WESTERN	54-6146	BC546146	125
E	980 SEATTLE PFC	54-6150	OLY-WESTSIDE FINANCE STA	WA	WESTERN	54-6146	BC546146	125
E	980 SEATTLE PFC	54-6151	OLY-MAIN OFFICE STA	WA	WESTERN	54-6146	BC546146	125
E	980 SEATTLE PFC	54-7070	RENTON PO	WA	WESTERN	54-7070	BC547070	125
E	980 SEATTLE PFC	54-7071	REN-DOWNTOWN STA	WA	WESTERN	54-7070	BC547070	125
E	980 SEATTLE PFC	54-7072	REN-HIGHLANDS STA	WA	WESTERN	54-7070	BC547070	125
E	980 SEATTLE PFC	54-7073	REN-MAIN OFFICE STA	WA	WESTERN	54-7070	BC547070	125
E	980 SEATTLE PFC	54-9435	YAKIMA MPF	WA	WESTERN	54-9435	BC549436	125
E	980 SEATTLE PFC	54-9436	YAKIMA PO	WA	WESTERN	54-9436	BC549436	125
E	980 SEATTLE PFC	54-9437	YAK-MAIN OFFICE STA	WA	WESTERN	54-9436	BC549436	125
E	980 SEATTLE PFC	54-9438	YAK-CENTRAL FINANCE STA	WA	WESTERN	54-9436	BC549436	125
F	900 LOS ANGELES PFC	05-6372	REDONDO BEACH PO	CA	PACIFIC	05-6372	BC056372	125
F	900 LOS ANGELES PFC	05-6373	RED-NORTH REDONDO BCH STA	CA	PACIFIC	05-6372	BC056372	125
F	900 LOS ANGELES PFC	05-6374	RED-HERMOSA BCH BR	CA	PACIFIC	05-6372	BC056372	125
F	900 LOS ANGELES PFC	05-6974	SMO-WILL ROGERS STA	CA	PACIFIC	05-6978	BC056978	125
F	900 LOS ANGELES PFC	05-6975	SMO-OCEAN PARK STA	CA	PACIFIC	05-6978	BC056978	125
F	900 LOS ANGELES PFC	05-6978	SANTA MONICA PO	CA	PACIFIC	05-6978	BC056978	125
F	913 SIERRA COASTAL PF(	05-1026	BURBANK PO	CA	PACIFIC	05-1026	BC051026	125
F	913 SIERRA COASTAL PF(	05-1242	CANOGA PARK PO	CA	PACIFIC	05-1242	BC051242	125

F	913 SIERRA COASTAL PF(	05-1243	CAN-WINNETKA STA	CA	PACIFIC	05-1242	BC051242	125
F	913 SIERRA COASTAL PF(	05-1244	CAN-WEST HILLS STA	CA	PACIFIC	05-1242	BC051242	125
F	913 SIERRA COASTAL PF(	05-5730	OXNARD PO	CA	PACIFIC	05-5730	BC055730	125
F	913 SIERRA COASTAL PF(	05-6780	SAN FERNANDO CA PO	CA	PACIFIC	05-6780	BC056780	125
F	913 SIERRA COASTAL PF(	05-6797	SFC-SYLMAR BR	CA	PACIFIC	05-6780	BC056780	125
F	913 SIERRA COASTAL PF(	05-6950	SANTA CLARITA PO	CA	PACIFIC	05-6950	BC056950	125
F	913 SIERRA COASTAL PF(	05-6952	SCC-NEWHALL BR	CA	PACIFIC	05-6950	BC056950	125
F	913 SIERRA COASTAL PF(	05-6957	SCC-CASTAIC STA	CA	PACIFIC	05-6950	BC056950	125
F	913 SIERRA COASTAL PF(	05-6959	SAN LUIS OBISPO AUX VMF OF OXNAR	CA	PACIFIC	05-6959	BC055730	125
F	913 SIERRA COASTAL PF(	05-7812	THOUSAND OAKS PO	CA	PACIFIC	05-7812	BC057812	125
F	913 SIERRA COASTAL PF(	05-7813	THO-NEWBURY PARK CARRIER ANX	CA	PACIFIC	05-7812	BC057812	125
F	913 SIERRA COASTAL PF(	05-8592	WOODLAND HILLS PO	CA	PACIFIC	05-8592	BC058592	125
F	920 SAN DIEGO PFC	05-1554	CHULA VISTA PO	CA	PACIFIC	05-1554	BC051554	125
F	920 SAN DIEGO PFC	05-1555	CHV-EASTLAKE STA	CA	PACIFIC	05-1554	BC051554	125
F	920 SAN DIEGO PFC	05-1556	CHV-RANCHO DEL REY FSTA	CA	PACIFIC	05-1554	BC051554	125
F	920 SAN DIEGO PFC	05-2382	EL CAJON PO	CA	PACIFIC	05-2382	BC052382	125
F	920 SAN DIEGO PFC	05-2383	ELC-BOSTONIA STA	CA	PACIFIC	05-2382	BC052382	125
F	920 SAN DIEGO PFC	05-2526	ESCONDIDO PO	CA	PACIFIC	05-2526	BC052526	125
F	920 SAN DIEGO PFC	05-2527	ESC-ESCONDIDO PSTL STR	CA	PACIFIC	05-2526	BC052526	125
F	920 SAN DIEGO PFC	05-2528	ESC-ORANGE GLEN STA	CA	PACIFIC	05-2526	BC052526	125
F	920 SAN DIEGO PFC	05-4158	LA MESA PO	CA	PACIFIC	05-4158	BC054158	125
F	920 SAN DIEGO PFC	05-4159	LAM - CARRIER ANX	CA	PACIFIC	05-4158	BC054158	125
F	920 SAN DIEGO PFC	05-5562	OCEANSIDE POST OFFICE	CA	PACIFIC	05-5562	BC055562	125
F	920 SAN DIEGO PFC	05-5563	OCD-BROOKS ST STA	CA	PACIFIC	05-5562	BC055562	125
F	926 SANTA ANA PFC	05-2904	FULLERTON PO	CA	PACIFIC	05-2904	BC052904	125
F	926 SANTA ANA PFC	05-2905	FUL-COMMONWEALTH STA	CA	PACIFIC	05-2904	BC052904	125
F	926 SANTA ANA PFC	05-2906	FUL-ORANGEHURST STA	CA	PACIFIC	05-2904	BC052904	125
F	926 SANTA ANA PFC	05-2907	FUL-SUNNY HILLS STA	CA	PACIFIC	05-2904	BC052904	125
F	926 SANTA ANA PFC	05-2934	GARDEN GROVE PO	CA	PACIFIC	05-2934	BC052934	125
F	926 SANTA ANA PFC	05-2935	GAR-WEST GARDEN GROVE STA	CA	PACIFIC	05-2934	BC052934	125
F	926 SANTA ANA PFC	05-5376	NEWPORT BEACH PO	CA	PACIFIC	05-5376	BC055376	125
F	926 SANTA ANA PFC	05-5664	ORANGE PO	CA	PACIFIC	05-5664	BC055664	125
F	926 SANTA ANA PFC	05-6168	POMONA PO	CA	PACIFIC	05-6168	BC056168	125
F	926 SANTA ANA PFC	05-6169	POM-DIAMOND BAR BR	CA	PACIFIC	05-6168	BC056168	125

F	926 SANTA ANA PFC	05-6846	SAN JUAN CPISTRANO PO	CA	PACIFIC	05-6846	BC056846	125
F	926 SANTA ANA PFC	05-8454	WHITTIER PO	CA	PACIFIC	05-8454	BC058454	125
F	926 SANTA ANA PFC	05-8459	WHI-BAILEY STA	CA	PACIFIC	05-8454	BC058454	125
F	940 SAN FRANCISCO PFC	05-5439	NORTH BAY CA P&DC	CA	PACIFIC	05-5439	BC055439	125
F	940 SAN FRANCISCO PFC	05-5441	NORTH BAY CA VMF	CA	PACIFIC	05-5441	BC055439	125
F	940 SAN FRANCISCO PFC	05-5802	PALO ALTO PO	CA	PACIFIC	05-5802	BC055802	125
F	940 SAN FRANCISCO PFC	05-5803	PAL-CAMBRIDGE STA	CA	PACIFIC	05-5802	BC055802	125
F	940 SAN FRANCISCO PFC	05-5804	PAL-HAMILTON STA	CA	PACIFIC	05-5802	BC055802	125
F	940 SAN FRANCISCO PFC	05-5805	PAL-STANFORD BR	CA	PACIFIC	05-5802	BC055802	125
F	940 SAN FRANCISCO PFC	05-6378	REDWOOD CITY PO	CA	PACIFIC	05-6378	BC056378	125
F	940 SAN FRANCISCO PFC	05-6379	RED-DOWNTOWN FINANCE STA	CA	PACIFIC	05-6378	BC056378	125
F	940 SAN FRANCISCO PFC	05-6750	SAN BRUNO PO	CA	PACIFIC	05-6750	BC056750	125
F	940 SAN FRANCISCO PFC	05-6918	SAN RAFAEL PO	CA	PACIFIC	05-6918	BC056918	125
F	940 SAN FRANCISCO PFC	05-6919	SRF-CIVIC CENTER STA	CA	PACIFIC	05-6918	BC056918	125
F	940 SAN FRANCISCO PFC	05-7620	SUNNYVALE PO	CA	PACIFIC	05-7620	BC057620	125
F	945 BAY-VALLEY PFC	05-1752	CONCORD PO	CA	PACIFIC	05-1752	BC051752	125
F	945 BAY-VALLEY PFC	05-5524	WALNUT CREEK CA (EAST) VMF	CA	PACIFIC	05-5524	BC058238	125
F	945 BAY-VALLEY PFC	05-6462	RICHMOND PO	CA	PACIFIC	05-6462	BC056462	125
F	945 BAY-VALLEY PFC	05-6463	RIC-EL SOBRANTE BR	CA	PACIFIC	05-6462	BC056462	125
F	945 BAY-VALLEY PFC	05-6464	RIC-MCVITTIE ANX	CA	PACIFIC	05-6462	BC056462	125
F	945 BAY-VALLEY PFC	05-6465	RIC-HILLTOP CARRIER ANX	CA	PACIFIC	05-6462	BC056462	125
F	945 BAY-VALLEY PFC	05-6852	SAN LEANDRO PO	CA	PACIFIC	05-6852	BC056852	125
F	945 BAY-VALLEY PFC	05-6871	SAN-SOUTH SAN LEANDRO STA	CA	PACIFIC	05-6852	BC056852	125
F	945 BAY-VALLEY PFC	05-6948	SANTA CLARA PO	CA	PACIFIC	05-6948	BC056948	125
F	945 BAY-VALLEY PFC	05-6949	STC-SANCHEZ ANX	CA	PACIFIC	05-6948	BC056948	125
F	945 BAY-VALLEY PFC	05-6953	STC-MISSION STA	CA	PACIFIC	05-6948	BC056948	125
F	945 BAY-VALLEY PFC	05-8238	WALNUT CREEK PO	CA	PACIFIC	05-8238	BC058238	125
F	956 SACRAMENTO PFC	05-5034	MODESTO PO	CA	PACIFIC	05-5034	BC055034	125
F	956 SACRAMENTO PFC	05-5035	MOD-PARADISE STA	CA	PACIFIC	05-5034	BC055034	125
F	956 SACRAMENTO PFC	05-5036	MOD-HUDSON STA	CA	PACIFIC	05-5034	BC055034	125
F	956 SACRAMENTO PFC	05-5038	MOD-MAIN OFFICE STA	CA	PACIFIC	05-5034	BC055034	125
F	956 SACRAMENTO PFC	05-6352	REDDING CA MPF	CA	PACIFIC	05-6352	BC056354	125
F	956 SACRAMENTO PFC	05-6354	REDDING PO	CA	PACIFIC	05-6354	BC056354	125
F	956 SACRAMENTO PFC	05-6355	RED-DOWNTOWN STA	CA	PACIFIC	05-6354	BC056354	125

F	956 SACRAMENTO PFC	05-6356	RED-MAIN OFFICE STA	CA	PACIFIC	05-6354	BC056354	125
G	320 GULF ATLANTIC PFC	12-1991	COLUMBUS PO	GA	SOUTHERN	12-1991	BC121991	125
G	320 GULF ATLANTIC PFC	12-1992	ALBANY AUX VMF OF MACON GA	GA	SOUTHERN	12-1992	BC121991	125
G	320 GULF ATLANTIC PFC	12-1994	COL-DOWNTOWN STA	GA	SOUTHERN	12-1991	BC121991	125
G	320 GULF ATLANTIC PFC	12-1995	COL-FORT BENNING BR	GA	SOUTHERN	12-1991	BC121991	125
G	320 GULF ATLANTIC PFC	12-1996	COL-MAIN OFFICE STA	GA	SOUTHERN	12-1991	BC121991	125
G	320 GULF ATLANTIC PFC	12-1997	COLUMBUS AUX VMF OF MACON GA	GA	SOUTHERN	12-1997	BC121991	125
G	330 SOUTH FLORIDA PFC	11-0960	BOYNTON BEACH PO	FL	SOUTHERN	11-0960	BC110960	125
G	330 SOUTH FLORIDA PFC	11-0961	BOY-DOWNTOWN BR	FL	SOUTHERN	11-0960	BC110960	125
G	330 SOUTH FLORIDA PFC	11-0962	BOY-JOG ROAD STA	FL	SOUTHERN	11-0960	BC110960	125
G	330 SOUTH FLORIDA PFC	11-0964	BOY-MAIN OFFICE STA	FL	SOUTHERN	11-0960	BC110960	125
G	330 SOUTH FLORIDA PFC	11-2205	DELRAY BEACH PO	FL	SOUTHERN	11-2205	BC112205	125
G	330 SOUTH FLORIDA PFC	11-2206	DLR-WEST BR	FL	SOUTHERN	11-2205	BC112205	125
G	330 SOUTH FLORIDA PFC	11-3107	PSL-MIDPORT STATION	FL	SOUTHERN	11-3108	BC113108	125
G	330 SOUTH FLORIDA PFC	11-3108	PORT SAINT LUCIE PO	FL	SOUTHERN	11-3108	BC113108	125
G	330 SOUTH FLORIDA PFC	11-5025	LAKE WORTH PO	FL	SOUTHERN	11-5025	BC115025	125
G	330 SOUTH FLORIDA PFC	11-5026	LKW-GREENACRES BR	FL	SOUTHERN	11-5025	BC115025	125
G	330 SOUTH FLORIDA PFC	11-5027	LKW-LUCERNE STA	FL	SOUTHERN	11-5025	BC115025	125
G	330 SOUTH FLORIDA PFC	11-5028	LKW-LANTANA BR	FL	SOUTHERN	11-5025	BC115025	125
G	330 SOUTH FLORIDA PFC	11-5029	LKW-MAIN OFFICE STA	FL	SOUTHERN	11-5025	BC115025	125
G	330 SOUTH FLORIDA PFC	11-5845	MBH-MAIN OFFICE STA	FL	SOUTHERN	11-5856	BC115856	125
G	330 SOUTH FLORIDA PFC	11-5846	MBH-NORMANDY STA	FL	SOUTHERN	11-5856	BC115856	125
G	330 SOUTH FLORIDA PFC	11-5856	MIAMI BEACH PO	FL	SOUTHERN	11-5856	BC115856	125
G	330 SOUTH FLORIDA PFC	11-5857	MBH-OCEANVIEW STA	FL	SOUTHERN	11-5856	BC115856	125
G	330 SOUTH FLORIDA PFC	11-5859	MBH-SURFSIDE BR	FL	SOUTHERN	11-5856	BC115856	125
G	335 SUNCOAST PFC	11-0974	BRA-BRADENTON CARRIER ANX	FL	SOUTHERN	11-0975	BC110975	125
G	335 SUNCOAST PFC	11-0975	BRADENTON PO	FL	SOUTHERN	11-0975	BC110975	125
G	335 SUNCOAST PFC	11-0976	BRA-57TH AVENUE BR	FL	SOUTHERN	11-0975	BC110975	125
G	335 SUNCOAST PFC	11-0977	BRA-BRADEN RIVER BR	FL	SOUTHERN	11-0975	BC110975	125
G	335 SUNCOAST PFC	11-0978	BRA-PALMA SOLA BR	FL	SOUTHERN	11-0975	BC110975	125
G	335 SUNCOAST PFC	11-0979	BRA-LAKEWOOD RANCH BR	FL	SOUTHERN	11-0975	BC110975	125
G	335 SUNCOAST PFC	11-4920	LAKELAND FL PO	FL	SOUTHERN	11-4920	BC114920	125
G	335 SUNCOAST PFC	11-4921	LKN-DOWNTOWN STA	FL	SOUTHERN	11-4920	BC114920	125
G	335 SUNCOAST PFC	11-4922	LKN-SOUTHSIDE STA	FL	SOUTHERN	11-4920	BC114920	125

G	335 SUNCOAST PFC	11-4923	LKN-DIXIELAND STA	FL	SOUTHERN	11-4920	BC114920	125
G	335 SUNCOAST PFC	11-4928	LAKELAND FL VMF	FL	SOUTHERN	11-4928	BC114920	125
G	335 SUNCOAST PFC	11-5085	LARGO PO	FL	SOUTHERN	11-5085	BC115085	125
G	335 SUNCOAST PFC	11-5086	LAR-SEMINOLE BR	FL	SOUTHERN	11-5085	BC115085	125
G	335 SUNCOAST PFC	11-5917	MID-FLORIDA FL VMF	FL	SOUTHERN	11-5917	BC115945	125
G	335 SUNCOAST PFC	11-5918	DAYTONA BEACH AUX VMF OF MID-FL	FL	SOUTHERN	11-5918	BC115945	125
G	335 SUNCOAST PFC	11-5945	MID FLORIDA FL P&DC	FL	SOUTHERN	11-5945	BC115945	125
G	335 SUNCOAST PFC	11-8952	DISTRICT SUPPORT-LKN	FL	SOUTHERN	11-8952	BC114920	125
G	390 MISSISSIPPI PFC	27-3146	GULFPORT PO	MS	SOUTHERN	27-3146	BC273146	125
G	390 MISSISSIPPI PFC	27-3147	GUL-DOWNTOWN STA	MS	SOUTHERN	27-3146	BC273146	125
G	390 MISSISSIPPI PFC	27-3148	GUL-EAST STA	MS	SOUTHERN	27-3146	BC273146	125
G	390 MISSISSIPPI PFC	27-3150	GULFPORT P&DF	MS	SOUTHERN	27-3150	BC273146	125
G	720 ARKANSAS PFC	04-3069	FAYETTEVILLE PO	AR	SOUTHERN	04-3069	BC043069	125
G	720 ARKANSAS PFC	04-3070	FAY-CLARENCE B CRAFT STA	AR	SOUTHERN	04-3069	BC043069	125
G	720 ARKANSAS PFC	04-5146	FAYETTEVILLE P&DF	AR	SOUTHERN	04-5146	BC043069	125
G	752 DALLAS PFC	48-3410	GARLAND PO	TX	SOUTHERN	48-3410	BC483410	125
G	752 DALLAS PFC	48-3411	GAR-NORTH STA	TX	SOUTHERN	48-3410	BC483410	125
G	752 DALLAS PFC	48-3412	GAR-SOUTH STA	TX	SOUTHERN	48-3410	BC483410	125
G	752 DALLAS PFC	48-3413	GAR-KINGSLEY STA	TX	SOUTHERN	48-3410	BC483410	125
G	752 DALLAS PFC	48-5130	LEWISVILLE PO	TX	SOUTHERN	48-5130	BC485130	125
G	752 DALLAS PFC	48-5131	LEW-FLOWER MOUND STA	TX	SOUTHERN	48-5130	BC485130	125
G	752 DALLAS PFC	48-5132	LEW-COLONY STA	TX	SOUTHERN	48-5130	BC485130	125
G	752 DALLAS PFC	48-7110	PLANO PO	TX	SOUTHERN	48-7110	BC487110	125
G	752 DALLAS PFC	48-7111	PLN-WILDCAT STA	TX	SOUTHERN	48-7110	BC487110	125
G	752 DALLAS PFC	48-7112	PLN-COIT STA	TX	SOUTHERN	48-7110	BC487110	125
G	752 DALLAS PFC	48-7113	PLN-NORTHWEST STA	TX	SOUTHERN	48-7110	BC487110	125
G	752 DALLAS PFC	48-7114	PLN-MAIN OFFICE STA	TX	SOUTHERN	48-7110	BC487110	125
G	770 HOUSTON PFC	48-4575	KATY PO	TX	SOUTHERN	48-4575	BC484575	125
G	770 HOUSTON PFC	48-4576	KAT-CARRIER ANX	TX	SOUTHERN	48-4575	BC484575	125
G	780 RIO GRANDE PFC	48-9390	WAC-BELLMEAD BR	TX	SOUTHERN	48-9395	BC489395	125
G	780 RIO GRANDE PFC	48-9391	WAC-DOWNTOWN STA	TX	SOUTHERN	48-9395	BC489395	125
G	780 RIO GRANDE PFC	48-9392	WAC-HIGHLANDER STA	TX	SOUTHERN	48-9395	BC489395	125
G	780 RIO GRANDE PFC	48-9393	WAC-WESTVIEW STA	TX	SOUTHERN	48-9395	BC489395	125
G	780 RIO GRANDE PFC	48-9394	WAC-WOODWAY FINANCE STA	TX	SOUTHERN	48-9395	BC489395	125

G	780	RIO GRANDE PFC	48-9395	WACO PO	TX	SOUTHERN	48-9395	BC489395	125
J	460	GREATER INDIANA P	17-0660	BLOOMINGTON PO	IN	GREAT LAKES	17-0660	BC170660	125
J	460	GREATER INDIANA P	17-0661	BLM-WOODBRIDGE STA	IN	GREAT LAKES	17-0660	BC170660	125
J	460	GREATER INDIANA P	17-3586	HAMMOND PO	IN	GREAT LAKES	17-3586	BC173586	125
J	460	GREATER INDIANA P	17-3587	HMD-FSTA	IN	GREAT LAKES	17-3586	BC173586	125
J	460	GREATER INDIANA P	17-3588	HMD-MUNSTER BR	IN	GREAT LAKES	17-3586	BC173586	125
J	460	GREATER INDIANA P	17-3589	HMD-HIGHLAND BR	IN	GREAT LAKES	17-3586	BC173586	125
J	460	GREATER INDIANA P	17-3590	HMD-HESSVILLE STA	IN	GREAT LAKES	17-3586	BC173586	125
J	460	GREATER INDIANA P	17-4477	LAFAYETTE PO	IN	GREAT LAKES	17-4477	BC174477	125
J	460	GREATER INDIANA P	17-4478	LAF-WEST LAFAYETTE BR	IN	GREAT LAKES	17-4477	BC174477	125
J	460	GREATER INDIANA P	17-5907	MUNCIE PO	IN	GREAT LAKES	17-5907	BC175907	125
J	460	GREATER INDIANA P	17-5909	MUNCIE P&DF	IN	GREAT LAKES	17-5909	BC175907	125
J	460	GREATER INDIANA P	17-6479	OAKVILLE PO	IN	GREAT LAKES	17-5907	BC175907	125
J	460	GREATER INDIANA P	17-7964	SELMA PO	IN	GREAT LAKES	17-5907	BC175907	125
J	481	DETROIT PFC	25-2400	DEARBORN PO	MI	GREAT LAKES	25-2400	BC252400	125
J	481	DETROIT PFC	25-2401	DEA-CARRIER ANX	MI	GREAT LAKES	25-2400	BC252400	125
J	481	DETROIT PFC	25-2402	DEARBORN MI VMF	MI	GREAT LAKES	25-2402	BC252400	125
J	481	DETROIT PFC	25-3150	FARMINGTON PO	MI	GREAT LAKES	25-3150	BC253150	125
J	481	DETROIT PFC	25-5485	LIVONIA PO	MI	GREAT LAKES	25-5485	BC255485	125
J	481	DETROIT PFC	25-5486	LIV-GREENMEAD STA	MI	GREAT LAKES	25-5485	BC255485	125
J	481	DETROIT PFC	25-5487	LIVONIA MI VMF	MI	GREAT LAKES	25-5487	BC255485	125
J	481	DETROIT PFC	25-7640	PONTIAC PO	MI	GREAT LAKES	25-7640	BC257640	125
J	481	DETROIT PFC	25-7641	PON-AUBURN HILLS BR	MI	GREAT LAKES	25-7640	BC257640	125
J	481	DETROIT PFC	25-7642	PON-WEST BLOOMFIELD STA	MI	GREAT LAKES	25-7640	BC257640	125
J	481	DETROIT PFC	25-7644	PONTIAC MI VMF	MI	GREAT LAKES	25-7644	BC257640	125
J	481	DETROIT PFC	25-8070	ROCHESTER PO	MI	GREAT LAKES	25-8070	BC258070	125
J	481	DETROIT PFC	25-8071	ROC-CARRIER ANX	MI	GREAT LAKES	25-8070	BC258070	125
J	481	DETROIT PFC	25-8805	SOUTHFIELD PO	MI	GREAT LAKES	25-8805	BC258805	125
J	481	DETROIT PFC	25-9380	TROY PO	MI	GREAT LAKES	25-9380	BC259380	125
J	481	DETROIT PFC	25-9790	WAYNE PO	MI	GREAT LAKES	25-9790	BC259790	125
J	481	DETROIT PFC	25-9791	WAY-CANTON BR	MI	GREAT LAKES	25-9790	BC259790	125
J	481	DETROIT PFC	25-9792	WAY-WESTLAND BR	MI	GREAT LAKES	25-9790	BC259790	125
J	493	GREATER MICHIGAN	25-6990	OLD MISSION PO	MI	GREAT LAKES	25-9320	BC259320	125
J	493	GREATER MICHIGAN	25-9320	TRAVERSE CITY PO	MI	GREAT LAKES	25-9320	BC259320	125

J	493	GREATER MICHIGAN	25-9321	TVC-BARLOW BR	MI	GREAT LAKES	25-9320	BC259320	125
J	493	GREATER MICHIGAN	25-9322	TRAVERSE CITY MI P&DC	MI	GREAT LAKES	25-9322	BC259320	125
J	530	LAKELAND PFC	16-0282	ARLINGTON HEIGHTS PO	IL	GREAT LAKES	16-0282	BC160282	125
J	530	LAKELAND PFC	16-0283	ARL-ELK GROVE VILL BR	IL	GREAT LAKES	16-0282	BC160282	125
J	530	LAKELAND PFC	16-2622	EVANSTON PO	IL	GREAT LAKES	16-2622	BC162622	125
J	530	LAKELAND PFC	16-2626	EVANSTON IL VMF	IL	GREAT LAKES	16-2626	BC162622	125
J	530	LAKELAND PFC	16-3138	GLENVIEW PO	IL	GREAT LAKES	16-3138	BC163138	125
J	530	LAKELAND PFC	56-6280	OSHKOSH PO	WI	GREAT LAKES	56-6280	BC566280	125
J	530	LAKELAND PFC	56-6285	OSHKOSH P&DF	WI	GREAT LAKES	56-6285	BC566280	125
J	530	LAKELAND PFC	56-6870	RACINE PO	WI	GREAT LAKES	56-6870	BC566870	125
J	530	LAKELAND PFC	56-6871	RAC-FOUR MILE STA	WI	GREAT LAKES	56-6870	BC566870	125
J	530	LAKELAND PFC	56-6872	RAC-WEST RACINE STA	WI	GREAT LAKES	56-6870	BC566870	125
J	604	CENTRAL ILLINOIS PI	16-0414	AURORA PO	IL	GREAT LAKES	16-0414	BC160414	125
J	604	CENTRAL ILLINOIS PI	16-0415	AUR-EAST STA	IL	GREAT LAKES	16-0414	BC160414	125
J	604	CENTRAL ILLINOIS PI	16-2208	DOWNERS GROVE PO	IL	GREAT LAKES	16-2208	BC162208	125
J	604	CENTRAL ILLINOIS PI	16-2209	DGV-WOODRIDG BR	IL	GREAT LAKES	16-2208	BC162208	125
J	604	CENTRAL ILLINOIS PI	16-3654	OAK BROOK PO	IL	GREAT LAKES	16-3654	BC163654	125
J	604	CENTRAL ILLINOIS PI	16-3655	OKB-WILLOWBROOK ANX	IL	GREAT LAKES	16-3654	BC163654	125
J	604	CENTRAL ILLINOIS PI	16-3966	JOLIET PO	IL	GREAT LAKES	16-3966	BC163966	125
J	604	CENTRAL ILLINOIS PI	16-5484	NAPERVILLE PO	IL	GREAT LAKES	16-5484	BC165484	125
J	604	CENTRAL ILLINOIS PI	16-5485	NPV-NAPER WEST STA	IL	GREAT LAKES	16-5484	BC165484	125
J	604	CENTRAL ILLINOIS PI	16-5778	OAKLAWN PO	IL	GREAT LAKES	16-5778	BC165778	125
J	604	CENTRAL ILLINOIS PI	16-5790	OAK PARK PO	IL	GREAT LAKES	16-5790	BC165790	125
J	604	CENTRAL ILLINOIS PI	16-5791	OAK-SOUTH STATION BR	IL	GREAT LAKES	16-5790	BC165790	125
J	604	CENTRAL ILLINOIS PI	16-5792	OAK-RIVER FOREST BR	IL	GREAT LAKES	16-5790	BC165790	125
J	604	CENTRAL ILLINOIS PI	16-6025	BEDFORD PARK CFS	IL	GREAT LAKES	16-5778	BC165778	125
J	630	GATEWAY PFC	16-0618	BELLEVILLE PO	IL	GREAT LAKES	16-0618	BC160618	125
J	630	GATEWAY PFC	16-0619	BEL-DUTCH HOLLOW STA	IL	GREAT LAKES	16-0618	BC160618	125
J	630	GATEWAY PFC	28-2760	FLORISSANT MO PO	MO	GREAT LAKES	28-2760	BC282760	125
K	200	CAPITAL PFC	23-3528	GAITHERSBURG PO	MD	CAPITAL METRO	23-3528	BC233528	125
K	200	CAPITAL PFC	23-3529	GBG-DIAMOND FARMS STA	MD	CAPITAL METRO	23-3528	BC233528	125
K	200	CAPITAL PFC	23-3530	GBG-MONT VILLAGE STA	MD	CAPITAL METRO	23-3528	BC233528	125
K	200	CAPITAL PFC	23-3531	GBG-WINDOW SERVICE FSTA	MD	CAPITAL METRO	23-3528	BC233528	125
K	210	BALTIMORE PFC	23-0216	ANNAPOLIS PO	MD	CAPITAL METRO	23-0216	BC230216	125

K	210 BALTIMORE PFC	23-0217	ANN-EASTPORT STA	MD	CAPITAL METRO	23-0216	BC230216	125
K	210 BALTIMORE PFC	23-0221	ANN-ANNE ARUNDEL DDU	MD	CAPITAL METRO	23-0216	BC230216	125
K	210 BALTIMORE PFC	23-2090	COLUMBIA MD PO	MD	CAPITAL METRO	23-2090	BC232090	125
K	210 BALTIMORE PFC	23-2091	COLUMBIA MD VMF	MD	CAPITAL METRO	23-2091	BC232090	125
K	220 NORTHERN VIRGINI/	51-3096	FAIRFAX PO	VA	CAPITAL METRO	51-3096	BC513096	125
K	220 NORTHERN VIRGINI/	51-3097	FFX-CHANTILLY BR	VA	CAPITAL METRO	51-3096	BC513096	125
K	220 NORTHERN VIRGINI/	51-3098	FFX-FAIRFAX STA	VA	CAPITAL METRO	51-3096	BC513096	125
K	220 NORTHERN VIRGINI/	51-3099	FFX-TURNPIKE STA	VA	CAPITAL METRO	51-3096	BC513096	125
K	220 NORTHERN VIRGINI/	51-3126	FALLS CHURCH PO	VA	CAPITAL METRO	51-3126	BC513126	125
K	220 NORTHERN VIRGINI/	51-3127	FCC-BAILEY'S CROSSROADS BR	VA	CAPITAL METRO	51-3126	BC513126	125
K	220 NORTHERN VIRGINI/	51-3128	FCC-MOSBY BR	VA	CAPITAL METRO	51-3126	BC513126	125
K	220 NORTHERN VIRGINI/	51-3130	FCC-SEVEN CORNERS FSTA	VA	CAPITAL METRO	51-3126	BC513126	125
K	220 NORTHERN VIRGINI/	51-8472	SPRINGFIELD PO	VA	CAPITAL METRO	51-8472	BC518472	125
K	220 NORTHERN VIRGINI/	51-8473	SPR-BURKE BR	VA	CAPITAL METRO	51-8472	BC518472	125
K	220 NORTHERN VIRGINI/	51-8474	SPR-NORTH SPRINGFIELD BR	VA	CAPITAL METRO	51-8472	BC518472	125
K	220 NORTHERN VIRGINI/	51-8475	SPR-WEST SPRINGFIELD BR	VA	CAPITAL METRO	51-8472	BC518472	125
K	220 NORTHERN VIRGINI/	51-9870	WOODBRIDGE PO	VA	CAPITAL METRO	51-9870	BC519870	125
K	220 NORTHERN VIRGINI/	51-9871	WDB-PRINCE WILLIAM BR	VA	CAPITAL METRO	51-9870	BC519870	125
K	230 RICHMOND PFC	51-1750	CHESAPEAKE PO	VA	CAPITAL METRO	51-1750	BC511750	125
K	230 RICHMOND PFC	51-1751	CHE-DEEP CREEK STA	VA	CAPITAL METRO	51-1750	BC511750	125
K	230 RICHMOND PFC	51-1752	CHE-GREAT BRIDGE STA	VA	CAPITAL METRO	51-1750	BC511750	125
K	230 RICHMOND PFC	51-1753	CHE-INDIAN RIVER STA	VA	CAPITAL METRO	51-1750	BC511750	125
K	230 RICHMOND PFC	51-1754	CHE-JOLIFF STA	VA	CAPITAL METRO	51-1750	BC511750	125
K	230 RICHMOND PFC	51-1755	CHE-SOUTH NORFOLK STA	VA	CAPITAL METRO	51-1750	BC511750	125
K	230 RICHMOND PFC	51-3978	HAMPTON PO	VA	CAPITAL METRO	51-3978	BC513978	125
K	230 RICHMOND PFC	51-3979	HAMPTON VA VMF	VA	CAPITAL METRO	51-3979	BC513978	125
K	230 RICHMOND PFC	51-3980	HAM-LANGLEY STA	VA	CAPITAL METRO	51-3978	BC513978	125
K	230 RICHMOND PFC	51-3981	HAM-PHOEBUS STA	VA	CAPITAL METRO	51-3978	BC513978	125
K	230 RICHMOND PFC	51-3982	HAM-POQUOSON BR	VA	CAPITAL METRO	51-3978	BC513978	125
K	230 RICHMOND PFC	51-3983	HAM-RIVERDALE FSTA	VA	CAPITAL METRO	51-3978	BC513978	125
K	230 RICHMOND PFC	51-6424	NWP-DENBIGH STA	VA	CAPITAL METRO	51-6426	BC516426	125
K	230 RICHMOND PFC	51-6425	NWP-FT EUSTIS STA	VA	CAPITAL METRO	51-6426	BC516426	125
K	230 RICHMOND PFC	51-6426	NEWPORT NEWS PO	VA	CAPITAL METRO	51-6426	BC516426	125
K	230 RICHMOND PFC	51-6427	NWP-HIDENWOOD STA	VA	CAPITAL METRO	51-6426	BC516426	125

K	230	RICHMOND PFC	51-6428	NWP-PARKVIEW STA	VA	CAPITAL METRO	51-6426	BC516426	125
K	230	RICHMOND PFC	51-6429	NWP-PATRICK HENRY STA	VA	CAPITAL METRO	51-6426	BC516426	125
K	230	RICHMOND PFC	51-6430	NWP-WARWICK STA	VA	CAPITAL METRO	51-6426	BC516426	125
K	270	GREENSBORO PFC	36-6608	ROCKY MOUNT PO	NC	CAPITAL METRO	36-6608	BC366608	125
K	270	GREENSBORO PFC	36-6609	RKY-CARRIER ANX	NC	CAPITAL METRO	36-6608	BC366608	125
K	270	GREENSBORO PFC	36-6610	ROCKY MOUNT P&DF	NC	CAPITAL METRO	36-6610	BC366608	125
K	280	MID-CAROLINAS PFC	36-0304	ASHEVILLE PO	NC	CAPITAL METRO	36-0304	BC360304	125
K	280	MID-CAROLINAS PFC	36-0305	ASH- LONDON ROAD ANX	NC	CAPITAL METRO	36-0304	BC360304	125
K	280	MID-CAROLINAS PFC	36-0306	ASH- GRACE STA	NC	CAPITAL METRO	36-0304	BC360304	125
K	280	MID-CAROLINAS PFC	36-0307	ASH- WEST ASHEVILLE STA	NC	CAPITAL METRO	36-0304	BC360304	125
K	280	MID-CAROLINAS PFC	36-8640	WILMINGTON PO	NC	CAPITAL METRO	36-8640	BC368640	125
K	280	MID-CAROLINAS PFC	36-8641	WIL-MAGNOLIA STA	NC	CAPITAL METRO	36-8640	BC368640	125
K	280	MID-CAROLINAS PFC	36-8642	WIL-MYRTLE GROVE STA	NC	CAPITAL METRO	36-8640	BC368640	125
K	280	MID-CAROLINAS PFC	36-8643	WIL-DOGWOOD STA	NC	CAPITAL METRO	36-8640	BC368640	125
K	280	MID-CAROLINAS PFC	36-8644	WIL-AZALEA STA	NC	CAPITAL METRO	36-8640	BC368640	125
K	300	ATLANTA PFC	12-0501	NORCROSS GA VMF	GA	CAPITAL METRO	12-0501	BC126391	125
K	300	ATLANTA PFC	12-2442	DECATUR PO	GA	CAPITAL METRO	12-2442	BC122442	125
K	300	ATLANTA PFC	12-2444	DEC-WESLEY CHAPEL STA	GA	CAPITAL METRO	12-2442	BC122442	125
K	300	ATLANTA PFC	12-6391	NORCROSS PO	GA	CAPITAL METRO	12-6391	BC126391	125
K	300	ATLANTA PFC	12-6392	NOR-PEACHTREE CORNERS STA	GA	CAPITAL METRO	12-6391	BC126391	125
B	6	CARIBBEAN PFC	42-1890	CAROLINA PO	PR	NORTHEAST	42-1890	BC421890	100
B	6	CARIBBEAN PFC	42-1891	CAR-PUEBLO STA	PR	NORTHEAST	42-1890	BC421890	100
B	6	CARIBBEAN PFC	42-1892	CAR-PLAZA STA	PR	NORTHEAST	42-1890	BC421890	100
B	6	CARIBBEAN PFC	42-6930	PONCE PO	PR	NORTHEAST	42-6930	BC426930	100
B	6	CARIBBEAN PFC	42-6931	PCE-ATOCHA STA	PR	NORTHEAST	42-6930	BC426930	100
B	20	GREATER BOSTON P	24-0714	BILLERICA PO	MA	NORTHEAST	24-0714	BC240714	100
B	20	GREATER BOSTON P	24-3927	LAWRENCE PO	MA	NORTHEAST	24-3927	BC243927	100
B	40	NORTHERN NEW EN	32-5520	NASHUA PO	NH	NORTHEAST	32-5520	BC325520	100
B	60	CONNECTICUT VALL	08-4352	MILFORD PO	CT	NORTHEAST	08-4352	BC084352	100
B	60	CONNECTICUT VALL	08-4624	NEW BRITAIN PO	CT	NORTHEAST	08-4624	BC084624	100
B	70	NORTHERN NJ PFC	33-1680	CLIFTON PO	NJ	NORTHEAST	33-1680	BC331680	100
B	70	NORTHERN NJ PFC	33-1681	CLI-DELAWANNA STA	NJ	NORTHEAST	33-1680	BC331680	100
B	70	NORTHERN NJ PFC	33-6225	ORANGE PO	NJ	NORTHEAST	33-6225	BC336225	100
B	70	NORTHERN NJ PFC	33-6690	PLAINFIELD PO	NJ	NORTHEAST	33-6690	BC336690	100

B	70	NORTHERN NJ PFC	33-6691	PLA-WARREN BR	NJ	NORTHEAST	33-6690	BC336690	100
B	70	NORTHERN NJ PFC	33-6692	PLA-MUHLENBERG STA	NJ	NORTHEAST	33-6690	BC336690	100
B	70	NORTHERN NJ PFC	33-6693	PLA-NETHERWOOD STA	NJ	NORTHEAST	33-6690	BC336690	100
B	70	NORTHERN NJ PFC	33-7485	RUTHERFORD PO	NJ	NORTHEAST	33-7485	BC337485	100
B	70	NORTHERN NJ PFC	33-7486	RUT-LYNDHURST BR	NJ	NORTHEAST	33-7485	BC337485	100
B	70	NORTHERN NJ PFC	33-7487	RUT-CARLSTADT BR	NJ	NORTHEAST	33-7485	BC337485	100
B	70	NORTHERN NJ PFC	33-7488	RUT-EAST RUTHERFORD BR	NJ	NORTHEAST	33-7485	BC337485	100
B	70	NORTHERN NJ PFC	33-7489	RUT-WOODRIDGE BR	NJ	NORTHEAST	33-7485	BC337485	100
B	70	NORTHERN NJ PFC	33-8595	UNION PO	NJ	NORTHEAST	33-8595	BC338595	100
B	70	NORTHERN NJ PFC	33-8815	WAYNE PO	NJ	NORTHEAST	33-8815	BC338815	100
B	70	NORTHERN NJ PFC	33-8816	WAY-SHEFFIELD STA	NJ	NORTHEAST	33-8816	BC338815	100
B	105	WESTCHESTER PFC	35-4391	KINGSTON CFS	NY	NORTHEAST	35-4395	BC354395	100
B	105	WESTCHESTER PFC	35-4395	KINGSTON PO	NY	NORTHEAST	35-4395	BC354395	100
B	105	WESTCHESTER PFC	35-5306	MID-HUDSON NY P&DC	NY	NORTHEAST	35-5306	BC355306	100
B	105	WESTCHESTER PFC	35-6800	POUGHKEEPSIE PO	NY	NORTHEAST	35-6800	BC356800	100
B	105	WESTCHESTER PFC	35-6801	POU-ARLINGTON DDC	NY	NORTHEAST	35-6801	BC356800	100
B	110	TRIBORO PFC	35-2785	FAR ROCKAWAY PO	NY	NORTHEAST	35-2785	BC352785	100
B	110	TRIBORO PFC	35-2786	FRK-ARVERNE STA	NY	NORTHEAST	35-2785	BC352785	100
B	110	TRIBORO PFC	35-2787	FRK-ROCKAWAY BEACH STA	NY	NORTHEAST	35-2785	BC352785	100
B	110	TRIBORO PFC	35-2788	FRK-ROCKAWAY PARK STA	NY	NORTHEAST	35-2785	BC352785	100
B	110	TRIBORO PFC	35-2789	FRK-INWOOD STA	NY	NORTHEAST	35-2785	BC352785	100
B	117	LONG ISLAND PFC	35-0420	BABYLON PO	NY	NORTHEAST	35-0420	BC350420	100
B	117	LONG ISLAND PFC	35-0421	BAB-NORTH BR	NY	NORTHEAST	35-0420	BC350420	100
B	117	LONG ISLAND PFC	35-0422	BAB-WEST BR	NY	NORTHEAST	35-0420	BC350420	100
B	117	LONG ISLAND PFC	35-0423	BAB-WEST BABYLON CFS	NY	NORTHEAST	35-0420	BC350420	100
B	117	LONG ISLAND PFC	35-2770	FARMINGDALE PO	NY	NORTHEAST	35-2770	BC352770	100
B	117	LONG ISLAND PFC	35-2771	FAR-SOUTH BR	NY	NORTHEAST	35-2770	BC352770	100
B	117	LONG ISLAND PFC	35-2880	FLORAL PARK PO	NY	NORTHEAST	35-2880	BC352880	100
B	117	LONG ISLAND PFC	35-2981	FPK-ELMONT STA	NY	NORTHEAST	35-2880	BC352880	100
B	117	LONG ISLAND PFC	35-3355	GREAT NECK PO	NY	NORTHEAST	35-3355	BC353355	100
B	117	LONG ISLAND PFC	35-3356	GNK-OLD VILLAGE STA	NY	NORTHEAST	35-3355	BC353355	100
B	117	LONG ISLAND PFC	35-4060	HUNTINGTON STATION PO	NY	NORTHEAST	35-4060	BC354060	100
B	117	LONG ISLAND PFC	35-4061	HST-MELVILLE BR	NY	NORTHEAST	35-4060	BC354060	100
B	117	LONG ISLAND PFC	35-7840	SMITHTOWN PO	NY	NORTHEAST	35-7840	BC357840	100

B	117 LONG ISLAND PFC	35-7841	SMI-HAUPPAUGE BR	NY	NORTHEAST	35-7840	BC357840	100
B	117 LONG ISLAND PFC	35-7842	SMI-INDUSTRIAL PARK BR	NY	NORTHEAST	35-7840	BC357840	100
B	120 ALBANY PFC	35-0078	BINGHAMTON AUX VMF OF SYRACUSE	NY	NORTHEAST	35-0078	BC350705	100
B	120 ALBANY PFC	35-0705	BINGHAMTON PO	NY	NORTHEAST	35-0705	BC350705	100
B	120 ALBANY PFC	35-8675	UTICA PO	NY	NORTHEAST	35-8675	BC358675	100
B	120 ALBANY PFC	35-8679	UTC-KERNAN STA	NY	NORTHEAST	35-8675	BC358675	100
C	80 SOUTH JERSEY PFC	33-1025	BRICK PO	NJ	EASTERN	33-1025	BC331025	100
C	80 SOUTH JERSEY PFC	33-1540	CHERRY HILL PO	NJ	EASTERN	33-1540	BC331540	100
C	80 SOUTH JERSEY PFC	33-4140	LAKEWOOD PO	NJ	EASTERN	33-4140	BC334140	100
C	80 SOUTH JERSEY PFC	33-4141	LAKEWOOD NJ VMF	NJ	EASTERN	33-4141	BC334140	100
C	190 PHILADELPHIA METF	41-8684	UPPER DARBY PO	PA	EASTERN	41-8684	BC418684	100
C	190 PHILADELPHIA METF	41-8685	UPR-HAVERTOWN-U DARBY	PA	EASTERN	41-8684	BC418684	100
C	190 PHILADELPHIA METF	41-9044	WEST CHESTER PO	PA	EASTERN	41-9044	BC419044	100
C	250 APPALACHIAN PFC	51-5406	LYNCHBURG PO	VA	EASTERN	51-5406	BC515406	100
C	250 APPALACHIAN PFC	51-5409	LYN-FORT HILL STA	VA	EASTERN	51-5406	BC515406	100
C	250 APPALACHIAN PFC	51-5410	LYN-COURTHOUSE STA	VA	EASTERN	51-5406	BC515406	100
C	370 TENNESSEE PFC	47-4404	JACKSON PO	TN	EASTERN	47-4404	BC474404	100
C	370 TENNESSEE PFC	47-4405	JAC-TOM MURRAY STA	TN	EASTERN	47-4404	BC474404	100
C	370 TENNESSEE PFC	47-4406	JAC-NORTHSIDE STA	TN	EASTERN	47-4404	BC474404	100
C	370 TENNESSEE PFC	47-4407	JAC-BEMIS STA	TN	EASTERN	47-4404	BC474404	100
C	370 TENNESSEE PFC	47-4408	JAC-COMPUTERIZED FWD	TN	EASTERN	47-4404	BC474404	100
C	370 TENNESSEE PFC	47-4474	JOHNSON CITY TN P&DC	TN	EASTERN	47-4474	BC474476	100
C	370 TENNESSEE PFC	47-4476	JOHNSON CITY PO	TN	EASTERN	47-4476	BC474476	100
C	370 TENNESSEE PFC	47-4477	JOH-GRAY BR	TN	EASTERN	47-4476	BC474476	100
C	370 TENNESSEE PFC	47-4478	JOH-CARROLL REESE STA	TN	EASTERN	47-4476	BC474476	100
C	440 NORTHERN OHIO PF	38-2037	CUYAHOGA FALLS PO	OH	EASTERN	38-2037	BC382037	100
C	440 NORTHERN OHIO PF	38-2038	CUY-STOW BR	OH	EASTERN	38-2037	BC382037	100
C	440 NORTHERN OHIO PF	38-2039	CUY-STATE RD STA	OH	EASTERN	38-2037	BC382037	100
C	440 NORTHERN OHIO PF	38-4851	MANSFIELD PO	OH	EASTERN	38-4851	BC384851	100
C	440 NORTHERN OHIO PF	38-4852	MNS-SOUTHWEST STA	OH	EASTERN	38-4851	BC384851	100
C	440 NORTHERN OHIO PF	38-4853	MNS-SHERMAN STA	OH	EASTERN	38-4851	BC384851	100
C	440 NORTHERN OHIO PF	38-4855	MNS-LEXINGTON BR	OH	EASTERN	38-4851	BC384851	100
C	440 NORTHERN OHIO PF	38-4856	MNS-MAIN OFFICE STA	OH	EASTERN	38-4851	BC384851	100
E	500 HAWKEYE PFC	18-2232	DAVENPORT PO	IA	WESTERN	18-2232	BC182232	100

E	500 HAWKEYE PFC	18-2233	DAV-NORTHWEST STA	IA	WESTERN	18-2232	BC182232	100
E	500 HAWKEYE PFC	18-5301	LONG GROVE PO	IA	WESTERN	18-2232	BC182232	100
E	500 HAWKEYE PFC	18-8325	SIOUX CITY PO	IA	WESTERN	18-8325	BC188325	100
E	553 NORTHLAND PFC	26-3470	GARDEN CITY PO	MN	WESTERN	26-6000	BC266000	100
E	553 NORTHLAND PFC	26-6000	MANKATO PO	MN	WESTERN	26-6000	BC266000	100
E	553 NORTHLAND PFC	26-6001	MAN-MADISON EAST STA	MN	WESTERN	26-6000	BC266000	100
E	553 NORTHLAND PFC	26-6002	MAN-NORTH MANKATO BR	MN	WESTERN	26-6000	BC266000	100
E	553 NORTHLAND PFC	26-6003	MANKATO P&DC	MN	WESTERN	26-6003	BC266000	100
E	553 NORTHLAND PFC	26-7960	ROCHESTER PO	MN	WESTERN	26-7960	BC267960	100
E	553 NORTHLAND PFC	26-7961	ROC-BEAR CREEK STA	MN	WESTERN	26-7960	BC267960	100
E	553 NORTHLAND PFC	26-7962	ROC-CITY STA	MN	WESTERN	26-7960	BC267960	100
E	570 DAKOTAS PFC	37-3807	GRAND FORKS MPF	ND	WESTERN	37-3807	BC373808	100
E	570 DAKOTAS PFC	37-3808	GRAND FORKS PO	ND	WESTERN	37-3808	BC373808	100
E	570 DAKOTAS PFC	46-7145	RAPID CITY MPF	SD	WESTERN	46-7145	BC467146	100
E	570 DAKOTAS PFC	46-7146	RAPID CITY PO	SD	WESTERN	46-7146	BC467146	100
E	640 MID-AMERICA PFC	28-1283	CAPE GIRARDEAU	MO	WESTERN	28-1283	BC281284	100
E	640 MID-AMERICA PFC	28-1284	CAPE GIRARDEAU PO	MO	WESTERN	28-1284	BC281284	100
E	640 MID-AMERICA PFC	28-4230	KELSO PO	MO	WESTERN	28-1284	BC281284	100
E	640 MID-AMERICA PFC	28-7242	SCOTT CITY PO	MO	WESTERN	28-1284	BC281284	100
E	852 ARIZONA PFC	03-1480	CHANDLER PO	AZ	WESTERN	03-1480	BC031480	100
E	852 ARIZONA PFC	03-1481	CHA-ANDERSEN SPRINGS STA	AZ	WESTERN	03-1480	BC031480	100
E	852 ARIZONA PFC	03-1482	CHA-OCOTILLO STA	AZ	WESTERN	03-1480	BC031480	100
E	980 SEATTLE PFC	54-0785	BOT-MAIN OFFICE STA	WA	WESTERN	54-0784	BC540784	100
E	980 SEATTLE PFC	54-0786	BOT-MILL CREEK BR	WA	WESTERN	54-0784	BC540784	100
E	980 SEATTLE PFC	54-0787	BOT-KENMORE STA	WA	WESTERN	54-0784	BC540784	100
E	980 SEATTLE PFC	54-4060	KENT PO	WA	WESTERN	54-4060	BC544060	100
E	980 SEATTLE PFC	54-4061	KEN-COVINGTON STA	WA	WESTERN	54-4060	BC544060	100
E	980 SEATTLE PFC	54-4062	KEN-DOWNTOWN FSTA	WA	WESTERN	54-4060	BC544060	100
E	980 SEATTLE PFC	54-4063	KEN-MIDWAY FSTA	WA	WESTERN	54-4060	BC544060	100
E	980 SEATTLE PFC	54-4064	KEN-CARRIER ANX	WA	WESTERN	54-4060	BC544060	100
E	980 SEATTLE PFC	54-4065	KEN-MAIN OFFICE STA	WA	WESTERN	54-4060	BC544060	100
E	980 SEATTLE PFC	54-4830	LYNNWOOD PO	WA	WESTERN	54-4830	BC544830	100
E	980 SEATTLE PFC	54-4831	LYN-MAIN OFFICE STA	WA	WESTERN	54-4830	BC544830	100
E	980 SEATTLE PFC	54-4832	LYN-ALDERWOOD STA	WA	WESTERN	54-4830	BC544830	100

E	980 SEATTLE PFC	54-7042	REDMOND PO	WA	WESTERN	54-7042	BC547042	100
F	900 LOS ANGELES PFC	05-0666	BEVERLY HILLS PO	CA	PACIFIC	05-0666	BC050666	100
F	900 LOS ANGELES PFC	05-0667	BHL-CRESCENT STA	CA	PACIFIC	05-0666	BC050666	100
F	900 LOS ANGELES PFC	05-0668	BHL-BEVERLY STA	CA	PACIFIC	05-0666	BC050666	100
F	900 LOS ANGELES PFC	05-2250	DOWNEY PO	CA	PACIFIC	05-2250	BC052250	100
F	900 LOS ANGELES PFC	05-2251	DOW-NORTH DOWNEY STA	CA	PACIFIC	05-2250	BC052250	100
F	900 LOS ANGELES PFC	05-2252	DOW-SOUTH DOWNEY STA	CA	PACIFIC	05-2250	BC052250	100
F	900 LOS ANGELES PFC	05-3681	ING-NORTH INGLEWOOD STA	CA	PACIFIC	05-3684	BC053684	100
F	900 LOS ANGELES PFC	05-3682	ING-CRENSHAW-IMPERIAL STA	CA	PACIFIC	05-3684	BC053684	100
F	900 LOS ANGELES PFC	05-3684	INGLEWOOD PO	CA	PACIFIC	05-3684	BC053684	100
F	900 LOS ANGELES PFC	05-3687	ING-MORNINGSIDE PARK STA	CA	PACIFIC	05-3684	BC053684	100
F	900 LOS ANGELES PFC	05-3688	ING-INGLEWOOD CARRIER ANX	CA	PACIFIC	05-3684	BC053684	100
F	900 LOS ANGELES PFC	05-4716	MANHATTAN BEACH PO	CA	PACIFIC	05-4716	BC054716	100
F	900 LOS ANGELES PFC	05-4717	BAY-MANHATTAN BCH STA	CA	PACIFIC	05-4716	BC054716	100
F	900 LOS ANGELES PFC	05-4718	BAY-DOWNTOWN STA	CA	PACIFIC	05-4716	BC054716	100
F	900 LOS ANGELES PFC	05-8106	VENICE PO	CA	PACIFIC	05-8106	BC058106	100
F	900 LOS ANGELES PFC	05-8110	VEN-MARINA DEL REY STA	CA	PACIFIC	05-8106	BC058106	100
F	913 SIERRA COASTAL PF(	05-4182	LANCASTER PO	CA	PACIFIC	05-4182	BC054182	100
F	913 SIERRA COASTAL PF(	05-8118	VENTURA PO	CA	PACIFIC	05-8118	BC058118	100
F	913 SIERRA COASTAL PF(	05-8119	VEN-EAST VENTURA STA	CA	PACIFIC	05-8118	BC058118	100
F	920 SAN DIEGO PFC	05-1308	CARLSBAD PO	CA	PACIFIC	05-1308	BC051308	100
F	920 SAN DIEGO PFC	05-1309	CSB-LA COSTA STA	CA	PACIFIC	05-1308	BC051308	100
F	920 SAN DIEGO PFC	05-2748	FONTANA PO	CA	PACIFIC	05-2748	BC052748	100
F	920 SAN DIEGO PFC	05-2749	FON-SOUTHSIDE STA	CA	PACIFIC	05-2748	BC052748	100
F	920 SAN DIEGO PFC	05-4611	LYTLE CREEK PO	CA	PACIFIC	05-2748	BC052748	100
F	926 SANTA ANA PFC	05-1818	COSTA MESA PO	CA	PACIFIC	05-1818	BC051818	100
F	926 SANTA ANA PFC	05-1819	COS-MESA CENTER STA	CA	PACIFIC	05-1818	BC051818	100
F	926 SANTA ANA PFC	05-5652	ONTARIO PO	CA	PACIFIC	05-5652	BC055652	100
F	926 SANTA ANA PFC	05-5653	ONT-DOWNTOWN ONTARIO STA	CA	PACIFIC	05-5652	BC055652	100
F	926 SANTA ANA PFC	05-5655	ONT-PLAZA CENTER STA	CA	PACIFIC	05-5652	BC055652	100
F	926 SANTA ANA PFC	05-6316	RANCHO CUCAMONGA PO	CA	PACIFIC	05-6316	BC056316	100
F	940 SAN FRANCISCO PFC	05-1990	DALY CITY PO	CA	PACIFIC	05-1990	BC051990	100
F	940 SAN FRANCISCO PFC	05-1991	DAL-WESTLAKE STA	CA	PACIFIC	05-1990	BC051990	100
F	940 SAN FRANCISCO PFC	05-2562	EUREKA PO	CA	PACIFIC	05-2562	BC052562	100

F	940	SAN FRANCISCO PFC	05-2563	EUR-DOWNTOWN STA	CA	PACIFIC	05-2562 BC052562	100
F	940	SAN FRANCISCO PFC	05-2688	FIELDS LANDING PO	CA	PACIFIC	05-2562 BC052562	100
F	940	SAN FRANCISCO PFC	05-4866	MENLO PARK PO	CA	PACIFIC	05-4866 BC054866	100
F	940	SAN FRANCISCO PFC	05-5208	MOUNTAIN VIEW PO	CA	PACIFIC	05-5208 BC055208	100
F	940	SAN FRANCISCO PFC	05-5209	MVW-CARRIER ANX	CA	PACIFIC	05-5208 BC055208	100
F	945	BAY-VALLEY PFC	05-0072	ALAMEDA PO	CA	PACIFIC	05-0072 BC050072	100
F	945	BAY-VALLEY PFC	05-4380	LIVERMORE PO	CA	PACIFIC	05-4380 BC054380	100
F	945	BAY-VALLEY PFC	05-5286	NAPA PO	CA	PACIFIC	05-5286 BC055286	100
F	945	BAY-VALLEY PFC	05-6138	PLEASANTON PO	CA	PACIFIC	05-6138 BC056138	100
F	945	BAY-VALLEY PFC	05-6139	PLE-DUBLIN BR	CA	PACIFIC	05-6138 BC056138	100
F	945	BAY-VALLEY PFC	05-6702	SALINAS PO	CA	PACIFIC	05-6702 BC056702	100
F	945	BAY-VALLEY PFC	05-6705	SAL-STEINBECK STA	CA	PACIFIC	05-6702 BC056702	100
F	945	BAY-VALLEY PFC	05-6706	SAL-ALISAL STA	CA	PACIFIC	05-6702 BC056702	100
F	945	BAY-VALLEY PFC	05-6924	SAN RAMON PO	CA	PACIFIC	05-6924 BC056924	100
F	945	BAY-VALLEY PFC	05-6954	SANTA CRUZ PO	CA	PACIFIC	05-6954 BC056954	100
F	945	BAY-VALLEY PFC	05-6955	SCZ-SCOTTS VALLEY BR	CA	PACIFIC	05-6954 BC056954	100
F	945	BAY-VALLEY PFC	05-6956	SCZ-EAST SANTA CRUZ STA	CA	PACIFIC	05-6954 BC056954	100
F	945	BAY-VALLEY PFC	05-8064	VALLEJO PO	CA	PACIFIC	05-8064 BC058064	100
F	945	BAY-VALLEY PFC	05-8065	VAL-SPRINGSTOWNE STA	CA	PACIFIC	05-8064 BC058064	100
G	320	GULF ATLANTIC PFC	11-7260	PANAMA CITY PO	FL	SOUTHERN	11-7260 BC117260	100
G	320	GULF ATLANTIC PFC	11-7261	PFN-BEACH STA	FL	SOUTHERN	11-7260 BC117260	100
G	320	GULF ATLANTIC PFC	11-7262	PFN-DOWNTOWN STA	FL	SOUTHERN	11-7260 BC117260	100
G	320	GULF ATLANTIC PFC	11-7263	PFN-EASTSIDE STA	FL	SOUTHERN	11-7260 BC117260	100
G	320	GULF ATLANTIC PFC	11-7264	PFN-NORTHSIDE STA	FL	SOUTHERN	11-7260 BC117260	100
G	330	SOUTH FLORIDA PFC	11-3105	FT PIERCE PO	FL	SOUTHERN	11-3105 BC113105	100
G	330	SOUTH FLORIDA PFC	11-3106	FTP-ORANGE AVENUE STA	FL	SOUTHERN	11-3105 BC113105	100
G	330	SOUTH FLORIDA PFC	11-3109	FTP-MAIN OFFICE STA	FL	SOUTHERN	11-3105 BC113105	100
G	330	SOUTH FLORIDA PFC	11-4500	JUPITER PO	FL	SOUTHERN	11-4500 BC114500	100
G	330	SOUTH FLORIDA PFC	11-4501	JUP-TEQUESTA BR	FL	SOUTHERN	11-4500 BC114500	100
G	335	SUNCOAST PFC	11-2100	DAYTONA BEACH PO	FL	SOUTHERN	11-2100 BC112100	100
G	335	SUNCOAST PFC	11-2101	DAB-MAIN OFFICE STA	FL	SOUTHERN	11-2100 BC112100	100
G	335	SUNCOAST PFC	11-2102	DAB-DOWNTOWN STA	FL	SOUTHERN	11-2100 BC112100	100
G	335	SUNCOAST PFC	11-2103	DAB-DAYTONA BCH SHORES STA	FL	SOUTHERN	11-2100 BC112100	100
G	335	SUNCOAST PFC	11-2104	DAB-PENINSULA STA	FL	SOUTHERN	11-2100 BC112100	100

G	335 SUNCOAST PFC	11-2105	DAB-SOUTH DAYTONA STA	FL	SOUTHERN	11-2100	BC112100	100
G	335 SUNCOAST PFC	11-2106	DAB-HOLLY HILL STA	FL	SOUTHERN	11-2100	BC112100	100
G	700 LOUISIANA PFC	21-5057	LAKE CHARLES PO	LA	SOUTHERN	21-5057	BC215057	100
G	700 LOUISIANA PFC	21-5058	LCH-DREW STA	LA	SOUTHERN	21-5057	BC215057	100
G	700 LOUISIANA PFC	21-5060	LCH-MOSS BLUFF STA	LA	SOUTHERN	21-5057	BC215057	100
G	720 ARKANSAS PFC	04-3231	FORT SMITH PO	AR	SOUTHERN	04-3231	BC043231	100
G	720 ARKANSAS PFC	04-3232	FSM-DOWNTOWN STA	AR	SOUTHERN	04-3231	BC043231	100
G	720 ARKANSAS PFC	04-3233	FSM-FIANNA HILLS STA	AR	SOUTHERN	04-3231	BC043231	100
G	720 ARKANSAS PFC	04-3234	FSM-MIDLAND STA	AR	SOUTHERN	04-3231	BC043231	100
G	720 ARKANSAS PFC	04-3235	FSM-MAIN OFFICE STA	AR	SOUTHERN	04-3231	BC043231	100
G	720 ARKANSAS PFC	04-6408	NORTH LITTLE ROCK PO	AR	SOUTHERN	04-6408	BC046408	100
G	720 ARKANSAS PFC	04-6409	NLR-MAUMELLE STA	AR	SOUTHERN	04-6408	BC046408	100
G	720 ARKANSAS PFC	04-6410	NLR-PARK HILL STA	AR	SOUTHERN	04-6408	BC046408	100
G	720 ARKANSAS PFC	04-6411	NLR-ROSE CITY STA	AR	SOUTHERN	04-6408	BC046408	100
G	720 ARKANSAS PFC	04-6412	NLR-SHERWOOD BR	AR	SOUTHERN	04-6408	BC046408	100
G	720 ARKANSAS PFC	04-6413	NLR-MAIN OFFICE STA	AR	SOUTHERN	04-6408	BC046408	100
G	752 DALLAS PFC	48-1475	CARROLLTON PO	TX	SOUTHERN	48-1475	BC481475	100
G	752 DALLAS PFC	48-1476	CAR-ROSEMEADE STA	TX	SOUTHERN	48-1475	BC481475	100
G	752 DALLAS PFC	48-5860	MESQUITE PO	TX	SOUTHERN	48-5860	BC485860	100
G	752 DALLAS PFC	48-5861	MSQ-BALCH SPRINGS STA	TX	SOUTHERN	48-5860	BC485860	100
G	752 DALLAS PFC	48-5862	MESQUITE CARRIER ANNEX	TX	SOUTHERN	48-5860	BC485860	100
G	752 DALLAS PFC	48-7555	RICHARDSON PO	TX	SOUTHERN	48-7555	BC487555	100
G	752 DALLAS PFC	48-7556	RIC-HUFFHINES PARK STA	TX	SOUTHERN	48-7555	BC487555	100
G	752 DALLAS PFC	48-9170	TYLER PO	TX	SOUTHERN	48-9170	BC489170	100
G	752 DALLAS PFC	48-9172	TYLER TX VMF	TX	SOUTHERN	48-9172	BC489170	100
G	752 DALLAS PFC	48-9173	TYL-AZALEA STA	TX	SOUTHERN	48-9170	BC489170	100
G	752 DALLAS PFC	48-9178	TYL-S TYLER ANX	TX	SOUTHERN	48-9170	BC489170	100
G	752 DALLAS PFC	48-9396	WACO AUX VMF OF FORT WORTH TX	TX	SOUTHERN	48-9396	BC489170	100
G	760 FORT WORTH PFC	48-9720	WICHITA FALLS PO	TX	SOUTHERN	48-9720	BC489720	100
G	760 FORT WORTH PFC	48-9721	WFL-MORNINGSIDE STA	TX	SOUTHERN	48-9720	BC489720	100
G	760 FORT WORTH PFC	48-9722	WFL-BRIDGE CREEK STA	TX	SOUTHERN	48-9720	BC489720	100
G	760 FORT WORTH PFC	48-9723	WFL-MAIN POST OFFICE	TX	SOUTHERN	48-9720	BC489720	100
G	770 HOUSTON PFC	48-6845	PASADENA PO	TX	SOUTHERN	48-6845	BC486845	100
G	770 HOUSTON PFC	48-6846	PAS-JOHN FOSTER STA	TX	SOUTHERN	48-6845	BC486845	100

G	770	HOUSTON PFC	48-6848	PAS-D L ATKINSON STA	TX	SOUTHERN	48-6845	BC486845	100
G	770	HOUSTON PFC	48-8710	SUGAR LAND PO	TX	SOUTHERN	48-8710	BC488710	100
G	770	HOUSTON PFC	48-8711	SUG-FIRST COLONY STA	TX	SOUTHERN	48-8710	BC488710	100
G	780	RIO GRANDE PFC	48-4950	LAREDO PO	TX	SOUTHERN	48-4950	BC484950	100
G	780	RIO GRANDE PFC	48-4951	LDO-DEL MAR STA	TX	SOUTHERN	48-4950	BC484950	100
G	780	RIO GRANDE PFC	48-6555	ODESSA PO	TX	SOUTHERN	48-6555	BC486555	100
G	780	RIO GRANDE PFC	48-6557	ODE-NORTHEAST STA	TX	SOUTHERN	48-6555	BC486555	100
J	481	DETROIT PFC	25-1880	CLARKLAKE PO	MI	GREAT LAKES	25-4800	BC254800	100
J	481	DETROIT PFC	25-4800	JACKSON PO	MI	GREAT LAKES	25-4800	BC254800	100
J	481	DETROIT PFC	25-4801	JAC-RETAIL	MI	GREAT LAKES	25-4800	BC254800	100
J	481	DETROIT PFC	25-6500	MUNITH PO	MI	GREAT LAKES	25-4800	BC254800	100
J	481	DETROIT PFC	25-8980	ST CLAIR SHORES PO	MI	GREAT LAKES	25-8980	BC258980	100
J	493	GREATER MICHIGAN	25-6530	MUSKEGON PO	MI	GREAT LAKES	25-6530	BC256530	100
J	493	GREATER MICHIGAN	25-6531	MUS-NORTH MUSKEGON BR	MI	GREAT LAKES	25-6530	BC256530	100
J	493	GREATER MICHIGAN	25-6532	MUS-MUSKEGON HEIGHTS BR	MI	GREAT LAKES	25-6530	BC256530	100
J	530	LAKELAND PFC	16-2094	DES PLAINES PO	IL	GREAT LAKES	16-2094	BC162094	100
J	530	LAKELAND PFC	16-6024	PALATINE PO	IL	GREAT LAKES	16-6024	BC166024	100
J	530	LAKELAND PFC	56-0250	APPLETON PO	WI	GREAT LAKES	56-0250	BC560250	100
J	530	LAKELAND PFC	56-1130	BROKAW PO	WI	GREAT LAKES	56-8690	BC568690	100
J	530	LAKELAND PFC	56-4280	KENOSHA PO	WI	GREAT LAKES	56-4280	BC564280	100
J	530	LAKELAND PFC	56-4281	KEN-CARRIER ANX	WI	GREAT LAKES	56-4280	BC564280	100
J	530	LAKELAND PFC	56-8640	WAUKESHA PO	WI	GREAT LAKES	56-8640	BC568640	100
J	530	LAKELAND PFC	56-8641	WKA-NEW BERLIN BR	WI	GREAT LAKES	56-8640	BC568640	100
J	530	LAKELAND PFC	56-8690	WAUSAU PO	WI	GREAT LAKES	56-8690	BC568690	100
J	530	LAKELAND PFC	56-8696	WAUSAU P&DF	WI	GREAT LAKES	56-8696	BC568690	100
J	604	CENTRAL ILLINOIS PI	16-0792	BLOOMINGTON PO	IL	GREAT LAKES	16-0792	BC160792	100
J	604	CENTRAL ILLINOIS PI	16-2442	ELGIN PO	IL	GREAT LAKES	16-2442	BC162442	100
J	604	CENTRAL ILLINOIS PI	16-2443	ELG-CARRIER ANX	IL	GREAT LAKES	16-2442	BC162442	100
J	604	CENTRAL ILLINOIS PI	16-7236	SHIRLEY PO	IL	GREAT LAKES	16-0792	BC160792	100
J	630	GATEWAY PFC	16-0864	BOODY PO	IL	GREAT LAKES	16-2004	BC162004	100
J	630	GATEWAY PFC	16-2004	DECATUR PO	IL	GREAT LAKES	16-2004	BC162004	100
J	630	GATEWAY PFC	16-2005	DEC-MEMORIAL STA	IL	GREAT LAKES	16-2004	BC162004	100
J	630	GATEWAY PFC	16-2532	ELWIN PO	IL	GREAT LAKES	16-2004	BC162004	100
J	630	GATEWAY PFC	16-3438	HARRISTOWN PO	IL	GREAT LAKES	16-2004	BC162004	100

J	630	GATEWAY PFC	16-5664	NIANTIC PO	IL	GREAT LAKES	16-2004	BC162004	100
J	630	GATEWAY PFC	28-0408	BALLWIN PO	MO	GREAT LAKES	28-0408	BC280408	100
J	630	GATEWAY PFC	28-7092	SAINT CHARLES PO	MO	GREAT LAKES	28-7092	BC287092	100
J	630	GATEWAY PFC	28-7093	STC-ST CHARLES DDC	MO	GREAT LAKES	28-7092	BC287092	100
K	210	BALTIMORE PFC	23-2178	CORDOVA PO	MD	CAPITAL METRO	23-2826	BC232826	100
K	210	BALTIMORE PFC	23-2826	EASTON PO	MD	CAPITAL METRO	23-2826	BC232826	100
K	210	BALTIMORE PFC	23-2836	EASTERN SHORE MD P&DC	MD	CAPITAL METRO	23-2836	BC232826	100
K	210	BALTIMORE PFC	23-3348	FREDERICK PO	MD	CAPITAL METRO	23-3348	BC233348	100
K	220	NORTHERN VIRGINI/	51-4212	HERNDON PO	VA	CAPITAL METRO	51-4212	BC514212	100
K	220	NORTHERN VIRGINI/	51-4213	HRN-RESTON BR	VA	CAPITAL METRO	51-4212	BC514212	100
K	220	NORTHERN VIRGINI/	51-4215	HRN- OAK HILL BR	VA	CAPITAL METRO	51-4212	BC514212	100
K	230	RICHMOND PFC	51-1716	CHARLOTTESVILLE PO	VA	CAPITAL METRO	51-1716	BC511716	100
K	230	RICHMOND PFC	51-7690	CHARLOTTESVILLE VA VMF	VA	CAPITAL METRO	51-7690	BC511716	100
K	290	GREATER SOUTH CA	45-8320	SPARTANBURG PO	SC	CAPITAL METRO	45-8320	BC458320	100
K	290	GREATER SOUTH CA	45-8321	SPT-WESTSIDE BR	SC	CAPITAL METRO	45-8320	BC458320	100
K	290	GREATER SOUTH CA	45-8322	SPT-BOILING SPRINGS BR	SC	CAPITAL METRO	45-8320	BC458320	100
K	300	ATLANTA PFC	12-0418	ATHENS PO	GA	CAPITAL METRO	12-0418	BC120418	100
K	300	ATLANTA PFC	12-0419	ATH-ALPS ROAD STA	GA	CAPITAL METRO	12-0418	BC120418	100
B	6	CARIBBEAN PFC	42-0180	ADJUNTAS PO	PR	NORTHEAST	42-0180	BC420180	0
B	6	CARIBBEAN PFC	42-0270	AGUADA PO	PR	NORTHEAST	42-0270	BC420270	0
B	6	CARIBBEAN PFC	42-0360	AGUADILLA PO	PR	NORTHEAST	42-0360	BC420360	0
B	6	CARIBBEAN PFC	42-0361	BQN-RAMEY STA	PR	NORTHEAST	42-0360	BC420360	0
B	6	CARIBBEAN PFC	42-0362	BQN-VICTORIA STA	PR	NORTHEAST	42-0360	BC420360	0
B	6	CARIBBEAN PFC	42-0450	AGUAS BUENAS PO	PR	NORTHEAST	42-0450	BC420450	0
B	6	CARIBBEAN PFC	42-0540	AGUIRRE PO	PR	NORTHEAST	42-0540	BC420540	0
B	6	CARIBBEAN PFC	42-0630	AIBONITO PO	PR	NORTHEAST	42-0630	BC420630	0
B	6	CARIBBEAN PFC	42-0720	ANASCO PO	PR	NORTHEAST	42-0720	BC420720	0
B	6	CARIBBEAN PFC	42-0810	ANGELES PR PO	PR	NORTHEAST	42-5220	BC425220	0
B	6	CARIBBEAN PFC	42-0900	ARECIBO PO	PR	NORTHEAST	42-0900	BC420900	0
B	6	CARIBBEAN PFC	42-0990	ARROYO PO	PR	NORTHEAST	42-0990	BC420990	0
B	6	CARIBBEAN PFC	42-1080	BAJADERO PO	PR	NORTHEAST	42-1080	BC421080	0
B	6	CARIBBEAN PFC	42-1170	BARCELONETA PO	PR	NORTHEAST	42-1170	BC421170	0
B	6	CARIBBEAN PFC	42-1260	BARRANQUITAS PO	PR	NORTHEAST	42-1260	BC421260	0
B	6	CARIBBEAN PFC	42-1440	BOQUERON PO	PR	NORTHEAST	42-1440	BC421440	0

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Lawrence G. Butchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: Class Action
Chester, PA 19013
B7N-2A-C 2275

Dear Mr. Butchins:

On November 4, 1989, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether approved annual leave constitutes an interruption in assignment, so as to permit management to refrain from converting the senior PTF to regular status under the terms of Article 7 and relevant memoranda.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that for the purposes of meeting the six (6) month requirements of Article 7.3.c., approved annual leave does not constitute an interruption in assignment, except where the annual leave is used solely for purposes of rounding out the workweek when the employee would otherwise not have worked.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Arthur S. Wilkinson
Grievance & Arbitration
Division

Lawrence G. Butchins
Vice President
National Association of Letter
Carriers, AFL-CIO

(Date) 4/13/79

DOUG A. TULINO
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES POSTAL SERVICE

November 25, 2019

AREA MANAGERS, HUMAN RESOURCES
AREA MANAGERS, LABOR RELATIONS

SUBJECT: Mail Handler Assistant

In accordance with the Mail Handler Assistant (MHA) Annual Leave Provisions Memorandum of Understanding, MHAs accrue annual leave which may be used for rest, recreation, emergency purposes, and illness or injury. Except for emergencies, annual leave for MHAs must be requested on PS Form 3971 and approved in advance by the appropriate supervisor.

An MHA may request annual leave for a minimum of one hour and up to the number of hours the MHA is scheduled to work, but no more than eight hours in a service day or 40 hours in a service week.

Doug A. Tulino

12-16-2019

12/16/19

475 L'Enfant Plaza SW
Washington DC 20260-4100
202-000-0000

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020**.

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before they may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2. the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5/27/20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

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National Arbitration Panel

In the Matter of Arbitration	)	
	)	
	)	
between	)	
	)	Case No.
	)	C90C-1C-C 93018526
United States Postal Service	)	
	)	Final Award-Merits
	)	
and	)	(Crossing Wage Level)
	)	
	)	
American Postal Workers Union	)	

Before: Shyam Das

Appearances:

For the Postal Service: Lynn D. Poole, Esquire

For the APWU: Arthur M. Luby, Esquire

Place of Hearing:	Washington, D.C.
Dates of Hearing:	July 11, 2002 April 22, 2003 August 14, 2003 August 15, 2003
Date of Interim Award:	December 13, 2002
Date of Final Award:	September 7, 2004
Relevant Contract Provision:	Articles 3, 7.2 and 25
Contract Year:	1990-1994
Type of Grievance:	Contract Interpretation

Award Summary

The Postal Service is not required to justify cross-wage level assignments within the Clerk Craft such as those involved in this grievance under Article 7.2.B, and that provision is not violated by such assignments.

Shyam Das, Arbitrator

BACKGROUND C90C-1C-C 93018526

On August 16, 1992, the Union filed a class action grievance in Lehigh Valley, Pennsylvania. The basis for the grievance is set forth in the Step 2 appeal form as follows:

> During the period May 29, 1992 - June 5, 1992, management used 23 different level 5/6 clerks to perform duties in level 4, in the automation area of the facility. These 23 clerks accounted for a total of 246 hours of work performed in lieu of level 4 clerks.
>
> The Collective Bargaining Agreement (CBA) provides no language for such crossing of wage levels. Article 7.2.B provides for such crossing of occupational groups if in the same wage level. This assignment clearly violates the CBA since it is to circumvent the assignment of overtime work to the level four clerks and the posting of bid positions to the clerk craft.
>
> These assignments are being made not because of light workload in the level 5/6 areas, since most of these clerks are removed from their primary job areas and that mail then sits. Management must compensate the level 4 clerks at the appropriate overtime rate to include penalty overtime for all hours worked by the level 5/6 clerks.

The grievance was appealed to Step 3 without a Step 2 decision. The Step 3 appeal notes: "The parties have agreed that this grievance would be the representative case and that no further grievances must be filed." After the Postal Service denied the grievance at Step 3, it was appealed by the Union to regional arbitration, at which level the Postal Service declared it raised an interpretive issue.

On December 10, 1993 the Union appealed the grievance to Step 4. This appeal identified the applicable contract provision as Article 7.2 and the issue as "Crossing Wage Levels". There was no Step 4 meeting. On May 9, 1994, the Union appealed the case to National Arbitration, again identifying the applicable contract provision as Article 7.2.

At the outset of the arbitration hearing on July 11, 2002, the Union took the position that this grievance does not raise a legitimate national interpretive issue and should be remanded to the region. The Postal Service disagreed. The parties agreed to bifurcation to permit an initial determination to be made as to whether this grievance raises an interpretive issue properly to be resolved at National Arbitration, and, if so, what that issue is.

In an Interim Award, issued on December 13, 2002, I concluded that:

> [T]his grievance does raise an interpretive issue of general application for purposes of Article 15.4.D.1 of the 1990-1994 National Agreement. That issue is whether Article 7.2 applies to, and is violated by, intra-craft cross-wage level assignments such as those involved in this grievance.

The parties then addressed the merits of this case at hearings held on April 22 and August 14-15, 2003.

The intra-craft cross-wage level assignments protested in the underlying Lehigh Valley grievance occurred some time after the Lehigh Valley office moved into a new location. At the new location there were only two MPLSMs staffed by Level 5 and 6 Clerks, in contrast to three MPLSMs at the prior facility. The number of pieces of automated equipment staffed by Level 4 Mail Processors increased from six to 12 or 13. Lehigh Valley Supervisor Ronald Worrich testified that after the move, there was an excess number of Level 6 Clerks. There was only four hours of work for them at Level 6, so he assigned them to Level 4 work on a regular and recurring basis.[1]

Leroy Moyer, who was the Clerk Craft Director for the Lehigh Valley Local when this grievance was filed, testified that the Level 4 employees complained that they were being deprived of overtime opportunities. He also was concerned that there was an insufficient number of Level 4 positions after the move to the new facility.

Both Moyer and Worrich testified that prior to the move to the new facility there were occasions when Level 6 or 5 Clerks were temporarily assigned to Level 4 work to relieve Mail Processors on their lunch break or to cover an absence. Moyer stressed that this was not done on a regular and routine basis. He said he knew these assignments were "wrong", but he tolerated

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[1] The grievance disputes whether there was insufficient Level 6 work, but for purposes of deciding the interpretive issue I will assume that there was insufficient work and that this was the reason for the assignment to Level 4 work.

them in the context of the cooperative relationship that existed between the Local and management.

Article 7, Section 2 of the 1990-1994 National Agreement in effect when the grievance was filed in 1992 provides:

> 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.
>
> 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.
>
> B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's

knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Article 25 provides:

ARTICLE 25
HIGHER LEVEL ASSIGNMENTS

Section 1. 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.

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.

In a regional arbitration decision (Case No. E7C-2E-C 48567) issued on May 15, 1992 -- shortly before the present grievance was filed -- Arbitrator Bernard Cushman held that the

assignment of Level 6 and 5 Clerks to Level 4 Mail Processor work violated Article 7.2. The Cushman Award, as had some earlier regional arbitration decisions, rejected the Postal Service's position that intra-craft assignments are not within the purview of Article 7. Most, if not all, other regional arbitrators who have been faced with this issue after the Cushman Award have reached the same conclusion.[2]

The Postal Service takes the position that Article 7.2.B does not prohibit cross-wage level assignments unless they are cross-craft assignments. This case, it stresses, involves only cross-wage level assignments within the Clerk Craft. It insists that the Cushman Award and other regional arbitration decisions holding that intra-craft assignments are within the purview of Article 7 are incorrect. It also points to some regional decisions that support the Postal Service's position.

UNION POSITION

The Union contends that Article 7.2.B specifically provides that employees can only be assigned available work "in the same wage level" in the event of insufficient work in the employee's own scheduled assignment. This applies to intra-craft as well as cross-craft assignments. The Cushman Award and other regional arbitration decisions reaching the same conclusion are consistent with the language of the contract and

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[2] Evidently, a considerable number of grievances involving this issue are being held in abeyance by agreement of the parties, pending the decision in this case.

are directly rooted in National Arbitration awards issued by Arbitrators Richard Bloch and Richard Mittenthal.

The Union rejects the Postal Service's argument that Article 7.2.B does not really mean what it says. On the basis of bargaining history and the parties' purported practice, the Union asserts, the Postal Service has claimed at different points in this case that Article 7.2.B means that employees can be assigned across wage levels if (a) they maintain their rate, or (b) provided the assignment is not across craft lines. The proffered interpretations, the Union maintains, contradict one another and, in any case, are unsupported by evidence.

The Union stresses that the bargaining history witnesses presented by the Postal Service did not testify that the Postal Service believed that Article 7.2.B, which was included in the initial 1971 National Agreement, was designed or intended simply to protect craft jurisdiction. They testified it was not intended to protect jurisdiction at all, but rather to provide rate protection -- an employee assigned to a lower level position would continue to be paid at his scheduled wage level. That was the basis on which the Postal Service sought to delete the words "in the same wage level" as superfluous -- in light of Article 25.2 -- in subsequent contracts. The Unions successfully resisted such a change, and in 1982 Arbitrator Mittenthal rejected the Postal Service's contention that Article 7.2.B should be read, in light of its bargaining history, as not prohibiting cross-craft assignment to a higher level job.

The Union freely concedes that craft jurisdiction is a matter of utmost sensitivity in the Postal Service. But it stresses that if the parties had intended only to protect craft jurisdiction they could and would have done so directly, rather than by indirectly and abstractly expressing craft jurisdiction concerns in terms of wage level.

The Union contends that the record also fails to support the Postal Service's claim that the Union acquiesced to a practice of allowing temporary reassignment across wage levels, provided such assignments did not cross crafts.[3] The weight of the evidence establishes not only that there was not a consistent mutually understood practice of allowing the sort of reassignment at issue here, but also that in most offices such assignments were protested. Moreover, the Postal Service provided no documentation that the National APWU believed that only cross-craft assignments had to be within the same wage level. With the exception of one alleged after-hours discussion with former Clerk Craft Director Kenny Wilson, there was no testimony that any Headquarters National Union officer held such a view.

At best, the Union argues, the record shows that different Locals initially took different approaches to enforcement of Article 7.2.B when Clerks were assigned across

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[3] The Union does not dispute that Level 6 Clerks frequently were assigned (at level 6 pay) to distribution work performed by level 5 Clerks, but it stresses that such work is included in the Level 6 position description.

wage levels in and out of Mail Processor operations because of insufficient work. The Union asserts that these differences evaporated as the Mail Processor work force grew and became more insistent on contractual protection, and that since the late 1980's the Union's position on Article 7.2.B has been consistent and completely in accord with the position taken both here and before Arbitrator Cushman.

The Union points out that it does not take the position that Clerks (or any of its crafts) can never be assigned across wage levels. Its position is that, per the language of Article 7.2.B, "insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment" is not a contractually authorized reason to assign an employee to work outside the employee's wage level. Consistent with this language, when Lehigh Valley Clerk Craft Director Moyer was dealing with an occasional de minimis need to provide temporary staffing in OCR operations with higher level Clerks to keep the mail flowing, he declined to pursue grievances. When the reason for such cross level assignments became regular insufficient work in the normal assignments of Level 5 and 6 Clerks, he appropriately sought to enforce the restrictions of Article 7.2.B.

The appropriate remedy in this case, the Union asserts, is to provide overtime pay to Level 4 Mail Processors on the Overtime Desired List commensurate with the hours worked by higher level Clerks in violation of Article 7.2.B. The Union requests that, in the absence of appropriate records, the matter

be remanded to the parties for consideration, subject to returning any differences to the arbitrator.

EMPLOYER POSITION

The Postal Service contends that Article 7.2.B was not intended to, and does not, apply to intra-craft assignments, and that for years the practice in the Postal Service supported that interpretation. It urges that, to understand what "within the same wage level" means, it is necessary to look beyond literal wording and to consider what the parties were trying to accomplish when they negotiated that language, as well as its subsequent utilization by the parties. The Postal Service stresses that the Union acknowledges it is necessary to go beyond a literal interpretation of this provision when the Union concedes that the Postal Service can temporarily assign Clerks to a lower level position if the work is within their job description -- an exception found nowhere in Article 7.2.B.

The Postal Service asserts that the bargaining history evidence it presented shows that the language "within the same wage level" in Article 7.2.B, which originally was agreed to in the initial Working Text of the 1971 National Agreement, before the parties negotiated the text of other provisions including Article 25 later that year, was intended to provide rate protection for employees assigned to other work -- whether cross-craft or intra-craft. That was why the Postal Service proposed deleting this language from Article 7.2.B in 1973 and 1975 negotiations on the basis that it was superfluous in light

of Article 25.2. The Joint Bargaining Committee (JBC) Unions successfully resisted any change, and the Postal Service -- while it stuck to its position on the meaning of Article 7.2.B -- ceased to press for a change in language. The Postal Service stresses, however, that the evidence shows that the Unions insisted on keeping that language because they saw it as a defense to the crossing of craft lines, which was a crucial issue for them. Neither the Postal Service, nor the Unions, the Postal Service argues, saw Article 7.2 as restricting intra-craft assignments.

Testimony of both Postal Service and Union witnesses establishes that over the next years Clerk Craft employees frequently were reassigned from Level 6 MPLSM work to lower level work without anyone raising an Article 7.2.B issue. The Postal Service maintains that it was only after the Postal Service began to deploy automated OCR and BCS equipment and established a lower level Mail Processor position within the Clerk Craft that a change in position began to occur. The Union first sought to have the Mail Processor position upgraded from Level 3 to Level 5. After Arbitrator Benjamin Aaron increased it only to Level 4, some Union officials began to seek additional compensation for the Level 4 Clerks by claiming that Article 7.2 sharply restricted the Postal Service's ability to use higher level Clerks temporarily in Level 4 assignments.

The Union succeeded in convincing certain regional arbitrators, most notably Arbitrator Cushman in 1992, of its new interpretation. The Postal Service insists that the Cushman

Award and others reaching the same conclusion -- many of which rely on the Cushman Award -- reached the wrong result. Critically absent from Cushman's analysis is the extensive bargaining history which the Postal Service has presented in this case. Otherwise, he could not have relied upon a statement from Arbitrator Mittenthal's 1982 Award that the parties did not disagree about the meaning of the term "in the same wage level". That statement, the Postal Service asserts, is clearly incorrect. Moreover, Cushman evidently was not made aware of the exception conceded by the Union in this case that its contract interpretation is null and void so long as the lower level work at issue is part of the higher level Clerk position description.

The National Arbitration decisions issued in 1982 by Arbitrators Bloch and Mittenthal, which the Union relies on, both notably involved cross-craft assignments. Moreover, the Postal Service stresses, apparently neither arbitrator was presented with the extensive and unrebutted bargaining history evidence presented in this case, and Mittenthal's discussion of the negotiation history rests on the false assumption that the Postal Service agreed with the Union on the meaning of the term "in the same wage level".

The Postal Service argues that the Union's current position flies in the face of one of the JBC Unions' chief goals in 1971, which was to achieve an all regular work force. As Union witnesses acknowledged, the Postal Service could utilize part-time or casual employees or delay performance of Level 4

work if it did not assign it to Level 5 or 6 Clerks. It is not required to assign this work on overtime to Level 4 Clerks. Moreover, to the extent there is not enough work to keep Level 5 and 6 clerks productive for all of their guaranteed 8 hours, the Postal Service could eliminate those full-time positions. That hardly could have been the result intended by the Unions' negotiators in 1971.

The Postal Service also points to evidence it presented to show that even after some in the Union were trying to rewrite the bargaining history in the 1980s, other APWU officials made it clear they did not see Article 7.2 as restricting management's right to make lower level assignments within the same craft. Similarly, the record shows that continuing through the 1990s in diverse locations the Union frequently acquiesced in the Postal Service's right to make such assignments.

The Postal Service maintains that the Union's attempt to explain away this overwhelming evidence by claiming that such assignments are permissible so long as the lower level assignment was in the higher level employee's position description is inconsistent with National Arbitration awards and ELM provisions. These authorities hold that Postal Service position descriptions are not fully descriptive of what an employee can be required to do, and that their primary function is to rank positions for pay purposes.

The Postal Service points out that the APWU's position is at odds with the NALC's interpretation of Article 7.2 found in its joint contract interpretation manual (JCAM). The NALC, which was part of the JBC that negotiated the wording of Article 7.2.B has agreed with the Postal Service in its JCAM that 7.2.B and 7.2.C cover cross-craft assignments.

Contract interpretation, the Postal Service urges, should be rational and lead to sensible results. The APWU's position does not. For example, a Union witness contended that it would violate Article 7.2.B for Level 6 MPLSM operators to work Level 5 FSM machines, yet it would not be a violation for them to work Level 6 FSM machines, even though the two FSM positions are basically the same job.

The Postal Service further contends that its interpretation harmonizes Article 7.2.B with Article 25.2. If the parties had truly negotiated in 1971 that the Postal Service relinquished all rights to assign employees to a lower level, both cross-craft and intra-craft, the last sentence in Article 25.2 would be rendered nugatory. A more sensible conclusion is that both sides saw that sentence as having meaning; the Postal Service broadly, as not affecting its rights to make temporary assignments either cross-craft or intra-craft; the Unions, more narrowly, as applying only to intra-craft lower level temporary assignments. The Postal Service stresses there is nothing in the contract or in the bargaining history indicating that Article 25.2's last sentence was agreed to simply in order to

cover higher level employees temporarily assigned to lower level work within their position description.

Finally, the Postal Service contends that even if it is determined that the Postal Service did commit a violation of the National Agreement, the Union is entitled to no relief in this case. There is no need for prospective remedial relief because today the Postal Service does not have MPLSM Operators or Level 4 Mail Processors. Indeed, there are few Level 4 positions left at all. Nor is any retroactive remedy appropriate. The Union demands overtime pay for Level 4 employees who could have been assigned the work in question on overtime, but the Union does not dispute the Postal Service could have assigned this work to part-time employees or casual employees, or even put it over to the next day. There is no right to overtime. The remedy the Union seeks is simply a windfall. The Level 4 employees were fully employed for 8 hours at their regular positions.

FINDINGS

The Postal Service asserts that prior to 1971, when Article 7.2 was first agreed to, management freely assigned employees to any work they were qualified to perform in or out of their craft. If the temporary assignment was to a lower level job, the employee continued to receive his or her regular pay. If the assignment was to higher work, the employee only received the higher pay after 30 days. In 1971, the Union succeeded in getting the Postal Service to agree -- in Article

25 -- that employees assigned to higher level work would be paid at the higher level for time actually spent on the job. In 1971, the parties also agreed -- prior to negotiating Article 25 -- to the provisions in Article 7.2.[4]

The Postal Service maintains that the language in Article 7.2.B was not intended to limit its previous flexibility to temporarily move employees to higher or lower levels, both within craft and cross-craft, as it saw fit. It also insists that by agreeing to include the words "in the same wage level" in that provision, the Postal Service was only agreeing that employees temporarily assigned to a lower level job would retain their regular rate of pay. Whatever the merits of this position if we were starting from a clean slate, there is National Arbitration precedent which holds that the words "in the same wage level" in Article 7.2.B -- at least in the context of a cross-craft assignment -- mean that the assignment must be to work in the same wage level. This was a holding in Arbitrator Mittenthal's 1982 decision in Case No. H8C-2F-C-7406, in which the Postal Service relied on the same bargaining history it has cited in this case. Even assuming, purely for the sake of argument, that the Postal Service's brief in that case -- which Arbitrator Mittenthal read as acknowledging that "in the same wage level" meant the assignment had to be to a job in the same wage level -- misstated its position or was misunderstood by the arbitrator, the decision was final and binding and the Postal

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[4] Article 7.2.A was somewhat revised in 1973. Article 7.2.B and 7.2.C have remained essentially unchanged.

Service has not questioned its continued application to cross-craft assignments.

Although Arbitrator Mittenthal's decision only involved cross-craft assignments, it would be contractually anomalous and, in my view, unsound in this collective bargaining context to conclude that the words "in the same wage level" in Article 7.2.B have some different meaning for purposes of deciding the present case. It does not follow, however, that the intra-craft cross-wage level assignments at issue in this case violated the National Agreement.

Absent a contractual proscription on such assignments, there can be no question that the Postal Service would have the right to make intra-craft cross-wage level assignments such as those involved in this grievance. Article 3 (Management Rights) provides:

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> A. To direct employees of the Employer in the performance of official duties;
>
> B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
>
> C. To maintain the efficiency of the operations entrusted to it;

> D. To determine the methods, means, and personnel by which such operations are to be conducted;
>
> * * *

Moreover, Article 25 clearly contemplates that employees may be temporarily assigned to higher level work or lower level positions and sets forth the basis on which they are to be paid in those circumstances. In particular -- and relevant to the assignments at issue in this case -- Article 25 provides that: "An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate."

On its face Article 7.2, on which the Union relies, does not include any direct proscription on cross-wage level assignments within the same craft. Article 7.2.A provides only that: "Normally, work in different ... levels will not be combined into one job." That provision goes on, however, to recognize such a combination may be effected for the purpose of providing maximum full-time employment -- a major goal of the Postal Unions since the advent of collective bargaining -- and providing necessary flexibility. Indeed, Article 7.2.A specifically provides that work in different crafts or occupational groups may be included in a full-time schedule assignment only after: "All available work within each separate craft by tour has been combined."

Article 7.2.A, obviously, is not applicable to temporary assignments of the sort at issue in this case. Article 7.2.B and 7.2.C do address temporary assignments. Neither provision directly proscribes any assignment. Rather each authorizes certain assignments in particular circumstances. Nonetheless, there would appear be no need for such authorization -- given Article 3 -- if there was not some proscription that otherwise would bar such an assignment.

In Case No. H8S-5F-C-8027, decided in 1982, National Arbitrator Richard Bloch found there was an "inherent proscription against crossing craft lines", and that Article 7.2.B and 7.2.C set forth "limited circumstances" in which that inherent proscription is inapplicable. Arbitrator Bloch concluded with respect to Article 7.2:

> Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited.

He further stated:

> ... one must proceed on the premise that crossing craft lines is prohibited and that the contractual exceptions [in Article 7.2.B and 7.2.C] are not to be invoked unless clearly met.

Arbitrator Bloch cited Article 7.2.A as recognizing the distinction among crafts. As the Cushman Award and other similar regional decisions have noted (and as discussed above), the first sentence in Article 7.2.A specifies that normally work

in different wage levels, not just different crafts or occupational groups, will not be combined into one job. The remainder of that provision, however, does not treat wage levels as the equivalent of separate crafts or occupational groups. It states that, in order to provide maximum full-time employment and necessary flexibility, management "may establish full-time schedule assignments by including work within different crafts or occupational groups" -- something Arbitrator Bloch said otherwise would have been proscribed. Combining work in different wage levels in the same craft or group is addressed only indirectly in the requirement that before any inter-craft or inter-occupational group combinations are made, "work within each separate craft by tour" shall first be combined.[5]

Thus, I am not persuaded that the 1992 Cushman Award (and other similar regional arbitration decisions) is correct in concluding that: "... Section A lists wage levels as a third category coordinate with crafts and occupational groups". (Emphasis added.) The Cushman Award goes on to state:

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[5] This distinction is even clearer in the wording of Article 7.2.A in the 1971 Agreement -- which was revised to the present language in 1973. In the 1971 Agreement, this provision read:

> Normally work in different crafts, occupational groups or levels will not be combined into one job. However, in order to maximize full-time employment opportunities and provide necessary flexibility, management may after studied effort to meet its requirements by combining within craft or occupational groups establish full-time or part-time scheduled assignments by including work within different crafts or occupational groups.

> Under B and C it is provided that temporary assignments must be in the same wage level. The "inherent presumption" [a reference to the "inherent proscription" against crossing craft lines found by Arbitrator Bloch] would appear to apply to wage levels as well as to crafts or occupational group levels. Otherwise the term wage level would be superfluous.

With due respect to Arbitrator Cushman, this conclusion is not an obvious one. The provision in Article 7.2.A that normally work in different levels will not be combined into one job serves a distinct purpose, and, as discussed above, the remainder of Article 7.2.A does not treat wage level as the equivalent of craft or occupational group. As for Article 7.2.B and 7.2.C, under National Arbitrator Mittenthal's 1982 decision in Case No. H8C-2F-C-7406, the words "in the same wage level" in those provisions serve as a substantial limitation on cross-craft temporary assignments. So, it is not necessary to find that there is an inherent proscription against crossing wage levels within a craft in order to give effect to the parties use of the term wage level.

Craft jurisdiction has been a persistently significant issue between and among the Postal Service and the various Unions representing its employees. That was true before 1971. It is true today. Arbitrator Bloch found there was an "inherent proscription against crossing craft lines" reflected in Article 7.2. I see no convincing basis in Article 7.2 or elsewhere in the National Agreement for finding an equivalent proscription against cross-wage level assignments within the same craft or

the parties intended to provide greater protection against crossing wage levels within the same craft than against crossing craft lines -- a result that would be exactly the opposite of the agreed-to priorities reflected in the sequential actions set forth in Article 7.2.A.

Furthermore, if cross-wage level assignments were subject to the same "inherent proscription" as cross-craft assignments were determined to be in Arbitrator Bloch's decision, then such assignments would be prohibited and could only be made where the Agreement clearly authorizes them. The Union asserts that it is not saying that the Postal Service can never temporarily assign Clerk craft employees to work in a lower level -- something clearly contemplated by Article 25 -- but only that such assignments cannot be made in the circumstances described in Article 7.2.B. Yet, the only example the Union cited where Article 25 might apply consistent with its reading of the Agreement is where Clerks are assigned to lower level work which is within their position description. But such assignments, under the Union's theory, are not really to a lower level position, because the employees are performing work within their own position description, even if it overlaps work also performed by a lower level position.

The most critical point, however, is that -- unlike crossing craft lines -- there is no inherent or other contractual proscription on cross-wage level assignments within the Clerk Craft. Absent such a proscription, the Postal Service is not required by the National Agreement or National

Arbitration precedent to justify intra-craft cross-wage level assignments such as those involved in this grievance under the terms of Article 7.2.B.

One final point needs to be stressed. Nothing in this opinion is addressed to crossing occupational groups within the same craft. There are a number of regional arbitration awards (but no National Arbitration decision that I am aware of) which deal with various issues involving temporary assignments that cross occupational groups. Those issues are not raised in this case. There is no claim that the Level 6 or 5 Clerks temporarily assigned to Level 4 Mail Processor work are in a separate occupational group, as that term is used in the National Agreement.

AWARD

The Postal Service is not required to justify cross-wage level assignments within the Clerk Craft such as those involved in this grievance under Article 7.2.B, and that provision is not violated by such assignments.

Shyam Das, Arbitrator

ARBITRATION AWARD

July 9, 1982

UNITED STATES POSTAL SERVICE
Monongahela, Pennsylvania

-and-

Case No. H8T-2F-C-6605 (A8-E-1102)

AMERICAN POSTAL WORKERS UNION

Subject: Reduction in Hours of Work per Week - Part-Time Regular Employee

Statement of the Issue: Whether the Postal Service's action in permanently reducing the work week for a part-time regular employee from 30 to 20 hours was a violation of Articles V, VI, VII or XII?

Contract Provisions Involved: Articles III, V, VI, VII, VIII, XII, XIII, and XV of the July 21, 1978 National Agreement.

Grievance Data:

	Date
Grievance Filed:	July 9, 1980
Step 1 Answer:	July 9, 1980
Step 2 Answer:	July 29, 1980
Step 3 Answer:	October 31, 1980
Step 4 Answer:	March 5, 1981
Appeal to Arbitration:	March 12, 1981
Case Heard:	February 23, 1982
Transcript Received	March , 1982
Briefs Submitted:	April 8, 1982

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in permanently reducing the work week for a part-time regular employee from 30 to 20 hours. The Union claims this reduction was a violation of Articles V, VI, VII and XII of the 1978 National Agreement.

M. Yevcinez was first employed at the Monongahela Post Office in February 1963 on the basis of a "temporary appointment." He was terminated and rehired several times in the next four years. He was finally given a "career appointment" as a Laborer-Custodian on December 30, 1967. He was considered a part-time regular employee* and was scheduled for 40 hours a week. His schedule was reduced to 30 hours in June 1968. No grievance was filed objecting to that reduction.

Before the instant dispute arose in 1980, Monongahela had been authorized 70 hours of maintenance and custodial work per week. This work was done by two employees. One was a full-time regular, a Level 4 Maintenance Man, who was scheduled 40 hours per week. The other, Yevcinez, was a part-time regular, a Level 3 Laborer-Custodian, who was scheduled 30 hours per week.

A maintenance audit was performed in April 1979 by a team from the Management Sectional Center (MSC) in Pittsburgh. That audit resulted in a MSC decision that the authorized hours of maintenance and custodial work for the Monongahela Post Office be reduced from 70 to 48 per week. The Monongahela Postmaster sought 60 hours per week on the ground that certain work had not been taken into consideration. The MSC was sympathetic to his appeal and advised him in late January 1980 that Monongahela was authorized 60 hours of maintenance and custodial work per week.

Monongahela had to adjust its employee work schedules to comply with this 60-hour authorization. It continued to schedule the one full-time regular 40 hours per week. It permanently reduced the schedule of the one part-time regular, Yevcinez, from 30 to 20 hours per week. This reduction prompted the present grievance. The Union's position is that the Postal Service may not permanently reduce the weekly work hours of a part-time regular. It believes that such a reduction is a violation of Articles V, VI, VII and XII of the National Agreement.

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* The part-time regular employee was then referred to as an "hourly rate regular."

DISCUSSION AND FINDINGS

Article VII (Employee Classifications) is the proper starting point for any analysis of this dispute. It states that the "regular work force" will consist of two kinds of employees. One is "full-time" employees who, pursuant to Section 1-A-1, "shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week." The other is "part-time" employees who, pursuant to Section 1-A-2, "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..."

The difference between these employee categories is clear. Yevcinez, the grievant, is a part-time regular. Before this dispute arose, his "regular schedule" was 30 hours a week. Then, at the time this dispute arose, his "regular schedule" was changed to 20 hours a week. In either event, he was "assigned to [a] regular schedule...of less than forty (40) hours in a service week..." That is precisely what Article VII, Section 1-A-2 contemplates for a part-time regular. There plainly has been no violation of Article VII.

These contract provisions, however, form the underlying basis for the Union's argument. It asserts that the "only difference" between a full-time regular and a part-time regular is "the number of regularly scheduled hours in the work week." It maintains that because the full-time regular cannot have his hours reduced to less than 40, the part-time regular similarly cannot have his hours reduced below whatever they happened to have been when he was hired. Its post-hearing brief indicates that this analogy goes to the very heart of its case:

> "...Thus, the Union believes that when a part-time regular is hired at a given number of hours ...those hours become a guarantee below which the employee cannot be reduced, anymore than a full-time regular can arbitrarily have his hours reduced to less than 40..." (Brief p. 3)

It has no objection to an initial 20-hour schedule. Rather, its objection is to the reduction of the part-time regular from a 30-hour schedule to a 20-hour schedule.

The difficulty with the Union's argument is that its analogy is not at all convincing. A part-time regular is

not a full-time regular. They are separate and distinct employee categories. They are not governed by the same contract principles. Hence, the existence of a 40-hour floor for a full-time regular does not suggest any comparable floor for a part-time regular. Article VII, Section 1-A-2 does not establish minimum weekly hours for a part-time regular. It simply says that part-timers "shall be assigned to regular schedules of less than forty (40) hours in a service week..." Those "regular schedules" can encompass any number of hours less than 40. There is no minimum, no floor.

The proposition the Union appears to be urging is that once a part-time regular has been placed on a "regular schedule", here 30 hours per week, that "schedule" is irreducible. It believes the number of hours in this employee's initial "regular schedule" cannot be decreased.

Nothing in Article VII supports this proposition. One must look elsewhere in the National Agreement for guidance. The only provision which seems to address the matter of changes in the work week, changes in the number of scheduled hours, is Article VIII (Hours of Work). It reads in part:

> "Section 1. Work Week. The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day...Shorter work weeks will, however, exist as needed for part-time regulars.
>
> "Section 2. Work Schedules...
>
> "Section 3. Exceptions...Part-time employees will be scheduled in accordance with the above rules, except that they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week." (Emphasis added)

The critical sentence is found in Article VIII, Section 1, "Shorter work weeks will...exist as needed for part-time regulars." These words plainly imply that a part-time regular's work week is not necessarily fixed. His work week may be "shorte[ned]" as the "need[s]" of postal operations dictate. And, as those "need[s]" change again, his work week could surely be extended to what it originally was. For "shorter work weeks" are to "exist" only for such time "as"

they happen to be "needed." The parties thus appear to have accepted the idea that the work week of part-time regulars was subject to change. Had they intended to freeze the work week of such employees, as the Union contends, they would hardly have embraced the concept of "shorter work weeks...as needed." Nothing in the National Agreement points to such a freeze. Neither Article VIII nor any other contract provision prohibits the Postal Service from reducing the work week of a part-time regular because of operational need[s]".*

Even the Union concedes that the Postal Service has some flexibility with respect to a part-time regular's schedule. It acknowledges that the number of hours in his original weekly schedule can be increased. It protests only the situation in which the number of hours is decreased. Its argument nevertheless recognizes that the work week for a part-time regular is subject to change. The logic of the National Agreement, particularly Article VIII, indicates that this change can be in either direction. The Union's attempt to limit the change to a "longer" work week flies in the face of the Article VIII, Section 1 reference to a "shorter" work week.

My conclusion is that Article VIII, read together with the Management Rights in Article III "to maintain the efficiency of the operations..." and "to determine the methods [and] means...by which such operations are to be conducted", allow the Postal Service to reduce the number of hours of work of a part-time regular below the number he customarily had been scheduled to work. The reduction of the grievant's hours from 30 per week to 20 per week was permissible under the terms of the National Agreement given the needs of the Monongahela Post Office.

There remain several allegations regarding Articles V, VI and XII of the National Agreement. The Union asserts that each of these articles was violated by the Postal Service's action in reducing the grievant's scheduled hours from 30 per week to 20 per week.

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* Article VIII, Section 3 indicates, as does Article VII, that there is no floor on the weekly hours of a part-time regular. It says "part-time [regulars]...may be scheduled for...less than forty (40) hours per normal work week." A part-time regular could be scheduled 30 hours per week or 20 hours per week or less. All such schedules would be permissible under this contract language.

Article V provides that the Postal Service "will not take any actions affecting...hours...as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement..." For the reasons already stated, I have held that the reduction in the grievant's hours did not violate the National Agreement. It follows that there has been no violation of Article V.

Article VI provides that employees in the regular work force as of September 15, 1978, "shall be protected henceforth against any involuntary layoff or force reduction." The grievant was part of the regular work force as of September 15, 1978. However, the Postal Service's action in reducing his weekly hours from 30 to 20 did not subject him to an "involuntary layoff or force reduction." The provisions of Article VI do not appear to be applicable to the facts of this case.

Article XII, Sections 5-C-5 and 5-D* provides various principles and procedures for handling a "reduction in the number of employees in an installation other than by attrition." It details exactly how "reassignments within [an] installation" and "reassignments to other installations" are to be made. It protects "part-time regular employees within their own category." However, none of this is relevant to the instant dispute. For there was no "reduction in the number of employees..." in the maintenance/custodial group in the Monongahela Post Office. There were two employees in this group before this grievance arose; there were two employees in this group after this grievance arose. A reduction in hours for one of the two employees is not tantamount to a "reduction in the number of employees..." There has been no violation of Article XII.

I find, accordingly, that the reduction in the grievant's scheduled hours was not a violation of the National Agreement.

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* I shall assume, for purposes of this case, that these provisions were raised by the Union in the course of the grievance procedure and are hence properly before me in this arbitration.

AWARD

The grievance is denied.

Richard Mittenthal, Arbitrator

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
THE LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, MAIL HANDLERS
DIVISION

The parties to the Joint National Study Committee on Part-time Regular Mail Handlers mutually agree to the following:

1. That the United States Postal Service will not hire or assign part-time regular Mail Handlers in lieu of or to the detriment of full-time regular or part-time flexible Mail Handlers.

2. With regard to scheduling, part-time regular Mail Handlers are to be regularly scheduled during specific hours of duty. Only in emergency or unanticipated circumstances will part-time regular Mail Handler work hours be expanded beyond their fixed schedules.

3. When it is necessary that fixed scheduled day(s) of work or starting times in the basic work week for a part-time regular craft assignment be permanently changed, the provisions of Article 12, Sections 3.B4 and 3.B6 will be followed.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department

DATE 9/19/88

Joseph N. Amma, Jr.
Director of Contract
Administration
Laborers' International Union
of North America, AFL-CIO
Mail Handlers Division,

DATE 9/22/88

In the Matter of the Arbitration between AMERICAN POSTAL WORKERS UNION and UNITED STATES POSTAL SERVICE	CASES NO. H1C-5F-C 1004 1007 Colorado Springs, Colo OPINION AND AWARD

Appearances:

For the USPS - Robert L. Eugene, Labor Rel. Specialist
Danny Jackson, Acting Mgr., Cust. Svces.

For the APWU - Kenneth D. Wilson, Administrative Aide
Jon Numair, Local President
Mike Benner, Pres., SDM Division

Background:

These cases came on for arbitration pursuant to the provisions of the current collective bargaining agreement and a jointly signed letter dated May 25, 1982.

By agreement, the matter in issue was defined as follows:

> "Did management violate Article 8 and Article 19 of the National Agreement when it changed the grievants' schedules on October 30, 1981, and October 23, 1981, respectively, and, therefore, are the grievants entitled to out-of-schedule pay for the period they worked from October 30, 1981 and October 23, 1981, until they were placed in preferred duty assignments either by bid or by assignment to residual vacancies?"

These Parties also agreed upon a stipulated set f facts which they believed were pertinent to the proper disposition of this dispute,

> "1. The grievance is timely and properly before the Arbitrator.
>
> "2. The grievants were converted from part-time flexible status to full-time regular status on August 22, 1981. They were allowed to work regular schedules as follows:
>
> a. Anderson - 0900 hours to 1800 hours, Monday, Tuesday, Wednesday and Friday, and 0800 hours to 1700 hours on Saturday, and off on Thursday and Sunday.
>
> b. Bendekovic - 0830 to 1730 M,T,W,F; 0630 - 1500 SA; off TH, SU
>
> "3. The grievants' duty status at that time was unassigned, as they had not achieved preferred duty assignments by bidding or by assignment to residual vacancies at that time.
>
> "4. In October of 1981, management changed the schedules in the following manner:
>
> a. Anderson - Oct 30, 1981 to 2200-0630, TU-WE off.
>
> b. Bendekovic - October 23, 1981 to 2200 - 0630, TU-WE off.
>
> "5. The grievants were officially assigned to the new schedules until they were placed in new duty assignments, either by bid or by assignment to residual vacancies."

The Parties also stipulated at the opening of this hearing that there were two grievances properly befo; the Arbitrator. The first involves L. Anderson and the second G. Bendekovic. Both work out of the Colorado Springs Post Office.

Contentions of the Parties:

According to the Union, the case is a simple one. The issue posed is whether Anderson and Bendekovic, who were converted from part-time flexibles to full-time regulars and assigned a set of duty hours on August 22, 1981, and who had their schedules changed without the benefit of a bid or a residual vacancy, entitled to out-of-schedule overtime.

The Union contended that the failure to pay the out-of-schedule overtime violated Article 8, Section 4.B of the current National Agreement. Additionally, the Union argued that, pursuant to Article 19 of the Agreement, Handbook EL-401's terms and conditions have become part of the National Agreement. According to the Union, the provisions of that Handbook decree that employees similarly situated to the grievants herein are eligible for and should receive out-of-schedule overtime.

It was the Union's position that the Postal Service could not distinguish between permanent changes made in the schedules of unassigned regulars asagainst changes made in the schedules of full-time regulars. Such distinction is not provided for in the provisions of Article 37, Section 3 which deals with the posting and bidding for duty assignments in the Clerk Craft.

Finally, the Union addressed the documentation submitted by the Employer in support of its position. The Union asserted that certain arbitration awards cited by the Employer were issued prior to the publication of EL-401, and the other documents do not relate to the subject matter of unassigned regulars and also predate the provisions of EL-401.

Management contended that the Union's reliance upon the provisions of EL-401 was misplaced. Management took the position that EL-401 was not a Handbook issued pursuant to Article 19, and the Postal Service had taken the position that, when the directives contained in that Handbook were published for supervision, no changes relating to wages, hours or working conditions of bargaining employees were made by its terms. The Union filed no grievance, under Article 19, because this Handbook was issued.

The Postal Service argued that, in any event, it had followed the dictates of that Handbook. This Guide did not provide that regular work schedules could not be changed on a temporary or permanent basis to meet the operational needs of the

service. Since the Guide does not provide that permanent changes in schedule require the payment of out-of-schedule compensation, the changes made in the schedules of the Grievants, with whom this case is concerned, would not require that this additional compensation be paid. These Grievants were reassigned permanent changes in their hours of work. The Service contended that management rights, as set out in Article 3 of the National Agreement, as well as other provisions of the Time and Attendance Manual and the Employee and Labor Relations Manual made it clear that Management had not bargained away its right to make the changes in schedules with which we are here concerned nor had it issued any directive or publication which would bar it from assigning unassigned regulars to permanent schedule changes due to operational needs.

Management also addressed some of the documentation which the Union submitted in support of its case. It was the position of the Postal Service that Notice No. 114, resulting from the issuance of the Groettum decision, dealt with temporary schedule changes and the instant case, as the USPS alleged, was concerned with a permanent schedule change.

As to the provisions of Article 37, the Postal Service took the position that there are two types of full time regular employees, assigned and unassigned. For the latter classification, the Postal Service argued that no language precludes the Service from making a permanent change in the fixed schedule of such employees. The fact that Section 3-F-10 of that Article provides for how changes in schedule could be made by bid or residual assignment for such unassigned regulars does not mean there could not be other means for making such changes. Changes in schedules for unassigned regulars were not always made, by practice, to a vacant assignment.

The Postal Service also adduced testimony for the purpose of establishing that there were bona fide operational reasons for making these schedule changes at the Colorado Springs Post Office.

OPINION OF THE ARBITRATOR:

As stated earlier, this case is concerned with the question of whether the National Agreement provides that these two grievants, who were converted from part-time flexible positions to full-time regular positions and then assigned a set schedule of hours of work, could have that schedule changed,

without the benefit of their bidding for such a change in assignment or required to fill a residual vacancy, and not be considered entitled to out-of-schedule overtime.

Article 8, Section 4-B of the National Agreement reads as follows:

> "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." (underlining supplied by the writer)

The dispute arose when these two unassigned regular employees at the Colrado Springs Post Office, who were converted to this regular status in the Clerk Craft on August 22, 1981, and were at that time assigned regular duty hours and days off, were subsequently reassigned to changed hours of work, on a different shift and with other days off.

The Union protested that these employees were due payment for time worked outside their regularly scheduled work week, albeit that change in assignment may have been made to meet operational needs of the Service. In effect, the USPS argued that this was a permanent change, and as such these employees were not entitled to receive such overtime pay.

The implementation of scheduling practices and the payment of premium pay is guided by the provisions of Handbook EL-401, which was issued in March of 1981. As stated in the prefatory comment on its first page, this Guide is provided as a management tool to enable supervisors not only to comply with the requirements of the FLSA but also "...postal policy and established contractual agreements." Although this Publication does state that it does not address every question of policy relating to time and attendance, it goes on to state the major topics of concern to each line supervisor and manager are addressed.

This Handbook does provide guidance as to how Management shall comply with "established postal policy and established contractual agreements" regarding out-of-schedule assignments of

"Unassigned Regular Full-Time Employees Out-Of-Schedule." Specifically, under the heading of III Premium Situations, this Handbook states as follows:

> "5. Unassigned Regular Full-Time Employees Out-Of-Schedule. All unassigned regular full-time employees must be assigned regular work schedules. When not assigned to a posted position, employees assume as their regular work schedule the hours worked in their first week of the pay period in which the change to unassigned regular occurred. When a part-time flexible (PTF) employee is converted to full-time regular, and is not assigned to a full time bid position, the employee becomes an unassigned regular. (See Article VII, Section 3 of the National Agreement.)
>
> "These employees are assigned regular work schedules and are eligible for out-of-schedule overtime. Temporary rescheduling must be compensated at the appropriate premium rate(s).
>
> "A management-directed permanent assignment of an unassigned regular to a specific posted position which went unbid in accordance with provisions in the National Agreement, requires no payment of out-of-schedule overtime."

This clear language in Handbook EL-401, with its reference to "full time bid positions" and "posted provisions" and unbid vacancies permitting management directed assignments, refers the reader to the pertinent provisions of Article 37, which deals with posting and bidding of vacancies for the Clerk Craft among other subjects of concern to that Craft. After dealing with the subject of filling of vacancies and the posting and bidding requirements to do so, Subsection 3-F-10, of that Article provides:

> "10. An unassigned full-time regular employee should bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, or is the unsuccessful bidder, such employee shall be assigned in any residual assignment. The employee's preference will be considered if there is more than one assignment available and shall be honored except where an employee can be assigned to any available duty assigment for which he/she is currently qualified (including scheme requirements)."

The Postal Service sought to establish that no Article 19 of the National Agreement obligation was raised by its publication of Handbook EL 401. It claimed that nothing in the Handbook did not comply with the terms of that National Agreement. It also claimed that this Handbook did not stop the making of changes in regular work schedules on a temporary or regular basis due to operational reasons.

That is quite true, the Postal Service is not prohibited from making such changes in assigned hours of work. The question with which we are here concerned is whether when such changes are made does the Service undertake a premium pay obligation.

Recognizing this, the Service argued that this Guide required payment when a temporary change was made but not when the Service chose to make a permanent change in shifts, hours, or days off for Unassigned Regulars. That contention flies squarely in the face of the posting, bidding and filling of vacancy provisions of Article 37 of the National Agreement. The so-called "permanent" vacancies which Anderson and Bendekovic were called upon to fill could only be filled, in compliance with Article 37, if they bid for such permanent vacancies, with different hours of work, which had been posted for their craft, or they were required to accept a residual assignment because they failed to bid or were unsuccessful bidders.

That is not what happened in this case. Both Anderson and Bendekovic were assigned to new hours of work because the senior bidders for certain vacancies were not qualified on the schemes and the office was approaching the holiday season. As Article 37.3-F-3 requires, "When the duty assignment requires scheme knowledge,...If the senior bidder is not qualified on essential scheme requirements when posting period is closed, permanent filling of the preferred assignment shall be deferred until such employee is qualified on the essential scheme requirements, but not in excess of 90 days."

Because of this contractual obligation, Management attempted to distinguish between being placed in a particular duty assignment and being placed in a schedule of hours and days off. That is a distinction that does not appear to find support in the filling of vacancy provisions of the National Agreement. The description of what motivated management to reassign Anderson and Bendekovic other hours than those they worked in the first week

they became unassigned regulars established that this was caused by the existence and filling of permanent vacancies which the senior bidders were not as yet qualified to fill. Anderson and Bendekovic had their tours and days off changed to meet manpower needs of the moment. The testimony of the Acting Manager of Customer Services at Colorado Springs pointed out the existence of a manpower shortage at the time these two grievants had their assignments changed. The other requirement, "to assign regular work schedules" when they became unassigned regulars appears to have been overlooked.

Again, despite the contention that Anderson and Bendekovic were given permanent rather than temporary assignments when their hours and days off were changed from those of their initial assignment in their first week in the new payroll status, the testimony of this same witness revealed that, as of the date of the arbitration hearing, one of them did bid a preferred bid assignment and was in a deferment period and the other was also in a deferment period after having been assigned a particular residual vacancy. From these subsequent assignments, it does not appear that either of these grievants could have been regarded as filling a permanent vacancy when they were assigned to Tour One.

For all the reasons set forth above, the Undersigned must find that these two grievants were temporarily assigned to out-of-schedule hours on October 23, 1981 and October 30, 1981 respectively, and that the USPS is obligated, under Article 8, Section 4-B of the National Agreement to pay them overtime for working outside their regularly scheduled work week at the request of the Employer. That obligation of the USPS shall cease or shall have ceased when proper schedule changes were made as required by the cited provisions of the National Agreement and the guidance contained in Handbook EL 401, or these employees are returned to their former schedules.

A W A R D

The grievances filed by the APWU on behalf of these grievants are sustained. The terms of the appropriate remedy are set forth in the paragraph of the Opinion immediately above.

Howard G. Gamser

HOWARD G. GAMSER, NATIONAL ARBITRATOR

Washington, DC
September 10, 1982

c. A holiday scheduling premium equal to 50 percent of the amount paid in 434.53a is paid to eligible employees for time actually worked on a holiday or on the employee's designated holiday (except Christmas) when the holiday schedule is not posted in accordance with national agreements, as follows:

(1) If the schedule is not posted as of Tuesday preceding the service week in which the holiday falls, a full-time regular bargaining unit employee who is required to work on his or her holiday or designated holiday, or who volunteers to work on that day, receives *holiday scheduling premium* for each hour of work, not to exceed 8 hours. This premium is in addition to both holiday leave pay and holiday-worked pay.

(2) In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises that requires the use of manpower on that holiday in excess of that scheduled in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) do not receive *holiday scheduling premium.*

(3) When a full-time regular employee who is scheduled to work on a holiday is unable to or fails to work on the holiday, the supervisor may require another full-time regular employee to work the schedule, and the replacement employee is not eligible for *holiday scheduling premium*.

(4) Employees are not eligible for *holiday scheduling premium* while temporarily assigned to nonbargaining positions.

d. For those eligible employees who receive TCOLA (439.1), Christmas-worked pay and the holiday scheduling premium are paid at 50 percent of the employee's basic rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In those workweeks when FLSA overtime is not earned, these premiums are calculated in accordance with 434.53b or 434.53c.

434.6 Out-of-Schedule Premium

434.61 Policy

434.611 General

Out-of-schedule premium is paid 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.

434.612 Timely Notice

Payment of out-of-schedule premium is dependent on timely notice being given by management of the temporary schedule change, as follows:

a. 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, the employee's time can be limited 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.

b. 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 his or her regular schedule. Therefore, any hours worked in addition to the employee's regular schedule are not worked "instead of" his or her regular schedule. The additional hours worked are not considered as 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.

434.613 **Application**

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 that result in paid hours in excess of 8 hours per service day or 40 hours per service week are to be recorded as overtime (see 434.1).

434.614 **Examples**

See Exhibit 434.614.

Example: An employee is notified by Wednesday of the preceding service week to work a temporary schedule the following service week from 6:00 a.m. to 2:30 P.M., instead of his or her regular schedule from 8:00 a.m. to 4:30 P.M. The employee is paid 2 hours out-of-schedule premium for the hours worked from 6:00 A.M. to 8:00 A.M. and 6 hours' straight time for the hours worked from 8:00 A.M. to 2:30 P.M. If in this situation the employee continues to work into or beyond the balance of his or her regular schedule (2:30 P.M. to 4:30 P.M.), then he or she is to be paid for hours worked in accordance with Exhibit 434.614.

Example: An employee's regular schedule is Monday through Friday and he or she is given a temporary schedule of 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. If, however, the employee also works his or her regular schedule on Friday, then there can be no out-of-schedule premium hours; the hours worked on Sunday would be paid as regular overtime hours worked in excess of 40 in the service week.

Exhibit 434.614
Computing Out-of-Schedule Premium Hours

Hours Worked	Total Work Hours	Out-of-Schedule Premium Hours	Straight Time Hours	Overtime Hours
6:00 AM–2:30 PM	8	2	6	0
6:00 AM–3:30 PM	9	1	7	1
6:00 AM–4:30 PM	10	0	8	2
6:00 AM–5:30 PM	11	0	8	3

434.62 Eligibility

434.621 Eligibility for Out-of-Schedule Premium

Exhibit 434.621 indicates those employees who are eligible to receive out-of-schedule premium while working a qualifying temporary schedule within a bargaining unit or while detailed to a nonbargaining position (see exceptions in 434.622).

Exhibit 434.621
Out-of-Schedule Premium Pay Eligibility Table

Rate Schedule	Employee Classification			
	Full-time Regular	Part-time Regular	Part-time Flexible	Casual,* Temporary and PM Relief
B — Rural Auxiliary	–	–	No	No
C — MESC	Yes	No	No	–
E — EAS	No[2]	No	–	No
F — Postmasters (A–E)	–	No	–	No
G — Nurses	Yes	–	No	No
K — HQ Op. Services Div.	Yes	–	–	–
L — Postmaster Replacement	–	–	–	No
M — Mail Handlers	Yes	No	No	–
N — Data Center	Yes[1]	–	No	–
P — PS	Yes[3]	No	No	–
Q — City Carriers	Yes[3]	No	No	–
R — Rural Carriers	No	–	No	–
S — PCES	No	–	–	–
T — Tool and Die	No	–	No	–
Y — Postal Police	Yes	–	No	–

* *Casual employees are covered in RS-E regardless of the bargaining unit they supplement.*

1. *Grades 18 and below when the change exceeds 1 hour and lasts for more than 1 week.*
2. *See 434.7 for coverage under the Nonbargaining Rescheduling Premium.*
3. *Employees in the clerk-craft are not eligible for out-of-schedule premium when detailed to a nonbargaining position.*

434.622 Exceptions

Eligible employees are not entitled to out-of-schedule premium under the following conditions:

a. When detailed to a postmaster position as officer in charge.

b. When detailed to a rural carrier position.

c. When detailed to an ad hoc position, for which the employee applies and is selected, when the core responsibilities of the position require work on an irregular schedule.

d. When detailed to either a bargaining unit or nonbargaining position in grade 19 and above.

e. When attending a recognized training session that is a planned, prepared, and coordinated program or course.

f. When assigned to light duty according to the provisions of the collective bargaining agreement or as required by the Federal Employee Compensation Act, as amended.

g. When allowed to make up time missed due to tardiness in reporting for duty.

h. When in accord with and permitted by the terms of a bid.

i. When a request for a schedule change is made by the employee for personal reasons and is agreed to by the employee's supervisor and shop steward or other collective bargaining representative.

j. When the collective bargaining agreement that covers the employee states that employees detailed to nonbargaining unit positions are not entitled to out-of-schedule premium.

k. When the assignment is made to accommodate a request for intermittent leave or a reduced work schedule for family care or serious health problem of the employee (see 515.6).

434.63 Pay Computation

Provisions concerning pay computation are as follows:

a. Out-of-schedule premium is paid to eligible personnel in addition to the employee's hourly rate and at 50 percent of the hourly rate for qualifying hours worked up to 8 hours in a service day or 40 hours in a service week.

b. For those eligible employees who receive TCOLA (439.1), this premium is paid at 50 percent of the employee's rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In workweeks when FLSA overtime is not earned, this premium is calculated in accordance with 434.63a.

c. All leave paid to an employee who is in an out-of-schedule status is paid at the employee's straight time rate.

434.7 Nonbargaining Rescheduling Premium

434.71 Policy

Nonbargaining rescheduling premium is paid to eligible nonbargaining unit employees for time actually worked outside of and instead of their regularly scheduled workweek when less than 4 calendar days notice of the schedule change is given. It is not paid beyond the 4th calendar day after the notice of schedule change is given. Neither is it paid when the assignment is made to accommodate an employee's request.

434.72 Eligibility

All nonexempt full-time nonbargaining unit employees grade 18 and below are eligible for nonbargaining rescheduling premium. Full-time nonexempt postmasters and officers in charge, however, are only eligible when their schedule is changed because their relief is not available to work the sixth day (see 432.34).

434.73 Pay Computation

Provisions concerning pay computation are as follows:

a. Nonbargaining rescheduling premium is paid to eligible personnel in addition to the employee's hourly rate and at 50 percent of the hourly rate for all actual workhours up to 8 hours in a service day or 32 hours in a service week.

b. For those employees who receive TCOLA (see 439.1), this premium is paid at 50 percent of the employee's rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In those workweeks when FLSA overtime is not earned, this premium is calculated in accordance with 434.73a.

434.8 Pyramiding of Premiums

See Exhibit 434.8 for a decision table for situations when an employee may be eligible for more than one type of premium pay for the same hour of work.

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

NOV 25 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: NALC Branch
Venice, CA
NC-W-9013/W824-77N

Dear Mr. Riley:

On November 8, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Based on the evidence presented in this grievance, we find that part-time flexible employees are not guaranteed forty hours in a work week. In addition, the National Agreement does not require that part-time flexible employees be scheduled in advance. However, there is no contractual provision, nor is it intended, that part-time flexible employees are required to remain at their home or to call the Post Office to ascertain whether their services are needed. Local management should attempt to schedule part-time flexibles in advance wherever possible and fully utilize those part-time flexibles employees on straight time whenever possible prior to scheduling full-time employees on overtime unless that overtime is on the carrier's own route.

Therefore, we find that the issues raised are resolved and this grievance is closed.

Sincerely,

Michael J. Harrison

Michael J. Harrison
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

September 30, 1982

Mr. Halline Overby
Assistant Secretary Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: Class Action
St. Clair Shores, MI 48080
HSM-4B-C 26754

Class Action
St. Clair Shores, MI 48080
HSM-4B-C 24748

Dear Mr. Overby:

On several occasions, the most recent being September 22, 1982, we met on the above-captioned cases at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

The question raised in these grievances involve whether local management violated the terms of the National Agreement when they advised part-time flexible carriers that they would be contacted by telephone if needed on a nonscheduled day.

After further review of this matter, we mutually agreed that no National interpretive issue is fairly presented in the particulars evidenced in these cases. Part-time flexible carriers cannot be required to "stand-by" or remain at home, under the threat of discipline, for a call-in on a nonscheduled day. Should a supervisor be unable to contact an employee whose services are needed, the employee merely remains nonscheduled for that day. The fact circumstances of this dispute must be adjudicated within this mutual understanding.

Accordingly, as we further agreed, these cases are hereby remanded to the parties at Step 3 for further processing if necessary. Please sign a copy of this letter as your acknowledgment of agreement to remand these cases.

Sincerely,

Howard R. Carter
Labor Relations Department

Halline Overby
Assistant Secretary Treasurer
National Association of Letter
Carriers, AFL-CIO

assigned as needed. Otherwise, the basic full-time workweek consists of 5 regularly scheduled 8-hour days within a service week.

Note: The daily 8-hour schedule may not extend over more than 10 consecutive hours.

432.32 Maximum Hours Allowed

Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the postmaster general (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 workhours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters and exempt employees are excluded from these provisions.

432.33 Mealtime

Except in emergency situations or where service conditions preclude compliance, no employee may be required to work more than 6 continuous hours without a meal or rest period of at least 1/2 hour.

432.34 Postmasters

A full-time postmaster is scheduled to work a 40-hour workweek. Normally, this regular work schedule is set at 8 hours a day and 5 days a week, Monday through Friday. When a nonexempt postmaster is required to work on the sixth day because relief is not available, premium pay at 150 percent of the postmaster's basic salary is paid for this time. Equivalent time off from work is not authorized to avoid the payment of this premium. Thus, either nonbargaining rescheduling premium or the better of postal or FLSA overtime, as appropriate, is paid.

432.4 Service Periods

432.41 Pay Period

A pay period begins on Saturday and ends on Friday. Each pay period comprises 2 service weeks.

432.42 Service Week

A service week is the calendar week beginning at 12:01 A.M. Saturday and ending at 12:00 midnight the following Friday. This service week remains fixed regardless of the schedule of hours worked by individual employees.

432.43 Service Day

The service day is a calendar day, 12:01 A.M. to 12 midnight. An employee's service day depends on his or her schedule, as follows:

a. *Full-time Employees.* For a full-time employee whose regular schedule begins at 8:00 P.M. or later, the service day is the next calendar day, and all workhours (including preshift workhours), as well as leave hours, are recorded on that calendar day. If the employee's regular schedule begins prior to 8:00 P.M., the service day is the calendar day on which the schedule begins, and all work and leave hours are recorded on that calendar day.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

APR 22 1986

Mr. Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Roanoke, VA 24022
H4C-2U-C 807

Class Action
Roanoke, VA 24022
H4C-2U-C 1396

Dear Mr. Wevodau:

On January 7, 1986, and again on April 2, 1986, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether management violated the National Agreement by requiring PTF employees to work 12 1/2 hours in one service day.

During our discussion, we mutually agreed that the following constitutes full settlement of these cases:

> Except in emergency situations as determined by the PMG (or designee), these employees may not be required to work more than 12 hours in one service day. In addition, total hours of daily service, including scheduled work hours, overtime, and meal time, may not be extended over a period longer than 12 consecutive hours.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle these cases.

Time limits were extended by mutual consent.

Sincerely,

Muriel A. Aikens
Labor Relations Department

Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO

MEMORANDUM OF INTERPRETATION

Article VII, "Employee Classifications," Section 1 (B) defines part-time employees as:

1. Persons assigned to regular schedules of less than forty (40) hours per service week (herein designated as part-time regular scheduled employees), or
2. Persons available for work on a flexible work schedule during the course of a service week (herein designated as part-time flexible employees).

It is the understanding of the parties that part-time regular scheduled employees are only those employees who have been formally designated by the Employer as "part-time employees assigned to regular schedules of less than forty (40) hours during the course of a service week." It is further understood by the parties that while it is frequently necessary to require part-time flexible employees to work the same hours daily over a substantial period of time, Article VII, Section 1(B) is properly interpreted by the parties to provide that only those employees who have been formally designated by the Employer as part-time regular scheduled employees will be considered for the purposes of this Agreement as employees assigned to regular work schedules. Nothing herein shall be interpreted as impairing the obligations of the Employer under Section 3 of Article VII.

Article VIII, Section 4 (B) insofar as it alludes to payment of overtime to employees for work outside of their regular work schedules, shall be interpreted by the parties to mean that it has no application to either employees assigned a regular schedule of less than

forty (40) hours during the course of a service week (herein designated as part-time regular scheduled employees) or employees who are available for work on a flexible work schedule during the course of a service week (herein designated as part-time flexible employees).

All part-time employees are eligible for overtime only after eight (8) hours per day or forty (40) hours per week as provided in the first sentence of Article VIII, Section 4B referred to above.

Article VIII, Section 6

It is mutually understood and agreed that Article VIII, Section 6, entitled "Sunday Premium" shall be interpreted by the parties to mean any part-time employee who has a period of service on Sunday shall be entitled to "Sunday Premium" payment whether he works a regular schedule or not, except casuals, commencing 11/27, 1971.

Article VIII, Section 8

It is mutually understood and agreed that the first full paragraph of Article VIII, Section 8, shall be interpreted by the parties to provide that a part-time flexible employee who has completed his work assignment, clocked-out and left the premises and who is subsequently called in to work on that same service day shall be entitled to the call-in guarantee provided for by the first full

paragraph of Article VIII, Section 8, commencing November 13, 1971.

It is expressly understood by the parties that this interpretation in no way alters or affects the meaning or application of the provisions of the second full paragraph of said Article VIII, Section 8, of the Agreement.

Except as herein expressly provided, nothing set forth in this document shall be construed to constitute a waiver by the Unions of their position concerning those items set forth in their statement of Union position bearing the date of October 15, 1971 (a copy of which is attached hereto) which items are yet unresolved as of the date set forth below.

November 4, 1971

U. S. Postal Service
by Special Assistant
to the Postmaster
General

General President
American Postal Workers Union, AFL-CI
comprised of: Clerk Craft Division;
Motor Vehicle Services Craft Divisio:
Special Delivery Messenger Craft
Division; Maintenance Craft Division

National Association of Letter Carrie
AFL-CIO

National Post Office Mail Handlers,
Watchmen, Messengers and Group Leade:
Division of Laborers' International
Union of North America, AFL-CIO

National Rural Letter Carriers
Association

ARBITRATION AWARD

July 9, 1982

UNITED STATES POSTAL SERVICE
Monongahela, Pennsylvania

-and-

Case No. H8T-2F-C-6605 (A8-E-1102)

AMERICAN POSTAL WORKERS UNION

Subject: Reduction in Hours of Work per Week - Part-Time Regular Employee

Statement of the Issue: Whether the Postal Service's action in permanently reducing the work week for a part-time regular employee from 30 to 20 hours was a violation of Articles V, VI, VII or XII?

Contract Provisions Involved: Articles III, V, VI, VII, VIII, XII, XIII, and XV of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	July 9, 1980
Step 1 Answer:	July 9, 1980
Step 2 Answer:	July 29, 1980
Step 3 Answer:	October 31, 1980
Step 4 Answer:	March 5, 1981
Appeal to Arbitration:	March 12, 1981
Case Heard:	February 23, 1982
Transcript Received	March , 1982
Briefs Submitted:	April 8, 1982

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in permanently reducing the work week for a part-time regular employee from 30 to 20 hours. The Union claims this reduction was a violation of Articles V, VI, VII and XII of the 1978 National Agreement.

M. Yevcinez was first employed at the Monongahela Post Office in February 1963 on the basis of a "temporary appointment." He was terminated and rehired several times in the next four years. He was finally given a "career appointment" as a Laborer-Custodian on December 30, 1967. He was considered a part-time regular employee* and was scheduled for 40 hours a week. His schedule was reduced to 30 hours in June 1968. No grievance was filed objecting to that reduction.

Before the instant dispute arose in 1980, Monongahela had been authorized 70 hours of maintenance and custodial work per week. This work was done by two employees. One was a full-time regular, a Level 4 Maintenance Man, who was scheduled 40 hours per week. The other, Yevcinez, was a part-time regular, a Level 3 Laborer-Custodian, who was scheduled 30 hours per week.

A maintenance audit was performed in April 1979 by a team from the Management Sectional Center (MSC) in Pittsburgh. That audit resulted in a MSC decision that the authorized hours of maintenance and custodial work for the Monongahela Post Office be reduced from 70 to 48 per week. The Monongahela Postmaster sought 60 hours per week on the ground that certain work had not been taken into consideration. The MSC was sympathetic to his appeal and advised him in late January 1980 that Monongahela was authorized 60 hours of maintenance and custodial work per week.

Monongahela had to adjust its employee work schedules to comply with this 60-hour authorization. It continued to schedule the one full-time regular 40 hours per week. It permanently reduced the schedule of the one part-time regular, Yevcinez, from 30 to 20 hours per week. This reduction prompted the present grievance. The Union's position is that the Postal Service may not permanently reduce the weekly work hours of a part-time regular. It believes that such a reduction is a violation of Articles V, VI, VII and XII of the National Agreement.

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* The part-time regular employee was then referred to as an "hourly rate regular."

DISCUSSION AND FINDINGS

Article VII (Employee Classifications) is the proper starting point for any analysis of this dispute. It states that the "regular work force" will consist of two kinds of employees. One is "full-time" employees who, pursuant to Section 1-A-1, "shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week." The other is "part-time" employees who, pursuant to Section 1-A-2, "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..."

The difference between these employee categories is clear. Yevcinez, the grievant, is a part-time regular. Before this dispute arose, his "regular schedule" was 30 hours a week. Then, at the time this dispute arose, his "regular schedule" was changed to 20 hours a week. In either event, he was "assigned to [a] regular schedule...of less than forty (40) hours in a service week..." That is precisely what Article VII, Section 1-A-2 contemplates for a part-time regular. There plainly has been no violation of Article VII.

These contract provisions, however, form the underlying basis for the Union's argument. It asserts that the "only difference" between a full-time regular and a part-time regular is "the number of regularly scheduled hours in the work week." It maintains that because the full-time regular cannot have his hours reduced to less than 40, the part-time regular similarly cannot have his hours reduced below whatever they happened to have been when he was hired. Its post-hearing brief indicates that this analogy goes to the very heart of its case:

> "...Thus, the Union believes that when a part-time regular is hired at a given number of hours ...those hours become a guarantee below which the employee cannot be reduced, anymore than a full-time regular can arbitrarily have his hours reduced to less than 40..." (Brief p. 3)

It has no objection to an initial 20-hour schedule. Rather, its objection is to the reduction of the part-time regular from a 30-hour schedule to a 20-hour schedule.

The difficulty with the Union's argument is that its analogy is not at all convincing. A part-time regular is

not a full-time regular. They are separate and distinct employee categories. They are not governed by the same contract principles. Hence, the existence of a 40-hour floor for a full-time regular does not suggest any comparable floor for a part-time regular. Article VII, Section 1-A-2 does not establish minimum weekly hours for a part-time regular. It simply says that part-timers "shall be assigned to regular schedules of less than forty (40) hours in a service week..." Those "regular schedules" can encompass any number of hours less than 40. There is no minimum, no floor.

The proposition the Union appears to be urging is that once a part-time regular has been placed on a "regular schedule", here 30 hours per week, that "schedule" is irreducible. It believes the number of hours in this employee's initial "regular schedule" cannot be decreased.

Nothing in Article VII supports this proposition. One must look elsewhere in the National Agreement for guidance. The only provision which seems to address the matter of changes in the work week, changes in the number of scheduled hours, is Article VIII (Hours of Work). It reads in part:

> "Section 1. Work Week. The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day...Shorter work weeks will, however, exist as needed for part-time regulars.
>
> "Section 2. Work Schedules...
>
> "Section 3. Exceptions...Part-time employees will be scheduled in accordance with the above rules, except that they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week." (Emphasis added)

The critical sentence is found in Article VIII, Section 1, "Shorter work weeks will...exist as needed for part-time regulars." These words plainly imply that a part-time regular's work week is not necessarily fixed. His work week may be "shorte[ned]" as the "need[s]" of postal operations dictate. And, as those "need[s]" change again, his work week could surely be extended to what it originally was. For "shorter work weeks" are to "exist" only for such time "as"

they happen to be "needed." The parties thus appear to have accepted the idea that the work week of part-time regulars was subject to change. Had they intended to freeze the work week of such employees, as the Union contends, they would hardly have embraced the concept of "shorter work weeks...as needed." Nothing in the National Agreement points to such a freeze. Neither Article VIII nor any other contract provision prohibits the Postal Service from reducing the work week of a part-time regular because of operational need[s]".*

Even the Union concedes that the Postal Service has some flexibility with respect to a part-time regular's schedule. It acknowledges that the number of hours in his original weekly schedule can be increased. It protests only the situation in which the number of hours is decreased. Its argument nevertheless recognizes that the work week for a part-time regular is subject to change. The logic of the National Agreement, particularly Article VIII, indicates that this change can be in either direction. The Union's attempt to limit the change to a "longer" work week flies in the face of the Article VIII, Section 1 reference to a "shorter" work week.

My conclusion is that Article VIII, read together with the Management Rights in Article III "to maintain the efficiency of the operations..." and "to determine the methods [and] means...by which such operations are to be conducted", allow the Postal Service to reduce the number of hours of work of a part-time regular below the number he customarily had been scheduled to work. The reduction of the grievant's hours from 30 per week to 20 per week was permissible under the terms of the National Agreement given the needs of the Monongahela Post Office.

There remain several allegations regarding Articles V, VI and XII of the National Agreement. The Union asserts that each of these articles was violated by the Postal Service's action in reducing the grievant's scheduled hours from 30 per week to 20 per week.

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* Article VIII, Section 3 indicates, as does Article VII, that there is no floor on the weekly hours of a part-time regular. It says "part-time [regulars]...may be scheduled for...less than forty (40) hours per normal work week." A part-time regular could be scheduled 30 hours per week or 20 hours per week or less. All such schedules would be permissible under this contract language.

Article V provides that the Postal Service "will not take any actions affecting...hours...as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement..." For the reasons already stated, I have held that the reduction in the grievant's hours did not violate the National Agreement. It follows that there has been no violation of Article V.

Article VI provides that employees in the regular work force as of September 15, 1978, "shall be protected henceforth against any involuntary layoff or force reduction." The grievant was part of the regular work force as of September 15, 1978. However, the Postal Service's action in reducing his weekly hours from 30 to 20 did not subject him to an "involuntary layoff or force reduction." The provisions of Article VI do not appear to be applicable to the facts of this case.

Article XII, Sections 5-C-5 and 5-D* provides various principles and procedures for handling a "reduction in the number of employees in an installation other than by attrition." It details exactly how "reassignments within [an] installation" and "reassignments to other installations" are to be made. It protects "part-time regular employees within their own category." However, none of this is relevant to the instant dispute. For there was no "reduction in the number of employees..." in the maintenance/custodial group in the Monongahela Post Office. There were two employees in this group before this grievance arose; there were two employees in this group after this grievance arose. A reduction in hours for one of the two employees is not tantamount to a "reduction in the number of employees..." There has been no violation of Article XII.

I find, accordingly, that the reduction in the grievant's scheduled hours was not a violation of the National Agreement.

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* I shall assume, for purposes of this case, that these provisions were raised by the Union in the course of the grievance procedure and are hence properly before me in this arbitration.

AWARD

The grievance is denied.

Richard Mittenthal, Arbitrator

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
Suite 525
1 Thomas Circle, N.W.
Washington, DC 20005-5802

Dear Mr. Amma:

On September 7 and again on September 12, 1988, you met with Muriel Aikens Arnold in prearbitration discussion of H4M-5L-C 15002; H4M-5L-C 16704; H4M-5L-C 16967 and H4M-5L-C 16968. The issue in these cases involved the expansion of part-time regular mail handler work hours beyond their fixed schedules.

It was mutually agreed to settle these cases as follows:

1. With regard to scheduling, part-time regular mail handlers are to be regularly scheduled during specific hours of duty. Only in emergency or unanticipated circumstances will part-time regular mail handler work hours be expanded beyond their fixed schedules.

2. A Memorandum of Understanding will be issued from the Joint National Study Committee on Part-time Regular Mail Handlers concerning the scheduling of such employees, including permanent schedule changes.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement and withdrawing the above cited grievances from the pending national arbitration list.

Sincerely,

William J. Downes
Director
Office of Contract
Administration

Joseph N. Amma Jr. 9/22/88
Joseph N. Amma, Jr.
Director of Contract
Administration
Laborers' International Union
of North America, AFL-CIO
Mail Handlers Division

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
THE LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, MAIL HANDLERS
DIVISION

The parties to the Joint National Study Committee on Part-time Regular Mail Handlers mutually agree to the following:

1. That the United States Postal Service will not hire or assign part-time regular Mail Handlers in lieu of or to the detriment of full-time regular or part-time flexible Mail Handlers.

2. With regard to scheduling, part-time regular Mail Handlers are to be regularly scheduled during specific hours of duty. Only in emergency or unanticipated circumstances will part-time regular Mail Handler work hours be expanded beyond their fixed schedules.

3. When it is necessary that fixed scheduled day(s) of work or starting times in the basic work week for a part-time regular craft assignment be permanently changed, the provisions of Article 12, Sections 3.B4 and 3.B6 will be followed.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department

DATE 7/19/88

Joseph N. Amma, Jr.
Director of Contract
Administration
Laborers' International Union
of North America, AFL-CIO
Mail Handlers Division,

DATE 7/22/88

and all other paid hours, including personal absences where no work is performed for the Postal Service.

Note: These hours are excluded from the determination of FLSA overtime.

434.13 Types of Compensation

434.131 Postal Overtime

Postal overtime is compensation paid pursuant to Postal Service regulations and in accordance with applicable provisions of the collective bargaining agreements to eligible personnel at 150 percent of each employee's basic hourly rate for actual work hours in excess of 8 paid hours in a day, 40 paid hours in a service week or, if a full-time bargaining unit employee, on a nonscheduled day.

434.132 FLSA Overtime

FLSA overtime is compensation paid in accordance with the FLSA overtime requirement described in 443.

434.133 Penalty Overtime

Penalty overtime is compensation paid pursuant to Postal Service regulations to eligible personnel at two times the employee's basic hourly straight-time rate for hours described in applicable labor agreements.

434.134 FLSA Exempt EAS Additional Pay

FLSA-exempt EAS additional pay is compensation directed by Postal Service regulations to be paid to eligible FLSA-exempt employees and is calculated by dividing the annual salary by 2080 and applying this rate to each eligible hour worked.

434.14 Eligibility and Coverage

434.141 Eligible for Overtime Pay

Exhibit 434.141a identifies employees who are eligible for postal overtime.

Exhibit 434.141b identifies employees who are eligible for FLSA overtime.

Exhibit 434.141c identifies employees eligible for penalty overtime.

Exhibit 434.141b
FLSA Overtime Pay Eligibility Table

Rate Schedule	Employee Classification			
	Full-time Regular	Part-time Regular	Part-time Flexible	Casual,* Temporary, and PM Relief
B – Rural Auxiliary	–	–	Yes	Yes
C – MESC	Yes	Yes	Yes	–
E – EAS	Yes[2]	Yes[2]	–	Yes[1]
F – Postmasters (A–E)	–	Yes	–	Yes
G – Nurses	Yes	–	Yes	Yes
K – HQ Op. Services	Yes	–	–	–
L – Postmaster Replacement	–	–	–	Yes
M – Mail Handlers	Yes	Yes	Yes	–
N – Data Center	Yes	–	Yes	–
P – PS	Yes	Yes	Yes	–
Q – City Carriers	Yes	Yes	Yes	–
R – Rural Carriers	Yes[2]	–	Yes	–
S – PCES	No	–	–	–
T – Tool and Die	Yes	–	Yes	–
Y – Postal Police	Yes	–	Yes	–

* *Casual employees are covered in RSC E regardless of the bargaining unit they supplement.*

1. *FLSA-nonexempt employees only.*
2. *See 444 and special provisions in the Rural Carrier contract.*

Exhibit 434.141c
Penalty Overtime Pay Eligibility Table

Rate Schedule	Employee Classification			
	Full-time Regular	Part-time Regular	Part-time Flexible	Casual,* Temporary, and PM Relief
B – Rural Auxiliary	–	–	No	No
C – MESC	Yes	Yes	Yes	–
E – EAS	No	No	–	No
F – Postmasters (A–E)	–	No	–	No
G – Nurses	No	–	No	No
K – HQ Op. Services	No	–	–	–
M – Mail Handlers	No	No	No	–
N – Data Center	Yes	–	Yes	–
P – PS	Yes	Yes	Yes	–
Q – City Carriers	Yes	Yes	Yes	–
R – Rural Carriers	No	–	No	–
S – PCES	No	–	–	–
T – Tool and Die	No	–	No	–
Y – Postal Police	No	–	No	–

* *Casual employees are covered in RS-E regardless of the bargaining unit they supplement.*

Mr. Joseph N. Amma, Jr.
Director of Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
905 16th Street N.W.
Washington, DC 20006-1765

Re: H4M-4J-C 12563
Milwaukee, WI 53203
T. Demet

Dear Mr. Amma:

Recently, we met with your representative, Claudis Johnson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the grievant, a PTF, was properly compensated for the overtime hours worked.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed overtime must be paid at 1 1/2 times the base hourly straight time rate in accordance with Article 8.4(A) of the National Agreement and ELM 434.131. It is understood by the parties that base rate includes COLA.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

William Scott
Grievance & Arbitration
Division

Joseph N. Amma, Jr.
Director of Contract
Administration
Laborers' International
Union of North America,
Mail Handlers Division,
AFL-CIO

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

DEC 21 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: Local 203
Springfield, MO
NC-C-8760/5STL-1750

Dear Mr. Riley:

On October 20, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The regular straight time hourly rate of part-time flexible employees incorporates compensation for the nine holidays cited in Article XI, Section 1 of the National Agreement. For this reason part-time flexible employees are compensated for overtime based upon the same rate as full-time regular employees.

No violation of the National Agreement has been shown and, therefore, the grievance is denied.

Sincerely,

Robert B. Hubbell
Labor Relations Department

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re:A00M-1A-C05094042
Class Action
Jersey City NJ 07097-9995

Recently, I met with Richard Collins to discuss the above captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether compensation per hour for overtime hours worked must be indicated on the pay stub for part-time flexible employees.

Article 8, page 6 in the Contract Interpretation Manual, Version 3, Updated March 2011 states:

> ***Postal overtime pay rate:*** *The contractual overtime rate of pay is one and one-half (1 ½) times the base straight-time hourly 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. While this rate is slightly less then one and one-half (1 ½) times the part-time flexible base straight-time hourly rate, it 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 11.7)*
>
> *Source: Step 4 Grievances H4M-4J-C 12563, dated August 3, 1990, and NC-C-8760, dated December 21, 1977.*

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to close this case, thereby removing it from the pending Step 4 case listing.

Time limits at this level were extended by mutual consent.

Michele Ditchey
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 3/14/2014

John F. Hegarty,
National President
National Postal Mail Handlers
Union, AFL-CIO

In the Matter of the Arbitration between	:	Arbitration Case No. N8-NA-0003 Washington, DC
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	:	
-and-	:	OPINION AND AWARD
UNITED STATES POSTAL SERVICE	:	

APPEARANCES:

For the NALC - Cohen, Weiss & Simon
by: Keith E. Secular, Esq.

For the APWU - Cafferky, Powers, Jordan & Lewis
by: Daniel B. Jordan, Esq.

For the Mail Handlers - James S. Ray, Esq.

For the USPS - Richard A. Levin, Esq.

BACKGROUND:

This case was properly processed through the steps in the grievance procedure found in the pertinent collective bargaining agreement. The Parties stipulated that it was in form before the Arbitrator for final and binding determination. The hearing was held at the offices of the USPS in Washington, DC, on October 9, 1979. At that time, the NALC, as the grieving Union, was represented as indicated above. Counsels for the APWU and the Mail Handlers appeared and requested leave to intervene pursuant to Article XV of the Agreement. The NALC and the USPS agreed that they should be afforded status as intervenors and they were represented as also indicated above.

During the course of the hearing, the Parties were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. By agreement, post-hearing briefs were filed. These were received from the NALC and the USPS on January 25, 1980, and their contents were duly considered.

THE ISSUE:

As stipulated:

> When the USPS involuntarily assigns an employee to a limited duty assignment outside of his or her regular work schedule, pursuant to the F-21 and F-22 Handbook and the 1978 National Agreement, must the employee receive out-of-schedule premium pay?

STATEMENT OF THE CASE:

February 2, 1979, in Case No. NC-S-10828, which arose in Tulsa, Oklahoma, the Undersigned was presented with the following issue:

> Is the USPS obligated to pay overtime compensation, under the provisions of Article VIII, Section 4-B of the 1975 National Agreement, to an employee who is assigned to work hours outside his regular schedule to perform a temporary limited duty assignment while partially incapacitated due to a work related injury or illness?

Obviously, the case presently under consideration and the previous one referred to above are closely related. In the Tulsa case, the NALC argued successfully that Article VIII-Section 4-B entitled the Grievant to premium pay for the out-of-schedule limited duty assignment. The Union contended that such a result had to follow in order to be consistent with a still earlier Award in Case No. AB-C-341, issued in a Fort Wayne, Indiana Case, which was decided on July 27, 1975.

The Union, in the Tulsa Case, argued that any provision to the contrary regarding liability for overtime payment in the F-21 and F-22 Handbooks, which were issued in 1978, could not have any impact upon the validity of the Union's claim which was advanced in a grievance filed on October 6, 1977. Pursuant to the terms of Article XIX of the National Agreement, concerning the applicability of of all handbooks, manuals and published regulations of the USPS, the specific requirements of these two Handbooks relating to out-of-schedule limited duty assignment pay calculations could not be given retroactive force and effect.

The Award in the Tulsa Case, as indicated above, sustained the Union's position that, pursuant to Article VIII, Section 4-B of the 1975 Agreement, the Grievant was entitled to be paid at the overtime rate for the hours which he worked outside his regular schedule. However, in the earlier Case it was noted that we were dealing with a provision filed prior to the issuance of the F-21 and F-22 Handbooks which took effect in April and early May of 1978, and which had been under consideration from December of 1977, in the case of the F-21, and from February of 1978, in the case of the F-22 Handbook. In this regard, the Undersigned stated:

> "In this proceeding, where we are dealing with a grievance filed prior to the issuance of either of these Handbooks, the question of whether the Union is bound by the terms of such Handbooks now possibly incorporated by reference into the National Agreement pursuant to the provisions of Article XIX is not presented. Nothing in Article XIX suggests that the terms of such Handbooks be given retroactive application. At the same time, it must also be noted that in this proceeding no finding will be made as to whether or not the Union has placed in contention subsequent to their

publication under the provisions of Article XIX, or properly challenged, the incorporation by reference of the above-quoted provision of these Handbooks thereafter."

The language in both Handbooks referred to above provides that overtime pay shall not be required for an out-of-schedule assignment under the following circumstances:

"Where the employee's schedule is temporarily changed because he was given a light duty assignment pursuant to Article XIII of the National Agreement or as required by the Federal Employee Compensation Act, as amended."

In this proceeding, the Unions have challenged the contention of the USPS that they failed to prevent the incorporation by reference of this provision in the 1978 Agreement, and for that reason the Service is no longer obligated to make such overtime payments. The Unions have also contended that, contrary to the assertion in that provision of the Handbooks, the Federal Employee Compensation Act does not now require that the Postal Service provide partially disabled employees, who were so disabled by an on-the-job injury or illness, with light or limited duty assignments when such assignments can be made available.

CONTENTIONS OF THE PARTIES:

As indicated above, the Unions claim that the provisions of Article XIX of the National Agreement are not applicable to this dispute since the Unions had already challenged the Service's right to deny overtime payments for limited duty assignments outside of an employee's regular scheduled hours in the Tulsa Case and even earlier. For that reason, a failure to process a challenge to this announced pay practice within 30 days after receipt of the notice of proposed change cannot be regarded as acquiescence.

With regard to this 30 day time limitation in the Agreement, the Unions contended that by practice the Parties had agreed that this requirement could be ignored and had been ignored without penalty. For this reason, discussions between the parties was an open ended process making this appeal to arbitration a timely challenge to the incorporation of this pay practice found in the Handbooks into the National Agreement.

The Unions also claimed that a failure to appeal a handbook revision to arbitration within 30 days does not permit the USPS to change the specific terms of the collective bargaining agreement. Since this failure to provide overtime payments would be contrary to the specific requirements of Article VIII-4-B, such provision could be grieved under the normal provisions of Article XV of the National Agreement. In addition, the Unions raised certain equitable considerations which they alleged warranted consideration in any determination of whether such overtime payments could be avoided.

Finally, the Union claimed that the Federal Employee Compensation Act does not require that the Employer put a partially disabled employee back to work, and implementing regulations issued by the Department of Labor and the Office of Personnel Management also do not impose such a requirement upon the Employer. For this reason, Section 233.23b of the Handbooks cannot be construed to permit the USPS to avoid its overtime obligation to such employees who are returned to duty in an out of schedule assignment.

The USPS made one principal argument with regard to the applicability of the provisions of Section 233.23b of the F21 Handbook. The Employer argued that by ratifying and signing the

1978 National Agreement, with knowledge of the provisions of the F21 and F22 Handbooks denying such overtime payments, the Unions accepted those provisions as being engrafted into the Agreement and not subject to further challenge as to their terms. According to the USPS, Article XIX of the Agreement clearly provides for such a result.

The Postal Service also contended that by operation of the terms of Article XIX the specific provisions of these Handbooks took precedence over the general provisions of Article VIII-4-B, which by their terms did not deal with the subject of out-of-schedule assignments for employees only capable of performing limited or light duty.

The Service also pointed out that the F21 and F22 Handbooks were published while the 1975 Agreement was in effect. Before that Agreement was superseded, the USPS served the notice that it intended to change the terms of the Handbooks upon the Union as required by Article XIX. The Union then had an additional 30 days in which to take those proposed changes to arbitration. Since the Union failed to do so, it must be concluded that it regarded the changes as not inconsistent with the requirements of Article VIII-4-B. There is no question, according to the Postal Service, that the Union knew of the change in pay practice which would result from the implementation of this provision in the Handbooks. It was discussed on numerous occasions, and the Union contended that the dispute over its implementation would be taken to arbitration. This did not happen in timely fashion.

The Postal Service also alleged that the fact it did discuss the implementation of Section 233.23b with certain attorneys

who represented various plaintiffs in a Fair Labor Standards Act proceeding more than 30 days after the time to file a request for arbitration under Article XIX could not be regarded as a waiver of the right to impose such a time limit on the Union which was the party with the right to request arbitration. From statements made by spokesmen for the NALC, it was apparent that the Union recognized it had to challenge the implementation of Section 233.23b in arbitration if the Service would not reconcile the terms of that provision with the language in Article VIII-4-B, and the subsequent discussions did not relieve the Union of this obligation.

In responding to the Union's claim that the question of the propriety of denying overtime payments to light duty assignees working out-of-schedule was being controverted at the time that the F-21 and F-22 changes were transmitted to the Union and a subsequent additional demand for arbitration was unnecessary, the Postal Service pointed out that even as late as February of 1978, when the F-22 revisions were sent to the Union, the fourth step decision in the Tulsa Case had not been issued. That was transmitted two months later. For that reason, at least at the National level, pursuant to Article XIX, the Union's objections to the changes in the Handbook should have been made known.

Finally, the USPS asserted that it believed it had an obligation imposed upon it to provide partially disabled employees with limited duty assignments in addition to other good reasons why it should do so. According to the Postal Service, based upon the authority under 5 U.S.C. Section 815(b), when read in conjunction with 5 C.F.R. 353.306, which imposed an obligation to "make every effort" to provide such employment, coupled with 5 C.F.R.353.401, an employee

could appeal to the Merit System Protection Board if the USPS did not offer such an employee a limited duty assignment. To prove that an employee waived his or her restoration rights, the USPS would be obliged to demonstrate a job offer was made and the employee did not avail himself or herself of that opportunity. For these and other reasons, which it advanced, the Employer claimed that the Federal Employee Compensation Act imposed a duty upon the Postal Service to "immediately and unequivocally" restore an employee who has recovered sufficiently within one year to perform work in his or her own pay grade.

OPINION OF THE ARBITRATOR:

As stated earlier, this Arbitrator has on previous occasions required the Postal Service, pursuant to the provisions of Article VIII-4-B, to pay overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer. In the Tulsa Case, that duty was imposed when the employees involved were given such out-of-schedule assignments temporarily while performing limited duty because of a partial physical incapacity due to a work related injury or illness.

In the Tulsa Case, the Arbitrator discussed the beneficial results which could be achieved from the rehabilitative effects of such assignments for the employee. Also considered were the considerable savings which might result from getting employees to work at jobs they were capable of handling rather than sitting at home and receiving compensation payments. Regardless of the obvious advantages to the employee and the Service, as well as adherence to the government policy stated in the Federal Employees Compensation Act and implementing regulations of

the Civil Service Commission, now Office of Personnel Management, and the Department of Labor, the Undesrigned was of the opinion that the clear language of Article VIII-Section 4-B precluded consideration of these other factors as then urged by the Postal Service. The Award had to take its "essence" from the terms of the Agreement.

The National Agreement provides in Article XIX as follows:

HANDBOOKS AND MANUALS

> Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.
>
> Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) 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 to the Unions upon issuance.

In the case at hand, there is no dispute that the Unions were furnished with a copy of the proposed F-21 Handbook as revised, pursuant to the requirements of Article XIX, on December 15, 1977. The Parties met on January 13, 1978 to discuss the proposed Handbook contents. On February 16, 1978, the Postal Service transmitted the proposed F-22 Handbook along with certain revisions now proposed to the

F-21 Handbook. The Parties met on March 17, 1978 to discuss the proposed contents of the two Handbooks . In the two Handbooks was the following language in Section 233.23b, excusing overtime payment:

> "Where an employee's schedule is temporarily changed because he was given a light duty assignment pursuant to Article XIII of the National Agreement or as required by the Federal Employee Compensation Act, as amended."

At that meeting, according to the testimony in this record, the spokesman for the NALC specifically brought up the Union's objections to making an exception out of involuntary out-of-schedule light duty assignments. He also argued that the Federal Employees Compensation Act did not require the USPS to make limited duty assignments. In the earlier Tulsa Case, this same witness indicated that he believed he told the Postal Service at the time he would arbitrate the issue and that arbitration was subsequently demanded. Before testifying in the present case, he learned that meetings had been requested but arbitration proceedings had not been invoked. Although this witness testified that he was of the opinion that the contentions made in the Tulsa Case covered the Union's position in this dispute, he obviously believed that the Postal Service was changing something because he indicated that an implementation of the Service's proposal to comply with Section 233.23b warranted processing a grievance on such an issue to arbitration. None of the Unions followed up their request for an Article XIX meeting with a request for arbitration when the Postal Service would not meet the objections to the inclusion of Section 233.23b in the Handbooks.

If the Unions believed that the changes in the payroll computation contemplated by this Section were in conflict with the terms of the then existing National Agreement, particularly Article VIII-4-B, than a grievance should have been raised and processed to a

resolution. If the contention of the Unions was that this change was neither fair, reasonable, nor equitable, a right to grieve also existed under the terms of Article XIX.

Parenthetically, it should be noted that the F-21 Handbook is singled out for specific mention in the provisions of Article XIX.

Examining the testimony offered at this hearing and the record of the Tulsa Case, which was incorporated by agreement of the Parties, the conclusion must be reached that the Postal Service did comply with the procedural requirements found in the second paragraph of Article XIX. The Unions were properly placed on notice, in a timely manner, that this limitation upon entitlement to overtime pay was going to be implemented under the terms of the Handbooks as it had under previous practice of the Service which the Union's had contested in the Tulsa Case.

While the discussions with a number of attorneys representing employees were underway concerning the USPS' financial obligation to a large number of employees under a decision issued applying Fair Labor Standards Act, the Unions were also questioning the Service's right to implement the payroll practice discussed in the Handbooks. At that very same time, in the Spring of 1978, negotiation of the new National Agreement began looking toward the renewal of the National Agreement due to expire on July 20, 1978. During the time that those negotiations were underway, there is no dispute about the fact that the Unions were aware of the contested provision contained in the Handbooks. The 30 day period provided for in Article XIX had long past before the new Agreement was consumated. That Agreement was made effective July 21, 1978. It contained the identical Article XIX language which was contained in the 1975 Agreement, including a specific reference to the

the F-21 Handbook provisions. No effort was made to modify that language at the time although the F-21 and F-22 were by then fully implemented nationwide and controlled time, attendance and payroll accounting procedures. The negotiators for the Unions, at the National level, thus agreed to continue in effect the terms of these Handbooks by their acceptance of the unaltered Article XIX requirements. It was not until April 19, 1979, more than a year after the transmission of these Handbooks, as revised, to the Unions, that the Union filed the grievance which led to this proceeding.

For reasons more fully explored in the Tulsa Case Award, the Undersigned is of the opinion that the language of the pertinent provisions of the Federal Employee Compensation Act as implemented by the regulations issued by the Office of Personnel Management and the Labor Department not only are designed to encourage employees to seek out and accept suitable work assignments for therapeutic reasons and to discourage malingering, but those same directives obligate the Postal Service to make every effort to find suitable employment, within a disabled employees physical capabilities, or be prepared to successfully explain why it was unable to do so. For that reason, the provision of Section 233.23b of the F-21 and F-22 Handbooks which indicates that such an obligation upon the Employer is a requirements of the FECA accurately reflects the intent of the draftsmen as well as those who were entrusted to administer the program and write the implementing regulations.

For the reasons set forth above, the Undersigned is of the opinion that this record supports the contention of the USPS that the current language of the F-21 and F-22 Handbooks governing eligibility for overtime payment for partially disabled employees has been engrafted into the National Agreement by virtue of the application of the provisions

of Article XIX.

Having reached this conclusion it must finally be determined that the grievance raised protesting the practice of not making overtime payments for out-of-schedule assignments to employees who are partially disabled because of an on-the-job injury or illness must be denied. Having so concluded, it is necessary to add that this determination does not give the USPS an unbridled right to make an out-of-schedule assignment when the disabled employee could be offered such a work opportunity during the hours of his or her regular tour.

A W A R D

The grievance filed in Case No. N8-NA-0003 must be and hereby is denied.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
March 12, 1980

In the Matter of the Arbitration between AMERICAN POSTAL WORKERS UNION and UNITED STATES POSTAL SERVICE	CASES NO. HlC-SF-C 1004 1007 Colorado Springs, Colo OPINION AND AWARD

Appearances:

For the USPS - Robert L. Eugene, Labor Rel. Specialist
Danny Jackson, Acting Mgt., Cust. Svces.

For the APWU - Kenneth D. Wilson, Administrative Aide
Jon Numir, Local President
Mike Benner, Pres., SDM Division

Background:

These cases came on for arbitration pursuant to the provisions of the current collective bargaining agreement and a jointly signed letter dated May 25, 1982.

By agreement, the matter in issue was defined as follows:

> "Did management violate Article 8 and Article 19 of the National Agreement when it changed the grievant' schedule on October 30, 1981, and October 23, 1981, respectively, and, therefore, are the grievants entitled to out-of-schedule pay for the period they worked from October 30, 1981 and October 23, 1991, until they were placed in preferred duty assignment. either by bid or by assignment to residual vacancies ?

These Parties aho agreed upon a stipulated set of facts which they believed were pertinent to the proper disposition of this dispute.

"1. The grievance is timely and properly before the Arbitrator.

"2. The grievants were Converted from prrt-time flexible status to full-time regular status on August 22, 1981. They were allowed to work regular schedules as follows:

a. Anderson - 0900 hours to 1800 hours, Monday, Tuesday, Wednesday and Friday, and 0600 hours to 1700 hours on Saturday, and off on Thursday and Sunday.

b, Bendekovic - 0830 to 1730 M,T,W,F: 0630 - 1500 SA; off TH, SU

"3. The grievant' duty status at that time was unassigned, as they had not achieved preferred duty asaignments by bidding or hy assignment to residual vacancies at that time.

"4. In Octobr of 1981, management changed the schedules in the following manner:

a. Anderson - Oct 30, 1981 to 2200-0630, TU-WE off.

b. Sandrkovic - October 23, 1981 to 2200 - 0630, TU-WE off.

"5. The grievants were officially assigned to the new schedules until they were placed in new duty assignmenta, either by bid or by assignment to residual vacancies. "

The Parties also stipulated at the opening of this hearing that there were two grievances properly before the Arbitrator. The first involves L. Anderson and the second G. Bendekovic. Both work out of the Colorado Springs Post Office.

Contentions of the Parties :

According to the Union, the case is a simple one. The issue posed is whether Anderson and Bendekovic, who were converted from part-time flexibles to full-time regulars and assigned a set of duty hours on August 22, 1981, and who had their schedules changed without the benefit of a bid or a residual vacancy, entitled to out-of-schedule overtime.

The Union contended that the failure to pay the out-of-schedule overtime violated Article 8, Section 4.8 of the current National Agreement. Additionslly, the Union argued that, pursuant to Article 19 of the Agreement, Handbook EL-401's terms and conditions have become part of the National Agreement. According to the Union, the provisions of that Handbook decree that employees similarly situated to the grievants herein are eligible for and should receive out-of-schedule overtime.

It was the Union's position that the Posts1 Service could not distinguish between pemranent changes made in the schedules of unassigned regulars against changes made in the schedules of full-time regulars. Such distinction is not provided for in the provisions of Article 37, Section 3 which deals with the posting and bidding for duty assignments in the Clerk Craft.

Finally, the Union addressed the documentation submitted by the Employer in support of its position. The union asserted that certain artitration awards cited by the Employer were issued prior to the publication of EL-401, and the other documents do not relate to the subject matter of unassigned regular and also predate the provisions of EL-401.

Management contended that the Union's reliance upon the provisions of EL-401 was misplaced. Management took the position that EL-401 was not a Handbook issued pursuant to Article 19, and ,the Postal Service had taken the position that, when the directives contained in that Handbook were published for supervision, no changes relating to wages, hours or working conditions of bargaining employees were made by its term. The Union filed no grievance, under Article 19, because this Handbook was issued.

The Postal Service argued that, in any event, it had followed the dictates of that Handbook. This Guide did not provide that regular work schedules could not be changed on a temporary on permanent basis to meet the operational needs of the

service. Since the Guide does not provide that permanent changes in schedule require the payment of out-of-schedule compensation, the changes made in the schedules of the Grievants, with whom this case is concerned,would not require that this additional compensation be paid. These Grievants were reassigned permanent changes in their hours of work. The Service contended that management rights, as set out in Article 3 of the National Agreement, as well as other provisions of the Time end Attendance Manual and the Employee and Labor Relations Manual made it clear that Management had not bargained away its right to make the changes in schedules with which we are here concerned nor had it issued any directive or publication which would bar it from assigning unassigned regulars to permanent schedule changes due to operational needs.

Management also addressed some of the documentation which the Union submitted in support of its case. It was the position of the Postal Service that Notice No. 114, resulting from the issuance of the Groettum decision, dealt with temporary schedule changes and the instant case, as the USPS alleged, was concerned with a permanent schedule change.

As to the provision of Article 37, the Postal Service took the position that there are two types of full time regular employees, assigned and unassigned. For the letter classification. the Postal Service argued that no language precludes the Service from making a pemanent change in the fixed schedule of such employees. The fact that Section 3-F-10 at that Article provides for how changes in schedule could be made by bid or residual assignment for such unassigned regulars does not mean there could not be other means for making such changes. Changer in schedules for unassigned regulars were not always made, by practice, to a vacant assignment.

The Postal Service also adduced testimony for the purpose of establishing that there were bona fide operational reasons for making there schedule changes at the Colorado Springs Post Office.

OPINION OF THE ARBITRATOR:

As stated earlier, this case is concerned with the question of whether the National Agreement provision that these two grievants, who were converted from part-time flexible positions to full-time regular positions and then assigned a set schedule of hours of work, could have that schedule changed,

without the benefit Of their bidding for such a change in assignment or required to fill a residual vacancy, and not be considered entitled to out-of-schedule overtime.

Article 8, Section 4-B of the National Agreement reads as follows:

> "B. Overtime shall by paid to employees for work performed only after eight (8) hours on duty in my 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." (underlining supplied by the writer)

The dispute arose when there two unassigned regular employees at the Colorado Springs Post Office, who were converted to this regular status in the Clerk Craft on August 22, 1981, and were at that time assigned regular duty hour and days off. were subsequently reassigned to changed hours of work, on a different shift and with other days off.

The Union protested that these employees were due payment for time worked outside their regularly scheduled work week albeit that change in asignment may have been made to meet operational needs of the Service. In effect, the USPS argued that this was a permanent change, and as such these employees were not entitled to receive such overtime pay.

The, implementation of scheduling practices and the payment of premium pay is guided by the provisions of Handbook EL-401, which was issued in March of 1981. As staterd in the prefatory comment on its first page, this Guide ia provided as a management tool to enable supervisors not only to comply with the requiremnts of the FSLA but also "...postal policy and estabiiahed contractual Agreement." Although this Publication does state that it does not address every question of policy relating to time and attendance, it goes on to state the major topics of concern to each line supervisor md manager are addressed.

This Handbook does provide guidance as to how Management shall comply with "eestablished postal policy and established. contractual agreements" regarding out-of-schedule assignments of

"Unassigned Regular-Time Employees Out-Of-Schedule. " Specifically, under the heading of III Premium Situations this Handbook states as follows:

> Unassigned Reguler Full-Time Employees Out-of-Schedule. All unassigned regular full-time employees must be assigned regular work schedule. When not assigned to I posted position, employees assume as their regular work schedule the hours worked in their first week of the pay period in which the change to unassigned regular occurred. When a part-time flexible (PTF) employee is converted to full-time regular, and is not assigned to a full time bid position, the employee becomes an unassigned regular. (See Article VII, Section 3 of the National Agreement.)
>
> "These employees are assigned regular work schedules and are eligible for out-of-schedule overtime. Temporary rescheduling must be compensated at the sppropriate prrmium rate(s).
>
> "A management-directed pemanent assignment of an unassigned regular to a specific posted position which want unbid in accordance with provision in tha National Agreement, requires no payment of out-of-schedule overtime."

This clear language in handbook EL-401, with its reference to "full time bid positions" and "posted provisions" and unbid vacancies permitting management directed assignments, refers the reader to the pertinent provisions of Article 37, which deals with posting end bidding of vacancies for the Clerk Craft among othet subjects of concern to that Craft. After dealing with the subject of filling of vacancies and the posting, and bidding requirements to do so, Subsection 3-F-10, of that Article provider:

> "10. An unassigned full-time regular emploYrs should bid on duty assignments posted for bids by employees in the craft, If the employee doee not bid, or is the unsuccessful bidder, much employee shall be assigned in any residual assignment. The employee's preference wi11 be considered if there is more than assignment available and sha11 be honored except where an employee can be ssaigned to any available duty assigmemt for which he/she is currently qualified (including scheme requirements)."

The Postal Service sought to establish that no Article 19 of the National Agreement obligation wag raised by its publication of Handbook EL 401. It claimed that nothing in the Handbook did not comply with the term of that National Agreement. It also claimed that this Handbook did not stop the making of changes in regular work schedules on a temporary or regular basis due to operational reason.

That is quite true, the Postal Service is not probibited from making such changes in assigned hours of work. The question with which we are here concerned is whether when such changes are made does the Service undertake a premiwn pay obligation.

Recognizing this, the Service arqued that this Guide required payment when a temporary change was made but not when the Service chose to make a permanent change in shifts, hours, or days off for Unassigned Regulars. That contention flies squarely in the face of the posting, bidding and filling of vacancy provisions of Article 37 of the National Agreement. The so-called "permanent" vacancies which Anderson and Bendekovic were called upon to fill could only be filled, in compliance with Article 37, if they bid for such permanent vacancies, with different hours of work, which had been posted for their craft, or they were required to accept a residual assignment because they failed to bid or were unsuccessful bidders.

That is not what happened in this case. Both Anderson and Bendekovic were assigned to new hours of work because the senior bidders for certain vacancies were not qualified on the schemes and the office was approaching the holiday season. As Article 37.3-F-3 requires. "When the duty assignment requires scheme knowledge,...If the senior bidder is not qualified on essential scheme requirements when posting period is closed, permanent filling of the preferred assignment shall be deferred until such employee is qualified on the essential scheme requirements, but not in excess of 90 days.

Because of this contractual obligation, Management attempted to distinguish between being placed in a particular duty assignment and beinq placed in a schedule of hours and days off. That ia a distinction that does not appear to find support in the filling of vacancy provisions of the National Agreement. The descriptlon of what motivated management to reassign Anderson and Bendekovic other hours than those they worked in the first week

they become unassigned regulars established that this was caused by the existence and filling of permanent vacancies which the senior bidder were not as yet qualified td fill. Anderson and Bendekovic had their tours and days off changed to meet manpower needs of the moment. The testimony of the Acting Manager of Customer Service at Colorado Springs pointed out the existence of a manpower shortage at the time these two grievarnts had their assignments changed. The other requirement, "to assign regular work schedules" when they become unassigned requlars appears to have been overlooked.

Again, despite the contention that Anderson and Bendekovic were given permanent rather than temporary assignments when their hours and days off were changed from those of their initial assignment in their first week in the new payroll status, the testimony of this same witness revealed that, as of the date of the arbitration hearing, one of them did bid a preferred bid assignment end was in a deferment peried and the other was also in a deferment period after having been assigned a particlar residual vacancy. From there subsequent assignments, it does not appear that either of there grievants could have been regarded as filling a permanant vacancy when they were assigned to Tour One.

For all the reasons set forth above, the undersigned must find that theae two grievant were temporarily assigned to out-of-schedule hours an October 23, 1981 and October 30, 1981 repectively, and that the USPS is obligation, under Article 8, Section 4-B of the National Aqreement to pay them overtime for working oudside their regularly schedled work week at the request of the Employer. That obligation of the USPS shall cease, or shall have ceased when proper schedule changes were made as required by the cited provision of the National Agreement and the guidance contained in Handbook EL 401, or there employees are returned to their former schedule.

AWARD

The qrievances filed by the APWU on behalf of these grievants are sustained. The terms of the appropriate remedy are set forth in the paragraph of the Opinion inmdiately above.

HOWARD G. GAMSER, NATIONAL ARBITRATOR

Washinqton, DC
September 10, 1982

c. A holiday scheduling premium equal to 50 percent of the amount paid in 434.53a is paid to eligible employees for time actually worked on a holiday or on the employee's designated holiday (except Christmas) when the holiday schedule is not posted in accordance with national agreements, as follows:

(1) If the schedule is not posted as of Tuesday preceding the service week in which the holiday falls, a full-time regular bargaining unit employee who is required to work on his or her holiday or designated holiday, or who volunteers to work on that day, receives *holiday scheduling premium* for each hour of work, not to exceed 8 hours. This premium is in addition to both holiday leave pay and holiday-worked pay.

(2) In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises that requires the use of manpower on that holiday in excess of that scheduled in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) do not receive *holiday scheduling premium*.

(3) When a full-time regular employee who is scheduled to work on a holiday is unable to or fails to work on the holiday, the supervisor may require another full-time regular employee to work the schedule, and the replacement employee is not eligible for *holiday scheduling premium*.

(4) Employees are not eligible for *holiday scheduling premium* while temporarily assigned to nonbargaining positions.

d. For those eligible employees who receive TCOLA (439.1), Christmas-worked pay and the holiday scheduling premium are paid at 50 percent of the employee's basic rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In those workweeks when FLSA overtime is not earned, these premiums are calculated in accordance with 434.53b or 434.53c.

434.6 Out-of-Schedule Premium

434.61 Policy

434.611 General

Out-of-schedule premium is paid 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.

434.612 Timely Notice

Payment of out-of-schedule premium is dependent on timely notice being given by management of the temporary schedule change, as follows:

a. 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, the employee's time can be limited 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.

b. 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 his or her regular schedule. Therefore, any hours worked in addition to the employee's regular schedule are not worked "instead of" his or her regular schedule. The additional hours worked are not considered as 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.

434.613 **Application**

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 that result in paid hours in excess of 8 hours per service day or 40 hours per service week are to be recorded as overtime (see 434.1).

434.614 **Examples**

See Exhibit 434.614.

Example: An employee is notified by Wednesday of the preceding service week to work a temporary schedule the following service week from 6:00 a.m. to 2:30 P.M., instead of his or her regular schedule from 8:00 a.m. to 4:30 P.M. The employee is paid 2 hours out-of-schedule premium for the hours worked from 6:00 A.M. to 8:00 A.M. and 6 hours' straight time for the hours worked from 8:00 A.M. to 2:30 P.M. If in this situation the employee continues to work into or beyond the balance of his or her regular schedule (2:30 P.M. to 4:30 P.M.), then he or she is to be paid for hours worked in accordance with Exhibit 434.614.

Example: An employee's regular schedule is Monday through Friday and he or she is given a temporary schedule of 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. If, however, the employee also works his or her regular schedule on Friday, then there can be no out-of-schedule premium hours; the hours worked on Sunday would be paid as regular overtime hours worked in excess of 40 in the service week.

Exhibit 434.614
Computing Out-of-Schedule Premium Hours

Hours Worked	Total Work Hours	Out-of-Schedule Premium Hours	Straight Time Hours	Overtime Hours
6:00 AM–2:30 PM	8	2	6	0
6:00 AM–3:30 PM	9	1	7	1
6:00 AM–4:30 PM	10	0	8	2
6:00 AM–5:30 PM	11	0	8	3

ARBITRATION AWARD

January 27, 1982

UNITED STATES POSTAL SERVICE

-and-

Case Nos.
A8-W-939; A8-C-0768
A8-S-712; H-8C-2F-C-6521
A8-C-0767; H-3C-4B-C-20836
A8-W-0776; A8-C-0626
A8-W-951; A8-C-0638
A8-C-0766; A8-C-637

AMERICAN POSTAL WORKERS UNION

Subject: Temporary Supervisors - Right to Out-of-Schedule Overtime Premium - Past Practice

Statement of the Issue: Whether the Postal Service's action in denying out-of-schedule overtime premium to employees working as temporary supervisors on and after January 12, 1980, was a violation of the National Agreement?

Contract Provisions Involved: Article I, Section 2; Article V; Article VIII, Section 4-B; Article XIX; and Article XLI, Section 1-A-2 and Section 2-A-2 of the July 21, 1978 National Agreement.

Grievance Data:

	Date
Case Heard:	September 25, 1981
Transcript Received:	October 15, 1981
Briefs Submitted:	November 22, 1981
Exhibits Filed:	January 10, 1982

Statement of the Award: The grievances are granted. The employees in question were entitled to receive the out-of-schedule overtime premium when applicable under Article VIII, Section 4-B. They should be compensated for their loss of earnings.

BACKGROUND

These grievances protest the Postal Service's action in denying out-of-schedule overtime premium to employees serving as temporary supervisors on end after January 12, 1980. The APWU insists this denial of the premium was a violation of Article V, Article VIII, Section 4-B, and Article XIX. The Postal Service disagrees.

Supervisors are absent for a variety of reasons. They may miss a day or two because of illness; they may be gone a week or more because of vacation; they may be away even longer because of a special detail. Management ordinarily replaces them with craft employees. The latter became temporary supervisors.* While working in that capacity, they have the authority to adjust grievances on behalf of Management and to discipline employees. Appointment to such a temporary supervisor's position is strictly voluntary on the part of the employee.

The employee who becomes a temporary supervisor may perform work outside of his regularly scheduled work week. For example, if his regular schedule as an employee had been 7:00 a.m. to 3:00 p.m. and if his schedule as a supervisor was from 11:00 a.m. to 7:00 p.m., he would be working outside of his regular schedule from 3:00 p.m. to 7:00 p.m. The issue here is whether he is entitled to an out-of-schedule overtime premium for such work. The applicable contract language is found in Article VIII, Section 4-B of the 1975 and 1978 National Agreements:

> "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." (Emphasis added)

* They are also known as 204(b) supervisors, a reference to Section 204(b) of the Postal Field Service Compensation Act of 1955.

Arbitrator Gamser decided Case No. AB-C-341 in mid-1975. He ruled that employees who volunteered for and filled temporary vacancies were entitled to an overtime premium under Article VIII, Section 4-B "for time worked outside of their regularly scheduled work week..." He ruled also that the fact that they had volunteered did not mean they were not filling temporary vacancies "at the request of the Employer." He made no mention whatever of employees serving as temporary supervisors.

The Postal Service, referring to this Gamser award, issued the following directive to its Employee & Labor Relations personnel on October 10, 1975:

> "A recent arbitration award interpreted the last sentence of Article VIII, Section 4B... Pursuant thereto the following principles should be applied in determining the overtime obligations under this provision of the Agreement...
>
> "1. Except under certain circumstances discussed herein, full-time employees are entitled to the payment of overtime for work performed outside of, and instead of, their regular schedule on a temporary basis even though such employees have volunteered for such temporary schedule changes. Except for details to certain positions enumerated in number 3 below, this general principle extends to temporary details of full-time bargaining unit employees both to vacancies within the bargaining unit and to vacancies in positions outside the bargaining unit (this includes, therefore, details to acting supervisor)..." (Emphasis added)

Thereafter, for more than four years, the Postal Service applied the last sentence of Article VIII, Section 4-B to "employees" serving as temporary supervisors. It paid them an overtime premium for "time worked outside of their regularly scheduled work week..."

Apparently two decisions caused the Postal Service to reconsider its position. The first was an award issued in Case No. NB-S-6859 by Arbitrator Fasser, approved by Impartial Chairman Garrett, on June 30, 1977. Fasser recognized that an employee, while serving as a temporary supervisor, has certain contract rights. He referred specifically to his "duty assignment" being "held open and available

to him for up to six months."* He added that if his supervisory detail lasts beyond six months, "he also has residual rights in the bargaining unit which would guarantee him a position as an unassigned carrier."* He observed too, "What other contract rights may be extended to employees in this situation is not clear." He suggested, however, that such rights might be established through practice. In the case before him, he could find no evidence that the Postal Service "customarily had permitted carriers detailed to supervisory positions to bid on available openings in the bargaining unit..." He held, accordingly, that a letter carrier filling in as a temporary supervisor did not have a right to bid for a vacancy in the unit.

The other decision was by the National Labor Relations Board in Case No. 5-CB-2121(P) dated February 5, 1979. The Board dismissed "unfair labor practice" charges filed by the Postal Service against NALC. Those charges arose from NALC's action (1) in amending the membership eligibility provisions of its constitution to provide that "...any regular member of the NALC who is temporarily...promoted to a supervisory position...will not be eligible to continue their membership in the NALC" and (2) in later interpreting this provision to mean that anyone accepting a temporary supervisor's position would not be eligible to participate in the NALC health benefits plan. The Board's ruling noted that "once he [a letter carrier] becomes a temporary supervisor, he is no longer an 'employee' within the meaning of Section 2(3) of the Act", that the "collective bargaining agreement excludes permanent supervisors from the bargaining unit", and that the "Postal Service has repeatedly taken the position that temporary supervisors are not a part of the bargaining unit." On the other hand, the Board also stated that a "letter carrier...while serving as a temporary supervisor, is not deprived of any contractual benefits."

Given these rulings, the Postal Service issued the following directive to its Employee & Labor Relations personnel in November 1979:

> "Recent arbitration and NLRB decisions hold that bargaining unit employees while temporarily assigned (detailed) to supervisory or other non-bargaining unit positions are not employees under the collective bargaining agreements; and therefore not governed by the provisions of, nor entitled to the benefits provided by, such agreements.

* These rights were set forth in Article XLI, Section 1-A-2 of the 1975 Agreement.

"Our policy with respect to such assignments outside of the bargaining units will be to treat them as non-bargaining unit employees and to grant benefits consistent with those provided for other employees in the non-bargaining unit salary schedules to which assigned. Thus such employees will not be entitled to Out of Schedule Overtime [under Article VIII, Section 4-B]..."

"Such employees will assume the schedule for the non-bargaining unit position to which assigned but will not be eligible for Out of Schedule Overtime...due to a schedule change upon accepting the temporary assignment. They will, of course, be eligible for overtime and other special pay provisions applicable to their assigned non-bargaining position..." (Emphasis added)

This change in policy was made effective January 12, 1980.

Thereafter, the Postal Service refused to pay the out-of-schedule premium to employees serving as temporary supervisors. That refusal prompted a large number of grievances, twelve of which are before me in this arbitration. The Union contends that the Postal Service's unilateral change of policy with respect to the application of this out-of-schedule premium was a violation of the 1978 Agreement. It alleges violations of Article V, Article VIII, Section 4-B, and Article XIX.

DISCUSSION AND FINDINGS

The Postal Service insists that the APWU request for an out-of-schedule premium for employees serving as temporary supervisors rests on "the underlying fallacy that such employees are covered by the provisions of the contract." It believes, on the contrary, that such people "are not bargaining unit employees..." during their supervisory stint and hence cannot claim any rights under the National Agreement. It asserts that while the employee fills in as a temporary supervisor, "the payment for hours worked is exclusively a supervisory matter."

This argument ignores the essentially hybrid status of an employee working as a temporary supervisor. He may

then be part of supervision but he also has certain rights under the National Agreement. Only a few examples need be cited to make the point. The employee-supervisor has a right under Article XLI, Section 2-A-2 to accumulate seniority within his craft during such time as he serves as a temporary supervisor. His service in the letter carrier craft is considered to be "uninterrupted", notwithstanding his supervisory assignment.* Moreover, the employee-supervisor has a right under Article XLI, Section 1-A-2 to return to his regular "duty assignment" within the bargaining unit any time within four months of his move to temporary supervisor. That "duty assignment" cannot be declared vacant or posted for bids within this four-month period. Under this same contract clause, he has a right to return to the bargaining unit after four months although he would then become an "unassigned regular."

None of this should come as a surprise to the Postal Service. For Arbitrator Fasser stated in Case No. NB-S-6859 that the employee-supervisor had certain contract rights and that the precise scope of such rights "is not clear." He held in effect that past practice is a legitimate means of determining what the employee-supervisor is entitled to under the National Agreement. His ruling was that an employee-supervisor could not bid on a vacancy within the bargaining unit so long as he was functioning as a temporary supervisor. But he made clear that his ruling would have been in the employee-supervisor's favor had the Postal Service been able to show that "it customarily had permitted carriers detailed to supervisory positions to bid on available openings in the bargaining unit..." Thus, the parties must look to well-established practices in deciding what contract rights are possessed by an employee-supervisor.

Here, Article VIII, Section 4-B speaks of "employees" receiving the premium in question "for time worked outside of their regularly scheduled work week..." The Postal Service paid this out-of-schedule premium to employee-supervisors between October 1975 and January 1980, a period of more than four years. It must have paid that premium to employee-supervisors on thousands of occasions. Indeed, it was paying that premium to employee-supervisors in July 1978 when the parties entered into a new National Agreement.

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* See my decision in Case No. N8-NA-0383. Although that case dealt with the letter carrier craft, I assume that the same accumulation of seniority would occur in the clerk craft.

Thus, Article VIII, Section 4-B has been given its own special meaning through long-standing practice. The term "employees" in that contract clause has been read broadly to apply to employees even during the time they serve as temporary supervisors. The Postal Service has offered no sound basis for upsetting this accepted interpretation of the out-of-schedule premium. Past practice must prevail in this case. Surely, the Postal Service's change of policy cannot change the meaning of the contract clause. Only a revision of the contract language itself or a mutual understanding to modify (or nullify) the practice could effect such a change.

It follows that the employee-supervisors in these grievances are entitled to the out-of-schedule premium during their details as temporary supervisors.

The Postal Service contends too that it had no choice in this matter, that it was merely attempting to comply with arbitration and/or NLRB decisions both in October 1975 when it began to pay the premium to employee-supervisors and in January 1980 when it ceased such payment. However, a careful review of these decisions suggests a quite different story. Nothing in Arbitrator Gamser's award commanded that the out-of-schedule premium be applied to employee-supervisors. Gamser never touched on that subject. Nothing in Arbitrator Fasser's award commanded that the out-of-schedule premium not be applied to employee-supervisors. Fasser never touched on that subject. However, his opinion states that employee-supervisors do have rights under the Agreement and that past practice is a relevent and necessary guide in determining exactly what those rights are. Nothing in the NLRB decision dealt with the employee-supervisor's rights under the Agreement. That case turned on NALC's statutory obligations under the National Labor Relations Act. Thus, the Postal Service was not under any kind of obligation to act on the issue before me in October 1975 or January 1980. Its failure to act at either time would not have caused Management to be in violation of any arbitration or NLRB precedent.

AWARD

The grievances are granted. The employees in question were entitled to receive the out-of-schedule overtime premium when applicable under Article VIII, Section 4-B. They should be compensated for their loss of earnings.

Richard Mittenthal

Richard Mittenthal, Arbitrator

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020**.

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before they may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2. the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

TO ALL AFFECTED REPRESENTATIVES:

During the course of the 1987 Negotiations, the parties agreed to make sweeping changes in the provisions of Article 8 of the National Agreement between the USPS and the Mail Handlers Division of the Laborers' International Union of North America, AFL-CIO. Mindful of the confusion and the need to resort to interpretive arbitration that occurred when the 1984 language was put into effect, the parties further agreed to generate a joint letter of interpretation outlining the intent of the changes that were made in Article 8. This letter is precedent-setting in its attempts to resolve potential disputes prior to the date upon which the new language becomes effective. As you are aware, the changes in Article 8 are effective September 26, 1987, the beginning of the fourth calendar quarter for overtime purposes.

We will walk through the provisions of Article 8, Sections 8.4 and 8.5, and outline the parties' joint interpretation of the new contract language that appears.

The provisions of Section 8.4 have been altered to eliminate all reference to penalty overtime. As of September 26, 1987, penalty overtime will not be payable for any hours worked under Article 8 of the Mail Handlers National Agreement.

The opening sentence of Section 8.5 has been reworded, stressing that the first opportunity for all overtime goes to full-time regular Mail Handlers who have signed the overtime desired list (OTDL) subject to the "operational window" concept set forth in Section 8.5D. This represents a major change in the scheduling process and provides that management must under the 1987 contract assign overtime to available, qualified employees on the OTDL prior to using part-time flexibles or casuals on overtime.

Section 8.5A now clearly specifies that only full-time regular Mail Handlers are eligible to sign the OTDL. The rest of the language in this section remains unchanged.

The provisions of Section 8.5B remain unchanged.

Several changes appear in Section 8.5C.

1. The first sentence of the section once again stresses that overtime is to be first assigned to available, qualified full-time regular Mail Handlers who have signed the OTDL. Although not all inclusive, the following examples may be useful in understanding the intent of the parties:

(a) Twenty Mail Handlers are needed for two hours overtime, from 3 p.m. to 5 p.m., at the end of Tour II at the BMC. Only ten Mail Handlers have signed the OTDL and all are available and qualified for the instant work. Under this circumstance, management must assign the ten Mail Handlers on the OTDL and then may assign ten Mail Handlers not on the list. If management determines that an additional two hours of overtime is needed, from 5 p.m. to 7 p.m., for ten Mail Handlers, the ten Mail Handlers from the OTDL who are working must be assigned that additional overtime. This will not be considered an additional overtime opportunity within the rotation outlined in Section 8.5C.

(b) The GMF has multiple ending times on Tour II; e.g., 3 p.m. and 4 p.m. Twenty Mail Handlers are needed for two hours overtime at 3 p.m. Again, ten available and qualified Mail Handlers are on the OTDL and management selects an additional ten Mail Handlers not on the list. At 4 p.m., ten more qualified Mail Handlers on the OTDL become available at the end of their tour. These ten OTDL Mail Handlers would be kept for one hour of overtime, 4 p.m. to 5 p.m., and the ten Mail Handlers not on the OTDL will be released.

As the language in Section 8.5C indicates, employees assigned overtime under this provision still must possess the necessary skills.

2. The second sentence of this section notes the elimination of previous language requiring that Mail Handlers on light duty be passed over. Under the 1987 Agreement, Mail Handlers on light duty may sign the OTDL and be selected for overtime work within the normal rotation as long as the work needed falls within their medical restrictions. For example, light duty employees with restrictions of "no work beyond eight hours" would not be eligible for overtime before or after the tour; light duty employees with restrictions of "no lifting over five pounds" would normally not be eligible for overtime work on the outbound docks.

3. The new language captured in sentence 3 of this section reemphasizes the current practice of scheduling. The example given adequately expresses the intent of the parties. The waiver under Section 8.8 must be agreed to by Management, the Union and the employees.

4. Sentence 4 mandates that Mail Handlers who sign the OTDL may be required to work up to twelve hours per day, seven days per week. Obviously, the 60-hour limitation contained in the 1984 language has been removed; that language no longer applies to Mail Handlers, even though management may be scheduling other craft employees in accordance with a 60-hour limit.

5. Finally, the fifth sentence in Section 8.5C establishes a system for Mail Handlers on the OTDL to volunteer for work beyond twelve hours in a day. Selection of these volunteers is at the discretion of management, but such selection must be made on a non-discriminatory basis. No second OTDL will be established; selection will be made on a case-by-case basis. Once again, Mail Handlers who volunteer and are selected for work beyond twelve hours will not be considered to have exercised another opportunity within the OTDL rotation.

Several changes have been made in Section 8.5D to address selection for overtime work once the OTDL has been exhausted.

(1) In the first sentence, "available" is directed to what may be termed the "operational window" concept. For example, if management determines that the need exists for twenty Mail Handlers to work two hours overtime and only ten are available from the OTDL, management may assign other Mail Handlers as required to meet the two-hour operational requirement.

(2) The remainder of the first sentence outlines management's right to assign "other employees" to meet its needs in these circumstances. Other employees include part-time flexibles, casuals and regulars not on the OTDL. While the selection is at the discretion of management, the parties have agreed that every effort should be made to schedule part-time flexibles or casuals for such overtime work before scheduling regulars not on the OTDL.

(3) In accordance with the second sentence, when management determines that regulars not on the OTDL must work overtime, their scheduling will continue to be based on juniority rotation. This rotation will also be established on a quarterly basis, parallel with the use of the OTDL.

The provisions of Section 8.5E remain unchanged.

In Section 8.5F, the protections for non-OTDL regulars found in the 1981 National Agreement have been reinstituted and clarified. These protections are meant to assure that overtime is limited for non-OTDL regular Mail Handlers. The use of part-time flexibles and casuals prior to non-OTDL full-time regulars has been previously discussed.

Section 8.5G notes that these provisions begin with the fourth calendar quarter of 1987; i.e., September 26. Solicitations for regulars wishing to sign the OTDL should be made in keeping with past practice and in consideration of this date.

The Memorandum of Understanding on Improper By-pass Overtime (found after the general articles of the 1987 National Agreement) in Part 2, now includes part-time flexibles and casuals under the category "another employee."

The Memorandum of Understanding on Penalty Overtime Pay is deleted in its entirety.

We hope that these explanations will assist both parties in understanding the new language in Article 8. It must be understood that this document represents the National Level interpretation of this new language and is not subject to alteration by parties other than those at the National Level.

Louis D. Eleste
International Trustee
Mail Handlers Division,
AFL-CIO

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

JUL 11 1986

Mr. Joseph H. Johnson, Jr.
Director, City Delivery
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: L. Eacret
Inglewood, CA 90311-9998
H4N-5B-C 9731

Dear Mr. Johnson:

On July 2, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether employees on light duty or limited duty may sign the "Overtime Desired" list.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agreed that employees on light duty and limited duty may sign the "Overtime Desired" list. We further agreed the parties at Step 3 are to apply Article 13, Section 3.B., and Part 546 of the Employee and Labor Relations Manual to the specific fact circumstances involved in this case. Also whether or not the grievant's physical condition and status was such that he could work overtime is a question that can only be answered based on the facts involved.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

This supersedes my letter dated May 30, 1986.

Sincerely,

Thomas J. Leng
Labor Relations Department

Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Brian D. Farris
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

APR 8 1988

Re: D. Ciruzzi
Nashua, NH 03061
H4N-1R-C 41588

Dear Mr. Farris:

On February 9, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who has been on military leave should be permitted to sign the overtime desired list after the start of the quarter.

After reviewing this matter, we mutually agreed that a letter carrier on military leave at the time when full-time employees place their names on the overtime desired list may place his/her name on the overtime desired list upon return to work.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to close this case.

Time limits were extended by mutual consent.

Sincerely,

Michael J. Guzzo, Jr.
Grievance & Arbitration
Division

Brian D. Farris
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 7, 1985

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Neill:

On July 8 we met in prearbitration discussion of NIC-18-C 41248 and NIC-18-C 42949, Boston, Massachusetts, GNF. The question in these grievances is whether the grievants should be permitted to place their names on the overtime desired list after the beginning of a quarter when they are successful bidders on a different tour.

It was mutually agreed to full settlement of these cases as follows:

1. Unless otherwise addressed in a Local Memorandum of Understanding, an employee may opt to bring his/her name forward from one overtime desired list to another when he/she is successful bidder on a different tour. The employee will be placed on the list in accordance with their seniority.

2. Unless otherwise addressed in a Local Memorandum of Understanding, an employee who was not on any overtime desired list at the beginning of a quarter may not place his/her name on the overtime desired list by virtue of being a successful bidder to another tour until the beginning of the next quarter.

3. Backpay is not awarded.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle these cases, withdrawing them from the national pending arbitration listing.

Sincerely,

Frank M. Dyer
Labor Relations Specialist
Arbitration Division
Labor Relations Department

Thomas A. Neill
Industrial Relations
Director
American Postal Workers
Union, AFL-CIO

(date)

Enclosure

ANGELO FOSCO
General President

ARTHUR E. COIA
General Secretary-Treasurer

ROBERT J. CONNERTON
General Counsel

LABORERS' INTERNATIONAL UNION
of NORTH AMERICA
Mail Handlers Division

CONTRACT
ADMINISTRATION
DEPARTMENT
Louis D. Elesie, Liaison
Joseph N. Amma, Jr., Director

Headquarters: 905 16th Street, N.W., Washington, D.C. 20006-1765 (202) 783-0573

May 30, 1989

William J. Downes
Director of the Office of Contract
Administration
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-4126

Re: OVERTIME DESIRED LISTS

Dear Mr. Downes:

During our Joint Contract Training Meeting in Philadelphia, PA following the 1987 negotiations, a question arose concerning employees removing their names from the O.T.D.L. during the course of a quarter.

It was our expressed understanding at that time that an employee's request to remove his or her name from the list would be honored provided that:

(a) The request is made prior to the date on which scheduling occurs; and

(b) The employee could not place his or her name back on the list for the remainder of that quarter.

Given the length of time that has elapsed since that meeting, this question has arisen with increasing frequency.

(next page please)

Please confirm whether your understanding of this matter is as stated above.

Thank you for your cooperation in this matter.

Fraternally yours,

Joseph N. Amma, Jr.
Director, Contract Admin.

JNA:WJS:ggb:c

cc: L. D. Elesie, Liaison/Supervisor
NCAC

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

June 20, 1989

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union
of North America, AFL-CIO,
Mail Handlers Division
One Thomas Circle, NW, Suite 525
Washington, DC 20005-5802

Dear Joe:

This is in response to your May 30 letter requesting the U.S. Postal Service's understanding of the circumstances under which an employee is allowed to remove his/her name from the overtime desired list during the course of a quarter.

The U.S. Postal Service is in agreement that a mailhandler's request to have his/her name removed from the overtime desired list should be honored provided that the following conditions exist:

1. The request is made prior to the date on which scheduling occurs.

2. The mailhandler cannot subsequently place his/her name back on the overtime desired list for the remainder of that quarter.

If you have any questions, please contact Peter A. Sgro of my staff at 268-3824.

Sincerely,

William J. Downes

William J. Downes, Director
Office of Contract Administration
Labor Relations Department

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

SEP 13 1988

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001-2197

Re: H4N-5K-C 4489
Class
Las Vegas, NV 89114

Dear Mr. Hutchins:

On September 12, 1988, we held a pre-arbitration discussion of the above-captioned case.

During our discussion we mutually agreed that management may not unilaterally remove an employee's name from the Overtime Desired List if the employee refuses to work overtime when requested. However, employees on the overtime desired list are required to work overtime except as provided for in Article 8, Section 5.E.

This represents a full and complete settlement of all issues in the above referenced case. Accordingly, this case will be removed from the pending national arbitration list.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement and

withdrawing B4N-5K-C 4489 from the pending national arbitration list.

Sincerely,

For Stephen W. Furgeson
General Manager
Grievance and Arbitration Division

DATE 9/13/88

Lawrence G. Hutchins
Vice President
National Association of Letter Carriers, AFL-CIO

DATE 9/13/88

Enclosure

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

December 4, 1987

Mr. Louis D. Elesie
International Trustee
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 525
1 Thomas Circle, N.W.
Washington, DC 20005-5802

Re: L. Elesie
Washington, DC
H4M-NA-C 75

Dear Mr. Elesie:

On November 12, 1987, Howard Kaufman met with your representative, Joseph N. Amma, Jr., in a prearbitration discussion. That discussion resulted in the following full and final settlement of the above referenced grievance.

1. Pursuant to Article 8.5.B and Article 30.2.L of the Mail Handlers National Agreement, during local implementation the parties may agree to one of the three following alternatives in establishing an Overtime Desired List:

   a.) by section within a tour; or
   b.) by tour; or
   c.) by section within a tour, and tour.

   If alternative C is agreed to prior to selecting from the tour list, local management may prefer to select from the section list those employees who have volunteered to work beyond 12 hours in a work day.

2. This settlement agreement will apply to future local implementations. In addition, it will also apply to the 1987 local implementations, but only to issues under Article 30.2.L that relate to this settlement agreement and are currently at impasse.

3. This agreement is not meant to amend or supercede the recently negotiated Article 8 language set forth in the 1987 Mail Handlers National Agreement.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case and remove it from the national arbitration listing.

Time limits were extended by mutual consent.

Sincerely,

Stephen W. Furgeson
Acting General Manager
Grievance & Arbitration
Division

Louis D. Elesie
International Trustee
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

TO ALL AFFECTED REPRESENTATIVES:

During the course of the 1987 Negotiations, the parties agreed to make sweeping changes in the provisions of Article 8 of the National Agreement between the USPS and the Mail Handlers Division of the Laborers' International Union of North America, AFL-CIO. Mindful of the confusion and the need to resort to interpretive arbitration that occurred when the 1984 language was put into effect, the parties further agreed to generate a joint letter of interpretation outlining the intent of the changes that were made in Article 8. This letter is precedent-setting in its attempts to resolve potential disputes prior to the date upon which the new language becomes effective. As you are aware, the changes in Article 8 are effective September 26, 1987, the beginning of the fourth calendar quarter for overtime purposes.

We will walk through the provisions of Article 8, Sections 8.4 and 8.5, and outline the parties' joint interpretation of the new contract language that appears.

The provisions of Section 8.4 have been altered to eliminate all reference to penalty overtime. As of September 26, 1987, penalty overtime will not be payable for any hours worked under Article 8 of the Mail Handlers National Agreement.

The opening sentence of Section 8.5 has been reworded, stressing that the first opportunity for all overtime goes to full-time regular Mail Handlers who have signed the overtime desired list (OTDL) subject to the "operational window" concept set forth in Section 8.5D. This represents a major change in the scheduling process and provides that management must under the 1987 contract assign overtime to available, qualified employees on the OTDL prior to using part-time flexibles or casuals on overtime.

Section 8.5A now clearly specifies that only full-time regular Mail Handlers are eligible to sign the OTDL. The rest of the language in this section remains unchanged.

The provisions of Section 8.5B remain unchanged.

Several changes appear in Section 8.5C.

1. The first sentence of the section once again stresses that overtime is to be first assigned to available, qualified full-time regular Mail Handlers who have signed the OTDL. Although not all inclusive, the following examples may be useful in understanding the intent of the parties:

(a) Twenty Mail Handlers are needed for two hours overtime, from 3 p.m. to 5 p.m., at the end of Tour II at the BMC. Only ten Mail Handlers have signed the OTDL and all are available and qualified for the instant work. Under this circumstance, management must assign the ten Mail Handlers on the OTDL and then may assign ten Mail Handlers not on the list. If management determines that an additional two hours of overtime is needed, from 5 p.m. to 7 p.m., for ten Mail Handlers, the ten Mail Handlers from the OTDL who are working must be assigned that additional overtime. This will not be considered an additional overtime opportunity within the rotation outlined in Section 8.5C.

(b) The GMF has multiple ending times on Tour II; e.g., 3 p.m. and 4 p.m. Twenty Mail Handlers are needed for two hours overtime at 3 p.m. Again, ten available and qualified Mail Handlers are on the OTDL and management selects an additional ten Mail Handlers not on the list. At 4 p.m., ten more qualified Mail Handlers on the OTDL become available at the end of their tour. These ten OTDL Mail Handlers would be kept for one hour of overtime, 4 p.m. to 5 p.m., and the ten Mail Handlers not on the OTDL will be released.

As the language in Section 8.5C indicates, employees assigned overtime under this provision still must possess the necessary skills.

2. The second sentence of this section notes the elimination of previous language requiring that Mail Handlers on light duty be passed over. Under the 1987 Agreement, Mail Handlers on light duty may sign the OTDL and be selected for overtime work within the normal rotation as long as the work needed falls within their medical restrictions. For example, light duty employees with restrictions of "no work beyond eight hours" would not be eligible for overtime before or after the tour; light duty employees with restrictions of "no lifting over five pounds" would normally not be eligible for overtime work on the outbound docks.

3. The new language captured in sentence 3 of this section reemphasizes the current practice of scheduling. The example given adequately expresses the intent of the parties. The waiver under Section 8.8 must be agreed to by Management, the Union and the employees.

4. Sentence 4 mandates that Mail Handlers who sign the OTDL may be required to work up to twelve hours per day, seven days per week. Obviously, the 60-hour limitation contained in the 1984 language has been removed; that language no longer applies to Mail Handlers, even though management may be scheduling other craft employees in accordance with a 60-hour limit.

5. Finally, the fifth sentence in Section 8.5C establishes a system for Mail Handlers on the OTDL to volunteer for work beyond twelve hours in a day. Selection of these volunteers is at the discretion of management, but such selection must be made on a non-discriminatory basis. No second OTDL will be established; selection will be made on a case-by-case basis. Once again, Mail Handlers who volunteer and are selected for work beyond twelve hours will not be considered to have exercised another opportunity within the OTDL rotation.

Several changes have been made in Section 8.5D to address selection for overtime work once the OTDL has been exhausted.

(1) In the first sentence, "available" is directed to what may be termed the "operational window" concept. For example, if management determines that the need exists for twenty Mail Handlers to work two hours overtime and only ten are available from the OTDL, management may assign other Mail Handlers as required to meet the two-hour operational requirement.

(2) The remainder of the first sentence outlines management's right to assign "other employees" to meet its needs in these circumstances. Other employees include part-time flexibles, casuals and regulars not on the OTDL. While the selection is at the discretion of management, the parties have agreed that every effort should be made to schedule part-time flexibles or casuals for such overtime work before scheduling regulars not on the OTDL.

(3) In accordance with the second sentence, when management determines that regulars not on the OTDL must work overtime, their scheduling will continue to be based on juniority rotation. This rotation will also be established on a quarterly basis, parallel with the use of the OTDL.

The provisions of Section 8.5E remain unchanged.

In Section 8.5F, the protections for non-OTDL regulars found in the 1981 National Agreement have been reinstituted and clarified. These protections are meant to assure that overtime is limited for non-OTDL regular Mail Handlers. The use of part-time flexibles and casuals prior to non-OTDL full-time regulars has been previously discussed.

Section 8.5G notes that these provisions begin with the fourth calendar quarter of 1987; i.e., September 26. Solicitations for regulars wishing to sign the OTDL should be made in keeping with past practice and in consideration of this date.

The Memorandum of Understanding on Improper By-pass Overtime (found after the general articles of the 1987 National Agreement) in Part 2, now includes part-time flexibles and casuals under the category "another employee."

The Memorandum of Understanding on Penalty Overtime Pay is deleted in its entirety.

We hope that these explanations will assist both parties in understanding the new language in Article 8. It must be understood that this document represents the National Level interpretation of this new language and is not subject to alteration by parties other than those at the National Level.

Louis D. Elesie
International Trustee
Mail Handlers Division,
AFL-CIO

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

bcc: Manager, BMC Des Moines, IA 50900
Central Region
Article Code ... 08-05-04 REMANDED
Subject, Chron, Reading, Art. File, Computer
LR410:JOng:3/07/88:OCA Computer Input
G8KM02.11

Mr. Joseph H. Ames, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division
Suite 525
1 Thomas Circle, N.W.
Washington, DC 20005-5802

APR 8 1988

Re: W. Fowler
BMC Des Moines, IA 50900
H7A-4A-C 469

1489

Dear Mr. Ames:

On March 1, 1988, we met with your representative, Claudia Johnson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the grievant was improperly bypassed for overtime work on October 1 and 2, 1987.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. It was further agreed that employees on the Overtime Desired List are considered "available" for overtime if they are on duty at the time the selection of employees for overtime is made, and if they are eligible to work overtime during the time period in which the overtime work is needed. Those absent or on leave shall be passed over.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Joseph E. Ross, Jr.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve this case.

Time limits were extended by mutual consent.

Sincerely,

Joyce Ong
Grievance and Arbitration
Division

Joseph E. Ross, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Rail Roading
Division

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union, AFL-CIO
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: B90M-1B-C 95062381
(MH # 664)
Niejadlik S
Springfield, MA 01101-9995

Dear Bill:

Recently, I met with your representative Richard Collins to discuss the aforementioned grievance at the fourth step of the contractual grievance procedure.

The issue in this grievance is whether management violated Article 8, Section 5, of the National Agreement when it failed to offer overtime to an employee on his scheduled day off while on annual leave.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case.

After reviewing this matter it was determined that there is no violation of the National Agreement. Normally, employees who are absent are not required nor considered available to work overtime. However, if an employee on the Overtime Desired List (OTDL) so desires, the employee may advise his/her supervisor in writing of his/her availability to work a nonscheduled day that is in conjunction with or part of approved annual leave.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time Limits as this level were extended by mutual consent.

Sincerely,

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

William H. Quinn
National President
National Postal Mail Handlers Union,
AFL-CIO

Date: 10/15/97

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

TO ALL AFFECTED REPRESENTATIVES:

During the course of the 1987 Negotiations, the parties agreed to make sweeping changes in the provisions of Article 8 of the National Agreement between the USPS and the Mail Handlers Division of the Laborers' International Union of North America, AFL-CIO. Mindful of the confusion and the need to resort to interpretive arbitration that occurred when the 1984 language was put into effect, the parties further agreed to generate a joint letter of interpretation outlining the intent of the changes that were made in Article 8. This letter is precedent-setting in its attempts to resolve potential disputes prior to the date upon which the new language becomes effective. As you are aware, the changes in Article 8 are effective September 26, 1987, the beginning of the fourth calendar quarter for overtime purposes.

We will walk through the provisions of Article 8, Sections 8.4 and 8.5, and outline the parties' joint interpretation of the new contract language that appears.

The provisions of Section 8.4 have been altered to eliminate all reference to penalty overtime. As of September 26, 1987, penalty overtime will not be payable for any hours worked under Article 8 of the Mail Handlers National Agreement.

The opening sentence of Section 8.5 has been reworded, stressing that the first opportunity for all overtime goes to full-time regular Mail Handlers who have signed the overtime desired list (OTDL) subject to the "operational window" concept set forth in Section 8.5D. This represents a major change in the scheduling process and provides that management must under the 1987 contract assign overtime to available, qualified employees on the OTDL prior to using part-time flexibles or casuals on overtime.

Section 8.5A now clearly specifies that only full-time regular Mail Handlers are eligible to sign the OTDL. The rest of the language in this section remains unchanged.

The provisions of Section 8.5B remain unchanged.

Several changes appear in Section 8.5C.

1. The first sentence of the section once again stresses that overtime is to be first assigned to available, qualified full-time regular Mail Handlers who have signed the OTDL. Although not all inclusive, the following examples may be useful in understanding the intent of the parties:

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(b) The GMF has multiple ending times on Tour II; e.g., 3 p.m. and 4 p.m. Twenty Mail Handlers are needed for two hours overtime at 3 p.m. Again, ten available and qualified Mail Handlers are on the OTDL and management selects an additional ten Mail Handlers not on the list. At 4 p.m., ten more qualified Mail Handlers on the OTDL become available at the end of their tour. These ten OTDL Mail Handlers would be kept for one hour of overtime, 4 p.m. to 5 p.m., and the ten Mail Handlers not on the OTDL will be released.

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2. The second sentence of this section notes the elimination of previous language requiring that Mail Handlers on light duty be passed over. Under the 1987 Agreement, Mail Handlers on light duty may sign the OTDL and be selected for overtime work within the normal rotation as long as the work needed falls within their medical restrictions. For example, light duty employees with restrictions of "no work beyond eight hours" would not be eligible for overtime before or after the tour; light duty employees with restrictions of "no lifting over five pounds" would normally not be eligible for overtime work on the outbound docks.

3. The new language captured in sentence 3 of this section reemphasizes the current practice of scheduling. The example given adequately expresses the intent of the parties. The waiver under Section 8.8 must be agreed to by Management, the Union and the employees.

4. Sentence 4 mandates that Mail Handlers who sign the OTDL may be required to work up to twelve hours per day, seven days per week. Obviously, the 60-hour limitation contained in the 1984 language has been removed; that language no longer applies to Mail Handlers, even though management may be scheduling other craft employees in accordance with a 60-hour limit.

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(3) In accordance with the second sentence, when management determines that regulars not on the OTDL must work overtime, their scheduling will continue to be based on juniority rotation. This rotation will also be established on a quarterly basis, parallel with the use of the OTDL.

The provisions of Section 8.5E remain unchanged.

In Section 8.5F, the protections for non-OTDL regulars found in the 1981 National Agreement have been reinstituted and clarified. These protections are meant to assure that overtime is limited for non-OTDL regular Mail Handlers. The use of part-time flexibles and casuals prior to non-OTDL full-time regulars has been previously discussed.

Section 8.5G notes that these provisions begin with the fourth calendar quarter of 1987; i.e., September 26. Solicitations for regulars wishing to sign the OTDL should be made in keeping with past practice and in consideration of this date.

The Memorandum of Understanding on Improper By-pass Overtime (found after the general articles of the 1987 National Agreement) in Part 2, now includes part-time flexibles and casuals under the category "another employee."

The Memorandum of Understanding on Penalty Overtime Pay is deleted in its entirety.

We hope that these explanations will assist both parties in understanding the new language in Article 8. It must be understood that this document represents the National Level interpretation of this new language and is not subject to alteration by parties other than those at the National Level.

Louis D. Eleste
International Trustee
Mail Handlers Division,
AFL-CIO

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Joseph N. Amma, Jr.
Director of Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
905 16th Street N.W.
Washington, DC 20006-1765

Re: H7M-1F-C 20892
D. Green
Buzzards Bay, MA 02532

Dear Mr. Amma:

On January 17, 1990, we met with your representative, Bill Shields, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management properly scheduled the grievant for an overtime opportunity.

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that the scheduling of overtime beyond twelve hours as outlined in Article 8.5.C should be administered in accordance with the seniority principles as outlined in said article.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.
Sincerely,

William Scott
Grievance & Arbitration
Division

Joseph N. Amma, Jr.
Director of Contract
Administration
Laborers' International Union
of North America, Mail
Handlers Division, AFL-CIO

Date: 1/24/90

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

June 30, 1998

Mr. William Flynn, Jr.
Manager, Contract Administration
National Postal Mail Handlers Union,
AFL-CIO
1101 Connecticut Avenue, N.W., Suite. 500
Washington, DC 20036-4303

RE: B90M-1B-C 95006557
Murphy, M.
Springfield, MA 01101-9995

Dear Bill:

Recently, Joseph Amma and myself held pre-arbitration discussions with you, Samuel D'Ambrosio, and Arthur Vallone concerning the above-referenced grievance, currently pending National level arbitration.

The issue in this grievance is whether management violated Article 8.5C of the National Agreement when it bypassed the grievant, who was on the Overtime Desired List, for overtime after the employee had worked twelve (12) hours in a day.

After reviewing the fact circumstances in this case and additional information provided by the union, it was mutually agreed to settle this case in accordance with the following understanding. The principles contained in the letter "To All Affected Representatives" of September, 1987, and in the settlement in Case H7M-1F-C 20892 (copies attached) continue to apply and should be used to resolve disputes such as that presented in the instant case. Grievant M. Murphy will be granted a four (4) hour make-up opportunity within thirty (30) days of receipt of this decision.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case and withdraw it from the list of cases pending National Arbitration.

Sincerely,

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)

William Flynn, Jr.
Manager, Contract Administration
National Postal Mail Handlers Union
AFL-CIO

Date: 8/14/98

Attachment

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

ARBITRATION AWARD

April 15, 1983

UNITED STATES POSTAL SERVICE

-and-

AMERICAN POSTAL WORKERS UNION

Case No. H8C-5D-C-14577
(A8-W-1641)

Subject: Holiday Schedule - Use of "Overtime Desired List" Rather than Volunteers

Statement of the Issue: Whether the Postal Service's action in selecting employees from the "overtime desired list" rather than volunteers to work on November 10, 1980, a designated holiday for the volunteers, was a violation of the National Agreement?

Contract Provisions Involved: Article VIII, Section 5 and Article XI, Sections 5 and 6 of the July 21, 1978 National Agreement and Article XI, Section 6 of the Local Memorandum of Understanding.

Grievance Data:

	Date
Grievance Filed:	November 25, 1980
Step 2 Answer:	December 5, 1980
Step 3 Answer:	March 13, 1981
Step 4 Answer:	April 27, 1981
Appeal to Arbitration:	May 1, 1981
Case Heard:	November 16, 1982
Transcript Received:	December 1, 1982
Briefs Submitted:	March 22, 1983 and April 9, 1983

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in selecting employees from the "overtime desired list" to work overtime on November 10, 1980. The APWU says others for whom November 10 was a holiday and who had volunteered to work that day had a superior claim to this work. It believes the Postal Service's failure to allow them to work was a violation of Article XI, Section 6 of the National Agreement. The Postal Service disagrees.

The essential facts are not in dispute. M. Avery, M. Bettman and D. Lane are full-time regular Distribution Clerks in the Bellview, Washington Post Office. They are scheduled off on Tuesdays and Wednesdays. The Veterans Day holiday fell on Tuesday, November 11, 1980. Pursuant to Article XI, Section 5-B, Monday, November 10 was considered a designated holiday for these three Clerks. That provision states: "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."

The holiday schedule was posted on Wednesday, November 5. Avery, Bettman and Lane had, prior to this posting, volunteered to work on Monday, November 10, their designated holiday. Management did not list them on the schedule to work that day. It apparently had no need of their services at the time of the posting. The parties stipulated at the arbitration hearing that the posted schedule, as of Wednesday, November 5, was "proper."

The problem arose when Management, sometime after Wednesday, November 5 but before Monday, November 10, decided it would need additional full-time regular Distribution Clerks on Monday, November 10. It chose seven such Clerks from the "overtime desired list." They worked at the time and one-half rate on Monday, November 10.* Their use is covered by Article VIII, Section 5 which reads in part:

> "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:

---

* Monday, November 10 was not a designated holiday for any of these seven employees.

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an 'Overtime Desired' list.

B. Lists will be established by craft, section or tour in accordance with Article XXX, Local Implementation.

C. 1....when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis..."

Avery, Bettman and Lane did not work on Monday, November 10. They grieved, alleging that their right to work on their designated holiday was superior to the rights of other Clerks on the "overtime desired list." They maintain that because they had volunteered to work this holiday, they should have been chosen. Their claim rests largely on Article XI, Section 6:

"Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls. 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. 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." (Emphasis added)

A few remaining points should be noted. No employee for whom Monday, November 10 was a designated holiday was required to work that day against his wishes. The grievants worked on Tuesday, November 11, the Veterans Day holiday, and were paid time and one-half for their work. The Local

Memorandum of Understanding in effect in November 1980 had the following provision, Article XI, Section 6, with respect to holiday schedules:

> "A. After determination has been made by Management as to the number of employees needed on a holiday or designated holiday, scheduling of employees will be accomplished in the following order:
>
> 1. Full or part-time regular employees who have volunteered to work the holiday.
>
> 2. Part-time flexible employees who have volunteered to work the holiday.
>
> 3. Casual employees.
>
> 4. Part-time flexible employees.
>
> 5. Full or part-time regulars who have not volunteered to work on the holiday by inverse seniority."

DISCUSSION AND FINDINGS

This grievance concerns the Postal Service's obligation regarding additional Clerk jobs which had to be filled on November 10, 1980. The APWU says the Clerks for whom November 10 was a designated holiday and who had volunteered to work that day should have been chosen pursuant to Article XI, Section 6. The Postal Service states that it had no such contract obligation and that it was within its rights in choosing Clerks from the "overtime desired list" pursuant to Article VIII, Section 5. The question here is which of these contract provisions, if either, Management was required to apply under the facts of this case.

The Postal Service's position at the arbitration hearing is a helpful starting point in this analysis. It acknowledges that had it known at the time the schedule was posted on Wednesday, November 5 that additional Clerks would be needed on Monday, November 10, it would have placed the aggrieved Clerks on the schedule. It concedes that their claim to the extra Clerk work on November 10 would, in these circumstances, be superior to the claim of anyone on the

"overtime desired list." This concession derives, it seems to me, from the Local Memorandum of Understanding. Article XI, Section 6A of this Memorandum describes the "order" in which people will be "scheduled" after Management determines "the number of employees needed on a holiday or designated holiday..." First priority on such a schedule is given to "full or part-time regular[s]...who have volunteered to work the holiday."

However, the Postal Service insists that its obligation to regular-volunteers ceases with the posting of the schedule. It stresses that Management did not become aware of the need for additional Clerks until after the November 5 posting. It believes it was then no longer bound by the Local Memorandum of Understanding. It urges that it was free, after November 5, to resort to the "overtime desired list" to satisfy its needs on November 10.

The APWU maintains that Management's obligation to prefer regular-volunteers did not end with the posting of the holiday schedule. It states that this obligation continued to exist after the posting. It relies not on the Local Memorandum of Understanding but rather Article XI, Section 6 of the National Agreement.

A close reading of this provision does not support the APWU's case. Article XI, Section 6 consists of four sentences. Only the second and third have any possible application to this dispute. But the purpose of these sentences is to require, where possible, that full-time (or part-time) regulars be given their holiday off.* The second sentence calls for Management to "excuse" from holiday work "as many full-time and part-time regulars as can be spared..." The third sentence recognizes that these regulars may be required to work on their holiday. But it provides that this cannot happen "unless all casuals and part-time flexibles are utilized to the maximum extent possible" and "unless all full-time and part-time regulars... who wish to work on the holiday have been afforded an opportunity to do so." All regular-volunteers, in other words, must be used for holiday work before Management can compel regular, non-volunteers to perform such work. That is the only preference granted to regular-volunteers. Article XI, Section 6 allows them to exercise this right only in relation to regular, non-volunteers. Or, to express the point in terms of the present grievance, Article XI, Section 6 does not give regular-volunteers any right in relation to employees on the "overtime desired list."

* Throughout this discussion, the word "holiday" should be taken to mean the actual holiday or the designated holiday.

For these reasons, the APWU's reliance on Article XI, Section 6 seems misplaced. It attempts to bring this case within the ambit of this provision by arguing that the grievants "deserved to work rather than require employees from the overtime desired list." But, to repeat, regular-volunteers in the situation presented here do not have a preference over employees on the "overtime desired list." Their preference is limited in the manner set forth in Article XI, Section 6. The APWU seeks to enlarge this preference. That cannot be done without modifying or adding to the terms of the National Agreement.

None of the documents referred to by the APWU warrant a different conclusion in this case. The March 1974 Holiday Settlement Agreement relates almost entirely to holiday pay questions. It has no bearing on the issue raised by the instant grievance. The pre-arbitration settlement in Case No. AB-N-2476 was concerned with employees on the "overtime desired list" who were "improperly passed over by Management in the selection for overtime work assignments." That is not the situation here. Other grievance settlements contain statements that "the overtime desired list...is not applicable to holiday scheduling." But that appears to refer to the initial posted holiday schedule, not to later additions to the schedule due to changed circumstances.*

There has been no violation of the National Agreement.

AWARD

The grievance is denied.

Richard Mittenthal, Arbitrator

* This would be true too of the Postal Service Northeast Region's internal memorandum concerning "holiday scheduling procedure vs. overtime desired list."

U.S. POSTAL SERVICE LABOR RELATIONS REPORTER 1978 NATIONAL AGREEMENT				ARTICLE VIII SECTION 5 PARAGRAPH
BULLETIN NO. 62	DATE 12/29/80	PAGES	SUPERSEDES BULLETIN NO. - PAGE(S)	TRANSMITTAL LETTER NO. 7-78

SUBJECT: WORK ASSIGNMENT WHEN CALLED IN TO WORK ON A NON-SCHEDULED DAY

In a settlement reached at Step 4 between the Postal Service and the APWU in connection with a Clerk Craft grievance, the parties mutually agreed "...that employees called in to work overtime on their non-scheduled day are not contractually guaranteed that such assignment will be to their bid position."

The terms and conditions of the 1978 National Agreement do not require that employees be placed in their bid assignments when called in to work on a non-scheduled day. An employee's bid assignment consists of duties and responsibilities to be performed on five-eight hour days within the service week. Pertinent contract language provides that "Normally the successful bidder shall work the duty assignment as posted...." Therefore, there is no entitlement on the part of an employee, who occupies an assignment, to work in that assignment on a day which is not one of the five regular work days specified for that particular assignment.

Although this was a Clerk Craft grievance, the same principle would apply to other crafts of the APWU, the Mail Handlers and the Letter Carriers inasmuch as pertinent language in those craft articles is either identical or very similar to the language in the Clerk Craft Article. It should be noted, however, that in the Letter Carrier Craft, local memoranda of understanding may contain special provisions for coverage of routes particularly where T/6 and utility assignments are involved.

Reference Material:

Grievance No. A8-N-0003
National Agreement Articles XXXVII, XXXVIII, XXXIX, XL, XLI, XLII

TO ALL AFFECTED REPRESENTATIVES:

During the course of the 1987 Negotiations, the parties agreed to make sweeping changes in the provisions of Article 8 of the National Agreement between the USPS and the Mail Handlers Division of the Laborers' International Union of North America, AFL-CIO. Mindful of the confusion and the need to resort to interpretive arbitration that occurred when the 1984 language was put into effect, the parties further agreed to generate a joint letter of interpretation outlining the intent of the changes that were made in Article 8. This letter is precedent-setting in its attempts to resolve potential disputes prior to the date upon which the new language becomes effective. As you are aware, the changes in Article 8 are effective September 26, 1987, the beginning of the fourth calendar quarter for overtime purposes.

We will walk through the provisions of Article 8, Sections 8.4 and 8.5, and outline the parties' joint interpretation of the new contract language that appears.

The provisions of Section 8.4 have been altered to eliminate all reference to penalty overtime. As of September 26, 1987, penalty overtime will not be payable for any hours worked under Article 8 of the Mail Handlers National Agreement.

The opening sentence of Section 8.5 has been reworded, stressing that the first opportunity for all overtime goes to full-time regular Mail Handlers who have signed the overtime desired list (OTDL) subject to the "operational window" concept set forth in Section 8.5D. This represents a major change in the scheduling process and provides that management must under the 1987 contract assign overtime to available, qualified employees on the OTDL prior to using part-time flexibles or casuals on overtime.

Section 8.5A now clearly specifies that only full-time regular Mail Handlers are eligible to sign the OTDL. The rest of the language in this section remains unchanged.

The provisions of Section 8.5B remain unchanged.

Several changes appear in Section 8.5C.

1. The first sentence of the section once again stresses that overtime is to be first assigned to available, qualified full-time regular Mail Handlers who have signed the OTDL. Although not all inclusive, the following examples may be useful in understanding the intent of the parties:

(a) Twenty Mail Handlers are needed for two hours overtime, from 3 p.m. to 5 p.m., at the end of Tour II at the BMC. Only ten Mail Handlers have signed the OTDL and all are available and qualified for the instant work. Under this circumstance, management must assign the ten Mail Handlers on the OTDL and then may assign ten Mail Handlers not on the list. If management determines that an additional two hours of overtime is needed, from 5 p.m. to 7 p.m., for ten Mail Handlers, the ten Mail Handlers from the OTDL who are working must be assigned that additional overtime. This will not be considered an additional overtime opportunity within the rotation outlined in Section 8.5C.

(b) The GMF has multiple ending times on Tour II; e.g., 3 p.m. and 4 p.m. Twenty Mail Handlers are needed for two hours overtime at 3 p.m. Again, ten available and qualified Mail Handlers are on the OTDL and management selects an additional ten Mail Handlers not on the list. At 4 p.m., ten more qualified Mail Handlers on the OTDL become available at the end of their tour. These ten OTDL Mail Handlers would be kept for one hour of overtime, 4 p.m. to 5 p.m., and the ten Mail Handlers not on the OTDL will be released.

As the language in Section 8.5C indicates, employees assigned overtime under this provision still must possess the necessary skills.

2. The second sentence of this section notes the elimination of previous language requiring that Mail Handlers on light duty be passed over. Under the 1987 Agreement, Mail Handlers on light duty may sign the OTDL and be selected for overtime work within the normal rotation as long as the work needed falls within their medical restrictions. For example, light duty employees with restrictions of "no work beyond eight hours" would not be eligible for overtime before or after the tour; light duty employees with restrictions of "no lifting over five pounds" would normally not be eligible for overtime work on the outbound docks.

3. The new language captured in sentence 3 of this section reemphasizes the current practice of scheduling. The example given adequately expresses the intent of the parties. The waiver under Section 8.8 must be agreed to by Management, the Union and the employees.

4. Sentence 4 mandates that Mail Handlers who sign the OTDL may be required to work up to twelve hours per day, seven days per week. Obviously, the 60-hour limitation contained in the 1984 language has been removed; that language no longer applies to Mail Handlers, even though management may be scheduling other craft employees in accordance with a 60-hour limit.

5. Finally, the fifth sentence in Section 8.5C establishes a system for Mail Handlers on the OTDL to volunteer for work beyond twelve hours in a day. Selection of these volunteers is at the discretion of management, but such selection must be made on a non-discriminatory basis. No second OTDL will be established; selection will be made on a case-by-case basis. Once again, Mail Handlers who volunteer and are selected for work beyond twelve hours will not be considered to have exercised another opportunity within the OTDL rotation.

Several changes have been made in Section 8.5D to address selection for overtime work once the OTDL has been exhausted.

(1) In the first sentence, "available" is directed to what may be termed the "operational window" concept. For example, if management determines that the need exists for twenty Mail Handlers to work two hours overtime and only ten are available from the OTDL, management may assign other Mail Handlers as required to meet the two-hour operational requirement.

(2) The remainder of the first sentence outlines management's right to assign "other employees" to meet its needs in these circumstances. Other employees include part-time flexibles, casuals and regulars not on the OTDL. While the selection is at the discretion of management, the parties have agreed that every effort should be made to schedule part-time flexibles or casuals for such overtime work before scheduling regulars not on the OTDL.

(3) In accordance with the second sentence, when management determines that regulars not on the OTDL must work overtime, their scheduling will continue to be based on juniority rotation. This rotation will also be established on a quarterly basis, parallel with the use of the OTDL.

The provisions of Section 8.5E remain unchanged.

In Section 8.5F, the protections for non-OTDL regulars found in the 1981 National Agreement have been reinstituted and clarified. These protections are meant to assure that overtime is limited for non-OTDL regular Mail Handlers. The use of part-time flexibles and casuals prior to non-OTDL full-time regulars has been previously discussed.

Section 8.5G notes that these provisions begin with the fourth calendar quarter of 1987; i.e., September 26. Solicitations for regulars wishing to sign the OTDL should be made in keeping with past practice and in consideration of this date.

The Memorandum of Understanding on Improper By-pass Overtime (found after the general articles of the 1987 National Agreement) in Part 2, now includes part-time flexibles and casuals under the category "another employee."

The Memorandum of Understanding on Penalty Overtime Pay is deleted in its entirety.

We hope that these explanations will assist both parties in understanding the new language in Article 8. It must be understood that this document represents the National Level interpretation of this new language and is not subject to alteration by parties other than those at the National Level.

Louis D. Eleste
International Trustee
Mail Handlers Division,
AFL-CIO

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

UNITED STATES POSTAL SERVICE
475 L ENFANT PLAZA SW
WASHINGTON DC 20260-4100

LABOR RELATIONS DEPARTMENT

Mr. Glenn Berrien
National President
National Postal Mail Handlers
Union, AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: See Attachment

Dear Mr. Berrien:

On February 25, 1992, we met with your representative, Jewell Reed, to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether Management violated Article 8.5d by scheduling employees not on the overtime desired list for overtime prior to requiring other employees to work overtime.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. Whethe overtime was properly scheduled is a fact circumstance best suited for regional determination. We further agreed that when the Employer requires a certain number of employees for overtime but the list does not provide sufficient qualified people, the Employer may assign "other employees". The "other employees" should be casuals and part-time flexible Mail Handler employees who are available and qualified prior to full-time regular employees not on the list.

Accordingly, we agreed to remand these cases to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Time limits were extended by mutual consent.

Sincerely,

Melissa J. Doniger
Grievance and Arbitration
Division

Glenn Berrien
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 6-1-92

ATTACHMENT

H7M-4K-C 23326
J ARTHUR
WATERLOO IA 50701

H7M-4K-C 23324
CLASS ACTION
WATERLOO IA 50701

H7M-4K-C 23325
CLASS ACTION
WATERLOO IA 50701

H7M-4K-C 23009
CLASS ACTION
WATERLOO IA 50701

H7M-4K-C 23010
CLASS ACTION
WATERLOO IA 50701

H7M-4K-C 23011
J WESTERMAN
WATERLOO IA 50701

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 14, 1985

Mr. Lonnie L. Johnson
National President
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 450
1225 19th Street, N.W.
Washington, D.C. 20036-2411

Dear Mr. Johnson:

On August 14 Sherry Barber met with Karen Seavey in a prearbitration discussion of Case No. H1M-2F-C 18272, Pittsburgh, Pennsylvania. The issue in this grievance is whether employees who are not on the overtime desired list should begin a new rotation quarterly as do employees on the list.

In full settlement of this case, the parties agree to the following interpretation of Article 8, Section 8.5.D of the 1984 National Agreement.

At the beginning of each quarter, concurrent with revisions to the overtime desired list, 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 then junior employee.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement and withdrawing H1M-2F-C 18272 from national arbitration.

Sincerely,

W. E. Henry, Jr.
William E. Henry, Jr.
Director
Office of Grievance
and Arbitration
Labor Relations Department

Lonnie L. Johnson 8/20/85
Lonnie L. Johnson (date)
National President
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

NATIONAL POST OFFICE MAILHANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

Case No. H1M-3W-C-29228/ MH4-S-1051

Hearing held February 20, 1985

Before Richard I. Bloch, Arbitrator

APPEARANCES

For the Union

William B. Peer, Esq.

For the Postal Service.

John S. Ingram
Manager, Arbitration Branch
Southern Regional Office

OPINION

Facts

At the Jacksonville, Florida bulk mail center, employees desiring to be excused from overtime are required to fill out a PS Form 3971. [The form is attached as Appendix "A".] The Union protests that requirement, saying the form is being improperly used as an indirect type of disciplinary action, contrary to the requirements of the collective bargaining agreement.

Issue

Is it a violation for the Postal Service to use Form 3971 in the case of individuals wishing to be excused from overtime assignments.

Union Position

The Union claims the use of the form may lead to management's taking disciplinary action against the employee for an otherwise approved absence. This, it says, is contrary to a 1978 Postal Service policy.

Management Position

Management denies any contractual prohibition against the use of such a form for record keeping purposes. If discipline is imposed, the propriety of such action may be tested in the individual cases, it is claimed.

Relevant Provisions of the Contract and the Employee and Labor Relations Manual

Section 8.5 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:

A Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list. Every employee shall have the opportunity to put his/her name on the "Overtime Desired" list, even though he/she may be on leave during the signing-up period for that quarter.

B Lists will be established by section and/or tour in accordance with Article 30, Local Implementation.

C When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis. Those absent, on leave or on light duty shall be passed over.

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.

E Exceptions to .5C and .5D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

F Excluding December, only in an emergency situation will a full-time regular employee be required to work over ten (10) hours in a day or six (6) days in a week.

Employee & Labor Relations Manual

.33 Application for Sick Leave
.331 General

Except for unexpected illness/injury situations, sick leave must be requested on Form 3971 and approved in advance by the appropriate supervisor.

.332 Unexpected Illness/Injury

An exception to the advance approval requirement is made for unexpected illness/injuries; however, in these situations the employee must notify appropriate postal authorities as soon as possible as to their illness/injury and expected duration of absence. As soon as possible after return to duty, employees must submit a request for sick leave on Form 3971. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36, Document Requirements. The supervisor approves or disapproves the leave request. When the request is disapproved, the absence may be recorded as annual leave, if appropriate,

as LWOP, or AWOL, at the discretion of the supervisor as outlined 513.342.

Analysis

Article 8, Section 5 of the Labor Agreement deals with overtime assignments and stipulates, in Section 5(C), the method of selecting employees from the "overtime desired" list. Section 5(D) sets forth a mechanism whereby additional individuals may be required to work in the event the voluntary list fails to provide sufficient personnel.[1] Subsection E deals with methods of requesting exceptions to assignments made under Section 5(C) or (D) for cases "based on equity." The Form 3971 is not specifically mentioned in that provision.

Section 513.33 of the Employee and Labor Relations Manual deals generally with the subject of application for sick leave. Section 513.331 speaks to the necessity of requesting such leave in advance. An exception is established in Section .332 in the case of unexpected illness or injury, in which case the employee must submit the request for sick leave on Form 3971 as soon as possible after his or her return to work.

---

1 There was some extensive discussion during the hearing on the question of whether individuals may, in fact, be assigned involuntarily--forced--to work overtime. The parties agree, however, that this case does not involve any such question.

The use of the form in question in these particular circumstances does not fall squarely within the purpose for which the form was designed. From a purely technical standpoint, the employee is not requesting sick leave when he or she leaves, unexpectedly, from an overtime assignment. The employee is simply requesting permission to leave early. But neither may it be said that the use of the form for record keeping purposes is either unreasonable or prohibited by the labor agreement. The form is generally designed to provide answers to questions that may as reasonably be asked in the context of this 'early out' request as in the case of a sick leave request.

Nothing in this Opinion, however, should be read as somehow suggesting that the forms necessarily stand as evidence supportive of discipline. That issue is not before this arbitrator and, in general, the propriety of any such disciplinary action must be evaluated on a case by case basis.

For the reasons stated herein, the grievance will be denied.

AWARD

The grievance is denied.

Richard I. Bloch, Esq.

September 5, 1985

APPENDIX A

EMPLOYEE'S NAME (Last, first, middle initial)	SOCIAL SECURITY NO.	DATE SUBMITTED	No. of Hours Requested:	PEDS ENTRY PP YR
INSTALLATION (for PM leave, show City, State & Zip Code)	PAY LOC NO.	DIA Code	From (mo., day, hr.)	
TIME OF CALL OR REQUEST	SCHEDULE REPORTING TIME	EMPLOYEE CAN BE REACHED AT (If needed)	☐ NO CALL	Thru (mo., day, hr.)

TYPE OF ABSENCE	DOCUMENTATION (Official use only)	REVISED SCHEDULE FOR (Date)
☐ ANNUAL ☐ LWOP	☐ FOR C. OF PAY LEAVE - CA-1 ON FILE	
☐ SICK (See other side)	☐ FOR ADVANCED SICK LEAVE - 1221 ON FILE	APPROVED IN ADVANCE? ☐ Yes ☐ No
☐ LATE ☐ COP	☐ FOR MILITARY LEAVE - ORDERS REVIEWED	BEGIN WORK
☐ COMP TIME USED	☐ FOR COURT LEAVE - SUMMONS REVIEWED	LUNCH-OUT
☐ OTHER _____	☐ FOR COMP. TAKEN - BALANCE REVIEWED	LUNCH-RETN.
	☐ FOR HIGHER LEVEL - 1723 ON FILE	END WORK
		TOTAL HOURS

REMARKS (Do NOT enter Medical information)

I understand that the annual leave authorized in excess of amount available to me during the leave year will be changed to LWOP.

Signature of Employee and Date	Signature of Person Recording Absence and Date	Signature of Supervisor Notified and Date

OFFICIAL ACTION ON APPLICATION

☐ APPROVED ☐ DISAPPROVED (Give reason)	SIGNATURE OF SUPERVISOR AND DATE

WARNING: The furnishing of false information on this form may result in a fine of not more than $10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001.)

DAY	INIT	HOURS
SAT 01		
SUN 02		
MON 03		
TUE 04		
WED 05		
THU 06		
FRI 07		
SAT 08		
SUN 09		
MON 10		
TUE 11		
WED 12		
THU 13		
FRI 14		

☐ Continued On Reverse

PS Form 3971

REQUEST FOR, OR NOTIFICATION OF, ABSENCE

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Louis D. Elesie
International Trustee
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 525
1 Thomas Circle, N.W.
Washington, D.C. 20005-5802

MAY 30 1986

Re: K. Brawley
Austin, TX 78710
H4M-3U-C 6982

Dear Mr. Elesie:

On May 18, 1986, we met with your representative, Marion Wright, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether non-overtime desired list employees can be required to work over ten hours in a day.

During our discussion, we mutually agreed to settle this case based on our understanding that the limits set forth in Article 8.5.F apply to the scheduling of overtime for full-time regular employees who are not on the overtime desired list.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Louis D. Elesie
International Trustee
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

JAN 26 1983

Mr. James I. Adams
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005

Dear Mr. Adams:

Recently you met with Frank Dyer in pre-arbitration discussion H8C-4B-C 22242, Flint, Michigan. The question in this grievance is whether employees are being properly compensated for Sunday premium when they take leave for a portion of the scheduled work day.

It is mutually agreed to full settlement of the case as follows:

1. An employee who is scheduled to work where a portion of the work hours overlaps to Sunday will be paid Sunday premium for actual work hours.

2. In the same circumstance, an employee who takes leave for that portion of the work day that is actually Sunday will receive Sunday premium for actual hours worked.

3. An employee will not receive Sunday premium for those hours which leave has been taken.

Please sign the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H8C-4B-C 22242 from the pending national arbitration listing.

Sincerely,

W. E. Henry, Jr.
William E. Henry, Jr.
Director
Office of Grievance and Arbitration
Labor Relations Department

(Original signed)
James I. Adams
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO

JAN 27 1983
Date

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

January 27, 1983

Mr. Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers
Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005

Re: A8-E-0299
Godbey
Charleston, WV 25301
S8C-2M-C 10215

Dear Mr. Wilson:

On January 24, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure. The grievance had been discussed previously.

The question raised in this grievance is whether or not the grievant is entitled to Sunday premium payment for hours worked on the date with which this case is concerned.

In the instant case, the grievant worked a portion of his scheduled tour, which called for him to work into Sunday, and took annual leave for the remainder of the scheduled tour. The portion of the tour for which the grievant received annual leave was that part which actually fell on Sunday.

The parties agree that under the definition of Sunday premium, an employee who has a scheduled tour, any part of which includes Sunday, is entitled to "Sunday premium" for the hours actually worked in that schedule. This is true even though an employee may not work that portion of the tour which falls on the calendar day of Sunday, as was the case in this instance.

We further agreed to remand this grievance to Step 3 for further processing in accordance with the foregoing interpretation.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this grievance for the reasons indicated herein.

The time limits were extended in this instance by mutual consent.

Sincerely,

George S. McDougald
George S. McDougald
General Manager
Grievance Division
Labor Relations Department

Kenneth D. Wilson
Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers
Union, APL-CIO

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: Q98M-4Q-C 00103887
Washington, DC

Dear John:

Recently, Donna Gill met with Bill Flynn to discuss the above-referenced case which is pending national-level arbitration.

This case involves changes to Sections 432.63, 432.464b, 434.31, 434.33, 434.34 and 434.8 of the Employee and Labor Relations Manual (ELM), which precluded the payment of Sunday premium for hours not actually worked, including payment of Sunday premium to employees in a continuation of pay (COP) status, or on court or military leave.

After discussing this matter, the parties agreed to the following mutual understanding and settlement of this dispute:

1. Without prejudice to either party's position regarding changes pursuant to Article 19, the Postal Service shall rescind the February 2000 and April 2000 changes to Section 432.63, 432,464b, 434.31, 434.33, 434.34 and 434.8 of the ELM which eliminated the payment of Sunday premium for hours not actually worked, including for employees in a continuation of pay (COP) status or on court or military leave. The intent of the changes was to eliminate the payment of Sunday premium for hours not actually worked for those employees in a continuation of pay status, on court leave, and military leave. The Postal Service shall restore the provisions and administrative practices relative to these sections of the ELM previously in effect prior to the 2000 changes.

2. Pursuant to Article 8, Section 6 of the National Agreement, employees whose regular work schedules include a period of service, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, shall be paid Sunday premium for each hour of work performed during that period of service. As specified in the language to be restored to ELM 434.33, if an employee is on leave for any part of the tour, normally he or she is not entitled to Sunday premium for leave hours. However, Sunday premium to which the employee is normally entitled is continued while the

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

employee is in a continuation of pay (COP) status, on military leave, or on court leave. An eligible employee also continues to receive the Sunday premium normally entitled to when he or she is rescheduled due to a compensable disability in lieu of placement in a COP status. (The parties also continue to have a pending dispute, at the national level, with regard to the payment of Sunday premium while an employee is on administrative leave.)

3. Any employee whose regular schedule included a period of service, any part of which was within the period between midnight Saturday and midnight Sunday, including those employees on COP, military leave, or on court leave, who was not paid Sunday premium for each hour of COP, military leave, and court leave during those periods of service from February 2000 through the present due to the 2000 changes, shall receive payment at the then-current rate for the Sunday premium not paid.

4. Additionally, where an arbitration award or settlement specified that an employee was entitled to back pay in a case involving disciplinary suspension or removal, those employees meeting the above criteria shall be paid for any unpaid Sunday premium. Where the back pay includes interest, the unpaid Sunday premium shall be paid with interest at the then-current interest rate.

5. The Postal Service will develop and supply the NPMHU local president and NPMHU regional director with a list of affected employees. Individual employees should contact their local NPMHU representative if they believe they are entitled, but do not appear on the list.

6. In the event there is a dispute over whether an employee is eligible for payment in accordance with paragraphs 3 and 4 above, the dispute will be referred to the parties at the national level, under the National Administrative Committee (NAC). In addition, grievances currently pending on this specific subject will be resolved in accordance with items 3 and 4 above. If the parties are unable to reach agreement, such grievance(s) will be removed from the grievance/arbitration procedure and forwarded to NAC.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle case number Q98M-4Q-C 00103887 and to remove it from the pending national arbitration listing.

Scott Morgan
Acting Manager
Contract Administration

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 03/17/04

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SUSTAINED:APWU/NPMHU
H7C-4S-C 29885/910325156:NATIONAL

National Arbitration Panel

In the Matter of Arbitration	)	
	)	
between	)	
	)	
	)	
United States Postal Service	)	Case No.
	)	
and	)	I90C-1I-C 910325156
	)	
American Postal Workers Union	)	H7C-4S-C 29885
	)	
and	)	
	)	
National Postal Mail Handlers Union - Intervenor	)	

Before: Shyam Das

Appearances:

For the Postal Service:	H. Alexander Manuel, Esquire
For the APWU:	Melinda K. Holmes, Esquire
For the NPMHU:	Bruce R. Lerner, Esquire Kathleen M. Keller, Esquire

Place of Hearing:	Washington, D.C.
Dates of Hearing:	January 14, 2004 May 18, 2004
Date of Award:	April 15, 2005

Relevant Contract Provisions: Article 8.6

Contract Year: 1987-1990

Type of Grievance: Contract Interpretation

Award Summary

An eligible employee who is scheduled by management to work and does work on a nonovertime basis on a Sunday, even if the employee was scheduled on Sunday pursuant to a request for a temporary schedule change for personal convenience, is entitled to Sunday premium pay under Article 8.6 of the National Agreement.

Shyam Das, Arbitrator

The issue in this case is whether an employee who works on a Sunday pursuant to the employee's request for a temporary schedule change for personal convenience is entitled to Sunday premium pay under Article 8.6 of the National Agreement.

The underlying grievance in this case arose under the 1987-1990 National Agreement. The relevant portion of Article 8.6, which has not changed since the first National Agreement in 1971, states:

> 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....

The underlying grievance was filed at the Minneapolis/St. Paul Bulk Mail Center in response to an August 20, 1990 posting by the Acting Manager of the BMC, which reads:

> It has been brought to my attention that section 434.3 of the Employee & Labor Relations Manual (ELM) is not always being adhered to with regard to Sunday premium pay.
>
> Below is an excerpt from the ELM. The BMC will adhere to this language.

434.3 Sunday Premium

434.31 Policy Sunday premium is paid to eligible employees for all work and paid training or travel time performed during a scheduled tour that includes any part of a Sunday. Note that:

a. An employee entitled to Sunday premium may also be entitled to other premiums for the same tour (see 432.55).

b. An employee may not be credited with Sunday premium in excess of the hours worked per tour, of 8.00 hours per tour, or of 16 hours per service week.

c. Sunday premium does not apply if Sunday time is due only to late clocking out or early clocking in (see 432.464.b), to a temporary schedule change at the employee's request, or to a temporary schedule initiated by management if the employer receives out-of-schedule premium or nonbargaining rescheduling premium for the Sunday time.

d. Eligible exempt employees receive Sunday premium when those hours that are normally worked in a service day fall within the specified parameters of this premium.

(Emphasis added.)

In its Step 2 response to the grievance, management stated, in part:

> Prior to August 20, 1990 the policy at the MSP BMC had been to pay employees on a temporary schedule change for personal convenience Sunday premium pay. As of August 20, 1990 the BMC no longer pays employees Sunday premium pay when they have requested to work a different schedule for personal reasons. (Those employees who do not normally have Sunday as a regularly scheduled workday.)
>
> * * *
>
> It is management's position that the language of the ELM is clear in that Sunday premium pay is not paid to employees working a Sunday on a schedule change at their own request. In the instant grievance management was erroneously paying Sunday premium pay to employees on a temporary schedule change. It is our position that the remedy for administrative error is to rectify the error....

The ELM 431.31(c) language quoted in the August 20, 1990 notice posted in the MSP BMC and referred to in management's Step 2 response was included in ELM Issue 11, dated October 7, 1988 and ELM Issue 12. In prior Issues, ELM 434.31(c) stated only:

> c. Sunday premium does not apply if Sunday time is due only to late clocking out or early clocking in (see 432.464.b).

The language added to ELM 434.31(c) in Issue 11 later was removed and not included in Issue 13, pursuant to settlement of Article 19 grievances protesting ELM changes in Issues 11 and

12. In its Step 4 response in the present case, which is dated September 29, 1993, the Postal Service asserted:

> The Union contends that since the language in question was removed from the Employee and Labor Relations Manual via Postal Bulletin #21849 the Sunday Premium Pay should be paid to employees on a temporary schedule change which the employee had requested.
>
> It is the position of the Postal Service that the language in question was in fact removed from the Employee and Labor Relations Manual at the Union's request because it had been added to the ELM without complying with the provisions of Article 19. The language change in the Employee and Labor Relations Manual was made as a matter of clarification, and was not intended to change existing policy. In agreeing to delete the language which had been added to the 11th edition of the Employee and Labor Relations Manual, management did not concede any change in it's interpretation of the section.

At arbitration, the Postal Service presented testimony to the same effect.[1]

Section 242.1 of Handbook F-21 (Time and Attendance) states that Sunday premium "is paid to eligible employees for all hours worked during a scheduled tour that includes any part of a Sunday". This tracks the language in ELM 434.31. Section

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[1] It is unnecessary to consider subsequent ELM editions in resolving the present dispute.

242.21 of Handbook F-21, which tracks the language in ELM 434.32, goes on to state:

> ... It is important to note that only those employees who have been *scheduled* to work on a Sunday are eligible to receive the premium. If the employee has not been scheduled, then he is not eligible for "Sunday premium."

Handbook F-21 also states that there are no special timecard procedures for Sunday premium hours, and that: "Supervisors are not required to approve Sunday premium hours."

The parties agree that full-time regular, part-time regular, full-time flexible and part-time flexible bargaining unit employees are eligible for Sunday premium under the terms provided in Article 8.6. The APWU and the NPMHU, which intervened in this case, contend that an eligible employee who is scheduled and actually works during a Sunday is entitled to Sunday premium -- if not working overtime or otherwise receiving premium pay -- regardless of the reason the employee is scheduled for that Sunday work. The Postal Service insists, however, that an employee is not entitled to Sunday premium if working on a Sunday only as a result of a temporary schedule change for personal convenience, because that Sunday work -- in the Postal Service's view -- is not part of the employee's "regular work schedule".

The APWU presented evidence that an employee requesting a temporary schedule change for personal convenience

must complete a Form 3189 on which the employee acknowledges that if the request is granted the employee will not be entitled to out-of-schedule premium.[2] The Form 3189 request also has to be agreed to and signed by a Union representative. The APWU stresses that Form 3189 only waives out-of-schedule pay, it makes no reference to Sunday premium pay. The Postal Service points out there is no need for a waiver of Sunday premium, because an employee only is entitled to Sunday premium if the Sunday work is part of the employee's "regular work schedule".

Louis Picciano, now a headquarters Payroll Accountant, testified that from 1984 to 1992 he had substantial responsibility as a PSDS (Postal Service Data System) Technician and Supervisor for ensuring proper administration in his district of time and attendance issues, including Sunday premium. His understanding always has been that employees are eligible for Sunday premium only if they work on a Sunday within their assigned schedule, that is, their official job or bid assignment. He added that "regular work schedule", for purposes of Article 8.6, also would include a temporary assignment dictated by management, and, in the case of a part-time flexible employee, the weekly schedule posted by management. He stated that in his entire tenure with the Postal Service since 1977 he has not been aware of any policy that would have allowed an employee to be paid Sunday premium for hours worked pursuant to a temporary schedule change for personal convenience. As he

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[2] Only full-time regular employees are eligible for out-of-schedule premium. (See Handbook F-21, Sections 232.11 and 232.21.)

also put it: "There is no penalty for accommodating an employee."

Cheryl Hubbard, another Payroll Accountant, testified that from 1976 to 1983, before she came to headquarters, she served as an Accounting Officer and General Accounting Officer in Milwaukee. Her opinion and understanding always have been that an employee is not eligible for Sunday premium for working on a Sunday on a temporary schedule change for personal convenience. On many occasions, Hubbard testified, she has stated that opinion in response to questions from other postal employees. When asked for her understanding of the phrase "regular work schedule" in Article 8.6, she testified:

> The regular work schedule, in my understanding and my application in the years I've worked in payroll, is it depends on the type of employee. If you have a full time regular employee, that is their bid schedule. If you have a regular flexible employee, it is the schedule that they are given at the beginning of the week. If it is a part time flexible employee, it is their hours per day that they are given to work.

APWU POSITION

The APWU contends that the only interpretation of Article 8.6 that is consistent with the National Agreement, the parties' application of Sunday premium, and the history of the provision itself does not allow for an exception to the Sunday premium entitlement simply because an employee works during a

Sunday as the result of the Postal Service approving an employee's schedule change request. As the Postal Service itself has reiterated numerous times and over dozens of years through its application of Article 8.6, the National Agreement entitles an employee to Sunday premium if two factors occur: the Postal Service schedules the employee to work and the employee actually works during a Sunday. Nowhere has the exception to these Sunday premium requirements for employee-requested schedule changes been expressed that binds the Union or the Postal Service. In a situation where both Sunday premium factors are satisfied, it is immaterial to the Sunday premium entitlement that management's exercise of its discretion to schedule an employee to work during a Sunday originated with a request from the employee.

The APWU, like the NPMHU, maintains that the term "regular work schedule" in Article 8.6, when read in context, refers to the nonovertime hours in an employee's schedule that fall during a Sunday. As the NPMHU has demonstrated, this is supported by the legislative history of the provision in the Federal Employees Salary Act of 1965, which is the obvious source of the language in Article 8.6. Moreover, the Postal Service's contention that this phrase limits Sunday premium to only those employees who work on Sunday as part of the fixed work schedule of their bid assignment is inconsistent with the National Agreement and the parties' practice -- reflected in Handbook F-21 -- that flexible employees, who do not have regular or fixed work schedules, are eligible for Sunday premium.

The APWU stresses that prior to the issuance of ELM 11 in 1988, there was no written policy that employees who request a temporary schedule change for personal convenience are not entitled to Sunday premium if they actually work their scheduled hours on Sunday. The exclusionary language added to ELM 434.3(c) in ELM 11 later was withdrawn and never has been agreed to or accepted by the Union. That language was not derived from the National Agreement, nor did it reflect the existing practice and policy recognized and followed by the parties since the first National Agreement, which has been that employees are paid Sunday premium if they are scheduled to work and actually work during a Sunday, notwithstanding their having put in a request for a temporary schedule change. This is demonstrated in the underlying grievance. The Postal Service offered no evidence that the understanding of its two Payroll Accounting witnesses that Sunday premium does not apply to employees who request a temporary schedule change for personal convenience was followed in the field, particularly prior to issuance of ELM 11.

The APWU also argues that the equities of the situation favor the Unions' interpretation of Article 8.6. As reiterated in numerous places, Sunday premium is available to employees only if they are scheduled by management to work during a Sunday. Although the request to work during a Sunday may initially emanate from the employee, it is nonetheless management's decision whether to approve the request. Thus, management ultimately decides whether to pay Sunday premium by how it schedules employees. If the Postal Service enjoys the

fruits of its employees' Sunday labor, the APWU asserts, there is no equitable explanation why it should not pay them Sunday premium.

NPMHU POSITION

The NPMHU argues that the term "regular" in Article 8.6 is ambiguous. It cannot be read simply to mean "recurrent", because flexible employees are eligible for Sunday premium and they do not have fixed or recurring schedules. Moreover, it is undisputed that over the years the practice of paying Sunday premium when an employee requests a temporary schedule change for personal convenience has been mixed.

There is no evidence regarding the bargaining history of the relevant language in Article 8.6, which has been part of the National Agreement since 1971. The record does show, however, that this language is virtually identical to that in the Federal Employees Salary Act of 1965, 29 U.S.C. §3573(3), which governed the payment of Sunday premium pay (25%) to postal employees prior to 1971. The NPMHU argues that, given the identical relevant language and lack of any contrary bargaining history, the only reasonable assumption is that the parties in 1971 intended the term "regular work schedule" in Article 8.6 to have the same meaning as that term had in the statute that governed postal pay prior to collective bargaining.

The NPMHU maintains that careful review of the legislative history of the Sunday premium pay provision in the

Federal Employees Salary Act of 1965, as well as the corresponding provision in the Federal Salary and Fringe Benefits Act of 1966 -- which was intended to provide the same Sunday premium pay entitlement to other federal employees -- supports the conclusion that this was understood to cover all Sunday work that was not subject to an overtime or 150% rate of pay. The NPMHU cites a 1969 decision of the Comptroller General of the United States, construing the 1965 Act, and a 1973 decision, construing the 1966 Act, as providing additional support for this interpretation.

Like the APWU, the NPMHU contends that the Unions' interpretation of Article 8.6 leads to an equitable result. The employee who is granted a temporary schedule change to a Sunday shift presumably is replacing another Sunday shift employee who is not working that day. This replaced employee would have been paid either an additional 25% for Sunday premium or an additional 50% for overtime or out-of-schedule pay. Paying the 25% premium to the employee who requests a temporary schedule change, therefore, does not cost the Postal Service anything beyond what it ordinarily would pay to staff its Sunday shifts, and, in many cases, saves the Postal Service money because the Postal Service otherwise would have to order more expensive overtime or out-of-schedule work to cover for the replaced employee.

EMPLOYER POSITION

The Postal Service contends that the words "regular work schedule" in Article 8.6 are assumed to be included in the contract for reasons intended by the parties and should be given their plain meaning. An employee's regular work schedule is a term of art which has particular meaning in the National Agreement. It refers to an employee's bid schedule. If the Unions' interpretation of these words were to be accepted, an employee's regular work schedule could be changed by the mere submission of a Form 3189 requesting a temporary schedule change for personal convenience. The Postal Service argues this result simply would be untenable and would result in literal chaos amongst the bargaining unit. If, in the Unions', submission of a Form 3189 does not cause the Sunday work hours to become part of the employee's regular work schedule, then their position in this case ignores the plain language of the contract.

The Postal Service asserts that just as mere service on a temporary relief assignment does not supplant one's "regular schedule" as determined by one's bid schedule, neither can the mere execution of a Form 3189 supplant one's regular schedule. An employee's regular work schedule, the Postal Service insists, is the schedule established by management. It is the bid schedule. It is the posted part-time flexible schedule. It is the assigned temporary detail schedule. All of these schedules are work schedules assigned by management. Sunday hours do not become part of one's regular work schedule,

however, when they are approved as a temporary schedule change for personal convenience.

To the extent that there is any ambiguity in the language of Article 8.6, and the Postal Service maintains there is none, it is completely dispelled by the express language of Handbook F-21 and the applicable provisions of the ELM, one or both of which have been in effect for the past 30 years. Both directives prohibit payment of Sunday premiums for employees unless they actually work the Sunday hours (with a few narrow exceptions) and they do so as part of their regular work schedule.

The Postal Service argues that since the contract language is clear and unambiguous, there is no basis for resort to extrinsic evidence to determine the meaning or intent of the parties in agreeing to the language of Article 8.6.

The Postal Service concedes that a fair reading of the legislative history presented by the NPMHU could lead one to conclude that the 1965 statute that governed Postal Service pay prior to 1971 used the term "regular work schedule" in the manner the Unions assert, although that is not the only possible conclusion. Nonetheless, there is no need to sort through what is at best obscure and conflicting legislative history to decide this case. There is nothing in the record to indicate that the parties intended to incorporate the federal statute and its legislative history into their collective bargaining agreement when they adopted the language in Article 8.6 in 1971. As

Arbitrator Garrett pointed out in an early Postal Service case involving a different issue relating to Sunday premium, the Postal Service was attempting to avoid paying Sunday premium wherever possible.

Insofar as past practice is concerned, the evidence at best shows that there were some local aberrations from the policy set forth in Article 8.6 and incorporated in postal handbooks and directives. There simply is no evidence of a national past practice of paying Sunday premium to employees who work a Sunday pursuant to a temporary schedule change for personal convenience.

FINDINGS

If the only employees eligible for Sunday premium pay under Article 8.6 were employees with fixed bid schedules, the Postal Service's argument that this is the clear or plain meaning of the words "regular work schedule", as used in that provision, might have considerable appeal.[3] But ever since this Sunday premium provision was included in the parties' first National Agreement in 1971, it also has applied to part-time flexible employees, who clearly do not have a fixed or bid

[3] As Arbitrator Snow, citing the Restatement (Second) of Contracts, pointed out, however: "It is not necessary to prove an ambiguity in the contractual language of the parties before evaluating the totality of circumstances that created the language. The language of the parties is understood only in context." APWU v. USPS, Case No. H4C-3W-C 8590 (1993), at 11.

schedule. Moreover, as Payroll Accountant Picciano testified, the Postal Service also considers "regular work schedule" in Article 8.6 to encompass a temporary assignment directed by management.

In other words, even the Postal Service acknowledges that the term "regular work schedule" in Article 8.6 does not necessarily mean recurring or fixed or bid -- as the term "regular schedule" evidently does on Form 3189 on which out-of-schedule premium is waived by full-time regular employees -- but rather it encompasses a variety of schedules directed by management. Indeed, it appears that the only nonovertime scheduled work that the Postal Service maintains should be excluded from "regular work schedule" is a temporary schedule change made at the request of an employee. This may be an arguable interpretation of Article 8.6, but it is not an interpretation that can be sustained simply on the basis of the plain meaning of the words "regular work schedule". Moreover, it should be pointed out that the schedule of an employee who successfully requests a temporary schedule change for personal convenience (using Form 3189) is the schedule assigned by management to that employee for that week.

Thus, it is necessary to look beyond the wording of Article 8.6 to resolve this dispute.

There is no evidence regarding the bargaining history of the relevant portion of Article 8.6, which was included in the first National Agreement in 1971. The NPMHU has made a

persuasive case that the pertinent language, including the term "regular work schedule" simply was carried over from the 1965 federal statute that governed postal pay prior to Postal Reorganization. The detailed legislative history presented by the NPMHU also shows, in my opinion, that Congress most likely used the term "regular work schedule" to refer to the basic five-day, forty-hour work week, as distinguished from overtime. The Postal Service does not concede the point, but does not dispute that this is as reasonable a reading of the legislative history as any.

It does not necessarily follow, however, that the 1971 negotiators meant the term "regular work schedule" to have that meaning. There is no evidence they were aware of the legislative history. It is reasonable to presume that in continuing to use the same entitlement language, they intended that language to be applied as it had been applied before Postal Reorganization.[4] There is, however, no relevant evidence of how the statutory provision was applied prior to Postal Reorganization. The 1969 Postal Manual and F-21 Handbook, which

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[4] In APWU v. USPS, Case No. AB-C-10 (1975), at 2, Arbitrator Garrett noted that following enactment of the 1965 Act the Post Office Department "launched a program to revise all affected work schedules so as to reduce the impact of the required Sunday premium to the greatest extent possible". (Believing this to be still ongoing, the Unions in 1973 succeeded in adding new language to Article 8.6 to limit that program.) The Postal Service's goal of avoiding Sunday premium where possible, however, does not shed any light on the parties' mutual intent when they adopted the prior statutory language on entitlement to Sunday premium in 1971.

are in evidence, do not provide any more detail on how the 1965 statute was applied in cases where an employee's schedule was temporarily changed at his or her request, assuming that occurred on occasion.

The meaning of the term "regular work week" that Congress most likely intended when it enacted the 1965 statute, at the very least, however, provides a solid basis on which to conclude that the parties quite possibly used it in that sense, rather than as referring to a fixed or bid schedule, when they carried forward the statutory language in Article 8.6 in 1971. That conclusion is strengthened by the fact that part-time flexible employees, who do not have fixed or bid schedules, became eligible in 1971 for Sunday premium.

The evidence as to past practice since Article 8.6 was agreed to in 1971 is mixed and far from conclusive. There was testimony from two Postal Service witnesses with responsibility for time and attendance matters regarding their knowledge and understanding of postal policy on this matter, which they said they had passed on to other management personnel in the districts where they served as supervisors before coming to headquarters. There also was evidence that top management at headquarters considered the specific exclusionary language added to ELM 434.3(c) in Issue 11 in 1988 to reflect existing policy. But whatever official policy may have been, it was not specifically set forth in any manual, handbook or directive prior to ELM 11, and it evidently was not always followed in the field. The underlying grievance record in this case, for

example, reveals that prior to ELM 11, the "policy" at the MSP BMC was to pay Sunday premium to employees on a temporary schedule change for personal convenience. There simply is no way on this record to determine the extent to which the contrary postal policy described by management witnesses was applied in other offices.[5]

As previously noted, there is no indication in the record of any postal manual, handbook or directive that specifically addressed this issue in the period after Postal Reorganization in 1971 until Issue 11 of the ELM was promulgated in 1988. Significantly, however, neither the relevant provisions in the ELM, nor those in Handbook F-21, required more than that the work on Sunday be scheduled work. ELM 434.31 and Section 242.1 of Handbook F-21 both stated (and continue to state) that Sunday premium "is paid to eligible employees for all hours worked during a scheduled tour that includes any part of a Sunday". In addition, ELM 434.32 and Section 242.21 of Handbook F-21 state:

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[5] If, as the NPMHU has indicated, temporary schedule changes for personal convenience frequently involve employees swapping days off, local management quite possibly would not consider payment of Sunday premium to be a "penalty" for approving the change, because the premium would have been paid anyway. Only when management otherwise would not have scheduled an employee on Sunday would the payment of Sunday premium constitute an "extra" cost to the Postal Service for accommodating an employee's request, and management is not obliged to grant the request.

> ... It is important to note that only those employees who have been *scheduled* to work on a Sunday are eligible to receive the premium. If the employee has not been scheduled, then he is not eligible for "Sunday premium."

Particularly in light of this stress on the employee having to be "scheduled" to work on a Sunday, without other qualification, the absence of any reference in the ELM or Handbook F-21 to "regular" schedule -- in the sense of fixed or bid -- or to employees not being entitled to Sunday premium if scheduled on Sunday pursuant to a request for a temporary schedule change is striking. This absence also is in marked contrast to ELM 434.611, relating to out-of-schedule premium -- which only full-time regular employees are eligible for -- which specifically refers to "regularly scheduled workday or workweek".[6]

In these circumstances, the absence -- prior to the disputed issuance of ELM 11 in 1988 -- of any specific language in the ELM or Handbook F-21 or any other policy directive or document stating that employees who request a temporary schedule change are not entitled to Sunday premium does not seem an oversight. This is not to say that at least some postal officials, including witnesses in this case, read the language

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[6] ELM 434.611 provides:

> Out-of-schedule premium is paid 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.

in Article 8.6 to have that meaning prior to 1988, but I am not persuaded that was the intent when the parties agreed to Article 8.6 in 1971, and the record does not establish that was an established past practice when the underlying grievance in this case arose in 1990.

For these reasons, I conclude that an eligible employee who is scheduled by management to work and does work on a nonovertime basis on a Sunday, even if the employee was scheduled on Sunday pursuant to a request for a temporary schedule change for personal convenience, is entitled to Sunday premium pay under Article 8.6 of the National Agreement.

AWARD

An eligible employee who is scheduled by management to work and does work on a nonovertime basis on a Sunday, even if the employee was scheduled on Sunday pursuant to a request for a temporary schedule change for personal convenience, is entitled to Sunday premium pay under Article 8.6 of the National Agreement.

Shyam Das, Arbitrator

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NATIONAL ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION.

between

UNITED STATES POSTAL SERVICE

And

AMERICAN POSTAL WORKERS UNION AFL-CIO

And

NATIONAL POSTAL MAIL HANDLERS UNION, A DIVISION OF LABORERS' INTERNATIONAL UNION, AFL-CIO (INTERVENING)

CASE NO.: Q06C-4Q-C 08058827
Sunday Premium While on Administrative Leave

BEFORE: Linda S. Byars

APPEARANCES:

For the APWU: Brenda C. Zwack

For the USPS: Brian M. Reimer

For the NPMHU: Kathleen M. Keller

Place of Hearing: Washington, D.C.

Date of Hearing: May 11, 2010

Post-Hearing Briefs: June 30, 2010

Award Summary

Pursuant to Article 8.6, Sunday premium is paid for work performed during the period commencing at midnight Saturday and ending at midnight Sunday. Section 434.33 of the ELM prohibits Sunday premium pay to an employee who is on leave including administrative leave but for the exceptions listed in the provision. Section 519.1 of the ELM is not interpreted to override Article 8.6 of the National Agreement and Section 434.33 of the ELM. Neither the August 6, 1985 settlement agreement between the Postal Service and the NPMHU nor the December 8, 2000 decision of Arbitrator Philip W. Parkinson controls in this case. Therefore, the Grievance is denied.

BACKGROUND

By letter dated December 20, 2007, the APWU initiated a dispute at Step 4 of the grievance procedure concerning the following interpretive issue:

> Whether an employee who is on administrative leave is entitled to Sunday Premium pay for hours he/she would have otherwise worked on Sunday. [Joint Exhibit No. 1, p. 9.]

Following discussions at the fourth step of the grievance/arbitration procedures and by letter dated August 13, 2009, the Postal Service set out its understanding of the issues involved and its response to those issues. Also, by letter dated August 13, 2009, the APWU set out its understanding of the issues to be decided and the facts giving rise to the interpretive dispute and appealed the dispute to arbitration.

By letter dated April 19, 2010, the parties scheduled Case Number Q06C-4Q-C 08058827 for hearing, and the dispute came before the Arbitrator at hearing on May 11, 2010 in Washington, D.C. The National Postal Mail Handlers Union (NPMHU) intervened. The record remained open for receipt of transcript and post-hearing briefs. The parties jointly submit the following statement of issue.

STATEMENT OF ISSUE

Whether an employee who is on administrative leave is entitled to Sunday premium pay for hours he or she would have otherwise worked on a Sunday. [Transcript pp. 9 and 14.]

OPINION

The Postal Service relies on Article 8, Section 6 of the National Agreement, which defines Sunday Premium Payment as follows:

> 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. [Joint Exhibit No. 2, p. 28.]

The Postal Service also relies on Section 434.33 of the Employee and Labor Relations Manual (ELM) which states as follows:

> If an employee is on leave for any part of the tour, he or she is not entitled to Sunday premium for the leave hours.
>
> The exception is that Sunday premium will be continued while an eligible employee is in continuation of pay (COP) status, or is on military or court leave. An eligible employee also continues to receive the Sunday premium when the employee is rescheduled due to compensable

disability in lieu of placement into COP status. [USPS Exhibit No. 3.]

The Unions rely on Article 10, Section 2, which states the following in Paragraph A:

> 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. [Joint Exhibit No. 2, p. 45.]

Section 519.1 of Subchapter 510 of the Employee and Labor Relations Manual provides the following definition of administrative leave:

> *Administrative leave* is absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay. [APWU Exhibit No. 3A and USPS Exhibit 4G.]

The Unions maintain that, unlike other provisions incorporated in the National Agreement only through Article 19, Subchapter 510 of the ELM cannot be changed without formal negotiation with the APWU. Therefore, the Unions maintain that, given this special status of ELM Subchapter 510, any conflict between ELM Section 434.33 and ELM Section 519.1 must be resolved in favor of ELM Section 519.1.

The Unions rely heavily on a national level opinion issued on December 8, 2000 by Arbitrator Philip W. Parkinson, deciding a grievance filed by the NPMHU and addressing the issue of night differential pay while an employee is on

administrative leave.[1] [APWU Exhibit No. 5 and USPS Exhibit No. 9, p. 11.] Arbitrator Parkinson granted the grievance and awarded night differential to employees who would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave. [APWU Exhibit No. 5 and USPS Exhibit No. 9, p. 15.] Contrary to the APWU's argument, however, the issue here is not nearly identical to the issue before Arbitrator Parkinson. Arbitrator Parkinson interpreted the meaning of Section 434.2 of the ELM in concert with Section 519.1 of the ELM, and that interpretation is *res judicata*.[2]

As the APWU points out, the language in Section 434.2 of the ELM, before Arbitrator Parkinson, is similar to the contractual language relevant to the instant case. Arbitrator Parkinson found significant that there are instances enumerated in Section 430 of the ELM that include Court Leave, Military Leave, Continuation of Pay (COP) status and the rescheduling of an employee to day work as a result of an on-the-job injury or compensable training where night differential is paid to employees. [APWU Exhibit No. 5, p.

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[1] Although the grievance before Arbitrator Parkinson originally included the issue of Sunday premium for administrative leave, the issue at arbitration was confined to night differential pay to an employee on administrative leave.

[2] The application of Arbitrator Parkinson's opinion to the circumstances outlined in a regional level case decided by Arbitrator R. Gudenberg is not persuasive on the broader issue in the instant case.

13.] He reasoned that, despite the language in Section 434.2 of the ELM defining night differential as paid for all work performed during the designated hours, there are instances where it is paid for hours not performed during the designated hours. [APWU Exhibit No. 5, p. 13.] Arbitrator Parkinson reasoned that although administrative leave is not one of the enumerated instances at Section 430 of the ELM where night differential is paid to employees, it is "likewise not excluded." [APWU Exhibit No. 5, USPS Exhibit No. 9, p. 13.] However, as the Postal Service points out, the contractual language it relies on in the instant case, Section 434.33 of the ELM, is significantly different from that relied on by Arbitrator Parkinson.[3]

Section 434.33 of the ELM begins with a clear statement: "If an employee is on leave for any part of the tour, he or she is not entitled to Sunday premium for the leave hours." This clear statement of Sunday premium exclusion for leave hours is significantly different from the contractual language considered by Arbitrator Parkinson in the night differential case. Also, unlike the provision with respect to night differential, Section 434.33 provides exceptions referred to as "The" exceptions to the general statement

[3] Contrary to the position of the NPMHU, Arbitrator Parkinson's decision is based on the language of both Section 519.1 and Section 434.2 of the ELM.

prohibiting Sunday premium to employees on leave. Administrative leave is not one of "The" exceptions listed.

As the Unions maintain, Arbitrator Parkinson rejected the Postal Service's reliance on the language in Article 8.7 and in Section 434.2 of the ELM as controlling and reasoned that there was not a clear exclusion for the payment of night differential to employees on administrative leave. [APWU Exhibit No. 5, p. 13.] However, the language of Section 434.33 of the ELM, prohibiting Sunday premium pay to employees on leave except as specified, precludes similar reasoning in the instant case.

Unlike the case before Arbitrator Parkinson, it is not reasonable to conclude from the record in this case that the parties have understood and applied the "without loss of pay" language in Section 519.1 as overriding the specific prohibition in Section 434.33 of the ELM. As the Postal Service maintains, because the Sunday premium and night differential regulations were written differently, the analysis for one does not apply to the analysis for the other.

The APWU also relies on the parties' Joint Contract Interpretation Manual (JCIM 2007) as reflecting the parties' understanding of ELM Section 434.33. It states in relevant part:

> As specified in the Employee and Labor Relations manual, Section 434.33, if an employee is on leave for any part of the tour, normally he or she is not entitled to Sunday premium for leave hours. However, Sunday premium to which the employee is normally entitled is continued while the employee is on a continuation of pay (COP) status, on military leave, or on court leave. An eligible employee also continues to receive the Sunday premium normally entitled to when he or she is rescheduled due to a compensable disability in lieu of placement in a COP status. [USPS Exhibit No. 12, p. 48.]

The parties jointly recognize Section 434.33 of the ELM in the above JCIM provision, and conspicuously absent from the exceptions to paying Sunday premium pay while an employee is on leave is when an employee is on administrative leave. The Unions' position requires the addition of administrative leave to the exceptions in Section 434.33 of the ELM.

The Unions do not assert a past practice supporting their interpretation. They maintain that the Postal Service is obligated to prove its assertion of a past practice of not paying Sunday premium to employees on administrative leave. However, as the Postal Service maintains, it is significant that the APWU offered no evidence to demonstrate that the parties' mutual understanding is reflected in a past practice supporting the Unions' interpretation.[4] Neither the APWU,

[4] The evidence presented during the arbitration before Arbitrator Parkinson, although not considered because he found it was submitted in support of a new argument, demonstrated a past practice of not paying premium pay to employees on administrative leave.

nor the NPMHU, asserts, or offers evidence to show, that Sunday premium has been paid to employees on administrative leave, except for the one exception outlined in the August 6, 1985 settlement agreement between the Postal Service and the NPMHU.[5]

The Unions do not maintain that Sunday premium is paid for leave other than those delineated in Section 434.33 of the ELM and for administrative leave. However, regulations governing other leave contain similar language to the ELM Section 519.1 relied on by the Unions. Section 513.11 of the ELM, states: "Sick leave 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." [Postal Service Exhibit No. 4B, emphasis supplied.] Both Sections 519.1 and 513.11 of the ELM use the term, "pay," which the Unions maintain includes premium pay. Despite such language, the Unions do not assert that employees are paid Sunday premium when they are on sick leave. Section 513.11 of the ELM is interpreted as a general statement with respect to sick leave, and, as the Postal Service maintains, it is reasonable to interpret Section

[5] The application of Arbitrator Parkinson's award in a regional case [Case No. B00T-1B-C 04181768] is not evidence of a past practice to support the Unions' position.

519.1 of the ELM as a general statement with respect to pay for administrative leave. To interpret it otherwise, would require the addition of another exception to those delineated in Section 434.33 of the ELM.

The APWU maintains that the Postal Service's disparate application of night and Sunday premium pay to employees on administrative leave is contrary to Section 511.1 of the ELM as well as a national level decision by Arbitrator Shyam Das. However, as the Postal Service maintains, treating one type of premium differently than another type because the regulations governing those premiums are different is not a violation of Section 511.1 of the ELM. If the application is consistent among employees, it is compliant with the stated commitment of Section 511.1 of the ELM, i.e., to administer the leave program on an equitable basis for all employees. Moreover, it is distinguishable from Case No. Q90C-6Q-C 94042619 in which Arbitrator Shyam Das found that the Postal Service provided administrative leave to some employees covered by the leave provisions in the ELM, but not to others.

The NPMHU maintains that employees working on Sunday have accepted an inconvenient schedule in order to allow the Postal Service to meet its business needs and that employees depend on the additional income provided by this schedule.

However, the employee benefit provided for accepting a schedule that includes Sunday is for Sunday premium pay while the employee is working, not normally while he/she is on leave. Employees depend on the additional income whether they are on administrative leave or other leave, such as sick leave, but they are entitled to the additional income only if they are working or when they are not working due to one of the exceptions delineated in ELM Section 434.33.

The Unions also distinguish administrative leave from other leave by maintaining that it is not within the control of the employee but generally is within the discretion of the Postal Service. Although the Postal Service may order administrative leave during a disciplinary investigation, which may reasonably be construed as within management's discretion, there are other circumstances where management grants administrative leave based on circumstances outside of its control. Moreover, employees are denied Sunday premium pay when they take leave that is outside of their control, such as sick leave.

The Unions also point to an August 6, 1985 pre-arbitration settlement agreement between the Postal Service and the NPMHU as reflecting a mutual understanding concerning the payment of Sunday premium to employees on administrative leave. The settlement agreement includes the definition of

administrative leave found in Section 519.1 of the ELM, which applies to bargaining unit employees represented by the NPMHU and the APWU, and includes the statement: "Therefore, those employees who would have normally received Sunday premium on the day in question will be appropriately compensated at the rate of pay in effect at the time of the incident." [APWU Exhibit No. 4, USPS Exhibit No. 11.]

As the Unions submit, and Arbitrator Daniel Collins opined in the national level case before him, the settlement of a contract grievance at the national level constitutes important evidence of the parties' mutual interpretation of their Agreement. [APWU Exhibit No. 6, p. 8.] However, the August 6, 1985 settlement agreement includes a statement of the issue in that grievance, i.e., "whether employees are entitled to Sunday premium pay for the time they received administrative leave, after being released from duty before the normal completion of their tour of duty due to an 'Act of God.'" [APWU Exhibit No. 4, USPS Exhibit No. 11.] The specified issue in the August 6, 1985 settlement agreement precludes considering it as a statement by the parties of the general issue and mutual understanding to be decided in the instant case. As the Postal Service maintains and the record demonstrates, issues concerning the precedential value of the

1985 settlement will be decided under the USPS-NPMHU grievance/arbitration process.

AWARD

An employee who is on administrative leave is not entitled to Sunday Premium pay for hours he or she would have otherwise worked on a Sunday. The Grievance is denied.

DATE: August 24, 2010

Linda S. Byars, Arbitrator

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: Q98M-4Q-C 00274228
Class Action
Washington, DC 20260 4100

Dear John:

Based on our Step 4 discussions concerning the payment of Sunday Premium pay to mail handlers on administrative leave, the parties agree to the following:

Case Q98M-4Q-C 00274228 is settled based on the June 30, 2010 Byars Award, in case #Q06C-4Q-C 08058827, which concluded that an employee on administrative leave, except for the exceptions delineated in ELM section 434.33, is not entitled to Sunday Premium pay for hours he or she would have otherwise worked on a Sunday. However, employees who are released on administrative leave before the normal completion of their tour of duty due to an "Act of God" shall receive Sunday Premium pay for the time that they receive administrative leave.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement

Vicki Benson
Vicki Benson
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 8/19/14

J. F. H.
John F. Hegarty
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 8/19/14

475 L'Enfant Plaza SW
Washington DC 20260-4101
www.usps.com

AGREEMENT BETWEEN MAIL HANDLERS AND USPS

ON SUNDAY PREMIUM PAY

The following disposition of pending grievances relating to Sunday Premium as provided by Article VIII, 6, is agreed to by the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO and the United States Postal Service.

1. The USPS will issue instructions to the effect that all work schedules established or posted since July 21, 1973, which were arranged solely to avoid the payment of Sunday Premium payment, and for which no operatonal justification existed, should be reviewed and adjusted so as to provide Sunday Premium payment. The instructions will provide that the schedules so affected shall be altered within 45 days of the date of this agreement, and no such schedules shall be established or posted in the future solely to avoid the payment of Sunday Premium. Failure to adjust the schedules accordingly will be subject to the grievance procedure.

2. For those individuals whose schedules are prohibited by paragraph one who have timely grievances on file as of December 1, 1974, the USPS will, on a case by case

basis, not only adjust the schedules as set forth in paragraph one, but also pay retroactive compensation at a rate of 25% of the applicable straight time hourly rate for any Sunday Premium missed since July 21, 1973, as a result of the improper schedules whether or not the schedules were established or posted prior to or after July 21, 1973. On all these grievances, the parties will meet and consider each case, provided that any unsettled cases will be scheduled for arbitration with the parties bearing the burden of proof usual in arbitration cases, and provided further that the USPS will make available to the Mail Handlers any existing documents, records or other evidentiary matter relevant to a determination of the case.

3. Schedules prohibited by paragraph 1, which were established or posted after June 13, 1973, but before July 21, 1973, will be adjusted as if they had been created after July 21, 1973, and will be treated as if paragraphs 1 and 2 were applicable.

Dated March 12, 1975

For the United States Postal Service

For the Mail Handlers, AFL-CIO

Exhibit 434.8
Pyramiding of Premiums

If an employee is eligible to receive:	Night differential	Sunday Premium	Overtime	Penalty Overtime	Out-of-Schedule Overtime	Guaranteed Time	Holiday-Worked Pay	Christmas-Worked Pay	Holiday Schedule Premium	Nonbargaining Rescheduling Premium	Continuation of Pay	DC Beeper Time	DC Telephone Time
Night Differential	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Sunday Premium	Yes	N/A	No[2]	No	No	Yes	Yes	Yes	No	No	Yes	No	No
Overtime[1]	Yes	No[2]	N/A	No	No	Yes	No	No	No	No	No	No	No
Penalty Overtime	Yes	No	No	N/A	No	Yes	No	No	No	No	No	No	No
Out-of-Schedule Overtime	Yes	No	No	No	N/A	Yes	No	No	No	No	No	No	No
Guaranteed Time	No	No	No	Yes	Yes	N/A	No	No	No	No	No	No	No
Guaranteed Overtime	No	No	No	No	No	N/A	No	No	No	No	No	No	No
Holiday-Worked Pay	Yes	Yes	No	No	No	Yes	N/A	No	Yes	Yes	No	No	No
Christmas-Worked Pay	Yes	Yes	No	No	No	Yes	No	N/A	No	No	No	No	No
Holiday Schedule Premium	Yes	No	No	No	No	Yes	Yes	No	N/A	No	No	No	No
Nonbargaining Rescheduling Premium	Yes	No	No	No	No	No	Yes	No	No	N/A	No	No	No
Continuation of Pay	Yes	Yes	No	No	No	No	No	No	No	No	N/A	No	No
DC Beeper Time	No	No	No	No	No	No	No	No	No	No	No	N/A	N/A
DC Telephone Time	No	No	No	No	No	No	No	No	No	No	No	N/A	N/A

1. *To be paid at the applicable Postal or FLSA overtime rate or EAS additional pay.*
2. *EAS-23 and below nonbargaining employees receive Sunday premium for hours actually worked on Sunday provided the time is part of their regular schedule or the time is eligible for additional pay or overtime pay.*

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	( )	Grievant: Doug Wright
between	( )	Post Office: Kalamazoo, MI
UNITED STATES POSTAL SERVICE	( )	Case Nos: J90M-1J-C 95047374 951001
and	( )	
NATIONAL POSTAL MAIL HANDLERS UNION	( )	

BEFORE: Philip W. Parkinson, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Jonathan Saperstein, Esq.

For the Union: Bruce R. Lerner, Esq.
Robert Alexander, Esq.

APWU as Intervenor: Melinda Holmes, Esq.

Place of Hearing: Washington, D.C.

Dates of Hearing: May 31, June 19 and July 6, 2000

Record Closed: October 20, 2000

AWARD

The grievance is granted. The grievant shall be paid night differential for the period he was on administrative leave. Furthermore, in the future, employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave.

Date of Award: December 8, 2000

Philip W. Parkinson

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	Case No.: J90M-1J-C 95047374
between	NPMHU NO: 951001
UNITED STATES POSTAL SERVICE	Date of Hearing: May 31, June 19, July 6, 2000
and	Record Closed: October 20, 2000
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	Date of Award: December 8, 2000

BEFORE

PHILIP W. PARKINSON, ESQ.

ARBITRATOR

Representing the Postal Service – Jonathan Saperstein, Esq.

Representing the Union – Bruce R. Lerner, Esq.
Robert Alexander, Esq.

Representing the Intervenor, APWU – Melinda Holmes, Esq.

I. BACKGROUND

This grievance was presented on or about April 5, 1995 on behalf of Mr. Doug Wright, a Mail Handler employed at the Kalamazoo, Michigan Postal Facility of the United States Postal Service (hereafter referred to as the "Postal Service" or sometimes as the "USPS" or "Management"). The grievance was presented by Local 307 of the National Postal Mail Handlers Union (hereafter referred to as the "Union"). Subsequent to a denial of the grievance at Step One of the grievance procedure, the Union appealed it to Step Two on April 7, 1995. The Union set forth its reason for the appeal on the Standard Grievance Form as follows:

> On above date (3/24/95) the grievant received his paycheck and was not paid for his night differential or Sunday premium. The grievant was placed on administrative leave on 3/6/95, but has yet to be given disciplinary action. The grievant is losing 70 hours of night differential and 32 hours of Sunday premium per pay period. This is a significant loss of pay."

As a result, it was alleged that the Postal Service violated Articles 5 & 16 of the parties' collective bargaining agreement[1] and Section 519.1 of the Employee and Labor Relations Manual ("ELM"). The Union requests, as a remedy, that the Postal Service cease and desist this violation as well as "pay and make whole at appropriate rates for night differential and Sunday premium from 3/6/95 until grievant's return to work." Thereafter, the parties met and discussed the Step Two Appeal on April 18, 1995. In it's response denying the grievance, the Postal Service representative set forth its position thusly:

> The grievant was placed on administrative leave on 3/6/96(sic) for his involvement in a possible altercation. The placement in Administrative Leave is continuing due to an ongoing investigation into the 3/6/95 incident.

[1] Agreement between National Postal Mailhandlers Union and United States Postal Service, November 20, 1990 – November 20, 1993, as supplemented by the '93 extension, (Hereafter referred to as "The Agreement.")

The grievant is not entitled to the night differential Sunday premium pay as outlined in Section 241 and 242 of the F-21, Time and Attendance handbook. Management is in compliance with the F-21 wherein it states:

The regulations pertaining to the "Definition of Premium Hours,"(241.1) as well as the "Definition of Sunday Premium" (242.1) were then set forth. The Union submitted Additions and Corrections to the Step Two denial on April 24, 1995 and noted, among other things in its response, that "As of 4/21/95, the MDO had not even spoken to the grievant personally to hear his testimony or to let him explain his side of the story. Management is causing the grievant financial loss by not having the investigation in a timely manner." Thereafter, the grievance was appealed to Step Three by the Union on April 26, 1995 using the same rationale, and, on the same basis as it did at Step Two. The grievance was next discussed at Step Three by the parties and the Postal Service denied the grievance for the reason that the grievant "is only entitled to night differential and Sunday premium for work hours." The Step Three decision goes on to state that inasmuch as the grievant "was in a non-duty status, he is not entitled to the premium hours requested." Thereafter, the Union initially appealed the matter to regular regional arbitration, but subsequently, by letter dated June 27, 1996, notified the Postal Service that it was withdrawing the grievance from regional arbitration and referred it to Step Four of the grievance procedure. The Union defined the nature of the interpretive issue as "should an employee who is on Administrative Leave and in a non-duty status be entitled to night differential and Sunday premium pay?" Thereafter, the parties met and discussed the grievance at the Fourth Step of their grievance procedure and the Postal Service representative agreed to remand the case to Step Three "for further processing or to be scheduled for arbitration, as appropriate." However, by letter dated October 15, 1998, the Union representative advised the Postal Service of a national settlement that required the Postal Service to pay Sunday premium to employees placed on

administrative leave. A Fourth Step discussion was held on October 22, 1998, and the Postal Service on November 5, 1998 denied the request relative to night differential while on administrative leave. This Step Four denial, however, did not address the payment of Sunday premium. The case was then appealed to National level arbitration pursuant to the provisions of 15.2 "Step Four" of the parties' Agreement on November 24, 1998. Subsequently, the undersigned arbitrator was appointed to hear and decide the matter. Accordingly, a hearing was held on May 31, June 9, and July 6, 2000 in Washington, DC. On the initial hearing day, the American Postal Workers Union (APWU) requested and was granted permission to intervene in this matter. The parties, including the APWU, were afforded full opportunity to present evidence, both oral and written, to cross-examine the witnesses who were sworn, and to argue their respective positions. Following the July 6, 2000 hearing, the parties elected to file post-hearing briefs. A stenographic transcript of the hearings was taken and provided to the arbitrator. Thereafter, briefs were received from the parties and the APWU, on or before October 20, 2000, at which time the record was deemed closed.

II. POSTION OF THE PARTIES

A. Postal Service

The Postal Service contends that employees are not entitled to night shift differential while on administrative leave. They refer to the Agreement and the ELM noting that they contain specific provisions defining entitlement to night shift differential. They allude to Section 8.7.A of the Agreement and point out that it states, "between the hours of 6:00 p.m. and 6:00 a.m. employees shall be paid additional compensation at the rate of ten percent (10%) of the base hourly straight time-rate for time worked." They accentuate the words "time worked" in this

clause and also allude to Section 434.21 of the ELM noting that it states, "night differential is a premium which is paid to eligible employees for all work and paid training or travel time performed between 6:00 p.m. and 6:00 a.m.," emphasizing the words, "all work" and "performed." They stress that this language has, except for minor modifications, remained unchanged since the issuance of the ELM in 1978 as well as predating the first ELM. Furthermore, any exceptions to the rule that night shift differential is to be paid for work performed are expressly contained in Chapter 430 of the ELM. These include five situations, i.e. court leave, military leave, continuation of pay ("COP") status, as well as the rescheduling of an employee to day work as a result of an on-the-job duty or compensable training where employees who are regularly scheduled to the night shift will receive "an equivalent amount of night time differential" even though they do not work. However, administrative leave is not mentioned in any of the provisions as an exception to the general policy of having to perform work during the night shift in order to be entitled to night shift differential.

Secondly, the Postal Service contends that the Payroll Department practice over the years supports the Postal Service's decision. The parties' Time and Attendance Manuals state what night differential is and when it is to be paid and this includes the words, "all work performed between 6:00 p.m. and 6:00 a.m." The Postal Service referred to regional arbitration awards in support of its position and point out that regional arbitrators "have consistently recognized that employees are not entitled to night shift differential while on administrative leave."

The Postal Service alleges that the Union arguments are without merit and its interpretation of the ELM in Section 519.1 "is mistaken." They claim that the reference at Section 519.1, as interpreted by the Union regarding "without loss of pay," is erroneous inasmuch as the Postal Service argues that "pay" refers to the employee's daily or hourly basic

rate of pay and not to any additional premiums that an employee might have otherwise earned while working. Notably, they point out that the night shift differential is additional compensation that is paid at a percentage of an employee's base hourly straight time rate, referring to 8.7.A of the Agreement. The Postal Service emphasizes that reference to base pay is consistent to the compensation afforded employees who are on other types of leave, such as annual or sick leave, inasmuch as they do not receive night differential while on sick leave, but, rather, receive their basic rate of pay. They allude to a decision by a regional arbitrator who rejected the Union's interpretation of "without loss of pay with respect to night differential."[2] That arbitrator concluded that night differential is not a part of the employee's regular pay and that Section 519.1 of the ELM guarantees an employee's regular pay and not its total compensation. The Postal Service furthermore contends that the pre-settlement agreement in Case No. HIM-4K-C25503 in 1985 in which the Postal Service agreed to give Sunday premium pay to a group of employees who had been on administrative leave is misplaced. They contend that said settlement was only for that case inasmuch as the agreement was a pre-arbitration settlement and provided in part that it was "in full settlement of this case." Additionally, their argument is that this pre-arbitration settlement was only to resolve the individual grievance at issue, referring to the testimony of the Senior Labor Relations official, Mr. Frank Dyer, who drafted and executed the agreement for the Postal Service. They point out that the Union failed to cite this settlement in a subsequent Step Four grievance that raised the identical issue that the Union now claims the 1985 pre-arbitration settlement controls. They contend that by not so raising it would suggest that the Union itself did not believe the 1985 pre-arbitration settlement agreement provided guidance in interpreting the ELM. The Postal Service also argues that the 1985 settlement is distinguishable from the instant case on the basis of the facts inasmuch as it

[2] USPS and APWU, Case No. W7C-5M-C20848, Claude D. Ames, 3/5/93.

involved an act of God since employees were forced to leave their facility in the middle of their work shift. However, in this case, the grievant was placed on leave while an investigation was conducted into his alleged misconduct. The Postal Service concludes that the grievance should be denied inasmuch as the record evidence strongly supports the conclusion that neither the ELM in Section 519.1 or any other section of the ELM provides a basis for providing night shift differential to employees on administrative leave.

B. Union

The Union emphasizes that night shift differential must be paid during the periods of administrative leave inasmuch as such leave is defined in Section 519.1 as "absence from duty" authorized by appropriate Postal officials without annual or sick leave and without loss of pay. Thus, the Union argues that the ELM plainly protects employees from suffering a loss of pay while in such administrative leave and this would include night differntial pay if, in the event the employee would have been entitled to such pay had he or she continued to work on his or her regularly scheduled tour. The ELM at Section 511.1 specifically requires that the Postal Service's leave policy be applied in a fair and equitable manner. They point out that if there exists a dispute involving any interpretive ambiguity in the language of the ELM then it must be resolved in an equitable manner such as National Arbitrator, Shayam Das concluded in a decision of his.[3] The employee involved in the instant case lost approximately $150.00 per pay period and this had a potentially punitive dimension because of such loss of pay. The Union notes that employees on military leave, court leave, as well as others, are entitled to night differential under the ELM at Section 434.222. However, by denying employees on

[3] USPS and APWU and NPMHU (Intervenor) Q90C-6-Q-C94042619, 4/7/98.

administrative leave the night differential, it gives rise to inherent inequities. The Union alluded to the 1985 settlement of a grievance in which the employees on administrative leave were given Sunday premium and, therefore, contends that this clearly demonstrates the parties' mutual understanding that the phrase "without loss of pay" requires the Postal Service to include Sunday premium as part of administrative leave. Moreover, they argue that the settlement of such a grievance at the National level, without any disclaimer of precedential effect, would constitute important evidence of the parties' mutual interpretation of their Agreement. They allude to a decision by National Arbitrator Collins for this contention.[4] The Union argues that this settlement does not contain any disclaimer or any indication that it was intended to be non-precedential and cites examples of Step Four agreements indicating how other National settlements state, in explicit terms, when they are intended not to be precedential. The Union also alluded to "quality of life" "quality of work life" coordinators who may be rescheduled to a different tour to serve in this position and note that a 1985 National level agreement provided them with night shift differential and/or Sunday pay if they would otherwise be entitled to it. Therefore, the parties' mutual understanding is that night differential is necessary to ensure that administrative leave is truly leave "without loss of pay."

The Union contends that the Postal Service's position simply does not withstand scrutiny with regard to their argument that night differential should be paid only for time worked or work performed except in certain circumstances that are enumerated in the ELM. They counter that night differential gets paid in a variety of circumstances where an employee is not on duty, including various circumstances that are not included in its own list of "exceptional circumstances." Section 434.222 which lists the circumstances does not, however, treat this list of exceptions as exclusive, nor does it specifically preclude or state that night differentials should

[4] USPS and APWU, Case No. HIC-36-3, 4/4/86.

not be paid during an administrative leave. They reason that all of the circumstances share a fundamental similarity, i.e. that "the absence from work is based on the decision by a Postal Service official or is otherwise due to some circumstance outside the employee's own control." Furthermore the Union notes that there are times that night differential is paid to employees in circumstances not specifically described in the ELM such as pay for "guaranteed time," as well as a component of back pay, pursuant to the ELM at Section 436.11. As to the Postal Service's contention of a practice, they note that the practice in the Federal government, both before and after passage of the Postal Reorganization Act is contrary to the Postal Service's position in this case. Thus, the Union concludes that the Postal Service never has limited the payment of night differential to the handful of circumstances specifically enumerated in the ELM at Section 434.222 or in the companion provisions of the F-21 Time and Attendance handbook. They argue that even if the arbitrator were to accept this management proposition, the administrative leave provision found in the ELM at Section 519.1 dictates such leave is without loss of pay and should be read to require payment of night differential while on administrative leave. The Postal Service easily could have drafted the ELM by including the terms leave without loss of base or basic pay rather than "without loss of pay." Thus, using the general term "pay" it can and should be read to include night differential.

As a final argument, the Union points out that for the first time during the arbitration hearing the Postal Service took the position that because it denied a grievance in 1986 on this issue at Step Four and the Union did not appeal it to arbitration that the Union then agreed to this decision. They contend this argument is totally without merit and allude to a decision by National Arbitrator Shayam Das, as well as Benjamin Aaron, for the proposition that a party in National arbitration is barred from introducing new arguments that are fundamentally different

from its position in prior steps of the grievance procedure.[5] This was never raised in the earlier stage of the grievance process and, therefore, the Postal Service is barred from relying on such an argument at this late stage of the proceedings. However, more importantly, this Step Four decision does not preclude the Union from challenging management's position in this arbitration. The failure to appeal a grievance is not, per se, acquiescence to the disposition of the issue on the basis of management's final answer so as to bar the issue from arbitration in a subsequent case. Elkouri & Elkouri, How Arbitration Works, p. 293. (5th. Ed. 1997). Finally, they argue that the Postal Service cannot demonstrate that the Union acquiesced in the Postal Service's position, thus concluding that there was a binding past practice. Here the practice has not been clear and consistent in accordance with the rules for constituting such a binding past practice, nor has it been long-standing and repeated. The Union concludes that the employee who is placed on administrative leave is entitled to receive a night differential pay that he or she would otherwise have received had he remained on duty and, therefore, the grievance filed by the Union should be sustained.

C. Intervenor – American Postal Workers Union (APWU)

The APWU supports the Union's position in this matter. The APWU, as Intervenor, points out that it wishes to make clear the point that this case does not concern Article 16 or general arbitrable make-whole remedies with regard to the successful challenges to discipline and/or administrative leave. In those cases, the parties do not dispute that a make whole remedy includes night differential pay, as well as other payments and premiums including, but not limited, to Sunday premium pay and overtime. They assert, for clarification purposes, that the issue before the arbitrator is what the grievant should have been paid while on administrative leave irrespective of the Postal Service's justification or lack thereof for placing the grievant on

[5] Case No. H4-NA-C72, 12/31/97 (Das), Case No. NC-E-113-59 (Aaron).

administrative leave initially. To this extent they argue that because the standard that employees do not suffer a loss of pay while on administrative leave, as well as the Postal Service's past grievance to pay differentials and premiums to employees on administrative leave, in addition to fairness and equity to employees who are kept on administrative leave for long periods of time and/or indefinitely, that this contemplates a requirement that the Postal Service pay night differential while an employee is on administrative leave. They ask that the Union's grievance be sustained by the arbitrator and that the Postal Service be directed to pay night differential to employees on administrative leave.

VI. RELEVANT CONTRACTUAL PROVISIONS

Article 8 Hours of Work

Section 8.7 Night Shift Differential

A. For time worked between the hours of 6:00 p.m. and 6:00 a.m. employees shall be paid additional compensation at the rate of ten percent (10%) of the base hourly straight time rate.

Article 19 Handbooks and Manuals

Section 19.1

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours of 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.

Employee and Labor Relations Manual (ELM)

430 Basic and Special Pay Provisions

432.2 Rates of Pay

432.21 Basic Rate

The basic rate is the amount of annual, daily, or hourly salary provided by the applicable salary schedule for an employee's assigned position – excluding TCOLA, overtime, out-of-schedule overtime, Sunday premium, holiday-worked pay, and night differential. Basic daily and hourly rates are determined by dividing the basic annual rate (BAR) as shown in the table below. See also 432.24.

434.2 Night Differential

434.21 Policy

Night differential is a premium which is paid to eligible employees for all work and paid training or travel performed between 6:00 p.m. and 6:00 a.m. The following applies:

a. Night differential is paid in addition to any other premiums earned by the employee (see 432.55).

b. In no case can the total night differential hours exceed the total hours for the tour.

c. Night differential does not apply if time between 6:00 p.m. and 6:00 a.m. is due only to late clocking out or early clocking in (see 432.464).

519 ADMINISTRATIVE LEAVE

519.1 Definition

Administrative leave is the absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.

VI. OPINION

The issue to be decided in this matter is whether an employee placed on administrative leave is entitled to receive night differential that the employee would have otherwise received had he(she) been on duty. The facts in this grievance are essentially not in dispute. The grievant, a full time regular mail handler employed at the Kalamazoo, Michigan Processing and Distribution Center was placed on administrative leave pending an investigation concerning alleged misconduct on his part. Upon receiving his first paycheck he noticed that he had not received night shift differential or Sunday premium pay, but rather, he received his basic hourly rate of pay. As a result, a grievance was presented on his behalf by the Union on the basis that

the Postal Service violated the Agreement because the grievant was not being paid the night shift differential and Sunday premium. Thereafter, the question of night differential payment as contested in the instant grievance was ultimately appealed by the Union to National Arbitration. (See part I supra.) Both parties, as well as the APWU, submitted detailed arguments in their written briefs, arguing that the Agreement, including the ELM provisions, support their respective positions. The Union and the intervening party, the APWU, allege that an employee placed on administrative leave, in accordance with Section 519 of the ELM is entitled to this leave without loss of pay; therefore, inasmuch as the grievant would have been on duty during the hours included as night differential, he should have received this entitlement. On the other hand, the USPS contends that an employee must work in order to receive night shift differential unless it is otherwise specifically excepted in the ELM. They point out that the exceptions, as set forth in the ELM, do not include night differential payment while on administrative leave. These positions constitute the basic foundation of the multiple and detailed arguments presented.

At the outset it is a generally accepted principle that the raison d'etre for including "shift differential pay" as part of a collective bargaining agreement is predicated on the basis of the particular hours of the shift (tour). Generally speaking, at least in the American labor climate and culture, most employees prefer a "day shift and/or tour" as their hours of work. However, many employers, including the Postal Service can not efficiently or effectively function solely during these "daylight" hours, which normally encompass a shift such as 8:00 a.m. to 4:00 p.m., 7 to 3, 9 to 5 or 6:00 a.m. to 2:00 p.m. Many industries, including service industries and some governmental agencies find it necessary to operate 24 hours a day. Thus, because hours of work after 6:00 p.m. are generally less desirable then the aforementioned "daylight hours", employers have often times agreed to pay differentials and/or additional compensation for those employees working these night shift hours. The Postal Service is no exception and, its Policy/Rules, as set forth in the ELM, provides that "night differential is a premium which is paid to eligible employees for all work and paid training or travel time performed between 6:00 p.m. and 6:00 a.m." Thus, the USPS reference for this additional compensation includes a twelve-hour window of time, which arguably generally entails the hours least desired by employees. However, be that as it may, and as the Union points out, employees often times bid into jobs that include scheduled shifts encompassing these scheduled hours because of the additional pay.

Also, this arbitrator is cognizant of the fact that some employees desire these "night" hours for personal and/or familial reasons.

In addressing the issue herein, suffice it to say that arbitrators are held to the direction and guidance of the parties' collective bargaining agreement. Thus, the primary authority for the Postal Service's position stems from Article 8.7, which provides that ten percent (10%) of the base hourly straight time rate shall be paid "For time worked between the hours of 6:00 p.m. and 6:00 a.m." Additionally, they allude to the ELM, which is incorporated into the agreement via Article 19, at Section 434.2 which, in defining night differential, states that it is to be paid for all work performed during the designated hours. Despite this, however, there are instances that are enumerated at Section 430 of the ELM that include Court Leave, Military Leave, Continuation of Pay (COP) status and the rescheduling of an employee to day work as a result of an on the job injury or compensable training, in which night differential is paid to employees. It is, however, significant that the aforesaid specifically enumerated situations are such that they are not within the control of supervision/management. It is likewise notable that payment of night differential for administrative leave, although not listed, is likewise not excluded. The ELM provides for certain "Events and Procedures for Granting Administrative Leave" by postal officials. These are set forth at Section 519 of the ELM and include Acts of God, Civil Disorder, State and Local Civil Defense Programs, Voting or Registering to Vote, Blood Donations, Funeral Services relative to veterans or relatives who died in a combat zone, Postmaster Organizations, Physical Exams for Entry Into the Armed Forces, Relocation Leave and First Aid Examination and Treatment for On the Job Injury or Illness. If any of these scenarios occur and, for example, a Postmaster authorizes administrative leave for an "Act of God" then the ELM requires that this be "without charge to annual or sick leave and without loss of pay." Therefore, because an employee who may fall into one of the above categories or, who may be placed on administrative leave for another reason, such as in the instant case, and has not actually performed work, the question/issue surfaces as to whether he should be paid the rate of pay that he or she would normally receive had the employee been on duty. It is my opinion that the intent of Section 519 of the ELM is clear in this regard, i.e., that an employee should be paid whatever the rate of pay he would have otherwise been paid had the employee not been placed on administrative leave. To read anything other than this into this clause so as to preclude an employee the rate of pay he would normally be paid on his regular tour of duty would mean that the clear and concise

language of this clause would be disregarded. It would, in effect, also mean that when an employee is placed on administrative leave and in the event his tour of duty falls or fell within the designated night differential window of hours, then he would be on administrative leave with loss of pay.

Section 519.1 does not state that the employee shall be paid without loss of his base and/or regular pay, nor does it state without loss of his premium pay, but rather simply "without loss of pay." Thus, whatever his "pay" would have otherwise been had he been on duty must be considered his "pay" for purposes of this provision. It is interesting to note that a person who is scheduled for a tour of duty during night differential hours would most likely not be taking/afforded administrative leave within such hours in a number of those instances falling within the umbrella of reasons for authorizing such leave. These would include, for example, leave for registering to vote, attending a veteran's funeral or to donate blood, situations which normally occur or take place prior to 6:00 p.m. or after 6:00 a.m. In the instant case, the Postmaster took the initiative to place the grievant on administrative leave pending an investigation of his misconduct. Had the Postmaster instead issued disciplinary action at the outset and, if this action would have been ultimately overturned and the employee ordered to be made whole, it is undisputed that the employee would have received his night shift differential. However, by placing the employee on administrative leave would, if the Postal Service's position is to be accepted, be a method by which the investigation could be prolonged prior to the issuing of discipline, thereby precluding the payment of night shift differential during the prolonged investigation in the event the discipline was ultimately overturned.

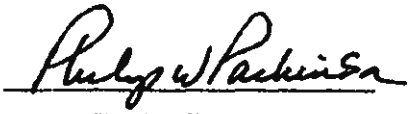
The Postal Service's argument that the use of the phrase "for all work" and the word, "performed" strengthens their position, is well intentioned but misplaced. It is simply good grammatical structural phrasing of the sentence and/or writing of a basic contract clause to define a differential payment between certain hours of the day as being "for all work performed," rather than stating, "for all work". Secondly, the words could be included to preclude, in addition to further clarification set forth in the ELM, night differential payment for work performed that may be a part of an employee's daily tour but that does not fall within the designated hours. For example, an employee could conceivably work only a portion of his tour after 6:00 p.m. Thus, the parties may have intended by this choice of words that this employee would receive the night differential only for those hours worked after 6:00 p.m. A more compelling reason why this

argument is misplaced, however, is as heretofore noted, that the administrative leave provisions mandate that an employee placed on such leave be placed there without loss of pay. The clear language, as well as equitable interpretation of this clause is that the employee must be paid the amount of pay that he otherwise would have received had he been on his regular scheduled tour of duty.

Finally, the Postal Service has argued that it has implemented the Administration Leave provision in this fashion for a number of years and it therefore constitutes a binding past practice and thus is illustrative of the intent of the parties. They point to a 1986 grievance in which they denied a grievance on this same issue at Step Four and emphasize that the Union did not appeal it further. However, in reviewing the grievance file, this type of argument was never included and/or raised in the Postal Service's arguments during the Steps of the grievance procedure prior to arbitration. A new argument presented for the initial time at this stage of the proceedings must be precluded. Such may perhaps appear harsh and/or unconventional, but nevertheless it is a standard evidentiary rule that has been upheld via National Postal Arbitration Awards and in numerous regional postal arbitration decisions. At any rate, this showing of an instance of denial of a night differential payment while on administrative leave is not, per se, albeit rendered at Step Four, sufficient to establish what is generally considered necessary to qualify as a binding past practice. The latter entails a consistent administration of a matter or a work method that can be shown to have been well known by both parties, and accepted by both parties for a long period of time. Such was not evidenced here.

AWARD

The grievance is granted. The grievant shall be paid night differential for the period he was on administrative leave. Furthermore, in the future, employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave.



PHILIP W. PARKINSON

December 8, 2000
Washington, Pennsylvania

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020**.

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before they may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2. the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5/27/20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

OCT 31 1978

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: B. Hanson
Gurney, IL
NC-C-12644/5CHI-2346

Dear Mr. Riley:

On October 12, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Based on the evidence presented in this grievance, the carrier did not work a full day due to the carrier taking off to take care of personal business. Work was available for this carrier to perform for a full eight hours, but the carrier chose to be off. The file failed to substantiate that this or any other regular carrier has been told to report for part of the day when a regular carrier was to be called in on their non-scheduled day. We did agree during our Step 4 meeting that management would not solicit employees to work less than their guarantees rather than soliciting employees who would work their full guarantees. We agreed to consider this grievance closed with this understanding.

Sincerely,

Daniel A. Kahn
Labor Relations Department

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

NOV 20 1978

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: L. McDaniel
Carrollton, TX
NC-S-12640/N5-ET-20817

Dear Mr. Riley:

On November 9, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

During our Step 4 meeting, we mutually agreed to consider this grievance resolved based on the following: Management recognizes its obligation to follow the provisions of Article VIII, Section 8 of the National Agreement. Although no specific substantiation was provided which would demonstrate that management had attempted to circumvent the National Agreement, we agreed that management would not solicit employees to work less than their guarantees.

Sincerely,

Daniel A Kahn

Daniel A. Kahn
Labor Relations Department

4

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

JAN 2 7 1982

Mr. Halline Overby
Assistant Secretary Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: R. Drechsel
Rutherford,
H8N-1N-C-23559

Dear Mr. Overby:

This letter supersedes our decision dated January 25, 1982.

On December 9, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

It was mutually agreed that the following would represent full settlement of this case:

1. When a part-time flexible employee is notified prior to clocking out that he should return within 2 hours, this will be considered as a split shift and no new guarantee applies.

2. When a part-time flexible employee, prior to clocking out, is told to return after 2 hours, that employee must be given another minimum guarantee of 2 hours work or pay.

3. All part-time flexible employees who complete their assignment, clock out and leave the premises regardless of interval between shifts, are guaranteed 4 hours of work or pay if called back to work. This guarantee is applicable to any size office.

4. Using this criteria, the grievant is not entitled to any back pay.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Howard R. Carter
Labor Relations Department

Halline Overby
Assistant Secretary Treasurer
National Association of Letter Carriers, AFL-CIO

TO ALL AFFECTED REPRESENTATIVES:

During the course of the 1987 Negotiations, the parties agreed to make sweeping changes in the provisions of Article 8 of the National Agreement between the USPS and the Mail Handlers Division of the Laborers' International Union of North America, AFL-CIO. Mindful of the confusion and the need to resort to interpretive arbitration that occurred when the 1984 language was put into effect, the parties further agreed to generate a joint letter of interpretation outlining the intent of the changes that were made in Article 8. This letter is precedent-setting in its attempts to resolve potential disputes prior to the date upon which the new language becomes effective. As you are aware, the changes in Article 8 are effective September 26, 1987, the beginning of the fourth calendar quarter for overtime purposes.

We will walk through the provisions of Article 8, Sections 8.4 and 8.5, and outline the parties' joint interpretation of the new contract language that appears.

The provisions of Section 8.4 have been altered to eliminate all reference to penalty overtime. As of September 26, 1987, penalty overtime will not be payable for any hours worked under Article 8 of the Mail Handlers National Agreement.

The opening sentence of Section 8.5 has been reworded, stressing that the first opportunity for all overtime goes to full-time regular Mail Handlers who have signed the overtime desired list (OTDL) subject to the "operational window" concept set forth in Section 8.5D. This represents a major change in the scheduling process and provides that management must under the 1987 contract assign overtime to available, qualified employees on the OTDL prior to using part-time flexibles or casuals on overtime.

Section 8.5A now clearly specifies that only full-time regular Mail Handlers are eligible to sign the OTDL. The rest of the language in this section remains unchanged.

The provisions of Section 8.5B remain unchanged.

Several changes appear in Section 8.5C.

1. The first sentence of the section once again stresses that overtime is to be first assigned to available, qualified full-time regular Mail Handlers who have signed the OTDL. Although not all inclusive, the following examples may be useful in understanding the intent of the parties:

(a) Twenty Mail Handlers are needed for two hours overtime, from 3 p.m. to 5 p.m., at the end of Tour II at the BMC. Only ten Mail Handlers have signed the OTDL and all are available and qualified for the instant work. Under this circumstance, management must assign the ten Mail Handlers on the OTDL and then may assign ten Mail Handlers not on the list. If management determines that an additional two hours of overtime is needed, from 5 p.m. to 7 p.m., for ten Mail Handlers, the ten Mail Handlers from the OTDL who are working must be assigned that additional overtime. This will not be considered an additional overtime opportunity within the rotation outlined in Section 8.5C.

(b) The GMF has multiple ending times on Tour II; e.g., 3 p.m. and 4 p.m. Twenty Mail Handlers are needed for two hours overtime at 3 p.m. Again, ten available and qualified Mail Handlers are on the OTDL and management selects an additional ten Mail Handlers not on the list. At 4 p.m., ten more qualified Mail Handlers on the OTDL become available at the end of their tour. These ten OTDL Mail Handlers would be kept for one hour of overtime, 4 p.m. to 5 p.m., and the ten Mail Handlers not on the OTDL will be released.

As the language in Section 8.5C indicates, employees assigned overtime under this provision still must possess the necessary skills.

2. The second sentence of this section notes the elimination of previous language requiring that Mail Handlers on light duty be passed over. Under the 1987 Agreement, Mail Handlers on light duty may sign the OTDL and be selected for overtime work within the normal rotation as long as the work needed falls within their medical restrictions. For example, light duty employees with restrictions of "no work beyond eight hours" would not be eligible for overtime before or after the tour; light duty employees with restrictions of "no lifting over five pounds" would normally not be eligible for overtime work on the outbound docks.

3. The new language captured in sentence 3 of this section reemphasizes the current practice of scheduling. The example given adequately expresses the intent of the parties. The waiver under Section 8.8 must be agreed to by Management, the Union and the employees.

4. Sentence 4 mandates that Mail Handlers who sign the OTDL may be required to work up to twelve hours per day, seven days per week. Obviously, the 60-hour limitation contained in the 1984 language has been removed; that language no longer applies to Mail Handlers, even though management may be scheduling other craft employees in accordance with a 60-hour limit.

5. Finally, the fifth sentence in Section 8.5C establishes a system for Mail Handlers on the OTDL to volunteer for work beyond twelve hours in a day. Selection of these volunteers is at the discretion of management, but such selection must be made on a non-discriminatory basis. No second OTDL will be established; selection will be made on a case-by-case basis. Once again, Mail Handlers who volunteer and are selected for work beyond twelve hours will not be considered to have exercised another opportunity within the OTDL rotation.

Several changes have been made in Section 8.5D to address selection for overtime work once the OTDL has been exhausted.

(1) In the first sentence, "available" is directed to what may be termed the "operational window" concept. For example, if management determines that the need exists for twenty Mail Handlers to work two hours overtime and only ten are available from the OTDL, management may assign other Mail Handlers as required to meet the two-hour operational requirement.

(2) The remainder of the first sentence outlines management's right to assign "other employees" to meet its needs in these circumstances. Other employees include part-time flexibles, casuals and regulars not on the OTDL. While the selection is at the discretion of management, the parties have agreed that every effort should be made to schedule part-time flexibles or casuals for such overtime work before scheduling regulars not on the OTDL.

(3) In accordance with the second sentence, when management determines that regulars not on the OTDL must work overtime, their scheduling will continue to be based on juniority rotation. This rotation will also be established on a quarterly basis, parallel with the use of the OTDL.

The provisions of Section 8.5E remain unchanged.

In Section 8.5F, the protections for non-OTDL regulars found in the 1981 National Agreement have been reinstituted and clarified. These protections are meant to assure that overtime is limited for non-OTDL regular Mail Handlers. The use of part-time flexibles and casuals prior to non-OTDL full-time regulars has been previously discussed.

Section 8.5G notes that these provisions begin with the fourth calendar quarter of 1987; i.e., September 26. Solicitations for regulars wishing to sign the OTDL should be made in keeping with past practice and in consideration of this date.

The Memorandum of Understanding on Improper By-pass Overtime (found after the general articles of the 1987 National Agreement) in Part 2, now includes part-time flexibles and casuals under the category "another employee."

The Memorandum of Understanding on Penalty Overtime Pay is deleted in its entirety.

We hope that these explanations will assist both parties in understanding the new language in Article 8. It must be understood that this document represents the National Level interpretation of this new language and is not subject to alteration by parties other than those at the National Level.

Louis D. Elesie
International Trustee
Mail Handlers Division,
AFL-CIO

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

August 28, 1998

Mr. William J. Flynn Jr.
Manager Contract Administration
National Postal Mail Handlers
Union, AFL-CIO
1101 Connecticut Avenue, NW
Suite 500
Washington, DC 20036-4304

Dear Bill:

This letter responds to your inquiry concerning the language of Step four grievance settlement Case Number J8M-4J-C 87037586. Specifically, you have asked whether this language allows an employee who is either nonscheduled Friday/Saturday, or on approved scheduled leave on Friday, to obtain his/her check at the end of their tour on Thursday.

An employee may obtain his/her check on at the end of their tour on Thursday provided that the employee makes arrangements to pick up their check as described in Handbook F-1, section 822.1.

Should there be any questions regarding the forgoing, please contact me at (202) 268-3831.

Sincerely,

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU), Labor Relations

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

c. Postal Service employees who have access to employee payroll information must not disclose employee's earnings except to carry out official duties.

d. Postmasters must not release checks to employees who were not in a pay status during the pay period for which the check is issued.

e. Postmasters must keep salary checks and earning statements in a secured place.

Mailed or transmitted salary checks and the payroll register should reach PRUs by the Thursday immediately following the close of each pay period. Upon receipt, immediately verify the contents of salary check shipments.

If the shipment...	Then...
Includes checks for another installation.	call the intended installation and the disbursing officer at Accounting Services and send the checks to the correct installation by the fastest method. The telephone number of the disbursing officer is 651-406-1354.
Has not arrived by noon on the day before the designated pay day.	notify the disbursing officer, Accounting Services.
Is missing 100 or more checks.	Accounting Services will initiate the stop payment procedure for the original checks.
Is missing fewer than 100 checks.	see section 23-3.2.3, Emergency Salary Issued for Nonreceipt of a Salary Check.

Distribute payroll checks on a date other than the salary check date under the following conditions:

a. After the local banks close on Thursday, distribute checks to employees whose regular tour of duty ends after local banks close on Friday.

b. If checks are available at the employee's pay location, and the employee is not scheduled for duty on payday, or is scheduled for leave on payday, the employee can do the following:

(1) Make arrangements to receive his or her check at the end of the tour on Thursday.

(2) Complete, sign, and submit PS Form 3077, *Request to Forward Salary Check,* to the custodian of the salary checks.

(3) Establish direct deposit for forwarding salaries to employee's account at a financial organization.

When Friday is a national holiday, Thursday is payday, and checks are available at the employee's pay location, distribute the salary checks at the end of an employee's tour on Wednesday.

Note: The "Check Mail" finance number in the Finance Number Control Master system defines the mailing address used for payroll check distribution. To request a payroll check mailing address change, see Appendix C, Exhibit C-12.

23-1.2 Payroll Register Distribution

Managers at field units must use the Payroll Register to reference issued checks and net to bank payments.

A copy of the Payroll Register will print on the district Finance printer each pay period and is to be distributed to the appropriate locations by district Finance personnel.

23-1.3 Direct Deposits and Allotments

The Postal Service honors employee requests to forward all or part of their salaries for credit to their accounts at financial organizations.

An employee may add, cancel, or make changes to allotments or net to bank via the following methods:

a. *PostalEASE.* To log in, employees need their Postal Service employee identification number and personal identification number (PIN).

b. *PostalEASE* Interactive Voice Response. Employees must call the Human Resources Shared Service Center (HRSDC) at 877-477-3273, menu option 5.

23-1.4 Checks Mailed to a Designated Address

Employees may request that their salary check be forwarded under the following conditions:

a. Employee is on leave.

b. Employee is on temporary detail to another duty station.

The procedure for forwarding salary checks at the request of the employee is as follows:

a. The employee completes, signs, and submits PS Form 3077 to the custodian of the salary checks.

b. The custodian forwards the salary check to the employee's designated address in a penalty envelope.

Note: Management must deny requests for continuous mailing of salary checks.

Do not use PS Form 3077 for terminated employees unless all Postal Service property charged to the employee is accounted for and all known indebtedness is liquidated.

23-1.5 Payroll Checks Mailed to Terminated Employees

The last payroll check for terminated employees must be a commercial Postal Service check even if the individual has direct deposit.

The procedure for mailing a payroll check to a terminated employee is as follows:

a. The manager is responsible for mailing the check to the employee's address of record.

b. Before sending the check, the postmaster must ensure that the employee has no unresolved employee items (e.g., stamp or cash credit shortages, travel advances, or emergency salary authorizations).

Finance

REVISION

Handbook F-15, Travel and Relocation, and Handbook F-12, Relocation Policy

Effective February 22, 2001, Handbook F-15, *Travel and Relocation,* and Handbook F-12, *Relocation Policy,* are revised as follows to reflect changes in the reimbursement rates for travel and relocation.

This revision will be incorporated into the next printed edition of Handbook F-15 and the online version on the corporate intranet at *http://blue.usps.gov/cpim/ftp/hand/f15.pdf.*

Handbook F-15, *Travel and Relocation*

* * * * *

Appendix A — Rates

A-1 Standard Mileage Rates

A-1.1 Mileage Rates

Vehicle	Cents per mile (Including Alaska)
Privately owned automobile	34.5
Privately owned motorcycle	27.5
Privately owned airplane	96.5

A-1.2 Reimbursement for Postal Supervisors

Postal supervisors (see 5-5.2.1.2) will be reimbursed at the rate of $6.00 per day or 34.5 cents per mile, whichever is greater, when a privately owned vehicle is used.

* * * * *

Handbook F-12, *Relocation Policy*

* * * * *

Appendix B — Reimbursement Rates

I. Mileage Rates

A. Standard mileage rates

Vehicle	Cents per mile (Including Alaska)
Privately owned automobile	34.5
Privately owned motorcycle	27.5
Privately owned airplane	96.5

B. Relocation-Related Advance Round-Trip and/or Enroute to New Duty Station

The allowable rate is 34.5 cents per mile.

* * * * *

— Corporate Accounting, Finance, 2-22-01

NOTICE

Mailing Earnings Statements

Effective pay period (PP) 06-2001, the earnings statement (PS Form 1223-B, *Earnings Statement — Net to Bank)* for those employees who have direct deposit (net to bank) will be mailed to the employee's address of record. For those employees who do not have net to bank, payroll checks with attached earnings statements will continue to be distributed at each employee's work location.

It is the responsibility of each employee to ensure that his or her address of record information is correct. Undeliverable net to bank earnings statements will be returned to the employee's finance office for disbursement. Employees who need to update their current mailing address must complete a PS Form 1216, *Employee's Current Mailing Address* (including ZIP+4®), and submit it to their Human Resources office for processing.

— Corporate Accounting, Finance, 2-22-01

422.132 **Creditable Service**

The following provisions apply:

a. *Postal Service.* Except as provided in this section, credit for advancement for step increases may be earned only by career employees in pay status on the rolls of the Postal Service. For computing creditable service, the following applies:

(1) *Service Week.* In computing the required waiting period, each full service week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday is creditable.

(2) *Leave Without Pay (LWOP).* Periods of LWOP of less than 13 weeks for which no step deferment is made are included with paid service in computing the waiting period of service (see 422.133).

(3) *Prior Service.* Employees reinstated or reemployed to a career position within 52 weeks of separation are allowed credit (not in excess of 52 weeks) for prior service provided:

(a) An equivalent increase was not received at the time of reinstatement or reemployment.

(b) The prior service was not under a casual or temporary appointment.

b. *Military Duty.* An employee who returns to postal duty following a separation or leave for military duty receives credit for the period of military duty as if duty with the Postal Service had been continuous (see 517).

c. *Injury Compensation.* An employee on official absence due to an injury compensable under rules of the Office of Workers' Compensation Programs (OWCP) receives credit for the period of absence as if duty with the Postal Service had been continuous.

d. *Union Officials.* Employees on LWOP to devote full or part-time to a union signatory to a collective bargaining agreement with the Postal Service are to be credited with step increases as if they had been in a pay status (see 514).

422.133 **Leave Without Pay**

The following provisions apply:

a. When an employee has been on LWOP for 13 weeks or more during the waiting period for receipt of a periodic step increase and has not been on military furlough, on the rolls of the Office of Workers'

Compensation Programs, or on official union business, the scheduled date for the employee's next step increase is deferred as follows:

Total Weeks LWOP	Pay Periods Deferred
0 to less than 13	No deferment
13 to less than 26	7
26 to less than 40	13
40 to less than 52	20
52	26
More than 52	One pay period for each 2 weeks of LWOP

b. For periods of LWOP that encompass an entire pay period, the full charge of 80 hours is applied. For partial pay periods, absence from scheduled service on a day is counted as 1 calendar day. Only whole days of LWOP are counted. Fractional days on which the employee has work hours or paid leave and takes LWOP are not counted in calculating the total LWOP.

422.134 **Simultaneous Personnel Actions**

If an employee is eligible for a step increase in the assigned position and is being reassigned or promoted to another position on the same date:

a. The actions are effected simultaneously in a manner that provides maximum benefit to the employee.

b. If the assignment change involves an increase in compensation that is greater than the increase an employee could obtain by a step increase in the former position, the employee is given the step increase before compensation is adjusted to the appropriate step in the new position.

422.14 Higher Level Assignments

422.141 **Definitions**

A *higher level assignment* is a temporary assignment to a ranked higher grade position, whether or not such position has been authorized at the installation. The subcategories of such an assignment are:

a. *Short-term temporary assignment* — an assignment in which an employee has been on a temporary assignment to a higher level position for a period of 29 consecutive workdays or less at the time he or she takes any annual or sick leave. The temporary assignment must be resumed upon return to work. All short-term assignments are automatically canceled if replacements are required for employees temporarily assigned to higher level positions.

b. *Long-term temporary assignment* — an assignment in which an employee has been on temporary assignment to the higher level position for a period of 30 consecutive workdays or longer before he or she takes any annual or sick leave. The temporary assignment must be resumed upon return to work.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Jim Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

OCT 23 1987

Re: H. Finley
Orlando, FL 32862
H4C-3W-C 37256

Dear Mr. Lingberg:

On October 14, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether there is a requirement for advance notice to employees whose step increases are withheld because of leave without pay usage.

During our discussion, we mutually agreed that current instructions require written advance notice when an employee's step increase is to be withheld. Inasmuch as no advance notice was given in this instance, the grievant's step increase is to be reinstated retroactively to the due date.

Accordingly, this case is remanded to the parties at Step 3 for implementation of the above.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand and settle this case.

Time limits were extended by mutual consent.

Sincerely,

Michael J. Guzzo, Jr.
Grievance & Arbitration
Division

Jim Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: A00M-1A-C 05085524
Class Action
Teterboro, NJ 07608-1005

Dear John:

Our representatives met, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a Level 4, Step O employee, who was detailed to a Level 5, Step N duty assignment was entitled to be advanced to Level 5, Step O after spending the requisite waiting period (24 weeks) at Step N.

The parties agree that once an employee who was detailed to Level 5, Step N spent 24 continuous weeks in the higher level assignment; the employee was entitled to be advanced to Level 5, Step O.

Accordingly, we agree to remand this grievance to Step 3 for further processing and/or regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this grievance to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Allen Mohl
Labor Relations Specialist
Contract Administration (NPMHU)

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 1-21-11

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: C00M-1C-C 04147342
Larry Binz
Warrendale, PA 15095-1000

Dear John:

Recently, I met with Bill Flynn and Sam D'Ambrosio to discuss the above captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a mail handler who was promoted to a higher level duty assignment (Level 5), and who had attained step O in that higher level, then bid to a lower level duty assignment (Level 4), should subsequently be paid level 5, Step O when he/she is temporarily detailed to a higher level duty assignment.

The parties agree that when an employee bids from Level 4, to Level 5 and attains Step O, then bids back to Level 4, and is subsequently detailed to a level 5 assignment, he/she must be paid at the level 5 Step O pay rate.

Accordingly, we agree to remand this grievance to Step 3 for further processing and/or regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

A Mohl

Allen Mohl
Labor Relations Specialist
Contract Administration (NPMHU)

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 5/27/10

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

AUG 4 1983

ARTICLE 9
SECTION
PROTECTED RATE BIDDING

Mr. Michael Benner
Director, SDM Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Benner:

On August 2 you met with Sherry Barber in prearbitration discussion of H1C-5D-C 8540, Tacoma, Washington. The question is whether or not the grievant forfeited salary rate protection provided under ELM 421.51 when she bid on a new assignment.

It was mutually agreed to full settlement of this case as follows:

> If an employee, while assigned to the lower grade position and still in the protected rate period, voluntarily bids on a position in that same grade, such a bid is not considered a voluntary reduction to a lower salary standing at the employee's request.

Please sign the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing it from the pending national arbitration listing.

Sincerely,

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and Arbitration
Labor Relations Department

Michael Benner

Michael Benner
Director
SDM Division
American Postal Workers Union, AFL-CIO

8/5/83
Date

Enclosure

ARTICLE 9
SAVED RATE

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Francis J. Conners APR 4 1985
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Dear Mr. Conners:

Recently you and Dave Noble met with George McDougald and myself in prearbitration discussion of H1N-1J-C 18920, Enfield, Connecticut. The question in this grievance is whether the grievant should receive salary protection because he lost his T-6 assignment due to insection bidding required by Article 41, Section 3.0.

It was mutually agreed to full settlement of this case as follows:

1. If an employee, while assigned to the lower grade position and still in the protected rate period, voluntarily bids on a position in that same grade, such a bid is not considered a voluntary reduction to a lower salary standing at the employee's request.

2. The grievant is to be appropriately compensated.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle this case, withdrawing H1N-1J-C 18920 from the pending national arbitration listing.

Sincerely,

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

Francis J. Conners 4/17/85

Francis J. Conners (Date)
Vice President
National Association of
Letter Carriers, AFL-CIO

Enclosure

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: Q00M-6Q-C 06280834
CLASS ACTION
Washington DC 20260-4100

I recently met with your representative, T.J. Branch, to discuss the above captioned grievance currently pending national arbitration.

The issue in the above referenced grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 420, *Wage Administration Policy for Bargaining Unit Employees* are fair, reasonable and equitable.

After reviewing this matter, we agree to resolve this grievance based on the following:

422.325 Reductions in Grade
a. ***

b. Step and Next Step Date Assignment for Bargaining Unit to Bargaining Unit Reductions in Grade within or into the mail handler rate schedule (RSC M). Assignments are made as follows:

1. To Former Lower Grade. The employee is assigned to the step and next step date as if service had been uninterrupted in the lower grade since the last time held.
2. To New Lower Grade. The employee is assigned to the step and next step date in the lower grade as if all postal service had been in the lower grade.

The Postal Service will modify the ELM, Section 422.325 to incorporate the above principle in accordance with Article 19 of the collective bargaining agreement.

Any disputes on this issue will be referred to the National Administrative Committee.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve this case thereby removing it from the national arbitration list.

Time limits at this level were extended by mutual consent.

Allen Mohl
Manager,
Contract Administration (NPMHU)
And Employee Workplace Programs

John F. Hegarty
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 5/13/14

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

Feb 7

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE

AND THE

NATIONAL POSTAL MAIL HANDLERS UNION,

A DIVISION OF LABORERS' INTERNATIONAL UNION OF

NORTH AMERICA, AFL-CIO

The United States Postal Service (USPS) and the National Postal Mail Handlers Union, a Division of Laborers' International Union of North America, AFL-CIO (Union) hereby agree to a full, final and binding resolution of national level grievance H7M-2F-C 45511 as well as any and all pending grievance matters in the dispute resolution system which specifically challenge the step placement or compensation levels of employees promoted from steps A, B, and C of the Mail Handler Salary Schedule (referred to herein as "affected employees") between January 19, 1985 and the date of this Memorandum of Understanding. Separate issues in any of these other pending grievances are not within the scope of this Memorandum and are to be handled in accordance with the usual grievance-arbitration contractual procedures.

USPS and the Union agree that promoted employees will continue to be placed in the grade level and step assigned in accordance with

USPS's current practice with waiting time rules applied in accordance with current practice. As a consequence of the current promotion practice, some affected employees in some pay periods receive less compensation than if they had not been promoted and had remained in the former grade. To address this promotion pay anomaly, USPS and the Union agree to the following principle:

> No employee will, as a consequence of a promotion, at any time be compensated less than that employee would have earned if the employee had not been promoted but had, instead, merely advanced in step increments in that employee's grade as a result of fulfilling the waiting time requirements necessary for step increases. This includes affected employees who are or were promoted to a higher grade and subsequently reassigned to their former grade.

Affected employees will be paid in accordance with the following principle:

> For each pay period following the promotion the employee's basic salary will be compared to the basic salary the employee would have received for that pay period if the employee had not been promoted. For those periods when the latter amount is higher the difference will be paid to the employee in a one-time lump sum payment.

Affected employees, who are in the Mail Handler bargaining unit as of the date of this Memorandum and experienced a promotion pay anomaly during the 1984-87 or 1987-90 National Agreements shall be paid a lump sum payment as soon as

practicable after administrative payroll audits are conducted on an individual basis. The Union will be kept advised of the progress of this work and any disagreements over individual lump sum payments will be worked through at the national level outside regular grievance channels unless the parties hereto agree differently. It is intended that these one-time lump sum payments will satisfy all employee entitlements which arise out of the employment relationship, including the 1984 and 1987 National Agreements due to the effects of the anomaly and this Memorandum of Settlement, as well as any possible FLSA payments; however, this document shall not be construed as constituting any waiver of possible individual rights under that statute.

Effective November 21, 1990, employees who have been promoted from Steps A, B, or C and who have been reassigned to their former grade will be placed in the step they would have been in, with credit toward their next step increase, as if all service had been in the original grade. However, such employees who are subsequently repromoted will be placed in the steps they would have attained, with credit toward their

former

next step increase, as if they had remained continuously in the higher grade since the original promotion.

Dated at Washington, D.C.
this 6 Day of February, 1991.

For the United States
Postal Service

For the National Postal
Mail Handlers Union, A
Division of Laborers'
International Union of
North America, AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
between	)	
UNITED STATES POSTAL SERVICE	)	
and	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Case No. Q11N-4Q-C 14239951
and	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO - INTERVENOR	)	
and	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO - INTERVENOR	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Syeda H. Maghrabi, Esq. Alexander MacDonald, Esq.
For the NALC:	Keith E. Secular, Esquire
For the APWU:	Melinda K. Holmes, Esq.
For the NPMHU:	Matthew Clash-Draxler, Esq.
Place of Hearing:	Washington, D.C.
Date of Hearing:	December 19, 2014
Date of Award:	July 2, 2015

Relevant Contract Provisions:	Article 10.2, Article 19 and Appendix B
Contract Year:	2011-2016
Type of Grievance:	Contract Interpretation

Award Summary:

The grievance is resolved on the basis of the following determination:

Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or may take annual leave.

Shyam Das, Arbitrator

This grievance was filed by the NALC on February 14, 2014. This national level interpretive dispute originated in the Portland, Oregon Post Office, and involves the right of former City Carrier Assistants (CCAs) to use annual leave following their conversion to full-time career status. The grievants all were former CCAs who requested scheduled annual leave after they were converted to full-time career positions. The leave initially was approved by local management, but subsequently was converted to leave without pay. The Postal Service based its decision on Section 512.313(b)(1) of the Employee and Labor Relations Manual (ELM), which states that: "New employees are not credited with and may not take annual leave until they complete 90 days continuous employment under one or more appointments without a break in service." The parties settled the underlying grievance and agreed that the facts of the underlying grievance are not at issue in this arbitration. The question presented to the Arbitrator here is an interpretive one involving only the 90-day qualifying period requirement in ELM section 512.313.

Both the APWU and the NPMHU intervened in this arbitration. Each has a similar classification to CCAs, and their respective National Agreements include similar applicable provisions.

The CCA classification was created by the 2013 Interest Arbitration Award and replaced the previous noncareer work force in the letter carrier bargaining unit known as transitional employees (TEs). The Interest Arbitration Award explained that the CCA workforce "is comprised of noncareer, city letter carrier bargaining unit employees" who "shall be hired for terms of 360 calendar days and will have a break in service of five days between appointments." The Award also provided that the "phasing out of the transitional employee category will occur within 90 days of the effective date of this Agreement." The Award represented a significant benefit to the Postal Service, but also provided a path to career appointment for members of the new noncareer complement and converts the career letter carrier workforce to essentially one hundred percent full-time status.

NALC Vice President Lew Drass testified all career hiring before the Award was based on competitive examination and appointment from a hiring register, but that procedure has fundamentally changed since the Award. The Postal Service still administers a test for

applicants, but the test is used to construct hiring registers for CCA positions. After the CCAs are appointed, they are given "relative standing" which is determined by original CCA appointment to the installation, adding time served as a city letter carrier transitional employee for appointments made after September 29, 2007 in any installation. The CCAs relative standing is then used to convert CCAs to available career positions. Drass described the conversion process from the employee's perspective as follows: "[Y]ou're a CCA on Friday, you go home as a noncareer. On Saturday you come back, and you're a full-time career."

Relevant Provisions of the applicable 2011-2016 National Agreement include the following:

ARTICLE 10
LEAVE

* * *

Section 2. Leave Regulations

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.

* * *

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

* * *

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

Relevant Provisions of the ELM include the following:

363 Conversions

363.1 Definition

Conversion refers to the process of changing a noncareer employee's status to a career appointment in one personnel action. The selected noncareer employee should not be separated and then given a career appointment unless the employee's appointment expires before the employee can be converted to career status....

* * *

510 Leave

511 General

511.1 Administration Policy

The Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the needs of the Postal Service and (b) the welfare of the individual employee.

* * *

512 Annual Leave

* * *

512.3 Accrual and Crediting

512.31 Employee Categories

512.311 Full-Time Employees

The following provisions concern full-time employees:

* * *

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

* * *

512.313 Appointees

The following provisions concern appointees:

a. *Rate of Leave Accrual.* The rate of leave accrual for a new career employee (whether appointed, reinstated, or transferred) *is determined promptly as soon as related facts are verified.* It is based on creditable service, both civilian and military (see 512.2).

b. *Ninety-Day Qualifying Period.*

(1) *Requirement.* New employees are not credited with and may not take annual leave until they complete 90 days of continuous employment under one or more appointments without a break in service.

Exception: This requirement does not apply to (a) career (or career conditional) employees who have had a minimum of 90 days of continuous federal service prior to transferring, without a break in service, to a Postal Service career position (see 512.812 and 512.91) or (b) substitute rural carriers or RCAs who are in a leave-earning status and convert to a Postal Service career position without a break in service.

(2) *Break in Service.* A break in service of 1 or more workdays breaks the continuity of

employment. Any further employment requires beginning a new 90-day period. (For substitute rural carriers and RCAs, see 512.552.)

* * *

The parties stipulated to the issue: Whether Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or may take annual leave?

NALC POSITION

The NALC argues that ELM 512.313 does not prohibit recently converted career employees from taking annual leave where they have completed 90-days of continuous service as CCAs. The wording of ELM 512.313 indicates an exception that fits the old hiring system for career employees. Before the 2013 Interest Award, individuals appointed from a hiring register based on a test score clearly were "new employees" and thus could not be credited with or use their annual leave until they had completed 90 days of service. However, the wording of ELM 512.313 does not fit former CCAs converted to career status under the current National Agreement. The NALC contends that these converted CCAs are not new employees and that they have all been continuously employed by the Postal Service at the time of their conversion. Moreover, the plain language of paragraph (b)(1) allows the employees' service as CCAs to count toward the 90-day requirement and does not limit qualifying service to service under the employee's current appointment; the 90 days may be satisfied by service under one or more appointments, so long as there is no break in service.

The NALC stresses that ELM 512.313(b)(1) does not include the word "career." The NALC argues that there is no evidence that the original purpose of the 90-day qualifying period requires that the present ELM language be read as if it refers exclusively to career appointments. The present ELM provision derives from regulations first promulgated by the old

Post Office Department to implement the Annual and Sick Leave Act of 1951. The pertinent regulation in the 1952 edition of the Post Office Manual says:

> New appointee.—Section 203(i) of the Annual and Sick Leave Act of 1951 provides that employees, including temporary rural carriers, shall be entitled to annual leave only after having been employed currently for a continuous period of 90 days under one or more appointments without a break in service.

The NALC maintains that the statement in the Manual that the term "employees" includes "temporary rural carriers" plainly shows that the 90-day qualifying period in its original incarnation applied equally to noncareer as well as career appointments. Additionally, the NALC contends that its exhibits show that the regulation was carried forward by the Postal Service and eventually incorporated into the ELM without any substantive revisions. Therefore, there is no reason to read the present ELM language as incorporating a different meaning than that of the original 1952 version which did not differentiate the application of the 90-day requirement between career and noncareer appointments.

The NALC points out that Section 512.313(b)(1) does not refer to 90 days of continuous career employment under one or more career appointments, but rather it requires 90 days of continuous employment so long as there is no break in service. The NALC asserts that since there is no break in service when a CCA is converted to career status, the employee's service before and after the conversion is continuous and should satisfy the literal language of the ELM provision. Furthermore, the NALC argues that ELM language is typically precise, thus the absence of the modifier "career' in Section 512.313(b)(1) signals that any postal employment will satisfy the 90-day requirement. The rule's original incarnation did not differentiate between career and noncareer, nor has the Postal Service sought to revise the language in succeeding editions of the ELM.

The NALC also disputes the Postal Service's argument under the doctrine of *expressio unius est exclusio alterius*. The language of ELM 512.313 was drafted long before the CCA classification and the contractual right to conversion was created in the 2013 Interest Award. Thus, the absence of any reference to former CCAs in the exceptions enumerated in

the ELM is irrelevant to the interpretive question in this case. In fact, the NALC suggests that the ELM's reference to the two exceptions supports its position because it shows that there is no practical or other reason for requiring employees who have been employed by the Postal Service or the federal government for more than 90 days in a leave earning capacity to satisfy a new, arbitrary 90-day qualifying period in order to use annual leave.

Finally, the NALC stresses that the Postal Service failed to prove its claim that the previous category of noncareer employees in the letter craft, TEs, were also required to serve a 90-day qualifying period following their appointment to career positions. In any event, the comparison is of no significance because, unlike CCAs, TEs did not have a path to career employment. A TE seeking career employment was required to take an exam like any other member of the public at large. TEs could only be hired off a register, as new employees, based on their test score. The NALC contends that this process is not analogous to a CCA who is converted to career status during an uninterrupted course of postal employment. Moreover, a former TE hired as a career letter carrier typically would have been assigned to a part-time flexible position, like any other new hire, because the previous National Agreement did not provide for the phasing out of part-time positions in the letter carrier craft. A former TE would not have been fronted his full year's annual leave in advance, thus there would have been no cause for the NALC to complain about former TEs being required to satisfy a 90-day qualifying requirement.

NPMHU POSITION

The NPMHU supports the arguments made by the NALC. It explains that there is a bargaining unit position within the Mail Handler craft called the Mail Handler Assistant (MHA). Like CCAs, MHAs are noncareer bargaining unit employees who are hired for terms of 360 days with a break in service of five days between appointments. MHAs replaced some noncareer employees known as casuals (a position that did not entitle the employee to annual leave) and some career part-time flexible employees (who did earn annual leave). Moreover, the NPMHU points out that its National Agreement mandates, like the NALC National Agreement, that "[w]hen the Postal Service hires new mail handler full-time career employees,

MHAs within the installation will be converted to full-time regular career status to fill such vacancies based on their relative standing in the installation, which is determined by their original MHA appointment date in that installation. Accordingly, the NPMHU contends that, like CCAs who are converted to career status, MHAs who have already worked for 90 days and who are converted to career status are not new employees and therefore, should be permitted to take annual leave.

The NPMHU argues that the plain language of the ELM and Section 512.313(b)(1)'s historical antecedent, the Annual and Sick Leave Act of 1951 and the pertinent regulation in the 1952 edition of the Postal Office Manual do not support the Postal Service's proposed interpretation. The NPMHU urges the Arbitrator to look to the rationale he applied in Postal Service and APWU Case No. I90C-1I-C 910325156, H7C-4S-C 29885 (Das, 2005), where he held that the historical precedent for a present term or condition of employment "provides a solid basis on which to conclude" that the parties intended to interpret the term as it had been. The NPMHU asserts that the same rationale if applied here would compel the Arbitrator to determine that the plain language of the ELM cannot be interpreted as requiring former MHAs converted to career status to wait 90 days before being credited or taking annual leave.

The NPMHU also points out that ELM 511.1 states that Postal Service policy is to administer the leave programs on an equitable basis for all employees. Interpreting ELM 512.313(b)(1) as not applying the 90-day qualifying period to career and noncareer employees who already have completed 90 days of continuous employment under one or more appointments without a break in service is compelled by this policy; the Postal Service has offered no rational basis for the distinction it is attempting to draw. See Postal Service and APWU Case No. Q90C-6Q-C 94042619 (Das, 1988).

APWU POSITION

The APWU supports the NALC's position in this case. It explains that the conversion mechanisms for the Postal Support Employees (PSEs), the CCA equivalent in the

APWU bargaining unit, are slightly different, but the concept of the PSE career path is the same. Similar to CCAs, the hiring of career employees in the APWU crafts is accomplished through conversion of PSEs to career positions and gives the Postal Service a pipeline of experienced and trained postal employees to convert directly into career positions rather than appointing them as career hires off of a hiring register. Also, similar to CCAs, the PSE path to career is a requirement for achieving career employment unlike the general opportunity to apply for career vacancies that existed for casuals or TEs. Thus, CCAs and PSEs who are converted to career are neither new postal employees nor former temporary workers who had no expectation of career employment with the Postal Service.

The APWU argues that CCAs and PSEs are not fairly categorized as new employees under ELM 512.313(b)(1) and that the existing exceptions in this provision of the ELM -- former federal employees and RCAs -- illustrates the Unions' position. New career employees who are not new to federal service or are continuing in their postal service do not have to earn the right to use their annual leave. Additionally, the Postal Service cannot articulate any legitimate purpose for imposing an additional 90-day requirement on CCAs, PSEs and MHAs who already have fulfilled the 90-day requirement in the continuation of their postal employment. The APWU asserts that, like the existing exceptions to the ELM's rule, CCAs, PSEs, and MHAs, can acquire the requisite time during their tenure to satisfy both the requirement of and rationale behind ELM 512.313(b)(1) upon continuing their employment through conversion to career positions.

POSTAL SERVICE POSITION

The Postal Service argues that ELM 512.313(b) applies to new career employees and requires a new career city carrier to complete a 90-day qualifying period before being credited with or taking annual leave, even if the carrier previously worked as a noncareer CCA. Although the word "career" does not appear in ELM 512.313(b), the Postal Service stresses that it is clear that this subsection applies only to new career employees. Indeed, the only employees to whom ELM 512.313(b) could apply are career employees. Employees in the Postal Service fall into one of two categories: career and noncareer and only career employees

are subject to ELM 510. According to the Postal Service, noncareer bargaining unit employees are subject to leave rules contained in the various National Agreements, rather than ELM 510.

Additionally, the Postal Service contends that the application of the interpretive doctrine of *noscitur a soccis* (a word is known by the company it keeps) shows that ELM 512.313(b) applies to career employees even though the word "career" does not appear. ELM 512.313 must be read as a whole. ELM 512.313(a), which immediately precedes the subsection on the 90-day qualifying period requirement, explicitly addresses the "rate of leave accrual for a new career employee." Therefore, the Postal Service argues that by reading ELM 512.313 holistically, one can reasonably infer that subsection (b), like subsection (a), is applicable to new career employees.

The Postal Service argues that CCAs who convert to career status are new career employees who are subject to the requirements in ELM 510 for purposes of annual leave usage. The NALC is conflating the distinct set of annual leave provisions that apply separately to noncareer CCAs and those that apply to career city carriers. The annual leave rules for career city letter carriers are found under Article 10 of the National Agreement, which incorporates ELM 510 into the National Agreement, while the annual leave rules for CCAs are found in the NALC National Agreement at Appendix B.3 and make no reference to ELM 510. It is only after a CCA is converted to a career city carrier that the annual leave rules in Article 10 and ELM 510 apply to these employees, making the former CCA a new employee, who is, for the first time, subject to ELM 510.

ELM 512.313(b) contains two exceptions to the 90-day qualifying period requirement, neither of which applies to newly converted CCAs. If, as the NALC argues, previous service as a noncareer postal employee can satisfy the 90-day qualifying period, the Postal Service also stresses there would have been no need to include an exception for RCAs in a leave-earning status.[1] The Postal Service further contends that another canon of contract

[1] The Postal Service notes that an RCA who is in a leave earning capacity serves a 90-day qualifying period before they begin to earn leave. The exception exempts them from having to serve another qualifying period.

interpretation, *expressio unius est exclusio alterius* (the express mention of one thing excludes all others), provides that when a text lists exceptions to a general rule, the general rule should be interpreted to include those items not covered by the stated exceptions.

The Postal Service maintains that its position is consistent with the parties' established practice. TEs, the CCAs noncareer predecessors, were not subject to ELM 510, and thus did not have to complete a 90-day qualifying period requirement during their noncareer appointments to earn and use annual leave. Additionally, like converted CCAs, when TEs were appointed to career status, they were required to complete the 90-day qualifying period in ELM 512.313. The Postal Service asserts that when the CCAs replaced TEs in the latest National Agreement, the TEs were phased out and subsequently, the leave rules that now govern CCAs mirror those that once governed TEs. Except for a few non-substantive changes, the parties carried forward the noncareer leave rules verbatim, which explains why, like the TEs before them, CCAs earn annual leave immediately and are eligible to take that leave as soon as they earn it. Also, just like TEs, CCAs cannot carry annual leave over to their next CCA appointment and are paid out their accrued annual leave upon their conversion to career status.

The Postal Service argues that the NALC has not claimed that former TEs who later received career appointments were exempt from the 90-day qualifying period requirement, however, it incorrectly claims that former CCAs are exempt from that same 90-day requirement. Since the NALC cannot point to any change in the leave rules that would suggest such a policy shift, the Postal Service urges the arbitrator to presume that the parties intended to maintain the existing noncareer leave rules and policies. CCAs should be treated just like TEs were treated, rather than creating a new policy, as the NALC is requesting.

Finally, the Postal Service insists that its position is equitable because its requirements apply to all new career employees who do not qualify under one of the explicit exceptions. It distinguishes Postal Service and APWU Case No. Q90C-6Q-C 94042619 (Das, 1998), cited by the NPMHU in support of its argument that the Postal Service's position is inequitable. In that case, the Arbitrator found that the Postal Service violated ELM 511.1 when it extended administrative leave to some employees, but not others, during a national day of

mourning for the late President Nixon. The Postal Service points out that the Arbitrator explained that in "the absence of any detailed provisions explicitly applying to situations such as the Nixon day of mourning," ELM 511.1 was "particularly significant." The Postal Service distinguishes this case because there is a detailed provision that explicitly applies—ELM 512.313(b). Additionally, the Postal Service points out that this case is purely an interpretive case about the facial meaning of a single provision of the leave system, rather than the application of its leave program to any particular set of facts.

FINDINGS

Under Article 10 of the NALC National Agreement, the applicable leave provisions of Subchapter 510 of the ELM are incorporated into the National Agreement. As written, the applicable provisions in Section 512.313 of the ELM, which govern annual leave entitlement for career letter carriers do not support the NALC's (and other Unions') position in this case.

Initially, I note that while the 90-day qualifying period in Section 512.313(b)(1) may derive from Postal regulations dating as far back as 1952, there have been changes over the years as reflected in NALC Exhibits 5-10. The 1978 version (ELM Issue 2) is very similar to the 1952 edition of the Postal Manual cited by the Unions. The 1982 version (Issue 7) includes a provision similar to the current 512.313(a), except that it references "a new employee," rather than "a new career employee." In the 1999 version (Issue 14) Section 512.313(a) does refer to "a new career employee" and substantively is equivalent to the current provision. Section 512.313(b) of the 1999 version -- which addresses the 90-day qualifying period -- includes the first exception now found in that provision -- which does not appear to have been included in prior ELM versions in the record. The second exception for "substitute rural carriers or RCAs who are in a leave-earning status and convert to a Postal Service career position without a break in service" does not appear in the 1999 version, but is included in its present format in the 2000 version (Issue 16). Under these circumstances, I am not persuaded that the historical antecedents provide much useful elucidation on the relatively narrow issue to be decided here.

It is clear from 512.313(a) that this section of the current ELM applies to annual leave for career employees. (The National Agreement includes separate provisions governing annual leave for CCAs.) The 90-day qualifying period in 512.313(b)(1), like the rest of this section, applies only to career employees. The provision that "new employees" may not use annual leave until they complete 90 days of continuous employment without a break in service logically applies to new career employees since they are the only "employees" whose annual leave is subject to this provision. The wording of 512.313(b)(1) contemplates a future act -- "until they complete 90 days of continuous employment." (Emphasis added.)

This conclusion is only strengthened by the express exception to the 90-day qualifying period for "substitute rural carriers or RCAs who are in a leave-earning status [which requires 90 days of service in that capacity] and convert to a Postal Service career position without a break in service." Under the NALC's reading of the general rule in 512.313(b)(1), there would be no need for such an exception. The analogy to a CCA who is in a leave-earning status -- at least one who has completed 90 days of service as a CCA -- and converts to a career position without a break in service hardly could be closer or more direct. The only difference I discern, but it is a mighty one, is that 512.313(b)(1) makes an exception for the substitute rural carrier or RCA, but not for the CCA.[2]

This is not a case like my 1998 Nixon Day of Mourning decision cited by the NPMHU in which I applied ELM 511.1. Here, unlike in that case, there are detailed ELM provisions addressing the issue at hand.

On the present record, it is not evident that from a policy or equity perspective there is any significant reason not to treat CCAs in a similar manner to substitute rural carriers or RCAs covered by the exception in 512.313(b)(1), but the 2013 Interest Arbitration Award --

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[2] While the evidentiary record is somewhat sparse in this regard, it appears that TSEs, who were replaced by CCAs, likely did have to serve a 90-day qualifying period under this provision upon becoming career employees. The NALC stresses that such TSEs were hired off a registry, rather than being entitled to conversion in the same manner as are CCAs, although it is not clear to me whether this involved a break in service. If not, their situation as "new employees" appears similar to a converted CCA. But I only point this out, and do not base my decision on any practice relating to TSEs.

which includes fairly detailed provisions relating to the newly created CCA bargaining unit position, including conversion to career status, does not provide for -- and the parties have not subsequently agreed to -- this result. Grievance arbitration is not the appropriate process for effecting the necessary change.

Accordingly, I conclude that the Postal Service's position in this case must prevail under the terms of the parties' National Agreement. The same conclusion applies with respect to MHAs and PSEs represented, respectively, by the NPMHU and the APWU.

AWARD

The grievance is resolved on the basis of the following determination:

Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or may take annual leave.

Shyam Das, Arbitrator

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020.**

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before tney may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2, the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5-27-20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. Paul V. Hogrogian
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: E11M-1E-C 14017686
CLASS ACTION
Des Moines, IA

I met recently with your representative, Kevin Fletcher, to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether Mail Handler Assistants (MHAs) may carry over accumulated annual leave upon conversion to a career position.

After full discussion of the issue, the parties agree that currently there are no contractual provisions requiring the Postal Service to allow MHAs to carry over accumulated annual leave upon conversion to a career position.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve this grievance based on the above language.

Time limits at this level were extended by mutual consent.

Michele Ditchey
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 2/8/2016

Paul V. Hogrogian
National President
National Postal Mail Handlers Union
AFL-CIO

Date: 2/8/2016

475 L'Enfant Plaza SW
Washington DC 20260-4101
www.usps.com

(10 days or 80 hours), credit for leave is reduced by the amount of leave earned by the employee in a pay period.

Notes:

(a) For rural carriers who are required to work 6 days a week, the equivalent of 1 pay period is 12 days or 96 hours.

(b) For J route carriers, the equivalent of 1 pay period is 11 days or 88 hours.

(2) When an employee has one or more periods of LWOP during the leave year, all hours in a nonpay status (during periods in which the employee earned annual leave) are totaled to reduce leave credits.

512.312 **Part-Time Employees**

The following provisions concern part-time employees:

a. *Accrual and Crediting Chart.* Part-time career employees other than rural carriers earn annual leave based on the number of hours in which they are in pay status (see Exhibit 512.312).

b. *Biweekly Crediting.* Leave accrues and is credited in whole hours at the end of each biweekly pay period. All hours in pay status that cannot be credited for leave purposes (see 512.312a) are dropped when:

(1) The leave year ends.

(2) The employee's status is changed from part-time to full-time.

(3) The employee is removed from the rolls for any cause.

Exceptions: The following are exceptions to the crediting rule in 512.312b.

(1) Part-time regular schedule employees including A–E Postmasters are credited with annual leave on a pro rata basis, according to their authorized daily schedules. Employees other than A–E Postmasters must wait until they have 1 year or more of career service to be credited at the beginning of the leave year with the annual leave that they will earn during the leave year. A–E Postmasters are credited at the beginning of the leave year with the annual leave that they earn during the leave year. Part-time regular employees are entitled to additional leave hours, based on their leave category, for each (1) 20, 13, or 10; or (2) 26, 17.33, or 13 hours of work in excess of the schedule (see Exhibit 512.312).

(2) Substitute rural carriers and rural carrier associates (RCAs) earn leave for time serving (a) a vacant route or (b) a route from which the rural carrier is on extended leave in excess of 90 days. RCAs also earn leave based on the number of hours worked serving an auxiliary route for a period in excess of 90 days. The leave category for substitute rural carriers is based on creditable service, and for RCAs it is based on category 4. The first day of the pay period following 90 days, the substitute or RCA is credited with accrued annual leave for the first 90 days.

(3) Auxiliary rural carriers, including substitute rural carriers in dual appointments, are credited with annual leave for actual service performed in accordance with their appropriate leave category. If auxiliary rural carriers are otherwise employed (e.g., as clerks in the Post Office), such additional service is also used in the computation of leave credit; otherwise, they are credited as instructed in 512.312a.

Exhibit 512.312

Accrual and Crediting Chart for Part-Time Career Employees

Table 1: Table 1 is valid only for:

1. Part-time career bargaining employees, and
2. Part-time career non-executive non-bargaining employees except for those listed under Table 2.

Leave Category	Years of 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 pay in 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.[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.)[1]
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.*

Recording Hours for Annual and Sick Leave

a. *Units of hours in a pay status are converted into annual leave credits at the rate of 1 hour for each unit of 20, 13, or 10 hours in a pay status — up to a maximum of 4, 6, or 8 hours per biweekly pay period, depending on the employee's leave category.*

b. *Hours in a pay status in excess of these whole units are accumulated and carried forward as excess workhours. These excess (uncredited) workhours are added to hours in a pay status in the next period.*

c. *Whole units of creditable hours (20, 13, or 10) are then converted into leave hours at the unit rate — provided no more leave is credited to a part-time employee than could be earned in the same leave year by a full–time employee.*

d. *The maximum credit allowable for a particular leave category is calculated by multiplying the period number by the number of leave hours allowable per period.*

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

FEB 1 1980

Mr. William J. Raczor
Executive Vice President, Maintenance Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: Local
Fairfield, OH
A8-C-0520/C8C4FC10815
APWU 0520

Dear Mr. Raczor:

On January 30, 1980, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we concluded that at issue in this grievance is the note contained at the end of Exhibit E-3 of the P-11 Handbook.

We have mutually agreed that this note is to be interpreted to mean that if an employee had a period of casual or temporary employment prior to January 1, 1977, this time, prior to January 1, 1977, is credible towards computation of the leave computation date which is utilized to determine whether an employee is to earn 4, 6 or 8 hours of annual leave a pay period. Time worked as a casual or temporary from January 1, 1977 or later is not credible towards the leave computation date.

Accordingly, this grievance is remanded to Step 3 for application of the above agreed to interpretation.

Please sign the attached copy of this letter as your acknowledgment of the remanding of this case.

Sincerely,

Daniel A. Rahn
Labor Relations Department

William J. Raczor
Executive Vice President,
Maintenance Craft
American Postal Workers Union,
AFL-CIO

DOUG A. TULINO
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

November 25, 2019

AREA MANAGERS, HUMAN RESOURCES
AREA MANAGERS, LABOR RELATIONS

SUBJECT: Mail Handler Assistant

In accordance with the Mail Handler Assistant (MHA) Annual Leave Provisions Memorandum of Understanding, MHAs accrue annual leave which may be used for rest, recreation, emergency purposes, and illness or injury. Except for emergencies, annual leave for MHAs must be requested on PS Form 3971 and approved in advance by the appropriate supervisor.

An MHA may request annual leave for a minimum of one hour and up to the number of hours the MHA is scheduled to work, but no more than eight hours in a service day or 40 hours in a service week.

Doug A. Tulino

BVH
12-16-2019

12/16/19

475 L'Enfant Plaza SW
Washington DC 20260-4101
www.usps.com

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

November 10, 1983

Mr. Thomas Freeman, Jr.
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: T. Hall
Flint, MI 48502
H1C-4B-C 17039

Dear Mr. Freeman:

On October 5, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance concerns whether management improperly charged 8 hours LWOP used by the grievant in the 1982 leave year to his 1983 leave year.

According to the file, the grievant used 8 hours LWOP on January 6, 1983, which was during the last pay period of the 1982 leave year. When the grievant received his pay check for pay period two of 1983, his pay stub showed 8 hours LWOP used.

We mutually concluded that the end of a leave year and the beginning of the 26 pay periods does not necessarily coincide (ref. 512.121, ELM). The grievant cannot determine the LWOP that will be charged to a leave year solely by viewing his pay stub. The pay stub will reflect whatever leave activity that takes place within a particular pay period. It does not control leave use allocations during a leave year. Therefore, leave taken by the grievant on January 6, 1982, will be charged to the 1982 leave year.

Accordingly, we consider this grievance, to the extent discussed above, to be resolved.

Please sign and return the enclosed copy of this decision as acknowledgment of agreement to resolve this case.

Sincerely,

R. L. E.

Robert L. Eugene
Labor Relations Department

Thomas L. Freeman, Jr.

Thomas Freeman, Jr.
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

JUN 15 1984

Mr. Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: C. Wolf
Bellevue, WA 98009-9998
H1N-5D-C 19202

K. Wagner
Bellevue, WA 98009
H1N-5D-C 19204

Dear Mr. Johnson:

On April 3, 1984, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether management violated Article 10, Section 4.D., by refusing to honor approved leave of the grievants who transferred from the clerk craft to the carrier craft.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 10 of the National Agreement.

The parties at this level agree that employees who have annual leave approved are entitled to such leave except in emergency situations. Whether an emergency situation existed at the time when the leave would be used is a noninterpretive question and is suitable for regional determination.

Please sign and return the enclosed copy of this decision as acknowledgment of our agreement to remand these grievances.

Time limits were extended by mutual consent.

Sincerely,

Leslie Bayliss
Labor Relations Department

Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

MAR 5 1985

Mr. Thomas Freeman, Jr.
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: D. Ortega
Phoenix, AZ 85026
H1C-5K-C 24208

Dear Mr. Freeman:

On January 15, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether the grievant's annual leave was improperly cancelled.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented as to the meaning and intent of Article 10 of the National Agreement. As stated in two previously issued Step 4 settlements (B1C-3Q-C 21492 dated September 16, 1983, and H1C-3D-C 34008 dated October 5, 1984), we agreed that when a PTF has been previously granted annual leave, the annual leave will not be unilaterally changed to an off day, solely to make the PTF available for an extra day of work at straight time.

Accordingly, as agreed, this case is remanded to the parties at Step 3 for application of the above settlement to the fact circumstances of this case and appropriate resolution.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Thomas Freeman, Jr.
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

September 8, 1981

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: J. Seratta
South San Franc, CA 94080
H8N-5C-C-18666

Dear Mr. Overby:

On August 26, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The question in this grievance is whether or not management violated Article XIX of the National Agreement by not allowing the employee involved to cancel scheduled annual leave. In our opinion, this issue does not fairly present an interpretive question.

The Union cites a violation of Part 516.332, Employee and Labor Relations Manual. This reference addresses the cancellation of annual leave and provides for placing the employee on court leave for the duration of court service. The file reflects that this requirement was accomplished.

Article XXX, 4, B, local agreement indicates that management's action was proper and no cited reference supports the relief requested by the Union. While not contractually obligated to, management should give reasonable consideration to requests for annual leave cancellation.

Accordingly, as we find no violation of the National agreement, this grievance is denied.

Sincerely,

Howard R. Carter

Howard R. Carter
Labor Relations Department

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union, AFL-CIO
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: B90M-1B-C 95062381
(MH # 664)
Niejadlik S
Springfield, MA 01101-9995

Dear Bill:

Recently, I met with your representative Richard Collins to discuss the aforementioned grievance at the fourth step of the contractual grievance procedure.

The issue in this grievance is whether management violated Article 8, Section 5, of the National Agreement when it failed to offer overtime to an employee on his scheduled day off while on annual leave.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case.

After reviewing this matter it was determined that there is no violation of the National Agreement. Normally, employees who are absent are not required nor considered available to work overtime. However, if an employee on the Overtime Desired List (OTDL) so desires, the employee may advise his/her supervisor in writing of his/her availability to work a nonscheduled day that is in conjunction with or part of approved annual leave.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time Limits as this level were extended by mutual consent.

Sincerely,

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

William H. Quinn
National President
National Postal Mail Handlers Union,
AFL-CIO

Date: 10/15/97

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

Mr. William J. Flynn, Jr.
Manager Contract Administration
National Postal Mail Handlers
Union, AFL-CIO
1101 Connecticut Avenue, NW, Suite 500.
Washington, DC 20036-4304

Re: D90M-1D-C 95008277
(MH S-1469)
Class Action
Lexington, KY 40511-9998

Dear Billy:

Recently, Joseph Amma and I met with Samuel D'Ambrosio, Arthur Vallone and yourself in pre-arbitration discussions of the aforementioned case pending arbitration at the National level.

The issue in this case is whether management is obligated to honor an employee's request pursuant to Article 10.5C for additional annual leave during the choice vacation period after the vacation list has been posted and the employee has been approved for the full leave entitlement outlined in Article 10.3 D1 and D2.

After full discussion of this issue, and taking into account additional information provided by the Union, the parties have agreed that the provisions of Article 10.5 C apply to requests for annual leave in full week increments made by employees after the initial sign-up period is completed and vacant weeks still exist on the vacation sign-up list.

This constitutes full and final settlement of all issues presented in this case.

Please sign and return one copy of this letter to indicate your agreement to settle this grievance and withdraw it from the pending arbitration list.

Sincerely,

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU), Labor Relations

William J. Flynn, Jr.
Manager Contract Administration
National Postal Mail Handlers
Union, AFL-CIO

Date: February 23, 1999

513.42 Part-Time Employees

513.421 General

General provisions are as follows:

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.

Exception: If employees shown to be eligible in 434.422 elect to receive annual leave credit in lieu of holiday leave pay (see 512.65), sick leave may be charged to supplement work hours, up to the limit of their regular work schedule, on the holiday worked, provided the requirements of section 513.32 are met.

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 one day.

(2) 40 hours in any one 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 is 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 that is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

513.422 Minimum Unit Charge

Minimum unit charges are as follows:

Employee Category	Minimum Unit Charge
All part-time nonexempt employees.	One-hundredth of an hour (0.01 hour).
Part-time exempt employees.	(See 519.7.)

513.5 Advanced Sick Leave

513.51 Policy

513.511 May Not Exceed Thirty Days

Sick leave not to exceed 30 days (240 hours) may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not the employee has an annual leave or donated leave balance.

513.512 Medical Document Required

Every request for advanced sick leave must be supported by medical documentation of the illness.

513.52 Administration

513.521 Installation Heads' Approval

Officials in charge of installations are authorized to approve these advances without reference to higher authority.

513.522 Forms Forwarded

PS Form 1221, *Advanced Sick Leave Authorization,* is completed and forwarded to the Eagan ASC when advanced sick leave is authorized.

513.53 Additional Sick Leave

513.531 Thirty-Day Maximum

Additional sick leave may be advanced even though liquidation of a previous advance has not been completed provided the advance at no time exceeds 30 days. Any advanced sick leave authorized is in addition to the sick leave that has been earned by the employee at the time the advance is authorized.

513.532 Liquidating Advanced Sick Leave

The liquidation of advanced sick leave is not to be confused with the substitution of annual leave for sick leave to avoid forfeiture of the annual leave. Advanced sick leave may be liquidated in the following manner:

a. Charging the sick leave against the sick leave earned by the employee as it is earned upon return to duty.

b. Charging the sick leave against an equivalent amount of annual leave at the employee's request provided the annual leave charge is made prior to the time such leave is forfeited because of the leave carryover limit.

513.6 Leave Charge Adjustments

513.61 Insufficient Sick Leave

If sick leave is approved but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

513.62 Insufficient Sick and Annual Leave

If sick leave is approved for employees who have no annual or sick leave to their credit, the absence may be charged as LWOP unless sick leave is advanced as outlined in 513.5. LWOP so charged cannot thereafter be converted to sick or annual leave.

513.63 Disapproved Sick Leave

If sick leave is disapproved, but the absence is nevertheless warranted, the supervisor may approve, at the employee's option, a charge to annual leave or a charge to LWOP.

513.64 Absence Without Leave

An absence that is disapproved is charged as LWOP and may be administratively considered as AWOL.

513.65 Annual Leave Changed to Sick Leave

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.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 1 6 1983

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: Branch
Portland, OR 97208
E1N-5D-C 14783

Branch
Portland, OR 97208
E1N-5D-C 14785

Dear Mr. Overby:

On November 21, 1983, we met to discuss the above-captioned cases at the fourth step of the contractual grievance procedure set forth in the 1981 National Agreement.

The question raised in these grievances is whether local management violated Article 10 and 19 of the National Agreement by implementing local tardiness and sick leave policies.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in these cases. This issue is a matter of application rather than interpretation. A local Attendance Program cannot be inconsistent with ELM 510. Disciplinary action which results from a local policy must meet the just cause provision of Article 16. Accordingly, we agreed that the parties at Step 3 are to once again review these cases to ascertain if the local policy conforms with ELM regulations. If the parties are unable to settle this matter, the issue should be arbitrated at the regional level.

Accordingly, as we further agreed, these cases are hereby remanded to the parties at Step 3 for further processing, if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Sincerely,

A. J. Johnson
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

January 5, 1981

Daniel B. Jordan, Esq.
Attorney at Law
American Postal Workers Union,
AFL-CIO
817 14th Street, NW
Washington, DC 20005

Re: E. Andrews
Washington, D. C.
A8NA-0840

Dear Mr. Jordan:

On November 14, 1980, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure with regard to disputes between the parties at the national level.

The matters presented by you, as well as the applicable contractual provisions, have been reviewed and given careful consideration.

At issue in this case is whether the Cleveland, Ohio post office has adopted and enforced a policy whereby employees using sick leave in excess of three percent of their scheduled hours will be disciplined.

During our discussion, several points of agreement were reached. They are:

1. The USPS and the APWU agree that discipline for failure to maintain a satisfactory attendance record or "excessive absenteeism" must be determined on a case-by-case basis in light of all the relevant evidence and circumstances.

2. The USPS and the APWU agree that any rule setting a fixed amount or percentage of sick leave usage after which an employee will be, as a matter of course, automatically disciplined is inconsistent with the National Agreement and applicable handbooks and manuals.

3. The USPS will introduce no new rules and policies regarding discipline for failure to maintain a satisfactory attendance record or "excessive absenteeism" that are inconsistent with the National Agreement and applicable handbooks and manuals.

The above constitutes our national position on such matters. We do not agree that a three percent policy as stated in your grievance has been implemented in the Cleveland, Ohio post office.

The Union bases its argument on several factors. First, they feel that the content of several internal management memos clearly indicates that a three percent rule was implemented. In my review of the said documents, I do not find such clarity. Further, the authors of the documents say they had no intention of establishing a three percent rule for individual attendance. Their concern was a three percent reduction in the sick leave usage for the entire office.

Second, the Union has presented affidavits from several employees who attest that they were told by their supervisors and/or in step one grievance proceedings that they used more than three percent sick leave they would be disciplined. The supervisors referred to have all submitted statements stating that they did not tell employees that there was a three percent rule.

Third, the Union states that the number of disciplinary actions taken with regard to excessive sick leave usage substantially increased after the memos were written. Though numbers were quoted, no documentation was submitted. The Cleveland office has submitted substantial documentation that certainly indicates that if a three percent rule was the policy, it was not being enforced. The Cleveland staff surveyed the attendance records of over seventeen hundred employees. Over 559 employees in that number had used more than three percent of their sick leave during the period January 1980 to July 1980, but were not disciplined. These statistics certainly belie the extence of a three percent rule. Management acknowledges that there has been increased emphasis on attendance, but not based on a three percent rule.

Notwithstanding those listed items to which we can agree, it is our position that in light of the fact circumstances o this case, no policy to discipline employees who used mor than three percent of their sick leave existed in the Cleveland post office.

It is further our opinion, that no definitive dispute exists between the parties concerning the contractual provisions for the administration of discipline with regard to failure to maintain satisfactory attendance.

Sincerely,

Robert L. Eugene
Labor Relations Department

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: G06M-1G-D 11079627
Monica Cuellar
Houston, TX 77201-9997

Dear John:

I recently met with your representative, TJ Branch, to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The issues in this grievance are whether local management may implement a policy whereby employees are disciplined for using sick leave after a specified amount of absences and does leaving on overtime constitute an unscheduled absence.

After full discussion of this issue, we agree that no national interpretive issue is fairly presented in this case. Furthermore, the issue of whether local management may implement a policy whereby employees are disciplined for using sick leave after a specified amount of absences has been addressed in a step 4 decision A8-NA-0840 and is cited in the CIM Version 3 in Article 10 page 12. Provisions for an unscheduled absence are addressed in Employee Relations Manual, Section 511.4.

Accordingly, we agree to remand this grievance to Step 3 for further processing and/or regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this grievance to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Allen Mohl
Allen Mohl, Manager
Contract Administration (NPMHU)
and Workplace Programs

John F. Hegarty
John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 01-16-13

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

SEP 03 1985

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Thomas Freeman, Jr.
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Orlando, FL 32802
H/C-3W-C 48121

Dear Mr. Freeman:

On August 16, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance involves management requiring employees to complete PS Forms 3971 at the Postal Source Data Site prior to obtaining their time badges following unexpected absences from duty.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Part 513.332 of the ELM as well as Part 333.3 of the F-21 Handbook to the fact circumstances.

The parties at this level agree that the completion of a Form 3971 "upon/after return to duty" means while the employee is on-the-clock.

Accordingly, we agreed to remand this case to the parties at Step 3 for application of the above understanding to the fact circumstances.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

Muriel Aikens
Muriel Aikens
Labor Relations Department

Thomas L. Freeman, Jr.
Thomas Freeman, Jr.
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO

513.42 Part-Time Employees

513.421 General

General provisions are as follows:

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.

Exception: If employees shown to be eligible in 434.422 elect to receive annual leave credit in lieu of holiday leave pay (see 512.65), sick leave may be charged to supplement work hours, up to the limit of their regular work schedule, on the holiday worked, provided the requirements of section 513.32 are met.

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 one day.

(2) 40 hours in any one 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 is 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 that is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

513.422 Minimum Unit Charge

Minimum unit charges are as follows:

Employee Category	Minimum Unit Charge
All part-time nonexempt employees.	One-hundredth of an hour (0.01 hour).
Part-time exempt employees.	(See 519.7.)

513.5 Advanced Sick Leave

513.51 Policy

513.511 May Not Exceed Thirty Days

Sick leave not to exceed 30 days (240 hours) may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not the employee has an annual leave or donated leave balance.

513.512 Medical Document Required

Every request for advanced sick leave must be supported by medical documentation of the illness.

ARBITRATION AWARD

January 19, 1987

UNITED STATES POSTAL SERVICE

-and-

AMERICAN POSTAL WORKERS UNION

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case Nos.
H4N-NA-C-21 (2nd Issue)
H4C-NA-C-23

Subject: Effect of Penalty Overtime Pay on Holiday Scheduling

Statement of the Issues: Whether Management may ignore the "pecking order" in holiday period scheduling, as established by Article 11, Section 6B or a Local Memorandum of Understanding, in order to avoid payment of penalty overtime pay under Article 8?

Whether Management may treat regular employees who have volunteered for holiday period work, pursuant to the holiday scheduling process, as having volunteered for up to twelve hours on whatever day(s) they are asked to work?

Contract Provisions Involved: Article 8, Sections 4 and 5; Article 11, Sections 1 through 6; and Article 30 of the July 21, 1984 National Agreement.

Appearances: For the Postal Service, J. K. Hellquist, General Manager, Labor Relations Division, Central Region; for APWU, Darryl J. Anderson, Attorney (O'Donnell Schwartz & Anderson); for NALC, Keith E. Secular, Attorney (Cohen Weiss & Simon) and Devon Lee Miller, Staff Attorney.

Statement of the Award: The grievances are granted. Management may not ignore the "pecking order" in holiday period scheduling under Article 11, Section 6 in order to avoid penalty overtime pay under Article 8. Management may not treat regular volunteers for holiday period work as having volunteered for up to twelve hours on whatever day(s) they are asked to work. The remedy for this violation, the question of who is entitled to back pay for Management's failure to honor rights under Articles 8 and 11, is remanded to the parties for their consideration. Should they be unable to resolve this matter, the back pay issue may be returned to the appropriate arbitration forum for a final decision.

BACKGROUND

These grievances involve interpretive questions with respect to Article 11, the holiday work and holiday scheduling language of the 1984 National Agreement. Article 11, Section 6B establishes a "pecking order" for scheduling employees during a holiday period. The Postal Service insists that if compliance with the "pecking order" would result in some employee receiving penalty overtime pay, Management is free to bypass that employee to avoid the penalty overtime pay. The Unions disagree. They urge that any failure to follow the "pecking order" is a violation of Section 6B.

Article 11 is the "holidays" clause. It states the holidays to which the employees are entitled (Section 1), the eligibility conditions for holiday pay (Section 2), and the payment made for a holiday (Section 3). It notes that when a holiday falls on an employee's scheduled non-workday, he takes his holiday on his "scheduled workday preceding the holiday" (Section 5B). That is referred to as his designated holiday. Because of this contract provision, a single holiday may embrace a two- or three-day period. For example, if the official holiday occurs on a Monday, anyone regularly scheduled that day will have Monday as a holiday. An employee whose scheduled off days are Sunday and Monday will have his designated holiday on Saturday; an employee whose off days were Monday and some later day would have his designated holiday on Sunday. These latter employees receive holiday pay for their designated holiday, not for the official holiday (Monday).

Article 11 also explains how employees are to be paid when they work on their holiday (Section 4) and how employees are to be scheduled for such holiday work (Section 6). In order to understand this dispute, these two provisions should be quoted at length:

> "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 to which the employee is entitled as above described.

B. An employee required to work Christmas shall be paid one and one-half (1½) 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."

"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 Wednesday preceding the service week in which the holiday falls.

B. As many full-time and part-time regular 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."

Some elaboration on the meaning of this contract language is necessary. Section 6A demands that a holiday work schedule be posted by a certain time. Section 6B establishes rules as to how the schedule is to be prepared. Its main purpose is to require that "full-time and part-time regulars" be given holidays off to the extent possible. It calls upon Management to "excuse" from holiday work "as many..." of them "as can be spared." It nevertheless recognizes that these regulars may sometimes be required to work on their holidays. But it says this cannot happen "unless all casuals and part-time flexibles are utilized to the maximum extent possible" including overtime and "unless all full-time and part-time regulars...who wish to work on the holiday have been afforded an opportunity to do so." Thus, all casuals, part-time flexibles and regular volunteers must be used for holiday work before Management can compel regular, non-volunteers to perform such work.

The precise order of choosing employees for holiday work, commonly referred to as the "pecking order", is left to the local parties. Article 30B, item 13 provides for

local implementation with respect to "the method of selecting employees to work on a holiday." Of course, should the local parties fail to agree on a "pecking order", they would be bound by the terms of Article 11, Section 6B.

Section 4 deals with the applicable rate of pay for the employee who works his holiday (or designated holiday) pursuant to the "pecking order." Ordinarily, he receives straight time for such holiday work (Section 4A) in addition to holiday pay. But if he works on Christmas Day, he receives time and one-half for such holiday work (Section 4B) in addition to holiday pay.

Because holiday scheduling involves more than the calendar holiday, employees are sometimes called upon to work during the holiday period on one or two of their regularly scheduled off days. Suppose, for instance, that the calendar holiday falls on Monday and that a regular volunteer has his off days on Sunday and Monday and hence his designated holiday on Saturday. If he is asked to work on Sunday[1] (or Monday), he receives time and one-half for such work. The parties appear to disagree on the basis for this payment. The Unions insist this overtime premium is required by Article 8, Section 4B. The Postal Service insists that pay for work performed because of the holiday scheduling provision has nothing to do with Article 8 but rather is based on the terms of Article 11 and the March 4, 1974 Settlement Agreement. Paragraph 3d of this Settlement Agreement states:

> "d. A full time regular employee required to work on a holiday which falls on his regularly scheduled non-work day shall be paid at the normal overtime rate of one and one-half (1½) times his basic hourly straight time rate for work performed on such day..."[2]

---

1 If he is asked to work on Saturday, his designated holiday, he receives straight time for such work pursuant to Article 11, Section 4A.

2 This clause plainly does not refer to Saturday in the hypothetical example above. For Saturday, being the employee's designated holiday, is by definition a scheduled workday. Rather, it must refer to the official holiday on Monday which was a "scheduled non-work day" for this employee. In any event, this clause does not concern his pay for work performed on Sunday pursuant to the holiday schedule. For Sunday was neither a calendar holiday nor his designated holiday.

Article 8 is a critical part of this dispute as well. Prior to the 1984 National Agreement, it provided overtime pay for work performed "after eight (8) hours on duty in any one service day or forty (40) hours in any one service week" (Section 4B). It provided further for overtime pay for work outside the regularly scheduled work week, i.e., for work on the employee's non-scheduled days (Section 4B). It referred to a single overtime rate, time and one-half (Section 4A).

The 1984 national negotiations led to significant changes in Article 8. The most important one, for purposes of this case, was the establishment of "penalty overtime pay" of "two (2) times the base hourly straight time rate" (Section 4C). The manner in which this penalty premium was to be applied is set forth in Sections 4 and 5 of the 1984 National Agreement:

> "Section 4...D. Effective January 19, 1985, penalty overtime pay will be paid to full-time regular employees for any overtime work in contravention of the restrictions in Section 5.F.
>
> "Section 5...F. Effective January 19, 1985, 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."

In short, employees who work beyond these Section 5F restrictions are entitled to penalty overtime pay.

In the 1984 national negotiations, the Unions proposed several changes in Article 11. One was to "correct Article 11 to reflect the Martin Luther King, Jr. holiday." Another was to "increase...the premium paid for work on a holiday or designated holiday." The former proposal was submitted to the Kerr interest arbitration panel which held that the King birthday should be an additional holiday beginning in 1986. The latter proposal was evidently an attempt to raise any existing "premium" for holiday work. It was dropped by the Unions during negotiations and was never placed before the Kerr panel.

The Postal Service advised the Unions of its interpretation of Article 11 in mid-April 1985. It asserted that volunteering for holiday period work would be considered by Management as indicating a willingness to work up to twelve hours per day. It asserted further that a holiday schedule would continue to be based on the "pecking order" created by Article 11, Section 6B and local implementation but that Management was not obligated to follow the "pecking order" if, by doing so, it incurred penalty overtime pay. Both Unions objected to this interpretation. NALC grieved, alleging that "pecking orders, however established, must be followed by the Postal Service." Its position was that the "pecking order" could not be disregarded because of penalty overtime pay considerations. APWU grieved, taking the same position as NALC on the "pecking order" question. It urged that an employee's right to holiday period work pursuant to Article 11, Section 6B and local implementation could not be affected by any Article 8 changes in overtime compensation. It added too that employees scheduled for holiday work "are available to work the number of hours [eight] they would normally be available for if it were not a holiday schedule."

The original arbitration hearing was held in Washington, D.C. on December 19, 1985. The parties submitted only the question of whether the Unions' complaint was arbitrable under the terms of the 1984 National Agreement. I ruled on May 5, 1986, that "the grievances in this case are arbitrable." A hearing was held on the merits of the dispute on October 8, 1986. Post-hearing briefs were received by the arbitrator on December 6, 1986.

DISCUSSION AND FINDINGS

Article 11, Section 6B is the key provision in this case. It deals with the holiday schedule for the holiday period, namely, the day on which the official holiday falls and the preceding day(s) on which many employees have their designated holiday. Its purpose was to insure, insofar as possible, that regulars would enjoy the holiday (or designated holiday) and be off work that day. It accomplished this purpose by creating a "pecking order." Thus, in preparing a holiday schedule, Management must use (1) "all casuals and part-time flexibles..." and (2) "all full-time and part-time regulars ...who wish to work on the holiday..." before turning to any regular who does not wish to work. The parties gave the regular non-volunteer a right, vis-a-vis others, to time off on

his holiday (or designated holiday). That right can be disregarded, according to Section 6B, only if Management has scheduled all qualified people in groups (1) and (2) and requires still more manpower for the holiday (or designated holiday).

More important, the "pecking order" described here is a mandatory procedure. Management must use non-protected employees (i.e., casuals, part-time flexibles, and regular volunteers) before protected employees (i.e., regular non-volunteers) during the holiday period. There are no exceptions. Failure to honor these priorities (i.e., scheduling a regular non-volunteer while other qualified non-protected people are available) would plainly be a violation of Article 11, Section 6B.

The Postal Service nevertheless insists that the "pecking order" is not always mandatory under the 1984 National Agreement. It stresses that part of Article 11, Section 6B which says the priorities set forth in the "pecking order" are to be followed "even if the payment of overtime is required." It believes these words mean that the parties anticipated the "pecking order" would cost Management no more than the "overtime" rate in effect (i.e., time and one-half) at the time Section 6B was first written into the National Agreement. It urges that the parties negotiated a new "penalty overtime" rate (i.e., double time) in the 1984 National Agreement, that this was not the "overtime" rate contemplated by Article 11, Section 6, and that Management may therefore ignore the "pecking order" when necessary to avoid the payment of anything beyond such "overtime" rate. Its position is that the parties agreed the Section 6B scheduling procedure could result in "...the payment of overtime" but not "...the payment of penalty overtime."

This argument fails for several reasons. The object of the phrase in question ("even if the payment of overtime is required") obviously was to make clear that Management could not escape the mandatory scheduling procedure in Article 11, Section 6B on the ground that strict application of this procedure would call for "overtime" pay. The "pecking order" had to be followed even though it caused employees to be paid time and one-half. The "pecking order" had to be

followed without regard to labor cost considerations.[3] Realistically viewed, this phrase simply serves to emphasize the unconditional nature of the Section 6B scheduling obligation. The Postal Service has never had an option in this matter. It had to honor the "pecking order" whenever it made up a holiday schedule. It presumably did so between 1973, when Section 6B came into being, and 1984. Now Management contends that this phrase, absent any change in the language of Section 6B, somehow places a new condition on what had always been an unconditional obligation. This claim is unconvincing, not only because it would alter the long-standing interpretation of Section 6B but also because it would expand the meaning of this phrase far beyond what the parties could possibly have intended.

To repeat, the phrase in question precludes any deviation from the "pecking order" because of "overtime." It is true that when Article 11, Section 6B was initially written, there was just one kind of "overtime" pay, namely, time and one-half. The parties established another kind of "overtime" pay, namely, double time, in the 1984 National Agreement and described it as "penalty overtime." Neither of these circumstances command a different conclusion in this case. For "penalty overtime" is still a form of "overtime" and double time is simply a new type of "overtime" rate. Moreover, these new arrangements have been included in the "overtime work" provisions of Article 8, Section 4. The parties' intent to make "overtime" (i.e., labor cost) considerations irrelevant in preparing a holiday schedule under Article 11, Section 6B strongly suggests that Management may not deviate from the "pecking order" because of "penalty overtime."

Neither party seems to have anticipated in the 1984 negotiations that the creation of "penalty overtime" in Article 8, Section 4 might have an impact on holiday scheduling under Article 11, Section 6B. There is no evidence that the negotiators discussed this interrelationship. The Postal Service maintains the Unions never advised Management at the time that the "pecking order" would have to be applied without regard to "penalty overtime" as well as "overtime." Had

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3 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."

it been so advised, it says it would have insisted on renegotiating Article 11, Section 6B. But the Unions can make the very same type of argument. They could properly assert the Postal Service never advised them at the time that deviation from the "pecking order" was prohibited with respect to "overtime" but not "penalty overtime." Had they been so advised, they presumably would also have insisted on renegotiating Article 11, Section 6B.

The difficulty here is the parties' silence on this issue in the 1984 negotiations. That silence, however, does not work to the Unions' disadvantage. For the holiday scheduling in Article 11, Section 6B, the "pecking order", has always been an unconditional obligation. Nothing in the Postal Service's argument convinces me that a sound basis exists for modifying that unconditional obligation.

The Postal Service resists these findings on other grounds as well. First, it states that pay for work performed pursuant to a holiday schedule is based not on Article 8 but rather on Article 11 and the March 4, 1974 Settlement Agreement. It seems to be asserting that there is no interrelationship between Articles 8 and 11. Second, it states that the Unions are seeking through this arbitration what they failed to achieve in the 1984 negotiations. It refers to the Unions' withdrawal in those negotiations of a proposal for "increasing the premium paid for work on a holiday or designated holiday" under Article 11.

The first claim has no merit whatever. It is true that pay for work on a holiday (or designated holiday) is governed by Article 11, Section 4. But the holiday schedule typically encompasses a two- or three-day period and calls for employees to work on a day(s) outside their regular schedule, a day(s) other than their holiday (or designated holiday). Payment for these days is not covered by Article 11. Payment for these days is covered by Article 8 and to a limited extent by the Settlement Agreement.[4]

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[4] See footnote 2 which explains that Paragraph 3d of the Settlement Agreement has a limited application to a holiday schedule. Note too that the purpose of Paragraph 3d, according to a lengthy April 1974 memorandum issued by Postal Service headquarters, was to show that an employee who "works on a calendar holiday" which is in fact "his sixth work day...is entitled only to the normal overtime rate for service performed that day..." (Emphasis added).

The Postal Service has recognized the applicability of the overtime pay provisions of Article 8 in these circumstances. An August 1973 telegraphic message was sent to facilities throughout the country by the then Senior Assistant Postmaster General for Employee & Labor Relations. The message dealt with misunderstandings as to the proper interpretation of Article 11, Section 6B. It described the priorities or "pecking order" for a holiday schedule and noted the fourth and fifth priorities in these words:

> . "4. All other full time and part time regular volunteers. In the case of such full time volunteers, if they are scheduled to work and it is what would otherwise be their non-scheduled work day, they will be guaranteed 8 hours at the overtime rate in accordance with Article VIII, Sections 1 and 4.
>
> "5. Full time and part time regulars who have not volunteered and who will be working on what would otherwise be their non-scheduled work day. In the case of such full time employees, they will be guaranteed 8 hours at the overtime rate in accordance with Article VIII, Sections 1 and 4." (Emphasis added)

Equally important, the Postal Service issued a January 1985 special postal bulletin (21495) which dealt with pay issues arising from the new "penalty overtime" provision. The bulletin addressed the situation where an "employee worked all seven days of the week which included a holiday." The calendar holiday fell on a Monday; the employee's regularly scheduled off days were Saturday and Sunday; the holiday schedule called for him to work these off days. The bulletin stated that "penalty overtime is paid for the 2nd non-scheduled workday, for hours worked on a 7th day (Sunday)" (Emphasis added). That was obviously a reference to Article 8, Section 4.

The Postal Service expressly acknowledged the applicability of "penalty overtime" to holiday scheduling in an April 1985 letter to the Unions. It stated its "position" in these words:

"For holiday scheduling purposes work hour limitations for the holiday period; i.e., the holiday and designated holidays, would be as follows:

* * *

- Penalty pay would be due for work in excess of 10 hours per day.

- Penalty pay would be due for overtime work on more than 4 of the employees 5 scheduled days.

- Penalty pay would be paid for work over 8 hours on a nonscheduled day.

- Penalty pay would be paid for work over 6 days in a service week." (Emphasis added)

These statements show that employees on a holiday schedule can, where appropriate, qualify for "penalty overtime" under Article 8, Sections 4 and 5. Indeed, the present dispute is before the arbitrator because the Postal Service has admittedly deviated from the "pecking order" of Article 11, Section 6B to avoid the payment of "penalty overtime." That action plainly implies that were Management required to follow the "pecking order" in such situations, it would have to pay "penalty overtime."

All of this illustrates, beyond question, that Article 8 does apply to certain portions of the Article 11, Section 6B holiday schedule. Articles 8 and 11 are interrelated.

The second claim is also not persuasive. In the 1984 negotiations, the Unions noted that "most employees are required to work on holidays" and proposed amending Article 11 so as to "increase...the premium paid for work on a holiday or designated holiday." This proposal was later withdrawn. The parties disagree on the significance, if any, to be attributed to this withdrawal.

The Unions' proposal had a narrow target. It was aimed at work performed by employees on their holiday (or designated holiday). It sought something more than the straight

time pay authorized by Article 11, Section 4 for such work.[5] The present dispute, however, does not concern work on the employee's holiday (or designated holiday). The Unions do not challenge the pay formulation in Article 11, Section 4. Rather, their concern is with the employee required to work on a non-scheduled day[6] pursuant to the holiday scheduling procedure of Article 11, Section 6B. Their concern is with Management's obligation to follow the "pecking order" of Section 6B without regard to the "overtime" consequences. Such concerns were obviously not part of the Unions' negotiating proposal. Therefore, it cannot be said that the Unions' position in this case is an attempt to secure through arbitration what it failed to achieve through negotiations.

The final issue in this case concerns the Postal Service's view that any regular employee who volunteers for holiday period work may be treated as having volunteered for up to twelve hours on whatever day(s) he is asked to work. The Unions do not agree. They believe that such a regular volunteer is limited to just eight hours and that should Management need more than this eight hours' work, it must use the overtime desired list (ODL).

Article 11 does not address this issue. It deals with the scheduling of holiday period work but it says nothing of the number of hours for which a regular volunteer may be scheduled. However, Article 8, Section 5 offers some significant clues. It describes the procedures to be followed in scheduling "overtime work" for employees. Its general provisions must give way to the specific provisions for holiday scheduling in Article 11, Section 6. Hence, a regular volunteer may be scheduled for an eight-hour shift in the holiday period even though these hours constitute "overtime work" for him and even though he is not on the ODL. But because Article 11 does not speak of the length of a holiday period assignment and because anything beyond the initial eight hours must amount to "overtime work", it is appropriate to look at Article 8, Section 5.

Assume, for instance, that a regular full-time volunteer is working eight hours on a non-scheduled day pursuant to the

---

5 Time and one-half pay is authorized for work on the Christmas holiday.

6 This non-scheduled day would, by definition, be a day other than his holiday (or designated holiday).

holiday schedule. That would be "overtime work." But Article 8, Section 5F says "no full-time regular will be required to work...over eight...hours on a non-scheduled day..." Assume further that this regular volunteer is also working eight hours on his holiday (or designated holiday), one of his regularly scheduled days. He receives straight time for such holiday work in addition to his holiday pay. Only if he is asked to work beyond eight hours would overtime pay be applicable. But Article 8, Section 5G says "full-time employees not on the [ODL]...may be required to work overtime only if all available employees on the [ODL]...have worked up to twelve...hours in a day or sixty...hours in a service week..."[7] In short, the regular volunteer cannot work beyond the eight hours without supervision first exhausting the ODL. These Article 8 provisions, when read together with Article 11, strongly suggest that regular volunteers are contractually expected to work eight hours, nothing more. And it appears that regular volunteers were ordinarily scheduled for holiday period work in eight-hour blocks prior to the 1984 National Agreement.

I find, accordingly, that the regular volunteer is volunteering for eight hours' work as urged by the Unions. That evidently was the accepted construction of Article 11, Section 6 prior to the 1984 National Agreement. There is no sound reason why the new "penalty overtime" provisions of Article 8 should prompt a different construction.

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7 If the regular volunteer is also on the ODL, a different situation might well be presented.

AWARD

The grievances are granted. Management may not ignore the "pecking order" in holiday period scheduling under Article 11, Section 6 in order to avoid penalty overtime pay under Article 8. Management may not treat regular volunteers for holiday period work as having volunteered for up to twelve hours on whatever day(s) they are asked to work. The remedy for this violation, the question of who is entitled to back pay for Management's failure to honor rights under Articles 8 and 11, is remanded to the parties for their consideration. Should they be unable to resolve this matter, the back pay issue may be returned to the appropriate arbitration forum for a final decision.

Richard Mittenthal, Arbitrator

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

OCT 28 1988

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: Class Action
Cincinnati, OH 45234
H4N-4F-C 11641

Dear Mr. Hutchins:

On August 30, 1988, we met to discuss the above captioned grievance.

The issue in this grievance is whether a disabled veteran can be disciplined for using sick leave while receiving treatment at a VA hospital.

After reviewing this matter, it was mutually agreed that no national interpretive issue is present in this case. The parties at this level agree that Executive Order 5396, dated July 3, 1930, does apply to the Postal Service and that absences meeting the requirements of that decree cannot be used as a basis for discipline.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

William J. Downes
Director, Office of
Contract Administration

Lawrence G. Hutchins 10/29/88
Vice President
National Association of
Letter Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

January 30, 1980

Mr. William J. Kaczor
Executive Vice President, Maintenance Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: S. Dodelin
Williamstown, NJ
AS-E-0477/ESC2BC-2061
APWU - 0477

Dear Mr. Kaczor:

On January 16, 1980, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we concluded that at issue in this grievance is whether management must pay an employee for all time spent to undergo a Fitness-for-Duty exam at the employer's request; and whether charging such time to an employee's annual leave constitutes such payment.

After reveiwing the information provided, it is our position that time spent by an employee in waiting for and receiving such medical attention at the direction of the employer constitutes hours worked. Thus, the grievant in this case shall be carried in an official duty pay status for all time involved. In addition, any annual leave charged to the grievant shall be recredited to his balance.

Please sign the attached copy of this letter as your acknowledgment of the final disposition of this case.

Sincerely,

William A. Stefl

William J. Kaczor

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: A00M-1A-C 06143989
Local Union #06-083
Jersey City, NJ 07097-9995

Dear John:

Recently, I met with your representative, Dick Collins to discuss the above-captioned grievance at the fourth step of our contractual grievance procedures.

The issue in this grievance is whether the use of the "Deems Desirable Option" in the RMD/ERMS is in violation of the National Agreement, Chapter 510 of the ELM and various Step 4 agreements.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agree that if a supervisor determines that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the Postal Service it must be made on a case by case basis, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious or unreasonable.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to Step 3.

Time limits at this level were extended by mutual consent.

Sincerely,

Anthony Thuro
Labor Relations Specialist
Contract Administration (NPMHU)

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 5-3-07

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

IV

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 19, 1982

Mr. Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: Class Action
Newark, NJ 07102
H1C-1N-C-1301

(10)

Dear Mr. Anderson:

On March 31, 1982, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed that a blanket management order requiring medical documentation or other acceptable evidence of incapacity to work from all employees who call-in on a particular day, regardless of individual circumstances, goes beyond the intent of Part 513.361 of the Employee & Labor Relations Manual and should not be used.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Robert L. Eugene
Labor Relations Department

Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

JUN 18 1985

Re: A. Gnewuch
Corvallis, OR 97330
H1N-5D-C 29943

Dear Mr. Overby:

On May 10, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question raised in this grievance is whether the grievant properly submitted documentation to support her absence due to illness.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. Whether the grievant provided acceptable documentation in accordance with the provisions of subchapter 513.364 of the Employee and Labor Relations Manual (ELM) is a factual dispute. However, the parties at Step 4 agree that a naturopath is considered an "attending practitioner" under ELM 513.364.

Accordingly, as we further agreed, this case is hereby remanded to the parties at Step 3 for further processing, if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

Thomas J. Lang
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

DEC 19 1986

Mr. Thomas Freeman, Jr.
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Dallas BMC, TX 75398
B4C-3A-C 15991

Dear Mr. Freeman:

On several occasions, the most recent being November 6, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether or not the language contained in Part 513.364 of the ELM means the document itself must be generated by the doctor.

During our discussion, we mutually agreed that the following constitutes full settlement of this grievance:

> The Employee and Labor Relations Manual contains no prohibition against the submission of a pre-printed form; however, it is understood that any medical documentation or other acceptable evidence submitted must meet the requirements set forth in Part 513.364 of the ELM.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Muriel A. Aikens
Muriel A. Aikens
Grievance & Arbitration
Division

Thomas L. Freeman Jr.
Thomas Freeman, Jr.
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

MAY 2 1995

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Neill:

On April 23 we met in prearbitration discussion of H1C-3T-C 40742, Oklahoma City, Oklahoma. The question in this grievance is whether local management acted accordingly when it rejected rubber stamp or facsimile signatures on medical certificates.

It was mutually agreed to settlement of this case as follows:

Rubber stamp and facsimile signature is acceptable, subject to verification on a case-by-case basis.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle this case, withdrawing H1C-3T-C 40742 from the national pending arbitration listing.

Sincerely,

Frank M. Dyer
Labor Relations Specialist
Arbitration Division
Labor Relations Department

Thomas A. Neill
Industrial Relations Director
American Postal Workers Union, AFL-CIO

5-6-95
(Date)

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005

SEP 6 1984

Re: Moe Biller
Washington, D.C. 20005
H1C-NA-C 113

Dear Mr. Neill:

On July 26, 1984, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The subject grievance is settled based on the following understanding concerning documentation required to substantiate illness:

> There may be situations in which an attending physician or other attending practitioner may authorize a staff member to sign a document on behalf of the attending physician or other practitioner (e.g. An attending physician or practitioner instructs his/her nurse to complete and sign a document for the attending physician or practitioner). Such documentation may be subject to verification, if the need arises.

Please sign and return the enclosed copy of this decision as acknowledgement of agreement to settle this case.

The time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Thomas A. Neill
Industrial Relations Director
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

September 14, 1983

Mr. Thomas Freeman, Jr.
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Fort Myers, FL 33906
H1C-3W-C 22219

Dear Mr. Freeman:

On several occasions, the latest being August 22, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether medical documentation submitted under the provisions of Section 513.364 of the Employee and Labor Relations Manual must cover the entire period of the absence.

After further review of the matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Articles 10 and 19 of the National Agreement.

The parties at this level agree that normally the medical documentation should cover the entire period. However, supervisors may accept proof other than medical documentation if it supports approval of the sick leave application.

Based upon the above considerations, we agreed to close this case.

Please sign and return the enclosed copy of this decision as acknowledgment of our agreement to close this grievance.

Time limits were extended by mutual consent.

Sincerely,

A. J. Johnson
Labor Relations Department

Thomas Freeman, Jr.
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE

June 22, 1995

MANAGERS, HUMAN RESOURCES (ALL AREAS)
MANAGERS, HUMAN RESOURCES (ALL DISTRICTS)
SENIOR AREA MEDICAL DIRECTORS

SUBJECT: Documentation Requirements

It has recently come to my attention that there is some confusion in the field concerning the substance of medical information needed by a supervisor to approve leave pursuant to Section 513.36 of the Employee and Labor Relations Manual. The following restates the Postal Service's position.

When employees are required to submit medical documentation to support a request for approved leave, such documentation should be furnished by the employee's attending physician or other attending practitioner, with an explanation of the nature of the employee's illness or injury sufficient to indicate that the employee was or will be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation.

In order to return to duty when medical documentation is required, an employee must submit to the supervisor information from the appropriate medical source which includes:

1. Evidence of incapacitation for the period of absence.

2. Evidence of the ability to return to duty with or without limitations.

Medical information which includes a diagnosis and a medical prognosis is not necessary to approve leave. A health care provider can provide an explanation of medical facts sufficient to indicate that an employee is, or will be, incapacitated for duty without giving a specific diagnosis or medical prognosis. If medical documentation is received by an employee's supervisor that provides a diagnosis and a medical prognosis, it must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806.

In order to facilitate operational scheduling and planning, supervisors may request medical information relative to the duration of an absence, future absences, or an employee's future ability to perform the full duties of a position or duty assignment. Such information may be given to a supervisor by an employee or health care provider without divulging restricted medical information.

David H. Reid, III MD
National Medical Director
Office of Employee Health and Services

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Jim Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

DEC 16 1987

Re: E. Watkins
North Suburban, IL 60199
H4C-4A-C 34162

E. Dandrea
North Suburban, IL 60199
H4C-4A-C 34163

Dear Mr. Lingberg:

On December 7, 1987, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances involves the review of medical certificates submitted by employees who returned to duty following extended absences due to illness.

After reviewing this matter, we mutually agreed that no national interpretive issue is at dispute between the parties.

We agreed to remand these cases to the parties at Step 3 for application of a previous Step 4 settlement, Case No. H1C-4T-C 24220, which stated:

"We mutually agreed to full settlement of this issue as follows:

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 employees 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 procedures on a case-by-case basis."

Accordingly, as agreed, these cases are remanded to Step 3 for further processing, including arbitration if necessary by the parties at that level.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Time limits were extended by mutual consent.

Sincerely,

Samuel M. Pulcrano
Grievance & Arbitration Division

Jim Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers Union, AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: Q00M-6Q-C 05099748
Q06M-6Q-C 11100872
CLASS
Washington, DC 20260-4100

I recently met with T.J. Branch to discuss the above-captioned grievances which are currently scheduled for national arbitration.

The issue in the above referenced grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 515, concerning the *Family and Medical Leave*, and Section 865, *Return to Duty after Medical Absences* are fair, reasonable and equitable.

After full discussion of this issue, we agree the Contract Interpretation Manual will be updated to clarify current ELM 515 language.

The current ELM 865 language does not negate management's obligation under the *MOU: Return to Duty* when returning an employee to duty after an absence for medical reasons.

The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve these cases thereby removing them from the national arbitration list.

Time limits at this level were extended by mutual consent.

Allen Mohl
Manager,
Contract Administration (NPMHU)
And Employee Workplace Programs

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 2-10-14

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

JUN 3 1985

Mr. Thomas Freeman, Jr.
Assistant Director
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Freeman:

On May 22 we met in prearbitration discussion of H1C-3D-C 37622, Atlanta, Georgia. The question in this grievance is whether management may create a "call-in" list of employees requried to document an unscheduled absence in lieu of utilizing the restricted sick leave method found in the Employee and Labor Relations Manual, Part 513.

It was mutually agreed to full settlement of this case as follows:

> The documentation "call-in" list automatically requiring medical certification for all unscheduled absences will be abolished.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H1C-3D-C 37622 from the pending national arbitration listing.

Sincerely,

Tracy M. Dyer
Labor Relations Specialist
Arbitration Division
Labor Relations Department

Thomas Freeman, Jr.
Assistant Director
American Postal Workers
Union, AFL-CIO

(Date)

Enclosure

UNITED STATES
POSTAL SERVICE

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Re: Case No. Q90C-4Q-C 95048683
Washington, DC - Headquarters

Recently, you met with Postal Service representatives to discuss the above-captioned grievance, currently pending national level arbitration.

This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning "Paid Leave and LWOP" found on page 312 of the 1998 National Agreement.

The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as the parties' further agreement on the use of paid leave and LWOP.

We further agree that:

1. As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

2. Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employee (policies to comply with the Family and Medical Leave Act).

3. In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. As we have previously agreed, this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

With the above understandings, which shall apply to currently pending timely grievances and those filed in the future, we agreed to settle this grievance. Please sign below as acknowledgment of your agreement to resolve this grievance, removing it from the pending national arbitration listing.

Pete Bazylewicz
Manager
Grievance and Arbitration

William Burrus
Executive Vice President
American Postal Workers'
Union, AFL-CIO

Date: 4-20-99

Attachment

c. LWOP is different from AWOL (absent without leave), which is a nonpay status due to a determination that no kind of leave can be granted either because (1) the employee did not obtain advance authorization or (2) the employee's request for leave was denied.

514.2 Policy

514.21 Restriction

LWOP in excess of 2 years is not approved unless specifically provided for in postal policy or regulations.

514.22 Administrative Discretion

Each request for LWOP is examined closely, and a decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service. The granting of LWOP is a matter of administrative discretion and is not granted on the employee's demand except as provided in collective bargaining agreements or as follows:

a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.

b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103-353.

c. An employee who requests and is entitled to time off under 515, Absence for Family Care or Serious Health Condition of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more of the reasons listed in 515.41(a) through 515.41(e), and up to 26 workweeks of leave during a single 12-month period to care for covered service members with a serious injury or illness.

514.23 Condition

In granting approval for extended LWOP, the granting official should have reasonable expectation that the employee will return at the end of the approved period.

514.24 Leave Credit Adjustment

Employees who are on LWOP for a period, or periods, totaling 80 hours (normal number of workhours in 1 pay period) during a leave year have their leave credits reduced by the amount of leave earned in 1 pay period.

Exception: Employees who (1) are in leave category 6, (2) are not on LWOP for the entire year, and (3) whose accumulated LWOP reaches 80 hours in the last pay period in a leave year have their leave balance reduced by only 6 hours, even if they earn 10 hours during that pay period (see 512.3). Also, no adjustment is made to the leave computation date for periods of LWOP taken for active military service or while absent due to an illness or injury approved by OWCP.

517.22 Ineligible Employees

Permitted to be absent, but not eligible for paid military leave, are noncareer employees such as the following:

a. Casual employees.

b. Contract workers.

c. Noncareer rural carriers.

d. Temporary employees.

e. Transitional employees.

517.3 Procedures

517.31 Approval

The employee is to complete a PS Form 3971 before the period of absence. Sufficient notice is required for making necessary arrangements for replacements. If the employee does not learn of the need for the absence until later, notice is to be given as soon possible. The official responsible for approving the attendance record also approves military leave.

517.32 Use of Mixed Leave

Normally the first days of a longer period of military duty are charged to military leave. If circumstances warrant it, any other scheduled workdays during the longer active duty period may be designated as military leave instead of the days at the beginning of the military duty.

517.33 Use of Leave Intermittently

Military leave may be taken intermittently.

517.34 Return From Duty

For paid military leave approval, upon return from military duty to the Postal Service, the employee furnishes a copy of military orders or other documentation properly endorsed by appropriate military authority to show the duty was actually performed.

517.4 Military Leave Allowances

517.41 General Allowance

Eligible full-time and part-time employees receive credit for paid military leave as follows:

a. *Full-time employees other than D.C. National Guard* — 15 calendar days (120 hours) each fiscal year.

b. *Part-time employees other than D.C. National Guard* — 1 hour of military leave for each 26 hours in pay status (including military LWOP) in the preceding fiscal year provided:

(1) Employee was in pay status a minimum of 1,040 hours in the preceding fiscal year.

Note: A part-time employee's time on military LWOP in one fiscal year counts toward meeting the 1,040 hours' requirement for the next fiscal year.

(2) Employee's pay for military leave does not exceed 80 hours.

c. *D.C. National Guard* — all days (no limit) of parade or encampment duty ordered under Title 49, District of Columbia Code.

An employee may carry over up to 1 year's allotted but unused (not to exceed 15 days) military leave from one fiscal year to the next.

517.42 Previous Service

Employees transferring to the Postal Service from other government agencies are entitled to credit for paid military leave purposes for government service performed prior to appointment as part-time employees. Any other creditable federal civilian service rendered during the prior fiscal year is also used in computing the required 1,040 hours. Creditable service is determined by requesting a transcript from the other agency detailing the number of hours in which the employee was in pay status.

517.43 Law Enforcement Allowance

517.431 State or Jurisdiction Duty

Eligible full-time and part-time employees who are members of the National Guard are granted additional paid military leave over and above the general allowance if they are ordered by appropriate authority to provide *military aid to enforce the law* of their contracted state or their chartered jurisdiction (e.g., the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States). See approval procedures in 517.3. The following provisions apply:

a. Evaluation of Circumstances.

(1) *Qualifying Circumstances. Military* aid is the kind of work characteristic of, or typically performed by, soldiers. Military aid to enforce the law means engagement in the suppression of riots, violent assembly, widespread looting, and civil disorder where the guardsman is ordered to perform state military duty under a state law that specifically confers law enforcement powers on the guardsman or under the authority of an executive order of the governor (or the highest authority of the jurisdiction) pursuant to state law that specifically confers on the governor the authority to confer law enforcement powers on activated guardsmen. Orders to provide assistance or support to law enforcement agencies do not constitute an order conferring law enforcement powers. The mere fact that national guardsmen in uniform perform a given function does not necessarily transform that function into military aid. The duty performed must be evaluated. Such additional military leave is granted only when an employee's military orders (or other official documentation from the employee's guard unit) specify that he or she was engaged in one or more of the activities and under the authority referenced above for the particular periods of military duty.

(2) *Nonqualifying Circumstances.* Additional military leave is not granted when military orders do not specify one or more of the duties and statutory requirements referenced in 517.431a1 above. For example, it is not granted when an employee's military orders simply indicate the employee was ordered to duty

determines whether (but for the active duty) the employee fulfills the pay status requirement.

517.52 Minimum Units

Military leave may be taken in one-hundredths of an hour, except for regular rural carriers (designation 71) or substitute rural carriers (designation 72), who must take military leave in minimum units of 8 hours.

517.53 Continuance of Night Differential Pay

Employees regularly assigned in whole or in part to a night tour of duty are entitled to night differential pay when absent on military leave.

517.54 Absence Beyond the General Military Leave Allowance

517.541 Training Periods

Any absence beyond the general military leave allowance is charged to annual leave or LWOP regardless of the number of training periods in the fiscal year.

517.542 Choice of Annual Leave, Sick Leave, or LWOP

Eligible employees who volunteer or are ordered for a period of military training or for a period of active military duty beyond the general military leave allowance may use annual leave or LWOP, at their option. Sick leave can be used only if the employee is hospitalized, confined to quarters as directed by competent military medical authorities, or on convalescent leave due to military service.

517.6 Conflict With Work Schedule

517.61 Employee Alternatives

An employee who has official duty orders or official notices signed by appropriate military authority for weekly, biweekly, or monthly training meetings and who has a conflict with scheduled work requirements may choose one of four ways of meeting the military obligation:

a. Use military leave not in excess of the general military leave allowance.

b. Use annual leave.

c. Use LWOP.

d. Arrange a mutually agreeable trade of workdays and days off with another employee who is qualified to replace the absent employee. Such trades must be cleared with the responsible supervisor and must be in accordance with the terms of collective bargaining agreements.

517.62 Administrative Policy

517.621 Reassignments

The following provisions concern reassignments:

a. Arbitrary reassignments of other employees are not made to permit absences of employees for military duty. An employee having military drills or military training responsibility should attempt to bid on a work assignment (when the opportunity presents itself) that will not conflict with military duties.

517.22 Ineligible Employees

Permitted to be absent, but not eligible for paid military leave, are noncareer employees such as the following:

a. Casual employees.

b. Contract workers.

c. Noncareer rural carriers.

d. Temporary employees.

e. Transitional employees.

517.3 Procedures

517.31 Approval

The employee is to complete a PS Form 3971 before the period of absence. Sufficient notice is required for making necessary arrangements for replacements. If the employee does not learn of the need for the absence until later, notice is to be given as soon possible. The official responsible for approving the attendance record also approves military leave.

517.32 Use of Mixed Leave

Normally the first days of a longer period of military duty are charged to military leave. If circumstances warrant it, any other scheduled workdays during the longer active duty period may be designated as military leave instead of the days at the beginning of the military duty.

517.33 Use of Leave Intermittently

Military leave may be taken intermittently.

517.34 Return From Duty

For paid military leave approval, upon return from military duty to the Postal Service, the employee furnishes a copy of military orders or other documentation properly endorsed by appropriate military authority to show the duty was actually performed.

517.4 Military Leave Allowances

517.41 General Allowance

Eligible full-time and part-time employees receive credit for paid military leave as follows:

a. *Full-time employees other than D.C. National Guard* — 15 calendar days (120 hours) each fiscal year.

b. *Part-time employees other than D.C. National Guard* — 1 hour of military leave for each 26 hours in pay status (including military LWOP) in the preceding fiscal year provided:

(1) Employee was in pay status a minimum of 1,040 hours in the preceding fiscal year.

Note: A part-time employee's time on military LWOP in one fiscal year counts toward meeting the 1,040 hours' requirement for the next fiscal year.

(2) Employee's pay for military leave does not exceed 80 hours.

determines whether (but for the active duty) the employee fulfills the pay status requirement.

517.52 Minimum Units

Military leave may be taken in one-hundredths of an hour, except for regular rural carriers (designation 71) or substitute rural carriers (designation 72), who must take military leave in minimum units of 8 hours.

517.53 Continuance of Night Differential Pay

Employees regularly assigned in whole or in part to a night tour of duty are entitled to night differential pay when absent on military leave.

517.54 Absence Beyond the General Military Leave Allowance

517.541 Training Periods

Any absence beyond the general military leave allowance is charged to annual leave or LWOP regardless of the number of training periods in the fiscal year.

517.542 Choice of Annual Leave, Sick Leave, or LWOP

Eligible employees who volunteer or are ordered for a period of military training or for a period of active military duty beyond the general military leave allowance may use annual leave or LWOP, at their option. Sick leave can be used only if the employee is hospitalized, confined to quarters as directed by competent military medical authorities, or on convalescent leave due to military service.

517.6 Conflict With Work Schedule

517.61 Employee Alternatives

An employee who has official duty orders or official notices signed by appropriate military authority for weekly, biweekly, or monthly training meetings and who has a conflict with scheduled work requirements may choose one of four ways of meeting the military obligation:

a. Use military leave not in excess of the general military leave allowance.

b. Use annual leave.

c. Use LWOP.

d. Arrange a mutually agreeable trade of workdays and days off with another employee who is qualified to replace the absent employee. Such trades must be cleared with the responsible supervisor and must be in accordance with the terms of collective bargaining agreements.

517.62 Administrative Policy

517.621 Reassignments

The following provisions concern reassignments:

a. Arbitrary reassignments of other employees are not made to permit absences of employees for military duty. An employee having military drills or military training responsibility should attempt to bid on a work assignment (when the opportunity presents itself) that will not conflict with military duties.

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	( )	Grievant: Doug Wright
between	( )	Post Office: Kalamazoo, MI
UNITED STATES POSTAL SERVICE	( )	Case Nos: J90M-1J-C 95047374 951001
and	( )	
NATIONAL POSTAL MAIL HANDLERS UNION	( )	

BEFORE: Philip W. Parkinson, Arbitrator

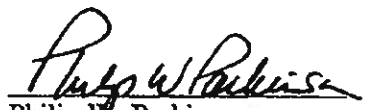
APPEARANCES:

For the U.S. Postal Service:	Jonathan Saperstein, Esq.
For the Union:	Bruce R. Lerner, Esq. Robert Alexander, Esq.
APWU as Intervenor:	Melinda Holmes, Esq.
Place of Hearing:	Washington, D.C.
Dates of Hearing:	May 31, June 19 and July 6, 2000
Record Closed:	October 20, 2000

AWARD

The grievance is granted. The grievant shall be paid night differential for the period he was on administrative leave. Furthermore, in the future, employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave.

Date of Award: December 8, 2000



Philip W. Parkinson

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	Case No.: J90M-1J-C 95047374
between	NPMHU NO: 951001
UNITED STATES POSTAL SERVICE	Date of Hearing: May 31, June 19, July 6, 2000
and	Record Closed: October 20, 2000
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	Date of Award: December 8, 2000

BEFORE

PHILIP W. PARKINSON, ESQ.

ARBITRATOR

Representing the Postal Service – Jonathan Saperstein, Esq.

Representing the Union – Bruce R. Lerner, Esq.
Robert Alexander, Esq.

Representing the Intervenor, APWU – Melinda Holmes, Esq.

I. BACKGROUND

This grievance was presented on or about April 5, 1995 on behalf of Mr. Doug Wright, a Mail Handler employed at the Kalamazoo, Michigan Postal Facility of the United States Postal Service (hereafter referred to as the "Postal Service" or sometimes as the "USPS" or "Management"). The grievance was presented by Local 307 of the National Postal Mail Handlers Union (hereafter referred to as the "Union"). Subsequent to a denial of the grievance at Step One of the grievance procedure, the Union appealed it to Step Two on April 7, 1995. The Union set forth its reason for the appeal on the Standard Grievance Form as follows:

> On above date (3/24/95) the grievant received his paycheck and was not paid for his night differential or Sunday premium. The grievant was placed on administrative leave on 3/6/95, but has yet to be given disciplinary action. The grievant is losing 70 hours of night differential and 32 hours of Sunday premium per pay period. This is a significant loss of pay."

As a result, it was alleged that the Postal Service violated Articles 5 & 16 of the parties' collective bargaining agreement[1] and Section 519.1 of the Employee and Labor Relations Manual ("ELM"). The Union requests, as a remedy, that the Postal Service cease and desist this violation as well as "pay and make whole at appropriate rates for night differential and Sunday premium from 3/6/95 until grievant's return to work." Thereafter, the parties met and discussed the Step Two Appeal on April 18, 1995. In it's response denying the grievance, the Postal Service representative set forth its position thusly:

> The grievant was placed on administrative leave on 3/6/96(sic) for his involvement in a possible altercation. The placement in Administrative Leave is continuing due to an ongoing investigation into the 3/6/95 incident.

[1] Agreement between National Postal Mailhandlers Union and United States Postal Service, November 20, 1990 – November 20, 1993, as supplemented by the '93 extension, (Hereafter referred to as "The Agreement.")

The grievant is not entitled to the night differential Sunday premium pay as outlined in Section 241 and 242 of the F-21, Time and Attendance handbook. Management is in compliance with the F-21 wherein it states:

The regulations pertaining to the "Definition of Premium Hours,"(241.1) as well as the "Definition of Sunday Premium" (242.1) were then set forth. The Union submitted Additions and Corrections to the Step Two denial on April 24, 1995 and noted, among other things in its response, that "As of 4/21/95, the MDO had not even spoken to the grievant personally to hear his testimony or to let him explain his side of the story. Management is causing the grievant financial loss by not having the investigation in a timely manner." Thereafter, the grievance was appealed to Step Three by the Union on April 26, 1995 using the same rationale, and, on the same basis as it did at Step Two. The grievance was next discussed at Step Three by the parties and the Postal Service denied the grievance for the reason that the grievant "is only entitled to night differential and Sunday premium for work hours." The Step Three decision goes on to state that inasmuch as the grievant "was in a non-duty status, he is not entitled to the premium hours requested." Thereafter, the Union initially appealed the matter to regular regional arbitration, but subsequently, by letter dated June 27, 1996, notified the Postal Service that it was withdrawing the grievance from regional arbitration and referred it to Step Four of the grievance procedure. The Union defined the nature of the interpretive issue as "should an employee who is on Administrative Leave and in a non-duty status be entitled to night differential and Sunday premium pay?" Thereafter, the parties met and discussed the grievance at the Fourth Step of their grievance procedure and the Postal Service representative agreed to remand the case to Step Three "for further processing or to be scheduled for arbitration, as appropriate." However, by letter dated October 15, 1998, the Union representative advised the Postal Service of a national settlement that required the Postal Service to pay Sunday premium to employees placed on

administrative leave. A Fourth Step discussion was held on October 22, 1998, and the Postal Service on November 5, 1998 denied the request relative to night differential while on administrative leave. This Step Four denial, however, did not address the payment of Sunday premium. The case was then appealed to National level arbitration pursuant to the provisions of 15.2 "Step Four" of the parties' Agreement on November 24, 1998. Subsequently, the undersigned arbitrator was appointed to hear and decide the matter. Accordingly, a hearing was held on May 31, June 9, and July 6, 2000 in Washington, DC. On the initial hearing day, the American Postal Workers Union (APWU) requested and was granted permission to intervene in this matter. The parties, including the APWU, were afforded full opportunity to present evidence, both oral and written, to cross-examine the witnesses who were sworn, and to argue their respective positions. Following the July 6, 2000 hearing, the parties elected to file post-hearing briefs. A stenographic transcript of the hearings was taken and provided to the arbitrator. Thereafter, briefs were received from the parties and the APWU, on or before October 20, 2000, at which time the record was deemed closed.

II. POSTION OF THE PARTIES

A. Postal Service

The Postal Service contends that employees are not entitled to night shift differential while on administrative leave. They refer to the Agreement and the ELM noting that they contain specific provisions defining entitlement to night shift differential. They allude to Section 8.7.A of the Agreement and point out that it states, "between the hours of 6:00 p.m. and 6:00 a.m. employees shall be paid additional compensation at the rate of ten percent (10%) of the base hourly straight time-rate for time worked." They accentuate the words "time worked" in this

clause and also allude to Section 434.21 of the ELM noting that it states, "night differential is a premium which is paid to eligible employees for all work and paid training or travel time performed between 6:00 p.m. and 6:00 a.m.," emphasizing the words, "all work" and "performed." They stress that this language has, except for minor modifications, remained unchanged since the issuance of the ELM in 1978 as well as predating the first ELM. Furthermore, any exceptions to the rule that night shift differential is to be paid for work performed are expressly contained in Chapter 430 of the ELM. These include five situations, i.e. court leave, military leave, continuation of pay ("COP") status, as well as the rescheduling of an employee to day work as a result of an on-the-job duty or compensable training where employees who are regularly scheduled to the night shift will receive "an equivalent amount of night time differential" even though they do not work. However, administrative leave is not mentioned in any of the provisions as an exception to the general policy of having to perform work during the night shift in order to be entitled to night shift differential.

Secondly, the Postal Service contends that the Payroll Department practice over the years supports the Postal Service's decision. The parties' Time and Attendance Manuals state what night differential is and when it is to be paid and this includes the words, "all work performed between 6:00 p.m. and 6:00 a.m." The Postal Service referred to regional arbitration awards in support of its position and point out that regional arbitrators "have consistently recognized that employees are not entitled to night shift differential while on administrative leave."

The Postal Service alleges that the Union arguments are without merit and its interpretation of the ELM in Section 519.1 "is mistaken." They claim that the reference at Section 519.1, as interpreted by the Union regarding "without loss of pay," is erroneous inasmuch as the Postal Service argues that "pay" refers to the employee's daily or hourly basic

rate of pay and not to any additional premiums that an employee might have otherwise earned while working. Notably, they point out that the night shift differential is additional compensation that is paid at a percentage of an employee's base hourly straight time rate, referring to 8.7.A of the Agreement. The Postal Service emphasizes that reference to base pay is consistent to the compensation afforded employees who are on other types of leave, such as annual or sick leave, inasmuch as they do not receive night differential while on sick leave, but, rather, receive their basic rate of pay. They allude to a decision by a regional arbitrator who rejected the Union's interpretation of "without loss of pay with respect to night differential."[2] That arbitrator concluded that night differential is not a part of the employee's regular pay and that Section 519.1 of the ELM guarantees an employee's regular pay and not its total compensation. The Postal Service furthermore contends that the pre-settlement agreement in Case No. HIM-4K-C25503 in 1985 in which the Postal Service agreed to give Sunday premium pay to a group of employees who had been on administrative leave is misplaced. They contend that said settlement was only for that case inasmuch as the agreement was a pre-arbitration settlement and provided in part that it was "in full settlement of this case." Additionally, their argument is that this pre-arbitration settlement was only to resolve the individual grievance at issue, referring to the testimony of the Senior Labor Relations official, Mr. Frank Dyer, who drafted and executed the agreement for the Postal Service. They point out that the Union failed to cite this settlement in a subsequent Step Four grievance that raised the identical issue that the Union now claims the 1985 pre-arbitration settlement controls. They contend that by not so raising it would suggest that the Union itself did not believe the 1985 pre-arbitration settlement agreement provided guidance in interpreting the ELM. The Postal Service also argues that the 1985 settlement is distinguishable from the instant case on the basis of the facts inasmuch as it

[2] USPS and APWU, Case No. W7C-5M-C20848, Claude D. Ames, 3/5/93.

involved an act of God since employees were forced to leave their facility in the middle of their work shift. However, in this case, the grievant was placed on leave while an investigation was conducted into his alleged misconduct. The Postal Service concludes that the grievance should be denied inasmuch as the record evidence strongly supports the conclusion that neither the ELM in Section 519.1 or any other section of the ELM provides a basis for providing night shift differential to employees on administrative leave.

B. Union

The Union emphasizes that night shift differential must be paid during the periods of administrative leave inasmuch as such leave is defined in Section 519.1 as "absence from duty" authorized by appropriate Postal officials without annual or sick leave and without loss of pay. Thus, the Union argues that the ELM plainly protects employees from suffering a loss of pay while in such administrative leave and this would include night differntial pay if, in the event the employee would have been entitled to such pay had he or she continued to work on his or her regularly scheduled tour. The ELM at Section 511.1 specifically requires that the Postal Service's leave policy be applied in a fair and equitable manner. They point out that if there exists a dispute involving any interpretive ambiguity in the language of the ELM then it must be resolved in an equitable manner such as National Arbitrator, Shayam Das concluded in a decision of his.[3] The employee involved in the instant case lost approximately $150.00 per pay period and this had a potentially punitive dimension because of such loss of pay. The Union notes that employees on military leave, court leave, as well as others, are entitled to night differential under the ELM at Section 434.222. However, by denying employees on

[3] USPS and APWU and NPMHU (Intervenor) Q90C-6-Q-C94042619, 4/7/98.

administrative leave the night differential, it gives rise to inherent inequities. The Union alluded to the 1985 settlement of a grievance in which the employees on administrative leave were given Sunday premium and, therefore, contends that this clearly demonstrates the parties' mutual understanding that the phrase "without loss of pay" requires the Postal Service to include Sunday premium as part of administrative leave. Moreover, they argue that the settlement of such a grievance at the National level, without any disclaimer of precedential effect, would constitute important evidence of the parties' mutual interpretation of their Agreement. They allude to a decision by National Arbitrator Collins for this contention.[4] The Union argues that this settlement does not contain any disclaimer or any indication that it was intended to be non-precedential and cites examples of Step Four agreements indicating how other National settlements state, in explicit terms, when they are intended not to be precedential. The Union also alluded to "quality of life" "quality of work life" coordinators who may be rescheduled to a different tour to serve in this position and note that a 1985 National level agreement provided them with night shift differential and/or Sunday pay if they would otherwise be entitled to it. Therefore, the parties' mutual understanding is that night differential is necessary to ensure that administrative leave is truly leave "without loss of pay."

The Union contends that the Postal Service's position simply does not withstand scrutiny with regard to their argument that night differential should be paid only for time worked or work performed except in certain circumstances that are enumerated in the ELM. They counter that night differential gets paid in a variety of circumstances where an employee is not on duty, including various circumstances that are not included in its own list of "exceptional circumstances." Section 434.222 which lists the circumstances does not, however, treat this list of exceptions as exclusive, nor does it specifically preclude or state that night differentials should

[4] USPS and APWU, Case No. HIC-36-3, 4/4/86.

not be paid during an administrative leave. They reason that all of the circumstances share a fundamental similarity, i.e. that "the absence from work is based on the decision by a Postal Service official or is otherwise due to some circumstance outside the employee's own control." Furthermore the Union notes that there are times that night differential is paid to employees in circumstances not specifically described in the ELM such as pay for "guaranteed time," as well as a component of back pay, pursuant to the ELM at Section 436.11. As to the Postal Service's contention of a practice, they note that the practice in the Federal government, both before and after passage of the Postal Reorganization Act is contrary to the Postal Service's position in this case. Thus, the Union concludes that the Postal Service never has limited the payment of night differential to the handful of circumstances specifically enumerated in the ELM at Section 434.222 or in the companion provisions of the F-21 Time and Attendance handbook. They argue that even if the arbitrator were to accept this management proposition, the administrative leave provision found in the ELM at Section 519.1 dictates such leave is without loss of pay and should be read to require payment of night differential while on administrative leave. The Postal Service easily could have drafted the ELM by including the terms leave without loss of base or basic pay rather than "without loss of pay." Thus, using the general term "pay" it can and should be read to include night differential.

As a final argument, the Union points out that for the first time during the arbitration hearing the Postal Service took the position that because it denied a grievance in 1986 on this issue at Step Four and the Union did not appeal it to arbitration that the Union then agreed to this decision. They contend this argument is totally without merit and allude to a decision by National Arbitrator Shayam Das, as well as Benjamin Aaron, for the proposition that a party in National arbitration is barred from introducing new arguments that are fundamentally different

from its position in prior steps of the grievance procedure.[5] This was never raised in the earlier stage of the grievance process and, therefore, the Postal Service is barred from relying on such an argument at this late stage of the proceedings. However, more importantly, this Step Four decision does not preclude the Union from challenging management's position in this arbitration. The failure to appeal a grievance is not, per se, acquiescence to the disposition of the issue on the basis of management's final answer so as to bar the issue from arbitration in a subsequent case. Elkouri & Elkouri, How Arbitration Works, p. 293. (5th. Ed. 1997). Finally, they argue that the Postal Service cannot demonstrate that the Union acquiesced in the Postal Service's position, thus concluding that there was a binding past practice. Here the practice has not been clear and consistent in accordance with the rules for constituting such a binding past practice, nor has it been long-standing and repeated. The Union concludes that the employee who is placed on administrative leave is entitled to receive a night differential pay that he or she would otherwise have received had he remained on duty and, therefore, the grievance filed by the Union should be sustained.

C. Intervenor – American Postal Workers Union (APWU)

The APWU supports the Union's position in this matter. The APWU, as Intervenor, points out that it wishes to make clear the point that this case does not concern Article 16 or general arbitrable make-whole remedies with regard to the successful challenges to discipline and/or administrative leave. In those cases, the parties do not dispute that a make whole remedy includes night differential pay, as well as other payments and premiums including, but not limited, to Sunday premium pay and overtime. They assert, for clarification purposes, that the issue before the arbitrator is what the grievant should have been paid while on administrative leave irrespective of the Postal Service's justification or lack thereof for placing the grievant on

[5] Case No. H4-NA-C72, 12/31/97 (Das), Case No. NC-E-113-59 (Aaron).

administrative leave initially. To this extent they argue that because the standard that employees do not suffer a loss of pay while on administrative leave, as well as the Postal Service's past grievance to pay differentials and premiums to employees on administrative leave, in addition to fairness and equity to employees who are kept on administrative leave for long periods of time and/or indefinitely, that this contemplates a requirement that the Postal Service pay night differential while an employee is on administrative leave. They ask that the Union's grievance be sustained by the arbitrator and that the Postal Service be directed to pay night differential to employees on administrative leave.

VI. RELEVANT CONTRACTUAL PROVISIONS

Article 8 Hours of Work

Section 8.7 Night Shift Differential

A. For time worked between the hours of 6:00 p.m. and 6:00 a.m. employees shall be paid additional compensation at the rate of ten percent (10%) of the base hourly straight time rate.

Article 19 Handbooks and Manuals

Section 19.1

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours of 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.

Employee and Labor Relations Manual (ELM)

430 Basic and Special Pay Provisions

432.2 Rates of Pay

432.21 Basic Rate

The basic rate is the amount of annual, daily, or hourly salary provided by the applicable salary schedule for an employee's assigned position – excluding TCOLA, overtime, out-of-schedule overtime, Sunday premium, holiday-worked pay, and night differential. Basic daily and hourly rates are determined by dividing the basic annual rate (BAR) as shown in the table below. See also 432.24.

434.2 Night Differential

434.21 Policy

Night differential is a premium which is paid to eligible employees for all work and paid training or travel performed between 6:00 p.m. and 6:00 a.m. The following applies:

a. Night differential is paid in addition to any other premiums earned by the employee (see 432.55).

b. In no case can the total night differential hours exceed the total hours for the tour.

c. Night differential does not apply if time between 6:00 p.m. and 6:00 a.m. is due only to late clocking out or early clocking in (see 432.464).

519 ADMINISTRATIVE LEAVE

519.1 Definition

Administrative leave is the absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.

VI. OPINION

The issue to be decided in this matter is whether an employee placed on administrative leave is entitled to receive night differential that the employee would have otherwise received had he(she) been on duty. The facts in this grievance are essentially not in dispute. The grievant, a full time regular mail handler employed at the Kalamazoo, Michigan Processing and Distribution Center was placed on administrative leave pending an investigation concerning alleged misconduct on his part. Upon receiving his first paycheck he noticed that he had not received night shift differential or Sunday premium pay, but rather, he received his basic hourly rate of pay. As a result, a grievance was presented on his behalf by the Union on the basis that

the Postal Service violated the Agreement because the grievant was not being paid the night shift differential and Sunday premium. Thereafter, the question of night differential payment as contested in the instant grievance was ultimately appealed by the Union to National Arbitration. (See part I supra.) Both parties, as well as the APWU, submitted detailed arguments in their written briefs, arguing that the Agreement, including the ELM provisions, support their respective positions. The Union and the intervening party, the APWU, allege that an employee placed on administrative leave, in accordance with Section 519 of the ELM is entitled to this leave without loss of pay; therefore, inasmuch as the grievant would have been on duty during the hours included as night differential, he should have received this entitlement. On the other hand, the USPS contends that an employee must work in order to receive night shift differential unless it is otherwise specifically excepted in the ELM. They point out that the exceptions, as set forth in the ELM, do not include night differential payment while on administrative leave. These positions constitute the basic foundation of the multiple and detailed arguments presented.

At the outset it is a generally accepted principle that the raison d'etre for including "shift differential pay" as part of a collective bargaining agreement is predicated on the basis of the particular hours of the shift (tour). Generally speaking, at least in the American labor climate and culture, most employees prefer a "day shift and/or tour" as their hours of work. However, many employers, including the Postal Service can not efficiently or effectively function solely during these "daylight" hours, which normally encompass a shift such as 8:00 a.m. to 4:00 p.m., 7 to 3, 9 to 5 or 6:00 a.m. to 2:00 p.m. Many industries, including service industries and some governmental agencies find it necessary to operate 24 hours a day. Thus, because hours of work after 6:00 p.m. are generally less desirable then the aforementioned "daylight hours", employers have often times agreed to pay differentials and/or additional compensation for those employees working these night shift hours. The Postal Service is no exception and, its Policy/Rules, as set forth in the ELM, provides that "night differential is a premium which is paid to eligible employees for all work and paid training or travel time performed between 6:00 p.m. and 6:00 a.m." Thus, the USPS reference for this additional compensation includes a twelve-hour window of time, which arguably generally entails the hours least desired by employees. However, be that as it may, and as the Union points out, employees often times bid into jobs that include scheduled shifts encompassing these scheduled hours because of the additional pay.

Also, this arbitrator is cognizant of the fact that some employees desire these "night" hours for personal and/or familial reasons.

In addressing the issue herein, suffice it to say that arbitrators are held to the direction and guidance of the parties' collective bargaining agreement. Thus, the primary authority for the Postal Service's position stems from Article 8.7, which provides that ten percent (10%) of the base hourly straight time rate shall be paid "For time worked between the hours of 6:00 p.m. and 6:00 a.m." Additionally, they allude to the ELM, which is incorporated into the agreement via Article 19, at Section 434.2 which, in defining night differential, states that it is to be paid for all work performed during the designated hours. Despite this, however, there are instances that are enumerated at Section 430 of the ELM that include Court Leave, Military Leave, Continuation of Pay (COP) status and the rescheduling of an employee to day work as a result of an on the job injury or compensable training, in which night differential is paid to employees. It is, however, significant that the aforesaid specifically enumerated situations are such that they are not within the control of supervision/management. It is likewise notable that payment of night differential for administrative leave, although not listed, is likewise not excluded. The ELM provides for certain "Events and Procedures for Granting Administrative Leave" by postal officials. These are set forth at Section 519 of the ELM and include Acts of God, Civil Disorder, State and Local Civil Defense Programs, Voting or Registering to Vote, Blood Donations, Funeral Services relative to veterans or relatives who died in a combat zone, Postmaster Organizations, Physical Exams for Entry Into the Armed Forces, Relocation Leave and First Aid Examination and Treatment for On the Job Injury or Illness. If any of these scenarios occur and, for example, a Postmaster authorizes administrative leave for an "Act of God" then the ELM requires that this be "without charge to annual or sick leave and without loss of pay." Therefore, because an employee who may fall into one of the above categories or, who may be placed on administrative leave for another reason, such as in the instant case, and has not actually performed work, the question/issue surfaces as to whether he should be paid the rate of pay that he or she would normally receive had the employee been on duty. It is my opinion that the intent of Section 519 of the ELM is clear in this regard, i.e., that an employee should be paid whatever the rate of pay he would have otherwise been paid had the employee not been placed on administrative leave. To read anything other than this into this clause so as to preclude an employee the rate of pay he would normally be paid on his regular tour of duty would mean that the clear and concise

language of this clause would be disregarded. It would, in effect, also mean that when an employee is placed on administrative leave and in the event his tour of duty falls or fell within the designated night differential window of hours, then he would be on administrative leave with loss of pay.

Section 519.1 does not state that the employee shall be paid without loss of his base and/or regular pay, nor does it state without loss of his premium pay, but rather simply "without loss of pay." Thus, whatever his "pay" would have otherwise been had he been on duty must be considered his "pay" for purposes of this provision. It is interesting to note that a person who is scheduled for a tour of duty during night differential hours would most likely not be taking/afforded administrative leave within such hours in a number of those instances falling within the umbrella of reasons for authorizing such leave. These would include, for example, leave for registering to vote, attending a veteran's funeral or to donate blood, situations which normally occur or take place prior to 6:00 p.m. or after 6:00 a.m. In the instant case, the Postmaster took the initiative to place the grievant on administrative leave pending an investigation of his misconduct. Had the Postmaster instead issued disciplinary action at the outset and, if this action would have been ultimately overturned and the employee ordered to be made whole, it is undisputed that the employee would have received his night shift differential. However, by placing the employee on administrative leave would, if the Postal Service's position is to be accepted, be a method by which the investigation could be prolonged prior to the issuing of discipline, thereby precluding the payment of night shift differential during the prolonged investigation in the event the discipline was ultimately overturned.

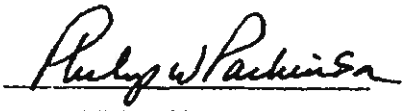
The Postal Service's argument that the use of the phrase "for all work" and the word, "performed" strengthens their position, is well intentioned but misplaced. It is simply good grammatical structural phrasing of the sentence and/or writing of a basic contract clause to define a differential payment between certain hours of the day as being "for all work performed," rather than stating, "for all work". Secondly, the words could be included to preclude, in addition to further clarification set forth in the ELM, night differential payment for work performed that may be a part of an employee's daily tour but that does not fall within the designated hours. For example, an employee could conceivably work only a portion of his tour after 6:00 p.m. Thus, the parties may have intended by this choice of words that this employee would receive the night differential only for those hours worked after 6:00 p.m. A more compelling reason why this

argument is misplaced, however, is as heretofore noted, that the administrative leave provisions mandate that an employee placed on such leave be placed there without loss of pay. The clear language, as well as equitable interpretation of this clause is that the employee must be paid the amount of pay that he otherwise would have received had he been on his regular scheduled tour of duty.

Finally, the Postal Service has argued that it has implemented the Administration Leave provision in this fashion for a number of years and it therefore constitutes a binding past practice and thus is illustrative of the intent of the parties. They point to a 1986 grievance in which they denied a grievance on this same issue at Step Four and emphasize that the Union did not appeal it further. However, in reviewing the grievance file, this type of argument was never included and/or raised in the Postal Service's arguments during the Steps of the grievance procedure prior to arbitration. A new argument presented for the initial time at this stage of the proceedings must be precluded. Such may perhaps appear harsh and/or unconventional, but nevertheless it is a standard evidentiary rule that has been upheld via National Postal Arbitration Awards and in numerous regional postal arbitration decisions. At any rate, this showing of an instance of denial of a night differential payment while on administrative leave is not, per se, albeit rendered at Step Four, sufficient to establish what is generally considered necessary to qualify as a binding past practice. The latter entails a consistent administration of a matter or a work method that can be shown to have been well known by both parties, and accepted by both parties for a long period of time. Such was not evidenced here.

AWARD

The grievance is granted. The grievant shall be paid night differential for the period he was on administrative leave. Furthermore, in the future, employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave.



PHILIP W. PARKINSON

December 8, 2000
Washington, Pennsylvania

518.6 Provisions for Postmasters

For all full-time postmasters except those in EAS A–E offices, if a holiday falls on a Saturday that is a nonscheduled workday, the preceding Friday is designated as the postmaster's holiday. When necessary, additional workhour allowances are authorized for those post offices without a senior supervisor to provide relief coverage during the postmaster's absence on holiday leave (see 434.412).

519 Administrative Leave

519.1 Definition

Administrative leave is absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.

519.2 Special Conditions

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

The following provisions concern administrative leave for acts of God:

a. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day.

b. District managers and Postal Career Executive Service (PCES) plant 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. District managers and senior or lead plant managers 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 one 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 one day.

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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.

(2) The number of hours the part-time flexible was scheduled to work.

(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, Sick Leave, or LWOP**

Employees on annual leave, sick leave, or LWOP remain in such status. They are not entitled to administrative leave.

519.217 **Substitute Rural Carriers and Rural Carrier Associates**

Substitute rural carriers and RCAs in a leave-earning status are treated the same as rural carriers:

a. If they are scheduled for duty and are unable to report to the postal installation, administrative leave is granted for the full day that the employees are scheduled to serve their routes. No equipment maintenance allowance is paid.

b. If employees are scheduled for duty and report to the postal installation but are unable to serve all or part of their routes through no fault of their own, they may be granted administrative leave for the remainder of the normal tour of duty for that day. Payment for equipment maintenance allowance is made, if appropriate, because employees are considered to be in duty status.

519.22 Civil Disorders

519.221 **Decision to Curtail or Terminate Postal Operations**

During times of civil disorders in communities, the postmaster or installation head determines whether conditions are such that postal operations are curtailed or terminated, taking into account the needs of the service, local conditions, and the welfare of postal employees.

515.64 Temporary Change in Duty Assignment

If an employee requests intermittent leave or a reduced work schedule that is foreseeable based on planned medical treatment, the Postal Service may assign the employee, with equivalent pay and benefits, temporarily to the duties of another position consistent with applicable collective bargaining agreements and regulations if such an assignment better accommodates the recurring periods of absence.

515.65 Fair Labor Standards Act Status

An employee exempt from the Fair Labor Standards Act (FLSA) normally may not take leave in less than 1-day increments. However, leave taken for an FMLA-covered reason on an intermittent basis or by temporarily establishing a reduced work schedule can be taken in less than 1-day increments without affecting the employee's FLSA-exempt status.

515.7 Return to Position

Employees whose absence is covered by the FMLA are normally entitled to return to the positions they held when the absence began, or to equivalent positions with equivalent pay, benefits, working conditions, and other terms of employment if they are able to perform the essential functions of the positions. Returning employees are not entitled to any right, benefit, or position to which they would not have been entitled had they not been absent, or to intangible, unmeasurable aspects of the job such as the perceived loss of potential for future promotional opportunities. If an employee was hired for a specific term or only to perform work on a discrete project, then there is no further reinstatement obligation under this section if the employment term or project is over and the employment would not have otherwise continued.

515.8 Benefits

All benefits accrue to employees during an FMLA absence pursuant to the applicable provision of the ELM.

515.9 Family Leave Poster

All postal facilities, including stations and branches, are required to conspicuously display WHD Publication 1420, *Employee Rights and Responsibilities Under the Family and Medical Leave Act*. It must be posted, and remain posted, on bulletin boards where it can be seen readily by employees and applicants for employment.

516 Absences for Court-Related Service

516.1 General

516.11 Determining Nature of Court-Related Service

Installation heads ascertain the exact nature of court service and determine if the employee (a) is entitled to paid court leave, (b) must take annual leave or LWOP, or (c) is to serve in an official duty status. If a summons to witness service is not specific or clear, the installation head contacts appropriate authorities to determine the party on whose behalf the witness service is to be rendered. When the exact nature of court service is determined, records

are annotated accordingly. (See Exhibit 516.11 for a summary of leave to be taken according to nature of service.)

Exhibit 516.11
Absences for Court-Related Service

Nature of Service	Court Leave	Annual Leave or LWOP	Official Duty
1. Jury Service:			
a. U.S. or D.C. court.	x	–	–
b. State or local court.	x	–	–
2. Witness Service:			
a. On behalf of U.S. or D.C. government.	–	–	x
b. On behalf of state or local government:			
(1) In official capacity.	–	–	x
(2) Not in official capacity.	x	–	–
c. On behalf of private party:			
(1) In official capacity.	–	–	x
(2) Not in official capacity:			
(a) Postal Service a party.	x	–	–
(b) Postal Service not a party.	–	x	–

516.12 Explanation of Terms

The following definitions apply for the purposes of 516.

a. *Judicial proceedings* — any actions, suits, or other proceedings of a judicial nature but not including administrative proceedings such as National Labor Relations Board (NLRB) hearings and hearings conducted in accordance with 650, Nonbargaining Disciplinary, Grievance, and Appeal Procedures.

b. *Summons* — an official request, invitation, or call, evidenced by an official writing from the court or authority responsible for the conduct of the judicial proceeding.

516.2 Court Leave

516.21 Definition

Court leave is the authorized absence from work status (without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve as a juror, as a witness in a nonofficial capacity on behalf of a state or local government, or as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. The court or judicial proceeding may be located in the District of Columbia, a state, territory, or possession of

Attendance, 232.23). Such request states that the schedule change is for the employee's personal convenience and is agreed to by the local union. Employees who exercise this option receive full compensation for the period of court service including any applicable night differential for the revised schedule.

516.4 Fees

516.41 General

Employees may retain any court allowance in the amount of $25 or less per day on days court leave is authorized. Employees must remit to their supervisor amounts received in excess of $25 per day. Employees who are eligible to receive such fees are not authorized to waive the fee.

516.42 Court Service Outside of Regular Working Hours or Regular Working Days

Employees who perform court service outside of their basic workweek (on scheduled days off) or outside of their scheduled tour of duty, for which no court leave is granted, may accept and retain the jury or witness fees or payment received incidental to such court service.

516.43 Holidays

Fees received for court service falling on a holiday within an employee's basic workweek may be retained by the employee provided the employee would have been excused from regular postal duties on the holiday.

516.44 Annual Leave or LWOP

Employees who are on annual leave and do not change, or are not eligible to change, the annual leave to court leave or who are on LWOP for court service may retain fees or payment received incidental to such service.

516.45 Recording and Reporting of Fees

Postmasters record and report fees in accordance with instructions in Handbook F-1, 793. Other installation heads forward collections of jury or witness fees to the disbursing officer, Eagan ASC. If court service is to be performed in a state court, the installation head determines the exact amount of compensation received from the state.

516.5 Official Duty

516.51 Definition

An employee is in an *official duty status* (as distinguished from a leave status and without regard to any entitlement to court leave) if assigned by the Postal Service or summoned by proper authority to:

a. Testify in a judicial proceeding or produce official postal records on behalf of the United States or the District of Columbia. (Such testimony may be in an official or nonofficial capacity.)

b. Testify in a judicial proceeding in an official capacity or produce official postal records on behalf of a party other than the United States or the District of Columbia.

Note: *Official duty* means that the testimony the witness provides concerns the witness's specialized knowledge of Postal Service facts,

procedures, or methods gained by performing his or her job. For example, a postal supervisor would be in an official capacity if called to explain how the Postal Service processes a particular class of mail. A carrier would be in an official capacity if called to confirm a delivery he or she made. On the other hand, a carrier would not be in an official capacity as a witness to a car accident, even if a postal vehicle were involved, because observing car accidents is not part of a carrier's job.

516.52 Compensation

Employees who perform witness service in an official duty status are paid their regular salaries as Postal Service employees, including any applicable night differential and overtime pay. In addition, such employees collect the authorized fees and any allowances for travel and subsistence expenses and retain an amount equal to actual allowable expenses. All amounts collected over and above the amount of the employee's actual allowable expenses are remitted to the postal official in charge (see Handbook F-15, *Travel and Relocation,* 9-1.2).

516.6 Witness Service in a Nonofficial Capacity on Behalf of a Private Party

An employee who is summoned to testify in a nonofficial capacity (as a private individual) on behalf of a private party is *not* performing official duty. The employee's absence is charged to court leave if the testimony is given in a judicial proceeding to which the Postal Service is a party or the real party in interest. If the Postal Service is not a party or the real party in interest, the employee's absence is charged to annual leave or LWOP.

517 Paid Military Leave

517.1 General

517.11 Postal Service Support

The Postal Service supports employee service in the Reserve or National Guard, and no action is permitted to discourage either voluntary or involuntary participation. The Postal Service allows employees to be absent:

a. To participate in drills or meetings scheduled by the National Guard or Reserve Units of the armed forces.

b. To attend usual summer training periods.

c. To perform any other active duty ordered by the National Guard and Reserve Units of the armed forces.

However, eligible employees are entitled to paid military leave only for such duty as and to the extent provided below.

517.12 Definition

Paid military leave is authorized absence from postal duties for hours the employee would have worked during his or her regular schedule, without loss of pay, time, or performance rating, granted to eligible employees who are members of the National Guard or reserve components of the armed forces.

Note: Non-workdays are not charged against the paid military leave allowed.

-APPENDIX-

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

AUG 2 8 1979

Mr. William J. Kaczor
Executive Vice President, Maintenance Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: APWU - Local
Denver, CO
A8-W-0046/W8C5FC-2673
APWU - 0046

Dear Mr. Kaczor:

On July 25, 1979, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we concluded that at issue in this grievance is whether Postal Service employees are performing official duty when subpoenaed by the National Labor Relations Board to testify as witnesses in any compacity.

After reviewing the information available, it is our position that by virtue of P.L. 91-563 amended 5 U.S.C. 6322, and now addressed in the Employee and Relations Manual 515.41, such employees are performing official duty during the period with respect to which they are summoned to testify or produce official records on behalf of the United States. In this case the National Labor Relations Board is considered an agency of the United States, thus whether the testimony is favorable to the Postal Service, adverse to the Postal Service, or unrelated to the Postal Service, such testimony is considered as performing official duty.

By copy of this letter, the Postmaster is instructed to make the necessary pay adjustments.

Please sign the attached copy of this letter as your acknowledgment of the final disposition of this case.

Sincerely,

William A. Stefl,
Labor Relations Department

William J. Kaczor
Executive Vice President
Maintenance Craft
American Postal Workers Union,
AFL-CIO

In the Matter of the Arbitration between

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

-and-

UNITED STATES POSTAL SERVICE

OPINION AND AWARD

CASE NO. N8-NE-0088

APPEARANCES:

For the USPS - Wyneva Johnson, Esq.
Sherryl A. Cagnoli, Esq.

For the NALC - Cohen, Weiss & Simon
by: Keith E. Secular, Esq.

BACKGROUND:

On May 14, 1979, the President of the Philadelphia Local of the NALC filed a grievance in which he alleged that the Management of Philadelphia Post Office had changed the method of allowing employees to drop days in order to conform their work schedules to the days on which they were scheduled for jury duty. The Local Union alleged that the provisions of Section 516.334 of the Employee & Labor Relations Manual upon which the Employer relied to authorize such a change in practice had been misinterpreted and misapplied.

The grievance was processed through the requisites steps as provided for in the July 21, 1978-July 20, 1981, collective agreement and came on for arbitration before the Undersigned in Washington, DC. The parties were represented as indicated above. At the conclusion of the hearing, they decided to submit post-hearing briefs. These were received in timely fashion and the arguments contained therein fully considered.

THE ISSUE:

These parties were unable to agree upon a defintion of the matter to be decided in this proceeding. However, from the contentions raised it can be ascertained that the issue could be stated as follows:

> Shall a postal employee who is called to serve on jury duty or make a court appearance, covered by the provisions of Chapter 516 of the Employee & Labor Relations Manual, be permitted to change his or her work schedule to conform to the days on which this employee is required to so serve or appear. If so,

what shall be the appropriate remedy for the unilateral termination of this practice by officials of the Philadelphia Post Office on or about July 8, 1978?

CONTENTIONS OF THE PARTIES:

The Union argued that the provisions of the Employee & Labor Relations Manual dealing with this subject, specifically Section 516.334-a-(2) and c, as well as .342 of this Manual, very explicitly grant employees the right to temporarily change their schedule so that their scheduled days of work conformed to the days that the employee must report in court. The Union also argued that the practice had existed, in the Philadelphia Post Office for many years, to allow such changes in an employee's work schedule, and the Employer could not unilaterally change this past practice without union consent pursuant to the requirements of Article V of the Agreement as well as Section 8(d) of the National Labor Relations Act as Amended.

The Postal Service also relied upon the provisions of Section 516.334-c of the Employee & Labor Relations Manual. It contended that this provision only allows an employee to change his or her hours of work to conform to the hours required for court service, and an employee may not change non-scheduled days to coincide with those that such employee must be present in court so that such days are treated as scheduled days of work. The Service also contended that the court leave provisions of the Manual and provisions for such leave in an earlier Manual as well as USPS rules and regulations which were based upon provisions of the Federal Personnel Manual, which applied to all government employees, have never provided for such an accomodation of the employees' work schedules and to so provide would be to contradict the entire concept of court leave and the purpose for which it was intended.

OPINION:

Because, as will be discussed below, the determination of the critical issue raised in this case may be made on the basis of the initial contentions of the Union, reference need only be made to the following provisions of the 1978 Agreement and the Manual:

Article VIII provides, in pertinent part:

ARTICLE VIII
HOURS OF WORK

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.

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.

Article XIX provides:

ARTICLE XIX
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe that the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) 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 to the Unions upon issuance.

The relevant Manual provisions, as contained in Subchapter 516, and as they apply in pertinent part, read as follows:

516 Court Leave

* * *

516.3 General

.31 Definition. Court leave is the authorized absence (without loss of or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee from work status for jury duty or for attending judicial proceedings in non-official capacity as a witness on behalf of a state or local government...

.33 Granting Court Leave

.331 Pay Status Requirement. Court leave is granted only to eligible employees who, except for jury duty or service as a witness in a non-official capacity on behalf of a state or local government would be in work status or on annual leave. An employee on LWOP when called for such court service, although otherwise eligible for court leave, is not granted court leave, but may retain any fees or compensation received incident to court service.

* * *

.334 Accomodation of Employees Called for Court Service

a. Employee Options. Employees who are eligible for court leave and who have a conflict with court duty and work schedules have the following options:

(1) Work their postal tours of duty in addition to performing court service.

(2) Have their work schedules changed temporarily to conform to the hours of court service. (Employees who do not choose this option may not have their work schedule changed and are expected to report for postal duty upon completion of their court service.)

* * *

c. Temporary Change in Schedule. Employees who choose to have their work schedules changed temporarily to conform to court service hours submit, as soon as possible, a request for such schedule change in writing to the appropriate postal official at their installation. Such request states that the schedule change is for the employee's personal convenience and is agreed to by the local union. Employees who exercise this option receive full compensation for the period of court service, including any applicable night diferential.

* * *

.342 Court Service Outside of Regular Working Hours or Regular Working Days. Employees who perform court service outside of their basic work week (on scheduled days off) or outside of their scheduled tour of duty, for which no court leave is granted, may accept and retain the jury or witness fees. (If the employee's basic work week is Monday through Friday, the employee is placed on court leave for any absence while serving as a juror or witness in a non-official capacity on behalf of a state or local government during this period. The employee is entitled to retain fees received for court service on Saturday and/or Sunday. The same rule applies to employees assigned to other basic work weeks, whether the scheduled non-work days are fixed or rotating.)...

The testimony adduced during the course of this hearing substantiated the Union's contention that for some twenty two years, if not longer, at the Philadelphia Post Office, employees were permitted, when serving as a juror or otherwise entitled to court leave under the then current provisions of a postal manual, regulations or the Federal Personnel Manual, to change their work schedules so that their scheduled days of work coincided with their scheduled days of court service. For example, a carrier who normally worked a scheduled which required him to work on Saturday and to be off on a Wednesday could file a a PS Form 3189, or its predecessor form, requesting a temporary schedule change for personal convenience. Such a request would be granted and permit the employee to have a work schedule from Monday through Friday for the length of time the employee was off on court leave. Such a request was routinely and consistently granted by postal supervisors. Thus, the employee would be paid for five days during the week, without working at his postal service job, and that employee would turn over to the postal service the amount he received as a fee for being present at court as a juror or a witness. The Saturday that the employee would normally have worked was regarded temporarily as a non-scheduled day.

In late April of 1979, the President of the Philadelphia Local of the Letter Carriers, NALC Branch 157, learned from an employee, who had requested a temporary change in work schedule to conform to his days requred to attend at court, that management had refused the request that his schedule be so changed. The President of the Local protested this alleged unilateral change in policy without consulting with the Union. Management, according to the unrebutted testimony, conceded that there had been a change in policy in this regard at the Philadelphia Post Office.

A careful reading of Section 516.334-a-(2) appears to confirm that the Manual did provide for such a change. It provides "Employees who are eligible for court leave and who have a conflict with court duty and work schedules have the following options:... (2) Have their work schedules changed temporarily to conform to the hours of court service." (Underlining added by the writer)

The Manual uses the terms "work schedule" and "hours of service" to define the scope of the employee's right. Referring to how those terms are utilized in Article VIII, as quoted above, it should be noted that in Article VIII utilizes the term "hours of service" as a general heading below which are set forth separate subsections on days and hours of service over the course of a week and hours of work within individual days. Article VIII, Section 2 specifically utilizes the term "work schedule" so as to include both the concept of an employee's "service week in Subsection A, as well as the employee's "service day" which is referred to in Subsection B. As the Union pointed out, in earlier agreements, the contractual antecedents of Article VIII, dealing with Hours of Work, the term "work schedule" is defined so as to include both the employee's hours of work on a service day and his service days within a basic work week.

It should also be noted that the Form 3189, on which an employee in Philadelphia requested a change in schedule for personal convenience, when assigned court duties making that employee eligible for court leave, utilizes the concept of a change in an employee's "regular work schedule" so as to include both changes in beginning and ending times on a specified day as well as changes in scheduled days off.

The USPS argued that the use of the term "work schedule" in the current E&LR Manual as well as the one previously published clearly indicated that the parties were referring to the hours of work on a specific duty day. The Postal Service contended that an employee was entitled to change duty hours so as to avoid the need to serve eight hours in court and then spend additional hours on a postal duty tour, if those latter hours happened to fall outside the hours the employee was scheduled to be in court.

If one were to argue that the language of the Manual, as it was drafted and promulgated by the Postal Service, may have been ambiguous on this point, and management's intention had to be to restrict changes to hours in each service day on which an employee was scheduled to work as well as be present in court, then such ambiguity must be resolved in the Union's favor and support its position on the appropriate interpretation of intent. In the first place, management drafted the language

employed in the Manual, and under accepted rules for the interpretation of written documents any ambiguity must be resolved against the writer. More importantly, the unrebutted testimony in this record, as noted earlier, and a management concession on the record established that with such language or very similar language in former Manual provisions, postal regulations, and the Federal Personnel Manual when applicable to postal employees, the Postal Service in Philadelphia at least interpreted that language to permit employees to change their weekly work days to conform to the days in court. Such a consistent application and interpretation of the provisions dealing with the accomodation of employees called for court service indicated most clearly that the Philadelphia Post Office, at least, was in accord with the Union's position as to the intent of the language with which we are here concerned.

Having found that these parties in Philadelphia had agreed that the language in the E&LR Manual permitted employees to change their days off so as to have their temporary work schedule coincide with their days in court and their non-scheduled days coincide with the days in the week on which they were not required to be in court, the Undersigned must conclude that the provisions of Article XIX are applicable to this situation. Management was bound to continue in effect the implementation of the language of Subchapter 516.334-a-(2) of the E&LR Manual than in effect. Management did not have the right to make any unilateral change in the consistent past practice giving evidence of the accepted interpretation of those provisions of the Manual without following the procedure outlined in the second paragraph of Article XIX in order to effectuate such a change.

Although Management did argue that the Local Union in Philadelphia was furnished with notice of such an intended change in practice, in addition to the fact that the Union claimed not to having received such notice or having it called to its attention when this grievance was being processed, it obviously was not the type of notice served upon the National Union as provided for, under appropriate circumstances, in Article XIX.

For the reasons set forth above, it must be ultimately concluded, based upon the record made in this proceeding, that the postal employees in the Philadelphia Post Office were previously entitled and continued to be entitled to make a temporary change in their weekly work schedule to coincide their duty days with the days they were assigned to be on court leave. The Union sought to broaden such a conclusion to make it applicable to all employees of the Postal Service wherever they happened to be located. Evidence to demonstrate a consistent past practice of so interpretating the provisions of the E&LR Manual and the similar provisions covering court leave in earlier manuals, regulations and the Federal Personnel Manual was not sufficiently conclusive, as it was presented by the Union, to support the Union's position in this regard. The substantiation of the Union's claims in this regard must be established in other proceedings initiated at appropriate postal installations.

As to the remedy sought by the Union at the Philadelphia Post Office, it must be found that since Local Management unilaterally

and improperly altered its previous practice, it must be directed that the Philadelphia Post Office return to its former practice of permitting employees to change their work schedules to coincide with the days they are required to be in court where court leave is to be granted under the provisions of the E&LR Manual.

Therefore, after due deliberation, the Undersigned makes the following

A W A R D

1. The Philadelphia Post Office must revert to its previous practice of permitting employees to make temporary changes in their work schedules so their days off shall coincide with the days of the week that such employees are not required to be in court under such circumstances which make them eligible for court leave pursuant to the provisions of Chapter 516 of the Employee & Labor Relations Manual currently in effect.

2. As to other postal installations, where it is established in an appropriate proceeding that the management of the installation consistently interpretated the provisions of the E&LR Manual and the related provisions of any earlier manual, regulation, or the Federal Personnel Manual, in the same manner as did management in Philadelphia, then, in that event, management must continue such practice or revert to such practice until and unless a change in the provisions of the E&LR Manual is made pursuant to the procedure outlined in Article XIX of the National Agreement.

Howard G. Gamser
HOWARD G. GAMSER, NATIONAL ARBITRATOR

Washington, DC
October 3, 1980

the United States, including the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.

516.22 Eligibility

Court leave is granted to full-time and part-time regular employees. Certain part-time flexible employees are granted court leave as provided and governed by applicable collective bargaining agreements. Other employees are ineligible for court leave and must use either annual leave or LWOP to cover the period of absence from postal duties for court service but may retain any fees or compensation received incident to such court service.

Court leave is granted only to eligible employees who would be in work status or on annual leave except for jury duty or service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. An employee on LWOP, when called for such court service, although otherwise eligible for court leave, is not granted court leave but may retain any fees or compensation received incident to court service.

516.23 Recording Court Leave

The following provisions concern the recording of court leave:

a. *Employees Other Than Rural Carriers.* PS Form 1224, *Court Duty Leave — Statement of Service,* is prepared at the time an employee is authorized court leave. Instructions for preparing PS Form 1224 appear in Handbook F-1, *Post Office Accounting Procedures,* 823; in Handbook F-21, *Time and Attendance,* 353.3; and in Handbook F-22, *PSDS Time and Attendance,* 353.3.

b. *Rural Carriers.* When a rural carrier is on court leave, the postmaster records it as "Other" leave on PS Form 1314, *Regular Rural Carrier Time Certificate,* and describes the court service performed on the reverse side of the form. (See Handbook F-1, 445.5 for recording and reporting fees.)

516.3 Conditions Affecting Court-Related Service

516.31 Employee on Annual Leave

If an eligible employee while on annual leave is summoned for court service that qualifies for court leave or official duty (see 516.11), the employee's annual leave is canceled and the employee is placed on court leave or official duty for the duration of such court service. Employees who are not entitled to court leave or official duty must use annual leave or LWOP for the period of absence from duty for such court service.

516.32 Combination of Court Leave and Postal Duty

The following provisions concern combinations of court service and postal duty:

a. *Employees Who Report for Court Service and Are Excused Early.* If an employee reports for court service and is excused by the court for the balance of the day, or performs court service for only part of that day, the employee is entitled to full compensation for the day in question.

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

July 10, 2013

Mr. John Hegarty
National President
National Postal Mail Handlers' Union
1101 Connecticut Avenue, N.W.
Washington, DC 20036-4304

Dear John:

As you know, on June 26 the Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional.

As a result of that ruling, the Office of Personnel Management (OPM) has decided to extend marriage-based federal benefits under its supervision and control to federal employees, annuitants, and their same-sex spouses who have legally married in a jurisdiction that permitted same-sex marriages, regardless of where they currently live or work. This change in OPM policy is deemed a qualifying life event which allows employees and annuitants 60 days, from June 26 through August 26, 2013, to make changes to their benefits.

Regarding internal regulations, the Postal Service will recognize same-sex spouses who have legally married in a jurisdiction that permitted same-sex marriages, regardless of where they currently live or work, for purposes of family member definitions under our relocation and leave programs.

For the purposes of applying the Family and Medical Leave Act (FMLA), all legally married same-sex couples who are otherwise eligible for FMLA protected leave can now take such leave for a qualifying FMLA reason, regardless of where they live or work. With regard to a same-sex spouse who resides in a State that does not recognize same-sex marriage, the right to this leave is on an interim basis only, pending guidance from the Department of Labor.

We have enclosed a document that provides a more detailed explanation and processing requirements related to this ruling.

Sincerely,

Alan B. Moore
Manager
Labor Relations Policy and Programs

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

UNITED STATES POSTAL SERVICE

December 12, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This is in response to your November 22 correspondence regarding whether steward's duty time should be counted as time worked toward the 1,250 hours eligibility requirement for FMLA.

After additional research we agree with your interpretation that authorized steward time, during the course of a regular schedule, is credited towards the required 1,250 hours for FMLA eligibility.

If you have any questions concerning this matter, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

UNITED STATES
POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: C98M-1C-C 99211556
Mihelcic, D
Pittsburgh, PA 15290-9511
Local Union # 99116DGGMF

Dear Billy:

I recently met with your representative, T.J. Branch, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee's eligibility for intermittent FMLA leave for the same underlying covered condition need be established only the occasion of the first absence in each leave year or on the occasion of each subsequent absence.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. Determination of this issue is based on the fact circumstances involved and the provision of Publication 71, Section II as discussed in the correspondence to the Managers, Human Resources (Area) dated November 14, 2000 (copy attached).

Accordingly, we agreed to remand this case to regional level arbitration in keeping with the provisions of the Memorandum of Understanding, Step 4 Procedures.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to regional level arbitration.

Time limits at this level were extended by mutual consent.

Sincerely,

Frank X. Jacquette III
Contract Administration
(NRLCA/NPMHU)

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 10/2/01

475 L'Enfant Plaza SW
Washington DC 20260
www.usps.com

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

November 14, 2000

MANAGERS, HUMAN RESOURCES (AREA)

SUBJECT: Family Medical Leave Act - Eligibility

Based on the recently issued Department of Labor (DOL) Opinion Letter, the USPS is amending its position on FMLA eligibility. The DOL Opinion Letter addresses the question of eligibility for intermittent or reduced schedule leave for a serious health condition.

First, DOL has not endorsed lifetime eligibility. Instead, there is a one-year limitation placed upon eligibility for a given condition. 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.

Example: If an employee meets the 1250 work hour requirement for Multiple Sclerosis (MS), in May 2000, the employee is eligible for FMLA protection for absences due to the MS throughout the remainder of the 2000 postal leave year. The employee would not have to establish eligibility again for absences due to the MS condition in the 2000 leave year, even if the employee falls below the 1250 work hour requirement in December 2000. However, in January 2001, when the new postal leave year begins, the employee will have to meet the 1250 work hour requirement to be eligible for FMLA protection of MS related absences which occur in the 2001 leave year.

It is important to note that if this same employee has a different serious health condition (e.g., hospitalization for and recovery from a hysterectomy) during the 2000 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, they are eligible for FMLA protection of absences for both conditions. Consequently, the leave for hospitalization is protected and leave for the MS condition continues to be protected for the remainder of the 2000 leave year, or until the 12 week entitlement has been exhausted.

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However, if the employee is unable to meet the 1250 work hour requirement for the second condition in the 2000 leave year, the employee is NOT entitled to FMLA protection for their hospitalization and recovery, but absences in the 2000 leave year for the MS condition continue to be protected. Therefore, it is possible for this employee to be eligible for FMLA protection of one qualifying condition (MS), 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 United States Postal Service is in the process of revising Publication 71 to reflect this change. Once we have met our Article 19 obligations with the unions, the revised Publication 71 will be issued.

Cases pending adjudication on this issue that do not reflect this amended position should be resolved.

If you have any questions contact Charles Baker at 202-268-3832 or Sandra Savoie at 202-268-3823.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies and Programs

recertification

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

198

February 9, 2000

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your January 12, 2000 letter regarding the interpretation of Postal policy concerning recertification of FMLA conditions.

The request arises because you have been informed that "local managers are interpreting the Family and Medical Leave Act to require that employees must recertify FMLA conditions each FMLA leave year. This means that employees who certified during calendar year 1999 who suffer from the same serious health condition are being required to recertify in the year 2000."

Pursuant to Public Law 103-3, 29 U.S.C. 2613(3), *SUBSEQUENT RECERTIFICATION.* –"The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis."

Therefore, we are in agreement that employees should not be required to automatically provide recertification for a serious health condition simply because the leave year has ended and a new leave year has begun. Managers should refer to 29 CFR Part 825.308 for the circumstances and the time frame under which recertifications may be required.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies and Programs

475 L'Enfant Plaza SW
Washington DC 20260-4100

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO
1101 Connecticut Avenue, NW Suite 500
Washington, DC 20036-4304

Re: I98M-1I-C0008990
Burris
Kansas City, KS 66106-9995

Dear Billy:

Recently, I met with your representative, Dallas Jones to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether LWOP hours converted to paid hours as a result of a grievance settlement or arbitration decision returning an employee to duty are counted towards the 1250 hours eligibility criteria for Family Medical Leave Act (FMLA).

After discussing this issue, the parties agree that: When an employee is awarded back pay accompanied by equitable remedies)i.e. full back pay with seniority and benefits, or a "make whole" remedy), the hours an employee would have worked if not for the action which resulted in back pay period, are counted as work hours for the 1250 work hour eligibility requirement under the Family Medical Leave Act (FMLA).

Accordingly, we agree to remand this case to the parties and Step 3 for application of this principle in this case.

Please sign and return the enclosed copy of this letter as your acknowledgement of agreement to remand this case.

Time limits at this level were extended by mutual consent.

Sincerely,

Gloria J. Gray
Contract Administration
(NRLCA/NPMHU)

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 8-15-02

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: Q00M-6Q-C 05099748
Q06M-6Q-C 11100872
CLASS
Washington, DC 20260-4100

I recently met with T.J. Branch to discuss the above-captioned grievances which are currently scheduled for national arbitration.

The issue in the above referenced grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 515, concerning the *Family and Medical Leave*, and Section 865, *Return to Duty after Medical Absences* are fair, reasonable and equitable.

After full discussion of this issue, we agree the Contract Interpretation Manual will be updated to clarify current ELM 515 language.

The current ELM 865 language does not negate management's obligation under the *MOU: Return to Duty* when returning an employee to duty after an absence for medical reasons.

The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve these cases thereby removing them from the national arbitration list.

Time limits at this level were extended by mutual consent.

Allen Mohl
Manager,
Contract Administration (NPMHU)
And Employee Workplace Programs

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 2-10-14

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LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. John F. Hegarty
President
National Postal Mail Handlers Union
1101 Connecticut Avenue
Washington, DC 20036-4303

Re: Q98N-4Q-C 01090839
CLASS ACTION
Washington, DC 20001-9998

Dear Mr. Hegarty:

We recently met in pre-arbitration discussion concerning the above referenced grievance. The issue is whether Publication 71, "Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act", violates the National Agreement by requiring "supporting documentation" for an absence of three days or less in order for an employee's absence to be protected under the Family and Medical Leave Act (FMLA).

After reviewing this matter, we agree that no national interpretive issue is presented. The parties agree to resolve the issue presented based on the following understanding:

The parties agree that the Postal Service may require an employee's leave to be supported by an FMLA medical certification, unless waived by management, in order for the absence to be protected. When an employee uses leave due to a condition already supported by an FMLA certification, the employee is not required to provide another certification in order for the absence to be FMLA protected.

We further agree that the documentation requirements for leave for an absence of three days or less are found in Section 513.361 of the Employee and Labor Relations Manual which states in pertinent part that:

> *For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.*

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case and remove it from the pending national arbitration listing.

Andrea B. Wilson
Manager
Contract Administration

Mr. John F. Hegarty
President
National Postal Mail Handlers Union
Intervener

Date: 2-19-03

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WASHINGTON DC 20260-4100
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assessment. Both applicants and employees may be required to participate in a focused physical examination addressing particular physical requirements.

864.2 Determination of Suitability

See Handbook EL-312, chapter 5.

864.3 Fitness for Duty

864.31 Reference

See Management Instruction EL-860-2000-7, *Fitness for Duty Examinations,* for the specific procedures for fitness-for-duty examinations.

864.32 Purpose

The purpose of the Postal Service fitness-for-duty examination is to ascertain whether or not the employee is medically capable of meeting the requirements of his or her job.

864.33 Requesting Examination

Management can order fitness-for-duty examinations at any time and repeat them, as necessary, to safeguard the employee or coworker. Specific reasons for the fitness-for-duty should be stated by the requesting official.

In cases of occupational injury or illness, the district injury compensation control office may request an examination in the course of monitoring an injury compensation case (see 545.44).

864.34 Tests and Consultation

A specific medical test or consultation may be required in the judgment of the examining physician before rendering a decision on fitness for duty. The indications are documented as part of the report.

865 Return to Duty After Absence for Medical Reasons

865.1 Clearance Required: All Bargaining Unit Employees and Those Non-bargaining Unit Employees Returning From Non-FMLA Absences

The decision to clear an employee to return to work rests with management. Management can require employees who have been absent due to an illness, injury, outpatient medical procedure (surgical), or hospitalization to submit documentation (as set forth in 865.3) in order to clear their return to work when management has a reasonable belief, based upon reliable and objective information, that:

a. The employee may not be able to perform the essential functions of his/her position; or

b. The employee may pose a direct threat to the health or safety of him/herself or others due to that medical condition.

In making the decision whether to require documentation in order to clear the employee's return to work, management must consider the following in order to make an individualized assessment:

a. The essential functions of the employee's job,

b. The nature of the medical condition or procedure involved, and

c. Any other reliable and objective information.

When management is considering requesting return-to-work documentation, management should also seek guidance from the following regarding the return-to-work decision:

a. Occupational health nurse administrator,

b. Occupational health nurse, and/or

c. Postal Service physician.

After consideration of the medical information, the employee's working conditions, and any other pertinent information, management is to make the decision to clear the employee's return. Medical personnel consult with management but do not have authority to clear the employee to return to duty.

In cases of occupational illness or injury, the employee will be returned to work upon certification from the treating physician, and the medical report will be reviewed by a Postal Service physician as soon as possible thereafter.

865.2 Non-bargaining Unit Employees Returning After FMLA Absence

To return to work from an FMLA-covered absence because of their own incapacitation, non-bargaining unit employees must provide a statement from their health care provider that they are able to return to work.This statement should also address the employee's ability to perform the essential functions of his or her position, with or without limitations (see 515.54). When employees take intermittent or reduced schedule leave, management can request a return-to-work clearance for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties due to the medical condition in issue.

865.3 Documentation Required

Medical clearances pursuant to 865.1 must be detailed medical documentation and not simply a statement that an employee may return to work.

a. There must be sufficient information to make a determination that the employee can perform the essential functions of his/her job, and do so without posing a significant risk of substantial harm to oneself or others.

b. The documentation must note whether there are any medical restrictions or limitations on the employee's ability to perform his/her job, and any symptoms that could create a job hazard for the employee or other employees.

c. The occupational health nurse administrator, occupational health nurse, or Postal Service physician evaluates the medical report and, when required, assists placing employees in jobs where they can perform effectively and safely.

865.4 Assignments

Installation heads may temporarily assign any employee returning to duty to a modified work assignment during the employee's rehabilitation/recovery period consistent with operational needs and obligations under any applicable collective bargaining agreement or federal law.

865.5 Fitness-for-Duty Examinations

If, after review of the documentation required in 865.3, the Postal Service physician questions whether an employee can perform the essential functions of his/her position, or whether he/she poses a direct threat to the health or safety of him/herself or others, the physician may require the employee to undergo a fitness-for-duty examination.

866 Medical Emergencies

866.1 General

In the event of a medical emergency, immediate and appropriate medical care must be provided. A medical emergency is an injury or sudden and unexpected onset of a condition requiring immediate medical care. Some problems are considered emergencies because, if not treated promptly, they might become more serious (for example: animal bites, eye injuries, deep cuts, broken bones, etc.). Others are emergencies because they are potentially life-threatening (for example: heart attacks, strokes, weapon wounds, the sudden inability to breathe, etc.). In the event there is doubt as to the urgent nature of the emergency, it should be handled as an emergency (ELM 545.41). In the event of a medical emergency, ensure immediate medical care is provided for the employee.

866.2 Requirement

All health services professionals must be prepared to respond to emergencies and to provide medical assistance, as required, and consistent with local policy and protocol.

866.3 Emergency Procedures

The recommended procedures for handling medical emergencies on postal premises are as follows:

a. Immediately contact 911.

b. After a 911 call is initiated or attempted, the Postal Police and any onsite health services professional should be immediately notified. This notification should include specific information as to where the ill/injured employee is located (floor, unit, column, or room number, etc.) and the nature of the illness or injury, if known.

c. Notify onsite management.

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

D) If at the end of one (1) year from the submission of the bid the employee has not been able to perform the duties of the bid-for position, the employee must relinquish the assignment, and shall not be eligible to re-bid the next posting of that assignment.

E) It is still incumbent upon the employee to follow procedures in Article 12.3.C to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

II. Higher Level Pay

Employees 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.

MEMORANDUM OF UNDERSTANDING

RETURN TO DUTY

The parties affirm 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.

2. Normally, the employee will be returned to work on his/her next scheduled tour of duty or the date stated in the medical documentation, provided that adequate medical documentation is submitted within sufficient time for review and that a decision is made to return the employee to duty.

3. The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

LETTER OF INTENT

LETTER ON ARTICLE 15 ISSUES

John F. Hegarty
National President
National Postal Mail Handlers Union, AFL-CIO
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Dear Mr. Hegarty:

During negotiations over the terms of the 2006 National Agreement between the National Postal Mail Handlers Union and the U.S. Postal Service, the parties reached the following understandings with regard to the changes made to Article 15.3D and Article 15.4D2.

1. Any dispute initiated by the Employer at the National level under Article 15.3D shall not include any issue that previously has been appealed by the Union to the National arbitration docket.

2. If the parties are unable to resolve a dispute initiated by the Employer at the National level under Article 15.3D, then the Union has the option to accept the Employer's position on that issue or appeal the issue to National arbitration within existing contractual time limits. The Employer has no right to appeal any dispute or issue to National arbitration.

3. If either the Employer or the Union, or both, do not opt to elect priority scheduling to the top of the National arbitration docket for up to two cases in any given calendar year, then those available arbitration hearing dates will revert to the dates subject to the preexisting scheduling standards — i.e., cases on the docket will be scheduled for arbitration in the order in which appealed, unless otherwise agreed to by the parties.

4. Cases on the National arbitration docket will be scheduled for arbitration with no less than one hundred and fifty (150) days notice to both parties measured from the date of scheduling to the date of the initial arbitration hearing, unless the parties mutually agree to expedite a particular hearing date.

5. Any local grievances filed on the specific interpretive issues pending on the National arbitration docket shall, upon mutual

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: Q00M-6Q-C 05099748
Q06M-6Q-C 11100872
CLASS
Washington, DC 20260-4100

I recently met with T.J. Branch to discuss the above-captioned grievances which are currently scheduled for national arbitration.

The issue in the above referenced grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 515, concerning the *Family and Medical Leave*, and Section 865, *Return to Duty after Medical Absences* are fair, reasonable and equitable.

After full discussion of this issue, we agree the Contract Interpretation Manual will be updated to clarify current ELM 515 language.

The current ELM 865 language does not negate management's obligation under the *MOU: Return to Duty* when returning an employee to duty after an absence for medical reasons.

The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve these cases thereby removing them from the national arbitration list.

Time limits at this level were extended by mutual consent.

Allen Mohl
Manager,
Contract Administration (NPMHU)
And Employee Workplace Programs

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 2-10-14

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

2-10-14

The following questions and answers dealing with the *Employee and Labor Relations Manual (ELM), Section 515, Absence for Family Care or Illness of Employee*, will be incorporated into the next version of the Contract Interpretation Manual and, if relevant, should be used immediately as guidance.

Clarifications for the Contract Interpretation Manual

Question: Is it mandatory for an employee to provide FMLA documentation within 15 days of the receipt of the request?

Answer: Yes, unless it is not practicable under the particular facts and circumstances.

Question: In order to qualify as a serious health condition, under the provisions of ELM 515.2.i.(2)(a), does the employee have to have treatment two or more times by a health care provider within 30 days of the first day of incapacity?

Answer: Yes, unless extenuating circumstances prevent the employee from a follow-up visit occurring within 30 days of the first day of incapacity.

Question: Are employees always required to submit complete and sufficient medical certification to establish a serious health condition as defined under the FMLA?

Answer: Yes, but this responsibility is not triggered until the employee receives a request for certification from the Postal Service.

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Young
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001-2197

Re: F90N-4F-D 95043198
M. Wencke
West Sacramento, CA 95799-0050

Dear Mr. Young:

Recently, we met to discuss the above-referenced case, currently pending national arbitration.

After reviewing this matter, it was mutually agreed that no national interpretive issue is presented in this case. We further agreed that the provisions of ELM Section 515, "Absence for Family Care or Serious Health Condition of Employee" are enforceable through the grievance arbitration procedure. Whether or not the provisions of ELM 515 are applicable and timely raised in this case is a fact question suitable for regional resolution or arbitration.

Accordingly, it was agreed to remand this case to the parties at Step 3 for further processing or to be rescheduled for arbitration, as appropriate.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case, removing it from the national arbitration listing.

Sincerely,

Pete Bazylewicz
Manager
Grievance and Arbitration
Labor Relations

William H. Young
Vice President
National Association of Letter
Carriers, AFL-CIO

Date: 2/26/97

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

FMLA

UNITED STATES POSTAL SERVICE

September 12, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Dear Bill:

This is in response to your July 30 correspondence concerning a system to address disputes arising out of the Family and Medical Leave Act and the Privacy Act. After our last discussion, we agreed to send you a written summary of our understanding regarding your concerns.

You indicated that there is a problem in the field with managers who insist on retention and review of records containing a prognosis or diagnosis. The National Medical Director for the Postal Service, Dr. David Reid, III, addressed the documentation requirements for approval of leave in a memorandum dated June 22, 1995. As noted by Dr. Reid, medical information received by an employee's supervisor that provides a diagnosis and a medical prognosis must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806. This application is consistent with the documentation requirements under the FMLA. Therefore, to address your concerns we can reissue the memorandum and review specific complaints on a case by case basis.

In response to your questions regarding those issues needing agreement or disagreement as to the basic principle, we submit the following as our understanding of our final discussion:

> Issue: Whether or not supervisors/postmasters/managers may maintain files containing medical records including prognosis or diagnosis.
>
> Answer: Management may maintain WH380, union FMLA forms, or other certifications from health care providers that do not contain restricted medical information. Documents containing diagnosis or prognosis must be returned to the employee, destroyed, or forwarded to the medical unit.

Should you have any further questions concerning these issues, you may call Connie Rodriguez at (202) 268-3823.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

Page 69

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

CERTIFIED MAIL:
7099 3400 0009 0831 4056

June 28, 2000

Mr. William H. Quinn
President
National Postal Mail Handlers
Union
1101 Connecticut Ave., NW, Suite 500
Washington, DC 20036-4303

Dear Billy:

As a matter of general information, enclosed is a final draft copy of Notice of New System of Records, USPS 170.020, for publication in the Federal Register as required by the Office of Management and Budget. The new system contains information about the usage of leave including, but not limited to, continuation of pay, sick, annual, leave without pay, leave used as a result of the Family Medical Leave Act (FMLA), sick leave for dependent care, military leave, etc., by an employee.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies and Programs

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purposes of this document are to publish notice of a change in title to grouping of records 170.000 Operations Data Collection System to read "170.000 Resource Management/Productivity Records" and to publish notice of a new Privacy Act system of records, USPS 170.020, Resource Management/Productivity Records—Resource Management Database. The new system contains information about the usage of leave including, but not limited to, continuation of pay, sick, annual, leave without pay, leave used as a result of the Family Medical Leave Act (FMLA), sick leave for dependent care, military leave, etc., by an employee. Additionally, employee work hours by operation are contained in this system. The system also contains information supporting the use of certain leave information concerning absence-related corrective actions and appeal information related to those actions. This information will be used by management to insure accurate leave data collection, to monitor leave usage, to reduce administrative redundancy, and to monitor the health and wellness of employees.

DATES: Any interested party may submit written comments on the proposed new system of records. This proposal will become effective without further notice on [**40 days from date of notice**], unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Finance Administration/FOIA, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141,

Washington, DC 20260-5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter (202) 268-4872.

SUPPLEMENTARY INFORMATION: To more effectively manage leave, the Postal Service will collect and maintain leave type and attendance information in a fashion that will make this information readily accessible to first-line supervisors and managers when needed to make informed decisions which affect their employees. This information will be used by management to insure accurate leave data collection, to monitor leave usage, to reduce administrative redundancy, and to monitor the health and wellness of employees.

Maintenance of these records is not expected to have a significant effect on individual privacy rights. The information will be kept in a secured environment, with automated data processing (ADP), physical, and administrative security, and technical software applied to information on computer media. Computers and hard copy records are maintained in a secured environment.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report on the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 170.020

SYSTEM NAME:

Resource Management/Productivity Records—Resource Management Database, USPS 170.020

SYSTEM LOCATION:

Human Resources and Operations, Headquarters; and other postal facilities as determined by management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal employees.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Records contain, but are not limited to, the employee's name, home address, telephone, pay location, work hours, overtime status, lunch time, leave balance and usage—sick and annual leave, continuation of pay, sick leave for dependent care, family medical leave and supporting documentation—leave without pay, limited medical information, and information concerning corrective action and grievance outcomes as they relate to leave usage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001, 1003, 1005, and 5 USC 8339.

PURPOSE(S):

Use to establish effective leave administration, analyze employee absences of all types, identify potential attendance problems, and identify employees eligible for attendance related awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: Paper records are maintained in locked file cabinets and computer files on magnetic tape or disk in automated office equipment.

RETRIEVABILITY: By the employee's name or social security number.

SAFEGUARDS:

Access to information in computer files is limited to personnel having an authorized computer password with hierarchical security clearance privileges. Hard copy records are maintained within locked file cabinets under the general scrutiny of designated postal personnel who have jurisdiction over the information. Supporting Family Medical Leave documentation containing restricted medical information will be maintained separately in a locked file cabinet by the FMLA coordinator, and supporting injury compensation documentation will be maintained separately in a locked file cabinet by the Injury Compensation Control Office.

RETENTION AND DISPOSAL:

(a) Hard copy records, including leave slips, leave analysis records are maintained for 2 years from date of cut off.

(b) Automated information including absence related corrective action and disciplinary information is maintained as provided for in the National Agreement.

SYSTEM MANAGER(S) AND ADDRESS:

SENIOR VICE PRESIDENT
OPERATIONS
US POSTAL SERVICE
475 L'ENFANT PLZ SW
WASHINGTON DC 20260-2700

SENIOR VICE PRESIDENT
HUMAN RESOURCES
US POSTAL SERVICE
475 L'ENFANT PLZ SW
WASHINGTON DC 20260-4200

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries to the department or facility head where employed at the time of reporting. Inquiries should contain full name and social security number.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with notification procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel, leave, and timekeeping and other postal data systems of records.

Stanley F. Mires
Chief Counsel, Legislative

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S. DAS: APRIL 18, 2012
SUSTAINED: NPMHU
11001666/11008239: REGIONAL

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	Case Nos. Q06C-4Q-C 11001666 Q06C-4Q-C 11008239
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO - INTERVENOR	)	
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO - INTERVENOR	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Brian M. Reimer, Esquire
For the APWU:	Darryl J. Anderson, Esquire
For the NALC:	Keith E. Secular, Esquire
For the NPMHU:	Matthew Clash-Drexler, Esquire

Place of Hearing:	Washington, D.C.
Date of Hearing:	July 28, 2011
Date of Award:	April 18, 2012

Relevant Contract Provisions:	Articles 5, 10.2, 15 and 19, and Joint Contract Interpretation Manual
Contract Year:	2006-2010
Type of Grievance:	Contract Interpretation

Award Summary:

The issues raised in these two cases are resolved as set forth in the above Findings.

Shyam Das, Arbitrator

BACKGROUND

Q06C-4Q-C 11001666
Q06C-4Q-C 11008239

On July 6, 2010 the Postal Service sent an Article 19 notice to its unions informing them that it intended to revise certain regulations in Section 510 of the Employee and Labor Relations Manual (ELM) concerning the Family and Medical Leave Act of 1993 (FMLA), as amended. Among those revisions was a new requirement in ELM 515.52 that employees use only the Department of Labor (DOL) WH-380 forms when they seek to have their absences protected by the FMLA.

On October 4, 2010 the APWU filed an Article 19 appeal to arbitration protesting, in part, the proposed change to ELM 515.52. The Union submitted its 15-day statement of issues and facts on October 19, 2010. The Postal Service submitted its 15-day statement on October 18, 2010. As an initial matter, the Postal Service asserted that the Union's Article 19 appeal was procedurally defective because the Union had not first requested and attended a meeting concerning the proposed ELM changes.

On October 27, 2010, the APWU initiated a Step 4 national dispute under Article 15, in which it stated:

> It is the APWU's position, consistent with the Collective Bargaining Agreement, applicable Department of Labor (DOL) regulations, the parties' established accepted past practice (for over 15 years), and the mutual understanding and agreement between the parties at the national level, that: (1) employees are not required to use a specific format or form for FMLA certification; (2) employees may use APWU forms for FMLA certification, or any other format or forms that contain the information required under 29 CFR 825.306; and (3) the submission of FMLA certification using DOL WH-380 forms is optional.

The Postal Service and the APWU agreed to combine the Union's Article 19 appeal and its Article 15 grievance in a single arbitration proceeding. The NALC and the NPMHU are intervenors in this proceeding.

At arbitration, the Postal Service argued that the Article 19 appeal should be dismissed based on the APWU's failure to follow the requirement of Article 19. The Postal Service further maintained that the APWU cannot escape its failure to follow Article 19 by filing a subsequent

Article 15 grievance, and that grievance, accordingly, should be denied. On the merits, the Postal Service insisted that the challenged change to the ELM did not violate Article 19 or any other provision of the National Agreement. The Postal Service agreed not to seek bifurcation, with the understanding that the Arbitrator initially would rule on the arbitrability issue.

The FMLA first was enacted in 1993. Section 103(b), 29 USC §2613(b), sets forth the following certification provision:

> (b) SUFFICIENT CERTIFICATION.--Certification provided under subsection (a) shall be sufficient if it states
>
> (1) the date on which the serious health condition commenced;
>
> (2) the probable duration of the condition;
>
> (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
>
> (4)(A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and
> (B) for purposes of leave under section 102(a)(1))(D), a statement that the employee is unable to perform the functions of the position of the employee;
>
> (5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
>
> (6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
>
> (7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a

> statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

Current DOL regulations include the following, 29 CFR §825.306 (b):

> (b) DOL has developed two optional forms (Form WH-380E and Form WH-380F, as revised) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements.... These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Form WH-380E and WH-380F, as revised, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in §§825.306, 825.307, and 825.308. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.

The DOL Preamble to §825.306 (73 Fed. Reg. No. 222 [Nov. 17, 2008], at 68013) states:

> Current §825.306 addresses how much information an employer can obtain in the medical certification to substantiate the existence of a serious health condition (of the employee or a family member) and the employee's need for leave due to the condition. This section also explains that the Department provides an optional form (Form WH-380) for use in the medical certification process; other forms may be used, but they may only seek information related to the condition for which leave is sought, and no additional information beyond that contained in the WH-380 may be required....

In 1995, Headquarters Labor Relations managers sent memos to Human Resources Area Managers regarding documentation for FMLA requests. In one memo, Manager Anthony Vegliante stated:

> The attached APWU Forms 1 through 5, dated June 26, 1995 provide supporting documentation for leave requests covered by the Family and Medical Leave Act (FMLA). These forms have been reviewed by the appropriate Headquarters functional areas and are acceptable for usage by managers to approve or disapprove FML leave requests.
>
> The Postal Service does not require a specific format for FML documentation. Information provided by the employee is acceptable as long as it is in compliance with Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act IV, Section IV.

In another memo, Acting Manager Patricia Heath stated:

> The DOL WH-380 form does not require medical information that directly violates the employee's right to privacy. However, we realize health care providers may give more detail than requested on the form (i.e., prognosis and diagnosis) and that employees may not want to provide this information to their immediate supervisors. Therefore, to address the union's concern, the Postal Service reviewed and approved APWU and NALC FMLA forms that, when properly filled out by the health care providers, provide enough information is provided [sic] to certify that the absence qualifies as a covered condition under the FMLA.
>
> Employees do not need to use the WH-380 or the union forms, they only need to provide the required information as listed on Publication 71....

In 2000, the APWU initiated a Step 4 dispute over the implementation of Resource Management Database (RMD) software. In that case, the APWU asserted: "We believe that the Postal Service has implemented a new policy of requiring employees to only use a WH-380 form, a policy that is also contrary to an agreement between the parties concerning the use of such forms." The parties entered into a pre-arbitration settlement of that case on March 28, 2003, which states in part:

> Optional FMLA Forms: There is no required form or format for information submitted by an employee in support of an absence for a condition which may be protected under the Family and

> Medical Leave Act. Although the Postal Service sends employees the Department of Labor Form, WH-380, the APWU forms or any form or format which contains the required information (i.e. information such as that required on a current WH-380) is acceptable.

In June 2007, the parties included the RMD pre-arbitration settlement in the provisions of the USPS-APWU Joint Contract Interpretation Manual (JCIM) relating to Article 10, as well as the following statement:

> Documentation to substantiate FMLA is acceptable in any format, including a form created by the union, as long as it provides the information as required by the FMLA.

The October 2004 USPS-NPMHU Contract Interpretation Manual (CIM) also includes an equivalent provision to that in the 2003 USPS-APWU RMD settlement, citing that settlement as the source.

In revised regulations that took effect in January 2009, the DOL changed some of the FMLA certification requirements and modified its WH-380 forms. The APWU updated its FMLA certification forms and provided them to the Postal Service. The parties then engaged in a series of correspondence, in which the Postal Service raised concerns regarding the APWU's revised forms and expressed its view that they were not equivalent to the revised WH-380. The Postal Service did not, however, state that it would not accept certifications on APWU forms. Its position at that time was expressed as follows in a July 8, 2009 email from a Headquarters Labor Relations manager to Area managers:

> DOL Forms WH-380E and WH-380F are the preferred "Certification(s) of Health Care Provider." When properly completed, these forms provide all information necessary to determine if leave qualifies for FMLA. However, if you receive certification in any other form including forms provided by the unions, you cannot refuse the form. Accepting the union form does not indicate you accept the certification as complete. You must carefully examine the form received to ensure that it provides complete information, sufficient to establish a serious

> health condition. If one or more necessary entries are missing or incomplete, or if the certification is insufficient, you must notify the employee that the certification is incomplete or insufficient and give them the opportunity to cure the deficiency. You must specify in writing the additional information that is needed to make the certification complete and sufficient (WH-382, Designation Notice).

On July 6, 2010, the Postal Service issued its Article 19 notice that triggered the present disputes. The ELM change requiring that employees use only the WH-380 forms subsequently went into effect after the 60-day period provided for in Article 19.

Linda DeCarlo, Director of Health and Safety for the Postal Service, testified that it receives close to 250,000 leave requests for FMLA protection per year. After enactment of the FMLA in 1993, initially decisions as to whether to designate leave as FMLA protected leave were made by employee supervisors. That responsibility later was transferred to FMLA coordinators assigned at each Postal Service district office. DeCarlo said the Postal Service currently is in the process of centralizing decision making at a single location.

DeCarlo explained that the main reason for the ELM change in dispute was that mandatory use of the WH-380 was better for the employee. In addition, use of a uniform form allows the Postal Service to streamline its operation, which enhances its ability to issue timely decisions.

On cross-examination, DeCarlo said that if an employee brought in a statement from their physician that contained all the information required by the FMLA but not on a WH-380, the employee would be required to return to the doctor to have the information copied onto the WH-380. If that required additional payment, the employee would be responsible for it.

Margaret Adams, a Resource Management Specialist for the Postal Service, testified regarding a survey she conducted in late November 2010. She asked all the FMLA Coordinators to pull from their files any 50 FMLA certifications submitted on union forms and to determine the number of these forms which resulted in a cure or clarification request because

the information provided on the form either was incomplete or insufficient. This survey revealed that 57.14 percent of the total 3262 union forms reviewed were required cure or clarification.

Adams acknowledged that no equivalent survey was conducted regarding FMLA certifications submitted on WH-380 forms. Based on her visits to various District FMLA offices, quarterly telecons and other discussions with individual FMLA coordinators, she believed that use of the WH-380, especially in its new format (since 2009) has made a big difference. She estimated that less than 20 percent, and possibly many fewer, of the WH-380 forms result in a cure or clarification request.

Greg Bell, Executive Vice President of the APWU since November 2010, previously served as the Union's Director of Industrial Relations and oversaw FMLA issues. After the DOL's revised regulations took effect in 2009, he had discussions and corresponded with Postal Service Labor Relations managers regarding the APWU's revised FMLA certification forms. He testified that when that dialogue ended at the end of March 2010, the Postal Service had not asserted that the APWU forms would not be accepted or that the Postal Service would only accept WH-380s. In the ongoing correspondence, he added, he typically reiterated the Union's position regarding the optional aspect of the WH-380 and the Postal Service's obligation to specify any deficiencies in the information submitted by an employee on whatever form they used. He also noted that whenever the APWU headquarters heard from the field that an FMLA coordinator was not accepting APWU forms, the Union contacted the Postal Service and those issues were resolved.

Bell also testified that if the Union receives an Article 19 notice of an ELM change that it determines is a clear violation of the National Agreement, it typically exercises its discretion to file a Step 4 grievance under Article 15. He cited, as one of many such examples, a Step 4 dispute initiated in 2000 protesting a revision to ELM 510 as a violation of Article 10.

Relevant provisions of the National Agreement include the following:

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.

* * *

ARTICLE 10
LEAVE

* * *

Section 2. Leave Regulations

A. 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.

* * *

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

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.

* * *

Section 4. Grievance Procedure-General

* * *

D. It is agreed that in the event of dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated at the Step 4 level by either party. Such a dispute 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 either party....

* * *

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable....

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. The Employer shall furnish the Union with the following information about each proposed change: a narrative explanation of the purpose and impact on employees and any documentation concerning the proposed change from the manager(s) who requested the change addressing its purpose and effect. Proposed changes will be furnished to the Union by hard copy or, if available, by electronic file. At the request of the Union, the parties shall meet concerning such changes. If the Union requests a meeting concerning proposed changes, the meeting will be attended by manager(s) who are knowledgeable about the purpose of the proposed change and its impact on employees. 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 ninety (90) days after receipt of the notice of proposed change. Within fifteen (15) days after the issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues....

An MOU regarding the JCIM, included at page 328 of the National Agreement, states, in part: "The parties will be bound by these joint interpretations and grievances will not be filed asserting a position contrary to a joint interpretation." The preamble to the 2007 JCIM states:

> The 2007 APWU/USPS Joint Contract Interpretation Manual (JCIM) update is provided as a resource for the administration of the National Agreement. Jointly prepared by the American Postal Workers Union, AFL-CIO, and the United States Postal Service, this manual provides a mutually agreed to explanation on how to apply the contract to the issues addressed.
>
> When a dispute arises, the parties should first go to the JCIM to determine if the issue in dispute is addressed. If it is, the parties are required to resolve the dispute in accordance with this manual.
>
> The JCIM will continue to be updated with additional material as we continue to narrow our differences and expand our joint understanding of the National Agreement. We encourage you to use the JCIM to ensure contract compliance and to foster more professional working relationships.

EMPLOYER POSITION

Arbitrability

The Postal Service initially contends that the Union's Article 19 appeal should be dismissed because the Union did not request, much less attend, an Article 19 meeting before filing the appeal. Under Article 19, the Postal Service maintains, the Union can only file an appeal to arbitration after it has requested a meeting, attended a meeting and determined that it is not satisfied with the result of the meeting.

The Postal Service insists that an Article 19 meeting is not a mere technicality. It points out that it was the APWU that insisted on the language that requires "manager(s) who are knowledgeable about the purpose of the proposed change" to attend the meeting. In this case, the Postal Service asserts, an Article 19 meeting would have given the APWU the opportunity to discuss an argument it first raised at the arbitration hearing that the Postal Service violated

Article 10 when it made the protested change to the ELM. The Postal Service had never heard this argument before, and this is the very type of harm that an Article 19 meeting should prevent. The Postal Service cites Case No. H7C-NA-C 10 (Snow, 1989) in support of its position.

The Postal Service further argues that the APWU should not be allowed to escape its failure to follow Article 19 by raising a new dispute under Article 15. Otherwise, the requirements of Article 19 would be rendered meaningless because a union could always take such action. The Postal Service acknowledges that in Case No. HOC-3N-C 416 (1994) Arbitrator Snow allowed the Union to raise an argument in an Article 15 case that the Postal Service's interpretation of an ELM regulation violated language in the National Agreement, even though the ELM language had never been challenged. In the instant case, however, the National Agreement does not address requests for FMLA certification. That is a matter entirely dealt with by the Postal Service in its manuals and handbooks.

Merits

The Postal Service contends that the ELM change does not violate Article 19 or any other part of the National Agreement.

The Postal Service asserts that the APWU's claim, that the new policy requiring use of only the WH-380 forms violated Article 10.2.A, should be dismissed because it was raised for the first time at arbitration. The APWU's brief passing reference to violation of Article 10 in its Article 15 15-day statement of issues and facts did not reference what part of Article 10 allegedly had been violated or why Article 10 had been violated and was insufficient to put the Postal Service on notice that it was raising this issue.

Even assuming, however, that the APWU had properly raised this argument, the Postal Service maintains that Article 10.2.A does not apply to all changes in ELM Subchapter 510, but only those that relate directly to wages, hours and working conditions. The new policy requiring employees to use only the WH-380 was not a change directly relating to wages, hours

or working conditions, even though it was contained in a larger Article 19 notice that included some changes to wages, hours and working conditions. The new policy had no effect on wages paid to employees or hours that they worked. In addition, it had no effect on working conditions, as a WH-380 is filled out by the treating physician. The new policy does not change the burdens on the employee who seeks FMLA protection. Prior to the new policy, employees submitting an APWU form had to do just as much.

The Postal Service also rejects the APWU's argument that the change violates Article 5 because it allegedly violates the FMLA. To the contrary, the FMLA and its implementing regulations allow such a requirement. The DOL's regulations specifically empower employers, not employees, to decide what forms employees must use when they seek FMLA protection for their leave, so long as those forms do not ask for more information than what is printed on the WH-380. By choosing to require use of the WH-380, the Postal Service clearly is complying with the law. The Postal Service cites a federal district court decision in Miedema v. Facility Concession Services, 2011 WL 1363793 (S.D. Texas, April 11, 2001). It further asserts that federal courts have held that employers have the right to institute rules to carry out their responsibilities under the FMLA, so long as those rules do not infringe upon substantive rights or discourage use of the FMLA.

The Postal Service contends that the March 28, 2003 RMD pre-arbitration settlement relied on by the Union merely recited the then-current policy of allowing use of the APWU's forms and other forms deemed by the Postal Service to be equivalent to the DOL forms. The settlement did not give the APWU anything new, and the Postal Service did not waive its rights to make future changes that are fair, reasonable, and equitable under Article 19. See: Case No. Q98C-4Q-C 02013900 (Das, 2006). Likewise, the JCIM language also cited by the Union gave an accurate interpretation of the policy as it existed in June 2007, when this part of the JCIM was published. Obviously, the JCIM will need to be updated to reflect the new policy.

Finally, the Postal Service contends that the new policy requiring employees to use only the WH-380 form when they seek for their leave to be protected by the FMLA easily meets the test of being fair, reasonable, and equitable.

The WH-380 form is generated not by the Postal Service, but by the agency (DOL) entrusted with administering FMLA. As postal witness Adams testified, WH-380 forms require cure or clarification less than 20 percent of the time, whereas the Postal Service's survey indicates that union forms require cure or clarification more than 50 percent of the time. Decreasing the frequency of occasions when it is necessary to return forms to employees for cure or clarification should benefit employees, as they should have less need to spend time and money returning to their physicians, and will not have their FMLA entitlements delayed as often.

Mandatory use of the WH-380 also should save processing time for the Postal Service. As it moves to centralize its FMLA function, there are obvious benefits in using one standard form to cover the approximately 250,000 leave requests for FMLA protection that come in per year. Moreover, as Arbitrator Dennis Nolan pointed out, in a case where the same postal unions were challenging form letters that the Postal Service was using in FMLA-covered situations, the WH-380 is a "safe harbor" for employers. See: NALC Case No. Q98N-4Q-C 01167325 (2008).

UNION POSITION

Abitrability

The Union insists its Article 19 grievance is arbitrable. Under Article 19, only the Union, not the employer, has a right to request an Article 19 meeting. This is because the purpose of the meeting is to require the employer to inform the Union of the purpose and intended effect of the proposed change so the Union can determine whether there is a dispute and make an informed decision about whether to appeal to arbitration. It would be anomalous to give preclusive effect to the lack of a meeting when the employer has no right to request, much less to demand, a meeting, particularly when the parties -- as in this case -- have been engaged in an ongoing dialogue about the subject of the protested ELM change.

The Union notes that under Article 19 if it delays in requesting a meeting or does not request a meeting the Article 19 process is not slowed down. The employer has a right to

implement the proposed ELM change 60 days after notice has been provided and the Union must appeal within 90 days of receiving such notice. Moreover, even if there was a requirement that the Union request a meeting, the employer should be required to show that it has been prejudiced by the lack of a meeting, which it has not done in this case.

The Union argues that it would be particularly anomalous to find a strict requirement for an Article 19 meeting under the circumstances of this case. The parties' discussions and agreements about the use of the WH-380 began soon after the passage of the FMLA in 1993. Those discussions led to the 2003 RMD pre-arbitration settlement that required the employer to continue to accept and process FMLA certifications that did not use the WH-380. That settlement was then made part of the parties' JCIM. Moreover, as testified to by Union witness Bell, the requirement that the Postal Service accept and process forms other than WH-380 was routinely enforced by the Union and complied with by the Postal Service. After publication of the amended WH-380 forms in January 2009, the APWU amended its forms as well, and a lengthy correspondence then ensued in which the Postal Service and the Union debated whether the APWU forms were "equivalent" to the WH-380 forms. In each of the Union's letters in this correspondence the Union reminded the Postal Service that it could not require employees to use the WH-380 form.

In other words, the Union stresses, the Postal Service was perfectly well aware of the APWU's position on the issue, and a meeting to "discuss" the matter further would have been a mere formality that would not have served the purpose of Article 19 meetings or expediting the Article 19 process.

To the extent the Postal Service relies on Arbitrator Snow's decision in Case No. H7C-NA-C 10, the Union disagrees with his dictum that the failure of the Union to demand a meeting as if an Article 19 notice had been provided is material to the arbitrability of the Union's appeal to arbitration in that case.

The Union insists that the Postal Service was not prejudiced by a lack of an Article 19 meeting in this case. In its 15-day statement under Article 19, the Union argued that the

proposed changes were not fair, reasonable, and equitable and that they violated Articles 5, 10 and 19 of the National Agreement. In light of the long history of the parties on this issue it simply is not credible that Postal Service representatives were unaware of the fact that the APWU regularly files Article 10.2 grievances when the employer attempts to amend part 510 of the ELM. The JCIM provisions that specify that the employer will not require use of the WH-380 form both reference Article 10.

The Union also asserts that its Article 15 grievance is arbitrable. The employer seems to be arguing that because the Union also has the right to challenge the employer's new policy under Article 19, the Union's Article 15 grievance and arbitration rights are cut off. This contention is contrary to the language of Article 15 and completely unsupported by the language of Article 19. The purpose of Article 19 is not to permit the employer to change the contract. The fundamental purpose of Article 19 is to permit the employer to modify its handbooks and manuals and to permit the Union to challenge those modifications on the ground that they are not fair, reasonable, and equitable. The authors of Article 19 also provided, that the manuals "shall contain nothing that conflicts with this Agreement." This oblique statement gives the Union the right to challenge proposed handbook and manual provisions under Article 19 on the ground that they conflict with the National Agreement. But it says nothing about cutting off the right of the Union to file an Article 15 grievance challenging the violation of the National Agreement.

Article 10.2, the Union argues, unequivocally prohibits the employer from making changes in ELM subpart 510 that affect wages, hours, or working conditions. Thus a prohibited amendment of Subchapter 510 is not just "inconsistent" with the National Agreement, it is not permitted to be made part of the ELM. Article 10.2 can only be given its intended meaning if, when prohibited amendments of Subchapter 510 are attempted, the Union has a right to challenge those amendments, not just using Article 19 procedures, but also by filing an Article 15 grievance to enforce Article 10.2. As Bell testified, this is the Union's regular practice.

Merits

The Union contends that its Article 15 grievance must be sustained because the Postal Service has violated the 2003 RMD pre-arbitration settlement agreement, the JCIM, the parties' MOU concerning the JCIM, and Articles 5 and 10 of the National Agreement.

The Union notes that although the RMD settlement agreement, like the MS-47 settlement agreement at issue in Case No. Q98C-4Q-C 02013900 (Das, 2006), does not provide that the employer never can change its FMLA handbook on the subject of the WH-380, the parties' agreement did not stop with the settlement. They also placed that settlement in the JCIM, which is binding and permanent unless changed. By placing the RMD settlement in the JCIM, the parties also placed it under the aegis of the MOU on the effect of the JCIM.

The JCIM makes clear, the Union asserts, that documentation to substantiate FMLA is acceptable in any format, including a form created by the Union, as long as it provides the information required by the FMLA. Under the preamble to the JCIM and the parties' MOU, the provisions of the JCIM are binding on both parties.

The Union asserts that the FMLA and related DOL regulations make clear that the use of form WH-380 is intended to provide a "safe harbor" for employers that permits them to enforce the certification requirements of the law without violating FMLA and HIPAA provisions that prohibit the employer from demanding too much information or irrelevant information. The FMLA, however, does not permit the employer to require use of the WH-380 forms. Both the law and the DOL's explanatory information accompanying its regulations make clear that the Postal Service's requirement that employees use the WH-380 forms is inconsistent with the FMLA. Accordingly, the Postal Service's actions violated Article 5 of the National Agreement.

The Union also contends that the requirement that FMLA leave certifications be provided on a WH-380 form imposes a change in working conditions through a modification of ELM Subchapter 510 in violation of Article 10.2. Before July 6, 2010, the ELM permitted employees to use a WH-380 form or equivalent documentation. The consequence of failing to

use the WH-380 form since the protested ELM change is that FMLA protection for the leave in question is lost. At a minimum, this permits the employer to impose discipline for absences that are not the employee's fault and that would, but for the requirement that this specific form be used, be protected by the FMLA. It also hardly could be said that the right to submit FMLA qualifying information to the employer in a non-standard format is protected by federal law and regulations, but is not a significant working condition. At a minimum, many employees will suffer inconvenience and may incur substantial expense, if they do not have a WH-380 form for their medical provider to complete.

The Union contends that the disputed ELM change deprives employees of rights protected under the FMLA and its regulations, rescinds a settlement agreement that is incorporated into the JCIM, and violates the proscription of Article 10.2. As such, the change is not fair, reasonable, and equitable. In addition, required use of WH-380 forms means that employees who use any other form or who use no form, but provide all the necessary information for certification under the FMLA, nonetheless will have their request for FMLA leave rejected. To correct that problem they will have to spend their time and likely incur additional expense to obtain the protection of the statute. The required use of the WH-380 provides employees less choice and therefore less protection. The Union also stresses that the employer's evidence in support of its contention that the APWU's form too often must be returned for cure or clarification does not address the critical question "more often than what?" because the employer did not bother to "survey" the experience in using the WH-380, the revised APWU form, or a medical provider's narrative.

As remedy, the Union seeks an order directing the Postal Service to cease and desist from requiring employees to submit FMLA medical certifications using only the WH-380 forms.

FINDINGS

Arbitrability

After receiving notice of the proposed changes to ELM 510, the APWU filed a timely appeal to arbitration and subsequently provided a timely 15-day statement. The Union did not, however, request a meeting -- and no meeting was held -- prior to its arbitration appeal.

The wording of Article 19 does contemplate that such a meeting will take place. It states: "If the Union, after the meeting, believes the proposed changes violate the National Agreement..., it may then submit the issue to arbitration...." Moreover, the requirement that each party provide a statement of the "precise issues involved and the facts giving rise to such issues" strongly suggests that the parties assumed there would have been some prior discussion of those issues. There is no requirement, however, that the Union present its position at this meeting -- to be attended by manager(s) who are knowledgeable about "the purpose of the proposed change and its impact on employees" -- in advance of its decision to appeal to arbitration and submission of its 15-day statement.

In this particular case, the record leaves little doubt that the Union's position in opposition to the mandatory use of the WH-380 forms, including its reliance on Article 10, was or should have been known to the Postal Service at the time the Union submitted its Article 19 appeal to arbitration. Article 10 was cited by the Union in its 15-day statement in the RMD grievance which led to the 2003 pre-arbitration settlement that later formed the basis for the provisions in the 2007 JCIM which are identified as relating to Article 10. The Union's position regarding optional use of the WH-380 also was reiterated in the correspondence that preceded the Postal Service's Article 19 notice. Thus, it is difficult to see how the Postal Service was prejudiced by the lack of a meeting in this case. (Article 10 also is cited in the Union's 15-day statement in its Article 19 appeal.)[1]

---

[1] This Article 19 15-day statement is mistakenly captioned "Article 15-15 Day Statement of Issues and Facts."

Ultimately, however, it is not necessary to rule on the issue of whether the Union's failure to request or attend a meeting precluded it from filing an Article 19 appeal challenging the ELM change in dispute. The Union also filed an Article 15 grievance asserting that the ELM change violated the National Agreement, including Articles 5, 10 and 19, and that it "is contrary to applicable regulations and law, and mutual understanding between the parties."

The Postal Service argues that if the Union's Article 19 appeal is precluded by its failure to properly follow the procedures in Article 19, then the Union should not be permitted to avoid the consequences of its failure by raising a new dispute under Article 15. In the Postal Service's view that would render the requirements of Article 19 meaningless. The Postal Service has cited no arbitral authority in support of this position. In Case No. HOC-3N-C 418 (Snow, 1994), the Postal Service argued that as a result of the Union's failure to object to rules promulgated under Article 19 fourteen years earlier, the Union forfeited its right to challenge the rules through "rights" arbitration. Arbitrator Snow noted: "It is not certain whether the parties ever intended Article 19 to have the sort of preclusive effect now asserted by the Employer." But he concluded there was no need in that case to resolve that "difficult question." In an earlier 1980 decision, Case No. N8-NA-0003, Arbitrator Gamser denied a grievance filed more than a year after the Postal Service gave Article XIX notice of changes in certain Handbooks. In the interim the parties had negotiated a new contract which readopted Article XIX without change, and Gamser concluded that by doing so the Unions agreed under Article XIX to continue in effect the terms of those Handbooks. In *dictum* he stated:

> If the Unions believed that the changes in the payroll computation contemplated by this Section [of the F-22 and F-21 Handbooks] were in conflict with the terms of the then existing National Agreement, particularly Article VIII-4-B, then a grievance should have been raised and processed to a resolution. If the contention of the Unions was that this change was neither fair, reasonable, nor equitable, a right to grieve also existed under the terms of Article XIX.

No broad pronouncements on the issue raised by the Postal Service are needed here. Even if the Union's Article 19 appeal in this case was deemed faulty, there can be no

reasonable claim that the APWU acquiesced in the protested ELM change. Its timely Article 19 appeal, even if defective, certainly put the Postal Service on notice as to the Union's position that the change violated the National Agreement, and the Union filed its Article 15 grievance within days after the Postal Service asserted its claim that the Union's Article 19 appeal was procedurally defective. On these particular facts, I am not persuaded that the Union should be barred from pursuing its Article 15 grievance, at least with respect to allegations that the change violated Articles 5 and 10 of the National Agreement. There is no necessity in this case to determine whether the Union -- having been given proper notice of the change -- could only raise a challenge that the change violates Article 19 because it is not fair, reasonable, and equitable in an Article 19 appeal, and not an Article 15 grievance.

Merits (Article 15 Grievance)

The issue here is not whether any of the Unions' forms -- which the Postal Service previously accepted if they contained the required information -- are valid, but whether the Postal Service may exclude any certification that is not on a WH-380, even if it satisfies the certification requirements set forth in Section 103(b) of the FMLA.

Article 10.2.A of the National Agreement provides that:

> A. 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.

The Postal Service maintains that the Union's Article 10 claim should be dismissed because it was raised for the first time at arbitration. The Postal Service, however, agreed to waive "any arguments it may have had regarding the lack of a Step 4 meeting, exchange of 15-day statements...." Moreover, as previously noted, the Union's reliance on Article 10 was or should have been known to the Postal Service at the time the Union submitted its Article 19 appeal to arbitration, and was included in its Article 19 15-day statement.

The Postal Service further argues that Article 10.2.A does not apply because the provisions of Subchapter 510 of the ELM that were changed do not "establish wages, hours and working conditions." That argument is not persuasive.

In its 15-day statement in the RMD grievance, the Union asserted the applicability of the provision in Article 10.2.A as part of its contentions. In the 2003 pre-arbitration settlement of that grievance the parties agreed that: "There is no required form or format for information submitted by an employee in support of an [FMLA protected] absence...." The parties subsequently included this agreement in the provisions of their JCIM relating to Article 10. As the JCIM Preamble makes clear: "this manual provides a mutually agreed to explanation on how to apply the contract to the issues addressed." (Emphasis added.) The Postal Service stresses that the form submitted by an employee is filled out by the health care provider, and argues that the new policy does not change the burdens on the employee who seeks FMLA protection. But, as a Headquarters Labor Relations manager recognized in 1995 -- shortly after the FMLA was enacted -- employees and their Unions have privacy concerns that may influence an employee's choice of form on which to submit an FMLA certification. Although the WH-380 provides the Postal Service a "safe harbor" -- so it cannot legally be challenged for privacy violation -- that does not negate an employee's interest in what information is provided by their health care provider, and, hence, what form is used. Moreover, the Postal Service's insistence that only WH-380 forms be used could have a negative effect on when, if not whether, FMLA leave is approved, cause additional inconvenience and expense to the employee, and possibly subject an employee to discipline for an unauthorized absence, even if the employee submits certification that meets the statutory requirements. In short, the ELM 510 provision that was changed established a working condition and, hence, was not subject to unilateral change by the Postal Service under Article 10.2.A.

Significantly, there has been no change in the FMLA or the related DOL regulations that would necessitate mandatory use of the WH-380. On the contrary, under current DOL regulations, use of the WH-380 by an employer is optional. Because unilaterally changing ELM 510 to mandate use of previously optional WH-380 forms violated Article 10.2.A of the National

Agreement and the JCIM, there is no need here to decide whether the Postal Service's action in requiring use of the WH-380 also violated the FMLA, as the Union contends.[2]

Accordingly, the Postal Service is directed to cease and desist from requiring employees to submit FMLA medical certifications using only the WH-380 forms.

AWARD

The issues raised in these two cases are resolved as set forth in the above Findings.

Shyam Das, Arbitrator

[2] The federal district court decision cited by the Postal Service does not, in my reading of that opinion, address this issue.

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Q98M-4Q-C 01113690
Class Action
Washington, DC 20260-4100

Dear John:

On several occasions our representatives met to discuss whether the Resource Management Database (RMD) or its web-based counterpart, enterprise Resource Management System (eRMS) violates the National Agreement.

As a result of these discussions the parties have mutually agreed that no national interpretive issue is presented. Additionally, the parties mutually agree to the following understanding:

The eRMS will be the web-based version of RMD, located on the Postal Service intranet. The eRMS will have the same functional characteristics as RMD.

The RMD/eRMS is a computer program. It does not constitute a new rule, regulation or policy, nor does it change or modify existing leave and attendance rules and regulations. Local policies, developed pursuant to these programs, shall not be implemented if they are in conflict with the National Agreement or with applicable manuals and handbooks.

When requested in accordance with Article 17.3 and 31.3, relevant RMD/eRMS records will be provided to the Union Representative.

The RMD/eRMS was developed to automate leave management, provide a centralized database for leave related data and ensure compliance with various leave rules and regulations, including the FMLA, the Sick Leave for Dependant Care Memorandum of Understanding and the American with Disabilities Act. The RMD/eRMS records may be used by both parties to support/dispute contentions raised in attendance-related actions.

When requested, the locally set business rule, which triggers a supervisor's review of an employee's leave record, will be shared with the NPMHU Local President or his/her designee.

It remains management's responsibility to consider only those elements of past record in disciplinary actions that comply with Article 16.10 of the National Agreement. The RMD/eRMS may track all current discipline; however, it must reflect the final settlement/decision reached in the Article 15 - Grievance-Arbitration Procedure.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

An employee's written request to have discipline removed from their record, pursuant to Article 16.10 of the National Agreement, shall also serve as the request to remove the record of discipline from RMD/eRMS.

Supervisor notes of discussions pursuant to Article 16.2 are not to be entered in the "supervisor's notes" section of RMD/eRMS.

RMD/eRMS users must comply with the Privacy Act, as well as handbooks, manuals and published regulations relating to leave and attendance.

RMD/eRMS security meets or exceeds security requirements mandated by AS-818.

It is understood that no function performed by RMD/eRMS now or in the future may violate the NPMHU National Agreement.

Please sign and return the enclosed copy of this letter as your acknowledgement of agreement to settle this case.

Andrea B. Wilson
Manager
Contract Administration NRLCA/NPMHU

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 01-23-03

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S.DAS:JANUARY28,2005
SUSTAINED:APWU/NALC/NPMHU
03126482:NATIONAL

National Arbitration Panel

In the Matter of Arbitration	)	
	)	
between	)	
	)	
	)	
United States Postal Service	)	
	)	
and	)	
	)	Case No.
American Postal Workers Union	)	
	)	Q00C-4Q-C 03126482
and	)	
	)	
National Association of Letter Carriers - Intervenor	)	
	)	
and	)	
	)	
National Postal Mail Handlers Union - Intervenor	)	

Before: Shyam Das

Appearances:

For the Postal Service:	Larissa O. Taran, Esquire
For the APWU:	Melinda K. Holmes, Esquire
For the NALC:	Keith E. Secular, Esquire
For the NPMHU:	Bruce R. Lerner, Esquire Kathleen M. Keller, Esquire

Place of Hearing:	Washington, D.C.
Dates of Hearing:	October 16, 2003 May 19, 2004
Date of Award:	January 28, 2005
Relevant Contract Provisions:	Article 10; ELM Subchapter 510
Contract Year:	2000-2003
Type of Grievance:	Contract Interpretation

Award Summary

The three issues raised in this case are resolved as follows:

Nature of Illness

In applying ELM 513.332 in the context of the RMD process, ACS's may ask questions necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury or for a condition which requires ELM 865 return-to-work procedures, in a manner consistent with the Findings in this decision, but may not otherwise require employees to describe the nature of their illness/injury.

FMLA Second and Third Opinion Process

The Postal Service's current process for initiating FMLA review by a third health care provider, at issue in this case, is not consistent with the FMLA or with ELM 515.1 and 515.54, and implementation of that process violates Articles 5 and 10.2.A of the National Agreement. The Postal Service is directed to rescind that process.

FMLA Paid Leave Documentation

The Unions' contention that the protested Postal Service paid leave documentation policy is improper and impermissible under the National Agreement is rejected.

Shyam Das, Arbitrator

BACKGROUND

In September 2000, the APWU initiated a national level dispute regarding implementation of certain aspects of the Postal Service's Resource Management Database (RMD) and its web-based counterpart, eRMS.[1] In an agreement dated March 28, 2003 the parties were able to resolve their disputes over some, but not all, of the issues raised by the APWU. This settlement agreement, in relevant part, states:

> This dispute involves the implementation of the Postal Service Resource Management Database (RMD), its web-based enterprise Resource Management System (eRMS), and the application of current leave-related rules and policies, including the Family and Medical Leave Act.
>
> After discussing this matter, the parties agreed to the following mutual understanding and settlement of this case:
>
> - Pursuant to Article 10 of the National Agreement, leave regulations in Subchapter 510 of the Employee Labor Relations Manual (ELM), which establish wages, hours and working conditions of covered employees, shall remain in effect for the life of the National Agreement. The formulation of local leave programs are subject to local implementation procedures, in accordance with Article 30 of the National Agreement.
>
> - The purpose of RMD/eRMS is to provide a uniform automated process for recording data relative to existing leave rules and regulations. RMD/eRMS (or similar system of records) may not alter or

[1] References in this opinion to "RMD" include both RMD and eRMS.

change existing rules, regulations, the National Agreement, law, local memorandums or understanding and agreements, or grievance-arbitration settlements and awards.

* * *

- Pursuant to part 513.332 of the ELM, employees must notify appropriate postal authorities of their illness or injury and expected duration of absence as soon as possible....

- Pursuant to part 513.361 of the ELM, when an employee requests sick leave for absences of 3 days or less, "medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is only required when an employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service." A supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interest of the Postal Service must be made on a case by case basis and may not be arbitrary, capricious, or unreasonable.

- Pursuant to part 513.362 of the ELM, when an employee requests sick leave for absences in excess of 3 days (scheduled work days), employees are required to submit medical documentation or other acceptable evidence of incapacity for work for themselves or of need to care for a family member, and if requested,

> substantiation of the family relationship. Medical documentation from the employee's attending physician or other attending practitioner should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Supervisors may accept substantiation other than medical documentation if they believe it supports approval of the sick leave request.
>
> * * *
>
> The parties agreed to continue discussions related to management requesting the nature of the illness when an employee calls in; FMLA second/third opinion procedures; medical documentation requirements to substitute paid leave for unpaid intermittent FMLA leave. In the event no agreement is reached within fifteen (15) days from the date of this settlement, the Union may initiate a dispute at the national level....

By letter dated April 23, 2003, the APWU initiated the present national level dispute over the three remaining issues. This dispute subsequently was appealed to arbitration, where the NALC and the NPMHU intervened in support of the APWU's position on the three issues.

Nature of Illness

ELM 17, July 2002, provides as follows in ELM 513.332:

Unexpected Illness or Injury

An exception to the advance approval requirement is made for unexpected illness or injuries; however, in these situations the employee must notify appropriate postal authorities of their illness or injury and expected duration of absence as soon as possible. When sufficient information is provided to the supervisor to determine that the absence is to be covered by FMLA, the supervisor completes Form 3971 and mails it to the employee's address of record along with a Publication 71.

When the supervisor is not provided enough information in advance to determine whether or not the absence is covered by FMLA, the employee must submit a request for sick leave on Form 3971 and applicable medical or other certification upon returning to duty and explain the reason for the emergency to his or her supervisor. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36, Documentation Requirements, or noted on the reverse of Form 3971 or Publication 71, as applicable.

The supervisor approves or disapproves the leave request.....

Prior to RMD, call-ins sometimes were taken by the employee's supervisor and sometimes by other individuals, including bargaining unit employees. With the implementation of

RMD (at most facilities), the call-ins are taken by designated "Attendance Control Supervisors" (ACS's), who input information previously handwritten on Form 3971 (Request for or Notification of Absence) into a computer system. Most recently, the Postal Service has begun to implement an Interactive Voice Recognition (IVR) system as part of the RMD program. IVR is a computerized speech application system that is replacing ACS's taking employees' calls for absences due to nonjob-related illness and injury. In late 2003, the APWU was provided with the proposed IVR script (APWU Exhibit 23).

The Postal Service maintains that prior to RMD, supervisors routinely asked employees the nature of their illness/injury when they called in absent. It presented testimony by headquarters Labor Relations Specialist Sandra Savoie in support of this contention. She testified to her experience in Dayton, Ohio both as a clerk and local APWU official from 1978 to 1988, and as a Postal Service labor relations official at various locations since 1988. After the APWU raised this issue in connection with implementation of RMD, Savoie testified, she queried the field and was told that supervision considers it very important and necessary that it be able to get this information, and also that it has been asked for "forever".

Although the IVR script does not ask employees to describe the nature of their illness/injury in so many words, Savoie said, it asks a series of questions -- capable of a yes/no response -- designed to provide supervision with

equivalent information. She pointed out that a computer can be programmed to ask the same questions every time it receives a call-in, while it is more difficult to "program" a live person to do that. At the end of the IVR message, she noted, employees are told: "Upon your return to work, you may be required to explain your unscheduled absence."

APWU Director of Industrial Relations Greg Bell testified that when the Postal Service notified the Union of its plans to implement RMD, nothing was said about this including asking employees to describe the nature of their illness/injury when they call in absent. Bell said this had not previously been a problem, but the Union subsequently began to receive many complaints from the field that this now was being done.

Bell stated that during his employment as a clerk and local APWU official in the Philadelphia office starting in 1970, employees were not required to describe the nature of their illness/injury when they called in absent. Such information was provided, pursuant to ELM 513.364, only when medical documentation was required. This practice was reflected in the minutes of a January 2003 Philadelphia BMC labor-management meeting which states: "The parties agreed the nature of the illness should not be requested when employee calls in." (APWU Exhibit 20.) Bell also presented an April 2000 Step 3 settlement of a San Antonio office grievance to the same effect. (APWU Exhibit 21.) He added that, contrary to the Postal Service's claim that the policy always has been to request information about the nature of an employee's illness/injury

when they call in absent, "I'm aware of that not being a policy in many, if not most facilities nationwide."

Union Position

The Unions contend that asking employees to describe the nature of the illness/injury for which they are calling in absent violates the National Agreement because it is neither permitted by, nor consistent with the leave provisions of the ELM. Article 10.2 of the National Agreement requires that those leave regulations remain in effect for the life of the National Agreement.

Since before implementation of RMD, ELM 513.332 has required employees who have an unexpected illness/injury to call in and "notify appropriate postal authorities as soon as possible as to their illness or injury and expected duration of absence".[2] As explained by APWU witness Bell, the supervisor or clerk who received the call prior to RMD manually completed appropriate parts of a Form 3971 (Request for or Notification of

[2] The APWU cites ELM 15, December 1999, which was in effect when the APWU initiated a national level dispute over certain aspects of the RMD. The Postal Service cites ELM 17, July 2002, in effect when the APWU initiated the present dispute over the three remaining issues from the earlier dispute which the parties were unable to settle. There is a slight difference in wording between the two versions of ELM 513.332. In ELM 15 employees are required to provide notice "as to their illness or injury", while ELM 17 states "of their illness or injury". The parties agree that this difference in wording does not signify any substantive difference. Unless otherwise stated, references to the ELM in this opinion are to ELM 17.

Absence). Upon return to duty, the employee completed additional parts of Form 3971, thereby requesting leave for the absence. A supervisor then completed the form by approving or disapproving the leave request.

For certain types of absences, such as those in excess of three days or those taken by employees on restricted sick leave, the Postal Service requires the employee to supply medical documentation, typically upon the employee's return to work. ELM 513.364 states that this documentation "should provide an explanation of the nature of the employee's illness or injury". The Unions stress this is the only provision in the ELM that refers to a requirement that a description of the nature of an employee's illness/injury be provided. The Unions contend that if the intent had been to require an employee to explain the nature of the illness/injury when calling in to report an absence, it would have been simple to write such a requirement into ELM 513.332, as was done in ELM 513.364.

The Unions point out that Form 3971 not only does not call for information regarding the nature of the illness/injury to be recorded when a call-in is received, but states in the "Remarks" section: "Do not enter medical information." The Unions also point out that when the Postal Service implemented RMD, it did not expressly require the ACS who takes the call and inputs information regarding the absence into the RMD system to inquire about the nature of the illness/injury. The RMD system continues to use a computerized version of Form 3971, and there was no written requirement that ACS's ask for or employees

provide such an explanation. Nonetheless, with the implementation of RMD, the APWU began to receive numerous complaints that employees were being asked to describe the nature of their illness/injury. When the APWU raised this issue, the Postal Service defended its policy of making such an inquiry.

The Unions assert that the Postal Service has provided no basis for this policy except to suggest it reflects past practice. The Unions insist, however, that the record does not support the existence of such a past practice, and that, in any event, a purported past practice cannot reverse the clear language in the ELM and other Postal Service documents that clearly do not authorize the Postal Service to inquire about the nature of an employee's illness/injury when an employee calls in absent.

The Unions also dispute the Postal Service's assertion that it is necessary to make such an intrusive inquiry at the time an employee calls in absent. Neither determinations about whether an absence is FMLA-protected, nor the need for a return-to-duty exam can or should be made based on what employees report when they call in absent. Instead, the system needs only to flag an employee to receive further follow-up information on the FMLA or an instruction to be cleared by the employee's doctor to return to work. Both outcomes are achieved, without requiring employees to describe the nature of their illness/injury, by asking whether the absence falls within the general categories prompting FMLA information or return-to-duty

exams pursuant to ELM 865.2. The Postal Service implicitly has acknowledged that less intrusive questions can serve these needs in its implementation of the IVR system and in the script it provided for use by the ACS's operating the RMD system, which the APWU obtained from the Los Angeles office (APWU Exhibit 8). Determinations as to whether a fitness-for-duty exam is required in accordance with ELM 513.38 typically are made when the employee is back at work. The Postal Service does not need to know or make a decision concerning a fitness-for-duty exam when an employee calls in absent. Notably, the IVR system makes no such inquiry.

Intervenor NALC stresses that ELM 513.332 -- the meaning of which is the crux of this case -- provides that the employee's obligation is to "notify appropriate postal authorities of their illness or injury...." (Emphasis added.) Unlike an employee's immediate supervisor, ACS's taking call-ins under the RMD system cannot be characterized as "appropriate postal authorities" for purposes of receiving information as to the nature of an employee's illness. They have no authority to make decisions for which the nature of illness information may be relevant, such as whether the employee is entitled to sick leave, whether a fitness-for-duty exam is warranted or whether the employee's condition is covered by FMLA. Moreover, Intervenor NPMHU points out, the information provided by the absent employee, without the underlying medical diagnosis, would be insufficient to permit the ACS to make such determinations, and asking the nature of the illness during the initial call to an ACS impermissibly intrudes on employee privacy.

Employer Position

The Postal Service contends that it is necessary and appropriate for the Postal Service to inquire as to the nature of an employee's illness or injury during call-ins reporting an unexpected absence. Such inquiry is necessary to enforcement of Postal Service policies, including FMLA, which require certain determinations to be made prior to the employee's return to work.

The Postal Service is required to make a determination as to whether the condition is covered under the FMLA, for which it needs to know the reasons for the absence, as the APWU has acknowledged in item 21 of the Joint APWU and USPS Family and Medical Leave Act Questions and Answers. The Postal Service also cites the February 2003 USPS-NALC Joint Contract Administration Manual (JCAM) on this point.

The Postal Service maintains that the nature of the illness/injury inquiry is crucial to its ability to timely schedule an employee for a fitness-for-duty examination, ELM 513.38, and to enforce the return to work provisions in ELM 865. ELM 513.38 provides:

> When the reason for an employee's sick leave is of such a nature as to raise justifiable doubt concerning the employee's ability to satisfactorily and/or safely perform duties, a *fitness-for-duty medical examination* is requested through appropriate authority. A

complete report of the facts, medical and otherwise, should support the request.

ELM 865.2 provides:

> Employees returning to duty after an absence for communicable or contagious diseases, mental and nervous conditions, diabetes, cardiovascular diseases, or seizure disorders or following hospitalization must submit a physician's statement doing one of the following:
>
> a. Stating unequivocally that the employee is fit for full duties without hazard to him- or herself or others.
>
> b. Indicating the restrictions that should be considered for accommodation before return to duty.
>
> * * *

The Memorandum of Understanding on Sick Leave for Dependent Care, included in Appendix B of the National Agreement, states:

> The parties agree that, during the term of the 2000 National Agreement, sick leave may be used by an employee to give care or otherwise attend to a family member having an illness, injury or other condition which, if an employee had such condition, would justify the use of sick leave by that employee....

The Postal Service stresses that without knowing the nature of the condition for which sick leave is requested, it has no basis

for making a determination as to whether the employee's request falls within this MOU's coverage.

The Postal Service asserts that with the implementation of the IVR system, it continues to obtain the same information previously obtained by asking employees about the nature of their illness/injury, albeit in a different format.

The Postal Service argues that the plain language of ELM 513.332 supports its position that such an inquiry is permitted. That provision states that an employee "must notify appropriate postal authorities....of their illness of injury," which the Postal Service reasonably interprets to mean more than a mere statement that an employee is ill or injured. While ELM 513.364 specifies that when medical documentation is required to be submitted to the Postal Service it "should provide an explanation of the nature of the employee's illness or injury", that does not mean that such an inquiry may not be made during the call-in. On the contrary, if the Postal Service was precluded from making such an inquiry, a supervisor would not have the information needed to apply that portion of ELM 513.364 which states: "Supervisors may accept substantiation other than medical documentation if they believe it supports approval of the sick leave request." Likewise, clearly a supervisor needs more information than just a simple statement that the employee is "ill" in order to decide whether to require medical documentation for absences of three days or less "for the protection of the Postal Service" pursuant to ELM 513.361.

The Postal Service stresses that the practice of inquiring as to the nature of an employee's illness/injury has existed for decades and was not initiated in the context of RMD. This was established by the testimony of Postal Service witness Savoie, and is confirmed by numerous regional arbitration awards which show that the Postal Service routinely asked for and was often provided with "nature of illness/injury" information. Union evidence of agreements in two offices (Philadelphia and San Antonio) that employees would not be asked the nature of their illness when they call in does not contradict the existence of the practice, but rather confirms that it existed at those offices before the local parties agreed otherwise.

FMLA Second and Third Opinion Process

The Family and Medical Leave Act (FMLA) includes the following provisions, at 29 USC §2613(c) and (d):

> (c) Second opinion
>
> (1) In general
>
> In any case in which the employer has reason to doubt the validity of the certification provided [by the employee's health care provider to support a request for FMLA leave]... the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer....

* * *

(d) Resolution of conflicting opinions

(1) In general

> In any case in which the second opinion described in subsection (c) of this section differs from the opinion in the original certification..., the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee....

(2) Finality

> The opinion of the third health care provider...shall be considered to be final and shall be binding on the employer and the employee.

Regulations issued by the United States Department of Labor (DOL) under the FMLA further provide, at 29 CFR §825.307(c):

> ...The third health care provider must be designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be

> failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

In conjunction with implementation of RMD, the Postal Service developed a series of sample or form letters to be utilized in the field to facilitate consistency and compliance with the FMLA nationwide. (These letters were discussed with the APWU and revisions were made based on APWU input, but they are not negotiated letters.) One of these letters, which are to be used even where RMD is not implemented, is a letter sent to an employee after the Postal Service has obtained a second medical opinion which differs from the initial certification provided by the employee's health care provider. This sample letter reads, in relevant part, as follows:

> In reference to your request for FMLA Leave protection, the USPS medical unit has received the results of the 2nd opinion medical evaluation from Dr. «Name».
>
> As explained in the attached letter from the USPS medical unit, Dr. «Name» has determined that the condition for which leave is requested does not warrant FMLA protected leave. If you accept the result of this 2nd opinion evaluation, then this decision will stand.
>
> If you do not accept these results, you must notify me «name» @ «Phone Number» within 5 calendar days of receiving this letter, and a 3rd opinion appointment will be scheduled.

> You should leave a message, if «name» is not in the office, to ensure that you have made contact within 5 days. A health care provider for the third opinion will be jointly agreed upon by you and the Postal Service.
>
> If the employee has not contacted me within the 5 days, the 2nd opinion will go on record as the final decision.

The Postal Service notes that some offices have elected to provide employees more than five days to respond, and that, in any event, employees can request additional time in which to do so.

Union Position

The Unions contend that by placing the responsibility on the employee to demand a third doctor's opinion, the Postal Service has abrogated the responsibilities the FMLA expressly places on the employer and nullified the purpose of the third doctor's opinion option. The FMLA expressly provides that only the employer can require a third doctor's opinion. The Unions' objection to the process established by the Postal Service is that it not only puts the responsibility for deciding whether to get a third doctor's opinion on the employee, but it creates a new default rule under which an employee who does not take the initiative to request a third doctor's opinion is deemed to have affirmatively accepted the Postal Service's second doctor's opinion as final. This is not only inconsistent with the FMLA, the Unions stress, it is patently unfair.

The Unions point out that while the employer is not required under the FMLA to request a third medical opinion, it is the employer's option whether to do so. If the employer chooses not to seek a third opinion, the employee is not bound by the second opinion. The employer in that situation may not be legally required to accept the employee's request for FMLA leave, as a number of courts have held, but, if the employer does not do so, the question of whether the absence was FMLA-covered falls to the ultimate factfinder, either in arbitration or litigation.

In practice, Intervenor NPMHU asserts, the FMLA puts the ball in the employer's court to weigh the potential difficulties of disproving the employee's medical certification in arbitration or at trial against both the expense of the third doctor's exam and the risk the third doctor will side with the employee. The Postal Service, however, is attempting to have it both ways by avoiding the risk and expense of a third opinion, while foreclosing the employee's opportunity to challenge the Postal Service's denial through arbitration or a lawsuit. This is not what the FMLA or National Agreement contemplate. Intervenor NPMHU contends that the Postal Service's policy is unfair, in violation of ELM 511.1, and impermissibly limits employees' FMLA rights in violation of ELM 515.1 and the FMLA.

The Unions also reject the Postal Service's assertion that its process is consistent with the FMLA because the Postal Service considers an employee's failure to demand a third doctor's opinion within a certain time period to be an act of

noncooperation binding the employee to the second opinion. The FMLA regulations state that if an employee fails to attempt in good faith to reach agreement on whom to select for the third opinion provider, the employee will be bound by the first certification. Those regulations make no reference to an employee's failure to cooperate in initiating the third doctor's opinion process because the law and regulations do not give employees a responsibility or duty to make that decision.[3]

The Unions contend that Article 5 of the National Agreement prohibits the Postal Service from taking any action affecting terms and conditions of employment that would violate the National Agreement or otherwise be inconsistent with the Postal Service's obligations under law. Because the third doctor's opinion process concerns the conditions under which a postal employee is granted or denied the protection of the FMLA, the propriety of that process, which was unilaterally established by the Postal Service, is properly reviewable by the Arbitrator. The Unions insist that the Arbitrator is fully empowered to interpret the FMLA and its regulations in addressing this issue, citing the decision of Arbitrator Nolan in USPS and NALC and NPMHU, Case No. Q98N-4Q-C 010190839 (2002).

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[3] Intervenor NPMHU further argues that the Postal Service's requirement that an employee respond in five days is inconsistent with the much more lenient "good faith negotiation" requirement which is all that federal law allows.

Employer Position

The Postal Service contends that neither FMLA regulations, nor the ELM provisions implementing the FMLA, contain a clearly delineated process regarding how the third opinion health care provider is to be selected. The Postal Service insists that the process it established in conjunction with the RMD process is fair, reasonable and consistent with the FMLA, specifically, with Section 825.307 of the applicable DOL regulations. That provision requires that if the employer requires the employee to obtain a third medical opinion, "the third health care provider must be designated or approved jointly by the employer and the employee". The regulation does not specify the process which will bring the parties together to select a third opinion health care provider.

Under the process established by the Postal Service, employees are informed that they can accept the second opinion or can call within the specified time-frame to arrange for a jointly agreed-upon health care provider to provide a third opinion. If the employee does not call within the designated period, the Postal Service infers that the employee has elected to forego the third opinion and agrees instead to abide by the second opinion. Put another way, the Postal Service asserts, the employee's election not to call is considered a failure to cooperate, pursuant to Section 825.307(c) of the DOL regulations, and the second opinion becomes binding. Contrary to the Unions' allegation that the process improperly shifts responsibility for demanding a third opinion from the employer

to the employee, this process gives an employee the option of asking for a third opinion or accepting the second opinion.

The Postal Service asserts that in establishing this process it took into account that a third medical exam intrudes on employees' time (as it is off the clock) and necessarily forces them to relinquish some privacy interests by subjecting them to examination by an additional health care provider. Allowing employees to elect whether or not they want a third opinion, the Postal Service argues, is a good compromise because employees still can get the benefit of what the statute intended -- the right to a third and final tiebreaker -- but they also get the right to say "no" to a third exam if they are willing to live with the results of the second opinion, which in many cases may not be very different from the first opinion.

The Postal Service also maintains that the arbitrator lacks the authority to decide the dispute concerning second and third opinions because at its essence it is a dispute about the meaning and intent of FMLA provisions and DOL regulations and not the collective bargaining agreement. In support of this position, it cites decisions by Arbitrator Bloch in USPS v Federation of Postal Police Officers, Case No. FPSP-Nat-81-006 (1983), Arbitrator Nolan in USPS and NALC and NPMHU, Case No. Q98N-4Q-C010190839 (2002), and Arbitrator Allen in USPS v. APWU, Case No. E98C-4E-C 00235731 (2003).

FMLA Paid Leave Documentation

Subchapter 513 of the ELM covers sick leave. ELM 513.362 provides as follows:

> For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work or of need to care for a family member and, if requested, substantiation of the family relationship.

At issue is the Postal Service's policy of requiring medical documentation under ELM 513.362 in situations where an employee, who has previously provided FMLA certification of a serious health condition indicating the need for intermittent leave, requests paid leave for an absence which falls between the certification and a recertification. The FMLA limits the circumstances, including frequency, under which the employer can require recertification for purposes of FMLA protected leave. The Postal Service, however, requires an employee to provide medical documentation for all absences in excess of three days, if the employee requests paid leave, even if no such documentation could be required for FMLA leave.

The APWU claims it was not aware of this policy until after the Postal Service began to implement RMD. APWU Industrial Relations Director Bell stated that, to his recollection, this was not an issue in contention in 1993 when the FMLA went into effect. He also pointed out that the documentation requirements in ELM 513.362 apply not only to an

employee requesting paid sick leave, but also to an employee requesting annual leave or leave without pay under the applicable ELM provisions governing such leaves. The purpose of the documentation, he stressed, is to substantiate the employee's incapacity for work. The APWU insists this is unjustified in cases where the employee already has provided FMLA certification of the need for intermittent leave, which necessarily establishes the employee's incapacity for work.

Postal Service Labor Relations Specialist Savoie insisted that the documentation requirements for paid leave -- sick leave or annual leave in lieu of sick leave -- have not changed, and are the same as before the FMLA. The Postal Service, however, does not require documentation for leave without pay if the leave is protected under FMLA.

Union Position

The Unions contend the Postal Service's policy of requiring medical documentation, in addition to an approved FMLA medical certification identifying a need for intermittent leave, when an employee seeks to substitute paid sick leave for unpaid FMLA leave for an absence of four days or more is improper and impermissible under the National Agreement.

Employer Position

The Postal Service asserts that paid leave is beyond the mandate of the FMLA, and that the statute and DOL

regulations make clear that an employee seeking to substitute paid leave for unpaid protected FMLA leave must meet the employer's normal requirements for paid leave.

The Postal Service acknowledges that information contained on a FMLA medical certification may also meet the Postal Service's paid sick leave documentation requirements. This occurs, however, only with regard to the particular absence triggering certification or recertification that contains information about incapacity during the current absence sufficient to justify paid leave. For absences not triggering a request for certification or recertification, the Postal Service may separately request sick leave documentation consistent with its regulations.

FINDINGS

Nature of Illness

The term "nature of the employee's illness or injury" appears only in ELM 513.364, which provides that when employees are required to submit medical documentation:

> The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence....

In cases where employees have called in absent due to unexpected illness or injury (ELM 513.332), the purpose of this medical documentation (or other acceptable evidence) is to substantiate the employee's incapacity to work when that is required pursuant to ELM 513.361 (three days or less), 513.362 (over three days) or 513.363 (extended periods).

ELM 513.332, which is the key provision in this dispute, provides that, in case of unexpected illness or injury: "the employee must notify appropriate postal authorities of their illness or injury and expected duration of absence as soon as possible." The words "of their illness or injury" are ambiguous, when read by themselves. It is reasonable, however, to conclude that they do not mean the same thing as "the nature of the employee's illness or injury" found in ELM 513.364. If they did, presumably the same wording would have been used. The distinction, moreover, is not limited to wording, the information to be provided by an employee calling in absent pursuant to ELM 513.332 serves different purposes than the information provided pursuant to ELM 513.364.

Call-ins pursuant to ELM 513.332 are not made to substantiate incapacity to work during the absence. The ACS taking the employee's call as part of the RMD process is not making a determination whether to approve or disapprove of leave for the absence. Nor is the supervisor who ultimately will make that determination going to do so on the basis of whatever the employee may or may not have told the ACS regarding the nature

of her or his illness/injury. Leaving aside for the moment FMLA leave, ELM 513.332 is quite clear:

> ...the employee must submit a request for sick leave on Form 3971 and applicable medical or other certification upon returning to duty and explain the reason for the emergency to his or her supervisor. Employees may be required to submit acceptable evidence of incapacity to work as outlined in the provisions of 513.36, Documentation Requirements, or noted on the reverse of Form 3971 or Publication 71, as applicable.
>
> The supervisor approves or disapproves the leave request....

The primary purpose of the call-in is to notify the Postal Service as soon as possible that the employee is going to be absent. For that, a simple statement that "I am sick/injured" might be sufficient. But the call-in, as the Unions acknowledge, serves other purposes, and the Postal Service is entitled to more than that. This case is not about whether the employee is only required to say "I am sick/injured".

Another major purpose of the call-in is to determine whether the absence is (or may be) covered by FMLA, in which case -- as stated in ELM 513.332 -- the supervisor completes Form 3971 and mails it (or FMLA Certification of Health Care Provider Form WH-380) to the employee along with Publication 71, which explains an employee's FMLA rights and obligations. (This applies whether the absence is due to the condition of the

employee or a family member.) As stated in item 21 of the Joint APWU and USPS FMLA Qs and As:

> ...an employee must explain the reasons for the absence and give enough information to allow the employer to determine that the leave qualifies for FMLA protection. If the employee fails to explain the reasons, the leave may not be protected under the FMLA.

Similarly, the USPS-NALC JCAM states (at page 10-15):

> Management is within its rights to ask employees about the circumstances of their condition in order to determine whether absences may be protected under the FMLA and/or whether absences are for a condition which requires the ELM 865 return to work procedures.

In order to make the necessary FMLA determination, the ACS need not ask the employee to describe his or her symptoms or to otherwise describe the specific nature of the illness. Indeed, as also stated in the USPS-NALC JCAM: "Other than pregnancy, the circumstances determine whether a [health] condition is serious, not the diagnosis." So, asking the employee questions like "What's the nature of your illness?" or "What's wrong with you?" does not really facilitate a FMLA determination. In addition to asking the employee directly whether the leave request is for a new or existing FMLA condition -- or "Is this leave FMLA?" (see ACS/RMD script obtained by APWU from the Los Angeles office) -- which the employee may well be able to answer, the ACS can ask other

questions that tie directly into the FMLA. A good example is in the IVR script, where the IVR "voice" asks:

> Say yes if your leave is because you or your family member has one of the following FMLA conditions: pregnancy, birth or placement of a child, overnight hospitalization, incapacity over three days with visits to a health care provider, a condition that without treatment would incapacitate over three days or incapacity from a long term condition with multiple treatments. Is your leave related to one of these conditions, Yes or No?

Employees who answer affirmatively, are then told they will be mailed Publication 71 and the necessary FMLA certification form to be completed by their health care provider.

Information obtained when an employee calls in absent due to illness/injury is needed for two other purposes. One is to determine whether the absence is due to an on-the-job injury, which can be asked directly. Another, which is recognized in the USPS-NALC JCAM, is to determine whether the absence is for a condition which requires return-to-work certification under ELM 865. This also can be done without asking employees to specifically describe the nature of their condition, as shown by the following portion of the IVR script:

> All right one last question. Is your absence due to hospitalization, mental or nervous condition, diabetes or seizure disorders, cardiovascular diseases, communicable or contagious disease, or for

more than 21 days? Please say "yes" or "no".

> YES: In order to return to work, you must provide a detailed medical report, sufficient to make a determination that you can return to work without hazard to self or others, and indicating any restrictions per local procedures.
>
> NO:

For all of these legitimate purposes, the Postal Service says it obtains equivalent information through the IVR system as when employees are asked to describe the nature of their illness to an ACS. Actually, the IVR script may provide more pertinent information. The IVR script, in any event, shows that the Postal Service's needs can be met less intrusively without asking for the nature of the illness. So does the ACS/RMD script from the Los Angeles office, which does not include asking the nature of the employee's illness/injury.[4] This conclusion is further supported by local agreements in Philadelphia and San Antonio that employees should not be asked the nature of their illness when they call in.[5]

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[4] The record does not indicate whether this ACS/RMD script was promulgated locally or by Postal Service headquarters. Postal Service witness Savoie testified that in implementing RMD headquarters did not "roll out anything that said ask the nature of the illness."

[5] I do not agree with the Postal Service that the existence of these agreements confirms that a contrary practice previously existed at those locations.

The Postal Service claims it needs to ask employees for the nature of their illness/injury when they call in to be able to timely schedule an employee for a fitness-for-duty exam under ELM 513.38, which states:

> When the reason for an employee's sick leave is of such a nature as to raise justifiable doubt concerning the employee's ability to satisfactorily and/or safely perform duties, a *fitness-for-duty medical examination* is requested through appropriate authority. A complete report of the facts, medical and otherwise, should support the request.

The Postal Service gave as an example an employee who calls in and says he hurt his back. For safety purposes, it says, it needs to know the employee is fit for duty before his return to work. Yet, keeping in mind that employees off work for more than three days have to provide medical documentation upon return to work (or have an FMLA certification), it seems doubtful, and there is no evidence, that supervisors request fitness-for-duty exams based on what the employee tells an ACS when he or she calls in, rather than on the basis of medical documentation, the explanation provided by the employee on return to work or other sources of information.

The Postal Service also claims that, if it is precluded from making such an inquiry, a supervisor would not have the information needed to apply that portion of ELM 513.364 which states: "Supervisors may accept substantiation other than medical documentation if they believe it supports approval of the sick leave [in excess of three days] request." Yet, there

is nothing in the record to show that such determinations are made on the basis of what employees tell an ACS on a call-in regarding the nature of their illness/injury.

Furthermore, as already noted, the ability of the Postal Service to satisfactorily administer the leave provisions of the ELM in offices such as Philadelphia and San Antonio, or using the IVR system, without asking the nature of their illness/injury when employees call in absent, is telling with respect to the Postal Services' claimed needs to request that information.

Finally, the Postal Service maintains that it needs to have employees describe the nature of their illness/injury in order to decide whether to require medical documentation for absences of three days or less under ELM 513.361, which provides:

> For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

Under this provision, medical documentation can be required for absences of three days or less only when the

employee is on restricted sick leave or to protect the interests of the Postal Service. The latter, insofar as the record in this case shows, applies where the supervisor who is to approve/disapprove the requested leave has some reason to suspect the employee is not really incapacitated from working, as where the employee was denied requested annual leave or has a pattern of asking for sick leave on the days after holidays. In their March 28, 2003 settlement agreement, the APWU and the Postal Service agreed that a supervisor's decision to require documentation or other evidence pursuant to ELM 513.361 "must be made on a case by case basis and may not be arbitrary, capricious or unreasonable".

It is far from clear on this record that any description of the nature of illness/injury provided by an employee to an ACS in the RMD process actually is passed on to the supervisor who makes determinations under ELM 513.361, let alone used as the basis for requesting medical documentation. Form 3971 specifically directs that medical information not be entered thereon. In the RMD process, the ACS essentially enters the same information that previously was handwritten on a Form 3971 into a computer data system, which generates a Form 3971 to be completed by the employee and the supervisor who approves or disapproves the requested leave on the employee's return to work.[6]

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[6] While this case is not about which "supervisor" can make a decision to require medical documentation under ELM 513.361, the evidence in this record does not indicate that any supervisor is doing so on the basis of employees' descriptions of the nature of their illness/injury when they call in to an ACS as part of

The evidence as to pre-RMD application of ELM 513.332 consists of testimony by Postal Service witness Savoie and APWU witness Bell and a dozen or so regional arbitration awards, which the Postal Service asserts support its position that a consistent practice of inquiring into the nature of an employee's illness/injury on a call-in has existed for decades. Not only is this evidence limited in scope, it is far from conclusive. At best, it shows that in some offices employees either volunteered or were asked to describe the nature of their illness/injury, particularly when the call was taken by their direct supervisor. In some other locations such as Philadelphia, this was not done.[7]

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the RMD process. Whether the supervisor who does make that decision under ELM 513.361 can question absent employees about the nature of their illness/injury in appropriate circumstances, as part of that decision making, is not an issue within the scope of this case.

[7] One of the arbitration decisions cited by the Postal Service, USPS and APWU, Case No. I-90-1I-C 95039549 (Fletcher, 1996), quotes 1992 "Call-In Procedure" instructions previously in effect in the Des Moines Post Office, that the grievance sought to have reinstated. Wholly unrelated to the issue in that case, those instructions stated: "In cases where the employee calls in claiming illness, normally the general nature of the illness is provided if requested by the supervisor." The Postal Service cited another decision, USPS and APWU, Case No. 9501904 et al (McAllister, 1996), for its determination that leave regulations issued by the Pittsburgh Post Office in 1995 appropriately required detailed information on a call-in. A paragraph on reporting absences in those regulations stated: "Additionally, you will be asked if the absence is in any way related to an on-the-job injury or if you believe the absence is covered in any way by the Family Medical Leave Act." Notably, the regulations quoted in the decision do not otherwise appear to provide for asking employees the nature of their illness/injury.

Taking into account the substantial employee privacy interests stressed by the Unions and the clear distinction between the wording of ELM 513.332 and 513.364, the information regarding an employee's illness/injury which the Postal Service properly can require an employee to provide when calling in absent -- beyond "I am ill/injured" -- should not exceed the established administrative needs of the Postal Service, as discussed above.

Accordingly, I conclude that in applying ELM 513.332 in the context of the RMD process, ACS's may ask questions necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury or for a condition which requires ELM 865 return-to-work procedures, in a manner consistent with these Findings, but may not otherwise require employees to describe the nature of their illness/injury.

FMLA Second and Third Opinion Process

Article 10.2.A of the National Agreement provides as follows:

> 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.

Article 5 of the National Agreement states:

> 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.

ELM 515.1 states: "Section 515 provides policies to comply with the Family and Medical Leave Act of 1993 (FMLA)." ELM 515.54 addresses "Additional Medical Opinions", in relevant part, as follows:

> Additional Medical Opinions
>
> A second medical opinion by a health care provider who is designated and paid for by the Postal Service may be required. A health care provider selected for the second opinion may not be employed by the Postal Service on a regular basis. In case of a difference between the original and second opinion, a third opinion by a health care provider may be required. The third health care provider is jointly designated or approved by management and the employee, and the third opinion is final....
>
> (Emphasis added.)

In conjunction with implementation of RMD, but separate and apart from that process, the Postal Service established its current policy and process with respect to third medical opinions. There is no evidence that prior to development of the sample letter (quoted earlier in this opinion), the Postal Service had any sort of policy requiring employees to notify the Postal Service if they do not accept the

second opinion and want a third opinion. Postal Service witness Savoie testified that headquarters was trying to establish some sort of process, where none had existed before, to help its FMLA administrators comply with existing FMLA regulations.

In these circumstances, I conclude that, as an Arbitrator under the National Agreement, I have the authority to determine whether the recently adopted Postal Service process is consistent with applicable ELM leave provisions, and, in doing so, to consider applicable provisions of the FMLA which the ELM provisions are expressly intended to comply with.[6]

ELM 515.54 specifically provides that: "In the case of a difference between the original and second opinion, a third

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[6] As Arbitrator Nolan stated in a recent decision cited by both the Postal Service and the Unions, USPS and NALC and NPMHU, Case No. Q98N-4Q-C 010190839 (2002):

> One obvious exception to the general rule [that the arbitrator's function is to interpret and apply the contract and not the law] is that parties who incorporate external law in their contract, either expressly or by paraphrase, necessarily expect their arbitrators to interpret and apply the incorporated law. That may sometimes require examination of implementing regulations and relevant judicial precedent.
>
> * * *
>
> The Postal Service's fall-back position, that an arbitrator may "apply" but may not "interpret" a law, relies on an impossible distinction. More often than not, it is necessary to interpret the law precisely in order to apply it; to put it simply, before one can apply a law, one must know what the law means.

opinion may be required." (Emphasis added.) The most, if not only, sensible reading of these words -- even without reference to the FMLA -- is that the Postal Service may require a third opinion. Moreover, this provision clearly is meant to comply with the provisions of the FMLA, as stated in ELM 515.1.

While the FMLA does not spell out a specific process for selecting the third opinion provider, it expressly places responsibility on the employer to determine whether to require that the employee obtain a third opinion. If the employer chooses to do so, the third opinion is controlling.

The Postal Service's current process, as reflected in the sample letter provided for use in the field, clearly departs from and is inconsistent with the statutory scheme. It requires the employee, rather than the employer, to make the decision whether to obtain a third opinion.

The Postal Service's current process makes the second opinion the final decision if the employee fails within a set time period to notify the Postal Service that he or she does not accept the second opinion. The Postal Service claims this is consistent with Section 825.307(a) of the DOL regulations.[9]

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[9] As part of its arbitrability argument, the Postal Service points out that some DOL regulations have come under fire as invalid extensions of the FMLA. But it does not assert that this part of the regulations has been challenged in court, and in this instance it is the Postal Service which is citing the regulations in support of its action.

There is no justifiable basis, however, for equating an employee's failure to affirmatively reject a second opinion as a failure by the employee to "act in good faith to attempt to reach agreement on whom to select for the third opinion provider", which is the only basis under the DOL regulations for making the second opinion binding on the employee.

Accordingly, I conclude that the Postal Service's current process for initiating FMLA review by a third health care provider is not consistent with the FMLA or with ELM 515.1 and 515.54, and that implementation of that process violates Articles 5 and 10.2.A of the National Agreement.

FMLA Paid Leave Documentation

Prior to the FMLA, ELM 513.362 required that employees requesting paid sick leave for an absence in excess of three days submit "medical documentation or other acceptable evidence of incapacity for work". This requirement also applied, under applicable ELM provisions, if an employee requested annual leave in lieu of sick leave or leave without pay (LWOP). The documentation had to cover the specific period of absence, whether or not due to a recurring condition.

The ELM provisions applicable to paid and unpaid leave, other than unpaid FMLA leave, have not changed. The FMLA, however, provides for medical certification of a serious health condition indicating the need for intermittent leave in the future, and this permits an eligible employee to use FMLA

leave when, and if, that occurs. The FMLA limits the circumstances, including frequency, under which the employer can request recertification. Thus, if an employee who is absent in excess of three days attributes the absence to the previously certified condition, the Postal Service may not (subject to certain exceptions) require additional documentation as a condition to granting unpaid FMLA leave.[10] The Postal Service has conformed to the requirements of the FMLA by not requiring such documentation for LWOP that is protected under the FMLA.

The Postal Service continues, however, to require compliance with the documentation requirements in ELM 513.362 if the employee seeks to substitute paid sick leave (or annual leave in lieu of sick leave) for unpaid FMLA leave. This is not inconsistent with the FMLA. Section 825.207 of the DOL regulations provides:

> (c) ...Substitution of paid sick/medical leave may be elected to the extent the circumstances meet the employer's usual requirements for the use of sick/medical leave. An employer is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave "in any situation" where the employer's uniform policy would not normally allow such paid leave.
>
> * * *
>
> (h) When an employee or employer elects to substitute paid leave (of any type) for

[10] For purposes of this section of the Findings, it is assumed that the certification meets the requirements of the FMLA and entitles the employee to use FMLA leave.

> unpaid FMLA leave under circumstances permitted by these regulations, and the employer's procedural requirements for taking that kind of leave are less stringent than the requirements of FMLA (e.g., notice or certification requirements), only the less stringent requirements may be imposed. An employee who complies with an employer's less stringent leave plan requirements in such cases may not have leave for an FMLA purpose delayed or denied on the grounds that the employee has not complied with stricter requirements of FMLA. However, where accrued paid vacation or personal leave is substituted for unpaid FMLA leave for a serious health condition, an employee may be required to comply with any less stringent medical certification requirements of the employer's sick leave program.

The Unions argue that: (i) the Postal Service concedes that FMLA certifications require more information than the Postal Service requires under ELM 513.362, so that the former must satisfy the latter; (ii) the Postal Service has articulated no reason why the FMLA certification does not suffice to satisfy ELM 513.362; (iii) the Postal Service cannot require both FMLA certification and ELM documentation for absences in excess of three days; and (iv) the Postal Service's policy is inequitable in imposing different documentation requirements on two employees with identical conditions and approved FMLA certifications just because the length or pay status of leave they use is different.

Contrary to the Unions' position, the Postal Service has articulated a reason for requiring documentation under ELM

513.362 even where an employee has provided an approved FMLA certification indicating a need for intermittent leave. If the absence exceeds three days, the Postal Service seeks medical documentation that the employee actually was incapacitated from working on those specific days. Even if the earlier FMLA certification includes more information about the employee's condition and its incapacitating effect, it establishes only a need for intermittent leave in the future. It does not, and cannot, by itself certify that any particular subsequent absence actually is attributable to that condition, rather than to some other reason which may not justify granting the requested leave.

The FMLA requires the employer, subject to certain exceptions, to accept certification of the need for intermittent leave as sufficient documentation for unpaid FMLA leave. The Postal Service has complied with the FMLA in that respect. The FMLA, however, does not require the employer to accept that certification for paid leave, if -- as is the case here -- the employer's uniform policy requires different documentation for paid leave.

As I read Section 825.207 of the DOL regulations, the fact that an employee already may have provided acceptable FMLA certification that would entitle the employee to unpaid FMLA leave does not preclude the employer from requiring an employee who elects to substitute paid leave to comply with the employer's own medical certification requirements, whether they are more or less stringent than the FMLA requirements.

It is true, as the Unions assert, that two postal employees with identical conditions and approved FMLA certifications may be subject to different requirements depending on the length of their absence or their pay status during the absence. The Unions claim this is inequitable, but postal employees long have been subject to different medical documentation requirements depending on whether their absence is or is not in excess of three days, and that has not been -- and cannot be -- deemed inequitable. As to pay status, as the APWU itself pointed out, the ELM -- absent the FMLA -- imposes the documentation requirements in 513.362 on employees requesting leave without pay as well as those requesting paid leave. The FMLA precludes the Postal Service from imposing its own leave requirements that are above and beyond those in the FMLA for unpaid FMLA leave. The FMLA, however, specifically permits the Postal Service to continue to impose its own different requirements for paid leave. While the Unions can seek agreement to change those requirements, they do not violate the law, the National Agreement or existing postal regulations.

The documents presented by the APWU to supports its claim that the Postal Service's current requirement contradicts the policy it expressed to the APWU when the FMLA was first implemented (APWU Exhibits 12, 13 and 14) do not address the requirements for paid leave when the employee seeks to substitute paid leave for unpaid FMLA leave. The evidence also does not establish that the Postal Service has varied or changed the manner in which ELM 513.362 has been applied in those circumstances.

In sum, the Unions' contention that the protested Postal Service paid leave documentation policy is improper and impermissible under the National Agreement must be rejected.

AWARD

The three issues raised in this case are resolved as follows:

Nature of Illness

In applying ELM 513.332 in the context of the RMD process, ACS's may ask questions necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury or for a condition which requires ELM 865 return-to-work procedures, in a manner consistent with the Findings in this decision, but may not otherwise require employees to describe the nature of their illness/injury.

FMLA Second and Third Opinion Process

The Postal Service's current process for initiating FMLA review by a third health care provider, at issue in this case, is not consistent with the FMLA or with ELM 515.1 and 515.54, and implementation of that process violates Articles 5 and 10.2.A of the National Agreement. The Postal Service is directed to rescind that process.

FMLA Paid Leave Documentation

The Unions' contention that the protested Postal Service paid leave documentation policy is improper and impermissible under the National Agreement is rejected.

Shyam Das, Arbitrator

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: C06M-1C-C 10158799
Dennis Ayers
Warrendale, Pa 15095-1000

Dear John:

I recently met with your representative, TJ Branch, to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether arbitrators have the authority to interpret and apply statutory law, including the Family and Medical Leave Act.

After full discussion the parties agree to remand the grievance to Step 3 for further discussion to include Arbitrator Nolan's award in grievance Q98N-4Q-C 01090839 dated April 28, 2002. If the parties are unable to resolve the grievance the provisions of the Memorandum of Understanding, Step 4 Procedures will apply.

Accordingly, we agree to remand this grievance to Step 3 for further processing and/or regional arbitration if necessary.

Time limits at this level were extended by mutual consent.

Sincerely,

Michele Ditchey
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 2/12/13

John F. Hegarty, National President
National Postal Mail Handlers Union
Union, AFL-CIO

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

08687.pdf
D.NOLAN:APRIL28,2002
ARBITRABLE:NALC/NPMHU
********** 01090839:NATIONAL

In the Matter of the National Arbitration Between

UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	**Q98N-4Q-C01090839**
	)	**Publication 71**
	)	**Arbitrability**
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION (Intervenor)	)	

****

Before: Dennis R. Nolan, Arbitrator, USC Law School, Columbia, SC 29208-0001.

Appearances:

For the Employer:	Larissa Omelchenko Taran, Attorney, USPS, Washington, DC.
For the NALC:	Thomas N. Ciantra, Cohen, Weiss and Simon, LLP, New York, NY.
For the NPMHU:	Page Kennedy, Bredhoff & Kaiser, P.L.L.C., Washington, DC.
Place of Hearing:	Washington, D.C.
Date of Hearing:	October 5, 2001
Date of Award:	April 28, 2002
Relevant Contract Provision(s):	Articles 3, 5, 10 (Section 5), and 19
Contract Year:	1998-2001
Type of Grievance:	Contract Interpretation
Award Summary:	The dispute is arbitrable.

Dennis R. Nolan, Arbitrator

OPINION

I. Statement of the Case

The NALC filed this Article 19 appeal on February 8, 2001 to challenge certain revisions made by USPS to Publication 71. The parties could not resolve the dispute in the grievance process, so the NALC demanded arbitration. The National Postal Mail Handlers Union (NPMHU) eventually intervened. The first scheduled hearing date, in Washington, DC on October 5, 2001, was devoted to arguments about arbitrability. All parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence. Because the arguments on the arbitrability dispute were too complex to resolve from the bench, all parties filed lengthy post-hearing briefs, the last of which arrived on April 10, 2002.

The Postal Service claimed that the NALC had not raised the issue of whether the revisions conflicted with ELM 513.36 in the earlier steps of the grievance procedure. It therefore argued that the NALC could not do so at the arbitration hearing. The NALC disputed that assertion. Unlike the other arbitrability objections, which are purely interpretive matters, this raised a factual dispute. After some discussion on how best to proceed, the parties agreed that the Postal Service, as the objecting party, could request a second hearing to receive evidence about the arguments raised below (Tr. 99). In due course, the Postal Service notified me that there would be no hearing but neither the Employer nor NALC explained why. Each now blames the other and seeks to profit from the lack of evidence in the record. The Postal Service's brief asserts (at page 16) that the NALC "canceled the hearing" and concludes that the Employer's objection is therefore unrebutted and "establishes a procedural defect in the Union's Article 19 appeal." The NALC's brief asserts (page 2) that the Postal Service "abandoned its claim that the NALC failed to raise" the alleged conflict.

II. Statement of the Facts

Late in 2000, the Postal Service informed postal unions and others that it proposed to revise Publication 71, *Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act*. After some discussions with unions and the Department of Labor's Wage and Hour Division, it issued the final version on February 6, 2001. Two days later, the NALC filed this Article 19 appeal. That appeal concisely states the NALC's objections by alleging that Publication 71 revisions dealing with an employee's documentation of the reason for an absence conflict with Articles 5 and 19 of the National Agreement, with EL-311, Personnel Operations, and with the Family and Medical Leave Act (FMLA) itself.

Because this phase of the arbitration deals only with arbitrability, it is unnecessary to discuss the NALC's objections in detail. Briefly, though, the NALC alleges that the new version of Publication 71 could result in denial of leave when an employee fails to provide specified documentation while ELM 513.36 requires documentation for short-term absences "only when the employee is on restricted sick leave or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service." In practice, it argues, that provision has long allowed employees to take leave of three days or less for a medical condition without having to

provide documentation unless the Postal Service has a reasonable factual basis for questioning the employee's absence. It proffers that evidence in a hearing on the merits would show that the Postal Service has reversed that practice since it issued the revised Publication 71 and now requires documentation for short-term absences even where there is no reason to doubt the employee's reason for requesting leave.

III. The Issue

Is this Article 19 appeal arbitrable?

IV. Pertinent Authorities

1998-2001 AGREEMENT

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations: . . . .

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.

ARTICLE 10
LEAVE

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.

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. . . .

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. . . .

EMPLOYEE AND LABOR RELATIONS MANUAL (2000)

513.36 **Sick Leave Documentation Requirements**

513.361 **Three Days or Less**

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

513.362 **Over Three Days**

For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work or of need to care for a family member and, if requested, substantiation of the family relationship.

515 Absence for Family Care or Serious Health Condition of Employee

515.1 Purpose of 515. This section provides policies to comply with the Family and Medical Leave Act of 1993. Nothing in this section is intended to limit employees' rights or benefits

available under other current policies (see 511, 512, 513, 514), or collective bargaining agreements. . . .

515.55 Employee Incapacitation. An employee requesting time off under this section because of his or her own incapacitation must satisfy the documentation requirements for sick leave in 513.31 through 513.38 or for leave without pay in 514.4. If absence exceeds 21 calendar days, evidence of ability to return to work with or without limitations must be submitted. If additional medical opinions are required, they are administered as described in 515.54.

PUBLICATION 71 (2001 Revision)

IV. Documentation on Request for Absence

Supporting documentation is required for your absence request to receive final approval. Documentation requirements may be waived in specific cases by your supervisor. *However, failure to provide requested documentation could result in a denial of FMLA-protected leave.*

V. The Parties' Positions on Arbitrability

A. The Postal Service

1. The Postal Service's first argument against arbitrability is that the Article 19 appeal is procedurally flawed.

(a) According to the Employer, Publication 71 is not a handbook, manual, or regulation as Article 19 uses those terms. It is, rather, only a document required by the FMLA to provide individual notice to employees of the FMLA's provisions. It is, in other words, part of the FMLA statutory framework, not of the collective bargaining framework. The Postal Service relies an award by Arbitrator Howard Gamser, H8C-NA-C 61 (December 27, 1982). In that decisions, the arbitrator found that a document issued by the Postal Service (EL-501) was not a handbook, manual, or regulation because it did not attempt to alter the ELM's leave regulations. Publication 71 stands in the same situation.

(b) The Postal Service made no substantive "change" to Publication 71 2001. It simply reorganized and repeated certain language. To support an Article 19 appeal there must be a significant change in one of the listed types of documents. Contrary to the Unions' assertions, an alleged change in Postal Service practice is insufficient to justify an Article 19 appeal.

(c) The main issue raised at the hearing by the NALC, an alleged conflict between Publication 71 and ELM 513.361, was not raised in previous proceedings. The NALC's cancellation of a planned hearing to receive evidence of prior discussions demonstrates its inability to prove that the parties had discussed the issue below.

(d) Finally, the appeal is time barred. Article 19 allows a union to demand arbitration within 60 days of receiving notice of a proposed changed. Here, both Publication 71 and the ELM provisions had been in effect at least since 1994, yet the Union did not file its appeal until early in 2001.

2. The Postal Service's second argument is that the core of the Union's case would require interpretation of the FMLA and its implementing regulations. That, it claims, is beyond the authority of an arbitrator. Relying on a 1983 decision by Arbitrator Richard Bloch, the Postal Service asserts that an arbitrator may only interpret collective bargaining agreements. Responding to the Unions' anticipated arguments that the Agreement's provisions are closely related to those of the statutes and that arbitrators routinely resolve FMLA disputes, it draws a distinction between *interpreting* a statute and *applying* it. Arbitrators may do the latter but not the former. Another postal union, the APWU, has sued the Postal Service over its changes in Publication 71. That suit demonstrates that the dispute is a legal one that belongs in court.

B. The NALC

1. The NALC begins by addressing the Postal Service's argument that an arbitrator may not interpret statutes and regulations. Even if this case turned on construction of the FMLA, it argues, it would still be arbitrable. The Agreement itself (Article 5) obliges the Employer not to take any actions affecting terms or employment that are "inconsistent with its obligations under law." Similarly, Article 3 on management rights limits the Employer to actions that are "consistent with applicable laws and regulations." Postal Service arbitrators have consistently interpreted laws, including the FMLA, when necessary to resolve grievances. Moreover, the Postal Service itself admitted that authority in settling at the national level Case No. F94N-4F-C 96032816 (P. Whitley). A settlement agreement in May of 1998 provided that "pursuant to Article 3, grievances are properly brought when management's actions are inconsistent with applicable laws and regulations."

2. The NALC then turns to the argument that Publication 71 is not a handbook, manual, or regulation within the meaning of Article 19. Even by a simple dictionary definition it is a "regulation" because it is "an authoritative rule dealing with details or procedure." The "details or procedures" at issue govern documentation requirements under ELM 515. ELM 515 does not itself set out documentation requirements; rather, it refers the employee back to the notice that is Publication 71. Form letters later issued by the Postal Service make this clear. They expressly direct the employee seeking leave to provide documentation pursuant to Section IV of Publication 71.

3. Third, the NALC argues that the changes in the 2001 version of Publication 71 were material modifications. In particular, the earlier version of the publication simply said that documentation was required before a leave request could receive final approval; the revision emphasizes that leave requests are governed by Publication 71's documentation requirements rather than by those of the ELM. That shift in emphasis is confirmed by the Postal Services' new practice of distributing Publication 71 as the official statement concerning necessary

documentation and by the Employer's new insistence on documentation even for short-term absences.

C. The NPMHU

Many of the NPMHU's arguments track those of the NALC and thus need not be repeated. It emphasizes the regulatory nature of Publication 71's documentation section by noting that it includes repeated mandates — that is, it requires employees to provide certain carefully detailed information. The publication is not merely a "derivative" document because no other Postal Service document contains those requirements. As a "rule or order that directs employee behavior," Publication 71 is a "regulation" under any reasonable meaning of that word. In the case decided by Arbitrator Gamser on which the Postal Service relies, the Employer disclaimed any intent to alter existing regulations or to change employee behavior. Here, in contrast, the Postal Service declined to make such a statement.

The NPMHU's other main point is that Postal Service arbitrators may interpret laws and regulations when necessary to resolve grievances. It notes that the issue in this case is not whether Publication 71 violates the FMLA but whether it conflicts with the ELM. Even if interpretation of the FMLA were required, an arbitrator can do so because the Agreement incorporates statutory or decisional law.

VI. Discussion

Although the issue in this proceeding is extremely narrow, the parties take it very seriously. Their submissions on arbitrability alone occupy 100 pages of a hearing transcript, three and a half inches worth of exhibits, 62 pages of briefs, plus assorted attached arbitration awards. Careful digestion of this mass of material reveals five disputed questions, which I will address in turn.

A. Is Publication 71 a handbook, manual, or regulation?

Article 19 permits the NALC to challenge changes in "handbooks, manuals and published regulations of the Postal Service." Both Unions rely on the last of those terms, asserting that Publication 71's documentation section is a "regulation." The Agreement does not define that term, so we have to assume the parties intended it to have its normal meaning as a general rule intended to direct behavior.

The Postal Service describes Publication 71 as simply "a document required by the FMLA to satisfy the individual notice requirements of that statute." It may indeed be that, but a notification required by a statute can also function as a general rule to direct employee behavior. The two, in short, are not mutually exclusive. Whether a notice serves that second function obviously depends on the facts of the case.

In this regard, the Employer's reliance on the Gamser award is misplaced. The EL-501 at issue in that case was simply a guide for supervisors, not for bargaining unit employees. Even though it looked like a handbook, was submitted to the Union as if it were a handbook, bore a handbook number, and was referred to by the Employer as a handbook, the Postal Service's cover letter specifically disclaimed any attempt to "alter existing Postal Service regulations." After noting the Postal Service's ambiguity as to whether EL-501 was an "authority" for interpreting the Agreement, Arbitrator Gamser said that the Employer could not have it both ways. Either EL-501 was an "internal management communication to supervisory and managerial personnel, outside the bargaining unit" or it was a separate "authority" on which management could rely. He relied on the Employer's disclaimer and directed it to "promulgate an official document" stating that EL-501 was not to be regarded "as a handbook having the force and effect of such a document issued pursuant to Article 19."

Publication 71, in contrast, did not come with a disclaimer of regulator force. In fact, the Postal Service expressly declined at the arbitration hearing to stipulate that the document was not intended to change existing rules. Moreover, Publication 71 goes to employees rather than just to their supervisors. It thus cannot be a simple "internal management communication." Finally, Publication 71 contains specific directions that employees must follow in order to obtain FMLA leave.

In sum, Publication 71 clearly meets the normal definition of a regulation and is therefore subject to an Article 19 appeal.

B. Did the 2001 Revision of Publication 71 Amount to a Material Change in that Document?

Article 19 permits appeals of "proposed changes that directly relate to wages, hours or working conditions." In the absence of any special contractual definition, "changes" must be given its normal meaning. We can safely assume that the parties used that word to apply to *material* changes; reissuance of an old document with a new typeface, correction of typographical errors, or changes in organization that have no practical effect would not give the Union an occasion for revisiting dormant complaints.

As to whether the 2001 revision constituted a material change, the evidence is limited. There were some wording changes but none of them flagrantly modifies an existing rule. To some extent, however, the Postal Service's objection begs the critical question. Even a small change in wording might have large practical consequences. If the union challenging a revision makes a plausible argument that the new words affect terms of employment, then the question of whether it is correct goes to the merits of the dispute, not to its arbitrability. To put it differently, the "change" hurdle in Article 19 is a very low one.

The heart of the NALC's objection involves one sentence the Postal Service added in 2001 to the beginning of Section IV of Publication 71: "*However, failure to provide requested documentation could result in a denial of FMLA-protected leave*" (emphasis in the original). On

one hand, that sentence is extremely similar to language contained in both the 1997 and 2001 introductory paragraphs: "Failure to provide such notice or documentation could result in denial of leave or other protections afforded under the Act." Putting old language in a different place or repeating it in two or more places normally would not amount to a material change. On the other hand, in rare cases location or frequency of wording may matter especially if (as here) the new words differ from the old ones.

The 2001 changes in Publication 71 initially seem minor and may well have no practical effect. Nevertheless, they are just important enough that the Unions should have the opportunity to demonstrate their impact in a hearing on the merits.

C. Is the Grievance Timely?

The Postal Service's timeliness objection piggybacks on its assertion that the 2001 version of Publication 71 merely carried forward the changes made in 1994 and 1997. If it did so, then obviously an appeal in 2001 would be far too late. Having found that the Unions cleared the "change" hurdle, I must also find that the challenge to the changes is timely. That the Unions may not have shown daylight when clearing that hurdle does not affect the timeliness of their jump.

D. Did the NALC Raise the Claim of a Conflict Between the Revised Publication 71 and ELM 513.36 Earlier in the Grievance Procedure?

I assume simply for the sake of argument that a union processing an Article 19 appeal must raise all issues before reaching the arbitration step. The next question is which party bears the burden of proof on that point once the Employer raises an arbitrability objection. Must the Postal Service must prove the Union's failure to raise the issue earlier, or must the Union prove that it did so? That somewhat abstract question is critical here because the record contains no evidence on either side of the issue. The allocation of the burden of proof will therefore decide the matter.

An arbitrability objection is a form of affirmative defense. Accordingly, the party raising the objection must prove its assertion. That is true whether the arbitrability dispute is substantive or (as here) procedural. A party claiming that the Agreement does not apply to the grievance must show that it does not. A party claiming that the grievance is untimely must show that it was filed after the appropriate deadline. Similarly, a party claiming that a particular issue had not been raised earlier must show that was the case. The Postal Service failed to do so. The record contains only a bare assertion contained in its counsel's opening statement.

By failing to present any evidence on the parties' earlier discussions, the Postal Service waived its opportunity to prevail on this basis. Whether or not the Union previously discussed the alleged conflict with ELM 513.36, it is not barred from doing so now.

E. May an Arbitrator Interpret a Statute and Its Implementing Regulations?

Before the middle 1960s, it was rare for a party to raise a legal issue in labor arbitration. Parties understandably assumed that the purpose of arbitration was solely to interpret or apply the collective bargaining agreement. Certain language in Supreme Court opinions seemed to support that understanding. Once Congress began to regulate employment relationships more carefully, though, the separation of "legal" and "contractual" questions became harder to maintain. Scholars, arbitrators, and advocates began a long-lasting debate about whether labor arbitrators could or should apply external law when resolving contractual grievances.[1]

To the extent that those debates produced a consensus, it was that arbitrators could not rely *solely* on the dictates of external law. More generally, most arbitrators shied away from legal questions if they could solve the case at hand in some other way. Many added comments to the effect that an arbitrator's proper role was simply to interpret the applicable contract. Usually, though, they reserved the possibility that external law might be applicable in an appropriate case.

Writing while those debates were fresh in mind, distinguished Postal Service arbitrators (who were, not incidentally, often leading members of the National Academy of Arbitrators) followed that pattern. In a 1982 APWU case (H8C-4A-C-11834), Arbitrator Ben Aaron wrote that "the arbitrator's function is to interpret and apply the Agreement." In "the circumstances of this case," he said, "there is not necessity to look to the external law." The clear implication of his last statement was that in some other cases there might be such a necessity. Similarly, in a 1983 Federation of Postal Police Officers case (FPSP-NAT-81-006), Arbitrator Richard Bloch held that "a claim premised solely upon the Fair Labor Standards Act would be outside the Arbitrator's jurisdiction." His addition of the adverb "solely" indicates that an arbitrator might have jurisdiction over a "mixed" case involving both statutory and contractual issues.

As the years passed and arbitrators more frequently faced legal issues, it became apparent that there were some undeniable holes in the wall of separation between "law" and "contract." One obvious exception to the general rule is that parties who incorporate external law in their contract, either expressly or by paraphrase, necessarily expect their arbitrators to interpret and apply the incorporated law. That may sometimes require examination of implementing regulations and relevant judicial precedent.

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[1] See, for example, Bernard Meltzer, Ruminations About Ideology, Law, and Labor Arbitration, 20 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 1 (1967); Robert G. Howlett, The Arbitrator, the NLRB, and the Courts, 20 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 67 (1967); Richard Mittenthal, The Role of Law in Arbitration, 21 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 42 (1968); Michael I. Sovern, When Should Arbitrators Follow Federal Law?, 23 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 29 (1970); and Theodore J. St. Antoine, Judicial Review of Labor Arbitration Awards: A Second Look at *Enterprise Wheel* and Its Progeny, 30 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 29 (1977).

A second exception may be less obvious but is firmly established as a canon of contract interpretation. It is reasonable to assume that parties intend their agreements to be legal and legally enforceable. Given two interpretations of a disputed term, then, an arbitrator should adopt the one that is consistent with applicable law rather than the one that would be illegal. That exercise, too, might require examination of implementing regulations and relevant judicial precedent. A good example is a 1987 APWU case (H1C-NA-C 101) cited by the Postal Service on a different point. Arbitrator Dan Collins carefully examined the Rehabilitation Act, cases interpreting that Act, and the position of the EEOC regarding its meaning when deciding an Article 19 challenge. He concluded that the Postal Service did not violate Article 19, but reached that conclusion only after interpreting and applying external legal authority.

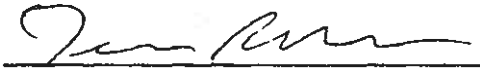
All of this is a roundabout way of reaching the Postal Service's objection that, because one NALC argument might require interpretation of the FMLA, the grievance is not arbitrable. In fact, neither Union's brief advanced the argument anticipated by the Postal Service. The mere possibility that the Unions might raise a legal issue in a hearing on the merits hardly suffices to bar them from arbitration. Nor does a pending suit on Publication 71 brought by the APWU demonstrate that court is the only place in which the FMLA may be of use. As the Supreme Court once held, it is quite possible to use the same legal arguments in different forums, arbitral and judicial. Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

The Postal Service's fall-back position, that an arbitrator may "apply" but may not "interpret" a law, relies on an impossible distinction. More often than not, it is necessary to interpret the law precisely in order to apply it; to put it simply, before one can apply a law, one must know what the law means.

I find that the presence or possibility of an argument involving external law does not make a case inarbitrable.

AWARD

For the reasons stated, none of the Postal Service's arbitrability objections is meritorious. The dispute is therefore arbitrable.



Dennis R. Nolan, Arbitrator and Mediator

April 28, 2002
Date

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

MAY 4TH 1988

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7C-NA-C 9
M. Biller
Washington, DC 20005

Gentlemen:

On February 9, 1988, David Cybulski and Charles Dudek met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who is on extended absence and wishes to continue eligibility for health and life insurance benefits, and those protections for which an employee may be eligible under Article 6 of the National Agreement may use sick leave and/or annual leave in conjunction with leave without pay (LWOP) prior to exhausting his/her leave balance.

During our discussions, we mutually agreed that an employee in the above circumstances may use sick leave and/or annual leave in conjunction with LWOP prior to exhausting his/her respective leave balance. In addition, this settlement does not limit management's prerogative to grant leave requests at its discretion according to normal leave approval procedures. Furthermore, the Employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

David P. Cybulski
Acting General Manager
Grievance & Arbitration
Division

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

5/4/88
DATED

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL POSTAL MAIL HANDLERS UNION
A DIVISION OF
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP In Lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent in this MOU is that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is where an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave when they reach the point where they may "exhaust" their leave benefits.

It was not the intent of this MOU to increase leave usage (i.e., approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore, the employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

This MOU does not impact Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods or increase leave usage. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. However, this option is available to an employee only if they are at the point of exhausting their annual leave balance and the employee must provide evidence of such to their supervisor at the time of the leave request (e.g., pay stub).

There is no priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve basis or other local procedure. This memorandum of understanding has

no effect on any existing leave approval policies or any other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks.

William Downes
Director, Office of Contract Administration
U.S. Postal Service

Glenn Berrien
President
National Postal Mail Handlers' Union, AFL-CIO

August 1, 1991
(Date)

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case No. B06M-1B-1 1135186
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	)	
	)	
	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Morgan E. Rehrig, Esq. Lucia R. Miras, Esq.
For the NPMHU:	Bruce R. Lerner, Esq. Tanaz Moghadam, Esq.

Place of Hearing:	Washington, D.C.
Dates of Hearing:	March 10, 2014
Date of Award:	September 26, 2014
Relevant Contract Provisions:	ELM Section 519.42 and Administrative Leave for Bone Marrow, Stem Cell, Blood Platelet and Organ Donations MOU
Contract Year:	2006 - 2011
Type of Grievance:	Contract Interpretation

Award Summary:

The grievance is denied as set forth in the above Findings.

Shyam Das, Arbitrator

The issue in this case is whether full-time regular mailer handler employees have the right to receive administrative leave in minimum 8-hour increments while donating blood platelets. The grievance was initially filed in 2010 on behalf of a mail handler in North Reading, Massachusetts where a supervisor refused to grant Grievant a full, 8-hour day of leave to donate blood platelets.

The Postal Service first began providing paid leave for whole blood donations in 1953. The blood donation policy was memorialized in the Employee and Labor Relations Manual (ELM) in 1978 and remained unchanged in subsequent editions. In July 2002, the Postal Service included a separate provision, Section 519.42, in the seventeenth edition of the ELM. This provision authorizes management to grant administrative leave to employees who donate bone marrow, stem cells, blood platelets, and organs.

The relevant provision of ELM Section 519.42 (hereinafter sometimes referred to as "the platelet provision") states:

> The maximum administrative leave that can be granted per leave year to cover qualification and donation is limited to the following:
>
> a. To a full-time career employee:
>
> (1) For bone marrow, 3 days.
> (2) For stem cells, 3 days.
> (3) For blood platelets, 3 days.
> (4) For organs, 14 days.

In 2006, during bargaining for their successor National Agreement, the APWU and the Postal Service negotiated a Memorandum of Understanding to increase the maximum leave from "3 days" to "7 days" for bone marrow, stem cell, and blood platelet donations and from "14 days" to "30 days" for organ donations. Later in 2006, the NPMHU asked for "the AWPU agreement" and the parties added a Memorandum of Understanding (the platelet MOU) concerning bone marrow, stem cell, blood platelet, and organ donation to the collective bargaining agreement. This platelet MOU states, in relevant part:

The parties agree the maximum administrative leave that can be granted per leave year to cover qualification and donation is limited to the following:

a. A full-time or part-time career employee is limited to:
   (1) for bone marrow, up to 7 days;
   (2) for stem cells, up to 7 days;
   (3) for blood platelets, up to 7 days;
   (4) for organs, up to 30 days.

The whole blood donation provision in ELM Section 510.25, which dates from 1978, reads as follows:

.25 Blood Donations

.251 Policy. All postal employees are urged to cooperate fully with the public blood donation programs for the health and security of their community. The time necessary includes the time required for travel and the time required by the medical facility to process the blood donation.

.252 Time Allowed

a. General Allowance. Postal employees may be excused for that period of time deemed reasonably necessary to cover any absence from regular tours of duty to make voluntary blood donations, without remuneration to the Red Cross, or the community, or other nonprofit blood bank. This regulation does not apply to those employees who participate in this program on their own time, off duty.

b. Additional Time. In the case of employees in occupations for which the blood bank recommends additional time off following the blood donation, the time necessary includes the additional time recommended by the blood bank. Every effort should be made to have blood donations for such employees scheduled near the end of their tour of duty.

.253 Restrictions.

The following provisions concern restrictions on time allowed for blood donations:

a. The time allowed may in no instance exceed 8 hours. A full day's administrative leave may only be granted when there are unusual circumstances such as in rural areas where considerable travel may be involved. It is not intended that a full day's administrative leave be granted any employee for donating blood when the blood bank or facility is nearby.

b. Administrative leave for blood donation may be granted during a regular tour of the employee's basic work week, but only on the date of the blood donation. It is not granted to employees on suspension or in any nonpay status.

UNION POSITION

The Union argues that the way the Postal Service incorporated donation of blood platelets into a new provision of the ELM, rather than adding it to the existing whole blood provision, shows that administrative leave for blood platelets was not intended to be treated the same as administrative leave for whole blood. The Union cites to the language in ELM Section 519.42 where leave time for donation is expressed in "days", not hourly increments, and argues that paid leave should be granted in days.

The Union points out that the federal government has a long history of encouraging federal employees to make medical donations by providing some kind of paid leave to cover donation time. The Union cites the discretion federal agencies have to set rules and regulations for providing paid leave for employees. For example, Army regulations provide authorized leave time for the time it takes to travel to and from blood donation centers and to give blood, as well as four hours of excused absence on the day of donation for recuperation purposes. Additionally, the Union contends that by amending Title 5 of the U.S. Code, which governs the terms and conditions of federal employment, in 1994 to provide paid leave for bone marrow and organ donations, and by passing the Organ Donor Leave Act in 1999, the federal government recognized that a key factor when encouraging medical donations was to ensure that employees had a sufficient amount of time to cover donation and recovery.[1]

[1] The Union notes that 5 U.S.C. §6327 provides for a specified number of "days" of leave for the covered medical donations, and 5 U.S.C. §6129 defines "day" as 8 hours.

The Union contends that despite the federal government's steps to encourage medical donations, the Postal Service initially explicitly prohibited administrative leave for bone marrow, stem cell, blood platelet, and organ donation. However, soon after this prohibition was included in the ELM, the Postal Service reversed its stance and decided to permit leave for such donations.

The Union argues that although the platelet provision, as augmented by the platelet MOU, provides for up to 7 days of leave for the donation of blood platelets, the Postal Service has refused to grant Grievant a full, 8-hour day of leave. The Union stresses that this practice serves to curtail the amount of leave provided to employees and limits their ability to give medical donations. The Union asks the arbitrator to include in his decision the Postal Service admission at the hearing that each day of the 7 days of leave referred to in the blood platelet donation MOU represents an 8-hour day, resulting in a 56-hour annual maximum of administrative leave for such donations. The Union explains that this admission is significant because some managers have been misapplying the provision to limit a day of leave to one donation, even where the amount of leave granted for the donation is less than 8 hours, which has reduced 7 days of leave to less than the 56-hour equivalent.

The Union argues that incorporating blood platelet donations in the creation of a new ELM provision with bone marrow, stem cell and organ donations -- all of which require at least one day -- shows that the Postal Service intended to treat blood platelet donations differently than donations of whole blood. The Postal Service notably did not add blood platelets to the already existing provision regarding whole blood donations. The Union contends that this shows that the Postal Service did not intend to limit each blood platelet donation to hourly increments of administrative leave, like it does with whole blood donations.

The Union interprets the plain language of the blood platelet provision to mean that the Postal Service took a completely different approach to blood platelet donations than to whole blood donations. For example, the Postal Service enumerated no discretionary standards or other factors, like it has in the whole blood provision, concerning the grant of administrative leave for blood platelet donation. The only unit of measure for blood platelets is a

certain number of days per leave year. The Union argues that the new donation policy was intended to provide for leave in days which is reflected in the types of medical procedures included in the policy, all of which it maintains require at least one day of leave.

The Union asserts that the Postal Service's arguments are unpersuasive and do not prove that it intended administrative leave for blood platelet donations to be granted only in hour-long increments. The Union questions the credibility of Postal Service witness Phillis Walden because she incorrectly said that blood platelets can be donated several times a week, while -- as the Postal Service acknowledges -- documents submitted from Memorial Sloan Kettering Cancer Center state that you can donate platelets only once a week. The Union argues that if the Postal Service actually intended to establish discretionary, hour-long increments for the donation of platelets, then it could have placed blood platelets in the whole blood donation section.

The Union also insists that even if the language of the platelet MOU is based on an identically worded MOU between the APWU and the Postal Service, it does not follow that the APWU's understanding of those terms control their meaning for the NPMHU. The Union argues that there is well-established precedent that identical language in two National Agreements may have different meanings.[2] The Union asserts that there is no evidence in the current dispute that the Union had a similar understanding of the blood platelet provision as the Postal Service purports that it had with the APWU. Additionally, bargaining unit members in the NPMHU and the APWU perform distinctly different job duties and the contexts in which employees from each union operate are vastly different. The Union stresses that mail handler craft work involves lifting heavy loads, operating heavy machinery, and engaging in other strenuous activities.

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[2] The Union cites Arbitrator Byars' 2008 award in an APWU case, No. Q98C-4Q-C 00062970, interpreting the APWU's agreement regarding the annual leave exchange option for PTF employees. The Union relies upon Byars' decision that even when contract language is identical, it does not necessarily follow that the unions were aware of or agreed to the identical application under their contract. Although one union and the Postal Service may have negotiated with a certain understanding, the contractual language may not convey such an understanding. As a consequence, the Union argues that the contract language controls and

The Union also argues that the practical realities of blood platelet donations necessitate that administrative leave be provided in one-day increments. Employees working in the mail handler craft require one day to make a blood platelet donation because of the time it takes to make the donation, to recuperate from the procedure and to travel to and from the donation center.

The apheresis process used for blood platelet donation, which is the same procedure used for stem cell donations, takes 2 to 2 1/2 hours to complete. The donation procedure for whole blood only takes 8 to 10 minutes, yet 4 hours is a common amount of leave time granted for blood donations. The Union points out that recuperation time for whole blood and blood platelet donation also is different. The Union asserts that whole blood donors are advised to drink fluids and limit exercise after making the donation, while blood platelet donors are advised to avoid heavy lifting or strenuous exercise that day. The Union argues that blood platelet donations necessitate at least one day of administrative leave for NPMHU members due to the strenuous nature of their work.

The Union notes that giving employees sufficient time for recuperation is a necessary part of a sound medical donation procedure and encourages employees to make a donation for the public good, which the platelet provision and MOU were intended to do. Limiting the amount of leave for blood platelet donors discourages, rather than encourages employee donations.

The Union also points out that blood platelet donation facilities are not as numerous as whole blood facilities. Therefore, employees donating blood platelets require a full day of administrative leave because they will, on average, have to travel a greater distance to the donation site.

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not the undisclosed intent of the other union during separate negotiations over a separate contract.

EMPLOYER POSITION

The Postal Service asserts that the platelet MOU language is clear that a supervisor is not required to grant 8 hours of administrative leave to an employee for each leave request. The Postal Service points out that the MOU language does not state a minimum amount of leave that a supervisor must grant. The Postal Service argues that the MOU contains clear, restrictive language that establishes a maximum amount of leave an employee may take during a leave year. More importantly, the Postal Service points out that the MOU does not contain any language that explicitly establishes a minimum amount of administrative leave that a supervisor must grant.

The Postal Service contends that its interpretation is consistent with the tenets of contract construction. The use of words establishing a maximum, and the absence of words establishing a minimum, is significant because the terms of the agreement are chosen in an effort to indicate intent. Essentially, the Postal Service argues that if the parties had intended to establish an 8-hour minimum, they would have included specific language to that effect in the MOU.

The Postal Service offered examples of employees who requested and were granted less than 8 hours of administrative leave for platelet donation as support for its argument that it has a past practice of granting less than 8 hours for donating platelets. Conversely, the Postal Service asserts that the Union offered no evidence or argument that there is a practice of granting a minimum of 8 hours for platelet donation.

The Postal Service argues that when it added the platelet provision to the ELM in 2002 it did not intend for leave to be taken in 8-hour increments for blood platelet donations. The Postal Service intended to grant employees' administrative leave consistent with the ELM's provision in which it states that administrative leave is a paid "absence from duty." Therefore, employees may receive paid leave for the number of hours that they are donating blood platelets, whether it is 3 hours or 6 hours. The Postal Service states that the process for donating blood platelets typically takes 1 ½ to 3 hours. The Postal Service disagrees with the

Union position that employees should get an automatic 8 hours of paid leave because that would give most employees additional hours beyond time needed to donate.

Phillis Walden, then a compensation specialist for the Postal Service, drafted the blood platelet ELM provision and was involved in taking steps to comply with Article 19 of the CBA.[3] Walden testified that the original 3-day maximum of administrative leave for platelet donations indicated a twenty-four hour aggregate maximum of leave per year. The blood platelet provision intentionally did not provide a minimum amount of time that must be granted.

The Postal Service argues that the updated platelet MOU that was signed in 2006 increased the maximum days from 3 to 7, but does not state a minimum amount of leave that supervisors must grant employees for donating platelets. The Postal Service points out that the NPMHU asked for the APWU agreement regarding blood platelets, accordingly, the parties did not negotiate over the MOU. The Postal Service asserts that supervisors currently grant administrative leave for blood platelet donations for the amount of time an employee needs to donate, which historically has ranged from approximately 1 ½ to 4 hours.

Allen Mohl, Manager of NPMHU Contract Administration for the Postal Service, testified that during the grievance process the parties reached out to the APWU to determine how it interprets its own MOU. A representative from APWU explained that the APWU understood the intent of the leave was to cover whatever time was necessary for the donation, rather than a guaranteed minimum. Although the Postal Service recognizes that the APWU's interpretation of its MOU is not controlling, it argues that it is highly persuasive and important because the MOUs are almost identical. Additionally, the NMPHU had the opportunity to clarify the meaning of the word "days" within its MOU in 2006.

The Postal Service points out that even the Union concedes that §§ 6129 and 6327 of Title 5 of the U.S. Code, cited by the Union, do not apply to the Postal Service. The

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[3] Article 19 of the CBA states that the Postal Service must give the Union notice of any changes to handbooks, manuals, and published regulations that directly relate to wages, hours, or working conditions sixty days prior to issuance.

Postal Service argues that those provisions are irrelevant to this dispute. Furthermore, even if the statutes were controlling, the sections, read together, do not show that a reference to "days" means that leave must be taken and granted in 8-hour increments. There is no evidence that either section of the Code referenced by the Union was aimed at or intended to create an 8-hour minimum for granted leave. Accordingly, the Union's argument should be rejected.

The Postal Service contends that the Union incorrectly argues that because the administrative leave maximum of 7 days for donating blood platelets and stem cells appear in the same ELM provision, the intent of the provision was to grant a minimum of a full day of administrative leave for donating platelets. Additionally, the Union incorrectly asserts that because both stem cells and blood platelets are donated using the apheresis process, the procedures are similar. The Postal Service argues that the Union's assertions are incorrect because the total time necessary to donate stem cells is much greater than the time required to donate platelets. Therefore, the Postal Service argues that it is reasonable to expect employees to take leave for donating platelets in any increment of 0.01 hours, as employees do for whole blood donations, and not in one eight-hour increment.

The Postal Service has authorized paid leave for whole blood donations for over sixty years and the ELM provision related to blood donation has appeared virtually unchanged in every edition of the ELM for over thirty-five years. The Postal Service argues that its decision to add four additional types of donations -- bone marrow, stem cell, blood platelet, and organ -- in a separate provision of the ELM in 2002 did not signify the sort of difference the Union is alleging with respect to how administrative leave was to be granted. Additionally, the Postal Service asserts that its interpretation of the platelet MOU encourages employees to donate blood platelets more often than if leave was required to be granted in minimum 8-hour increments.

FINDINGS

The wording of ELM Section 519.42, the platelet provision, differs from that in ELM Section 510.25 which covers whole blood donations. The latter does not specify the maximum administrative leave that can be granted per year, but does state that leave for a particular blood donation may not exceed 8 hours and that a full day of leave is to be granted only in unusual circumstances. The blood donation provision also specifically states that the allowed time should include the time needed to complete the donation procedure and to travel to and from the donation site. It also provides for inclusion of any recommended recuperation period based on occupation, but adds that: "Every effort should be made to have blood donations for such employees scheduled near the end of their tour of duty." These provisions in ELM 510.25 date back to 1978, and predecessor blood donation provisions had been included in postal regulations since the 1950s. When leave for additional types of medical donations was added in Section 519.42 of the ELM in 2002 -- sometime after provisions for granting leave to federal employees who made bone marrow and organ donations were included in Title 5 of the U.S. Code -- the Postal Service included such leave in a separate provision of the ELM. The platelet provision added in 2002 did not spell out the various components to be factored into the leave time to be granted for these donations as in ELM Section 510.25, but imposed annual maximums.

There is no question that some of the donations covered by the platelet provision in ELM Section 519.42, unlike whole blood donations, may require a minimum of one or more days of leave, but that has not been shown to be the case for donation of blood platelets.[4] The meaning of ELM Section 519.42 must be determined on the basis of the language used therein. I am not persuaded that by expressing the maximum amount of administrative leave to be granted for various donations in terms of "days" this provision of the ELM was intended by the Postal Service to establish that leave thereunder was to be granted in minimum 8-hour

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[4] Information on blood platelet donation published on the website of the American Red Cross states that the donation takes "approximately 1.5 to 2 hours." It further states: "After the donation you can resume your normal activities, avoiding heavy lifting or strenuous exercise that day." As the Postal Service points out, the American Red Cross likewise advises whole blood donors: "Do not do any heavy lifting or vigorous exercise for the rest of the day."

segments.[5] There also is no reason to believe that the wording of ELM Section 519.42, which applies across the Postal Service, was influenced by the strenuous nature of mail handler work -- which is not to say that a particular mail handler could not justifiably request leave that reflects the need for greater recuperative time than if that employee was performing more sedentary work, as also might be done for donating whole blood.

The Postal Service does not dispute that the maximum number of days of leave provided for in ELM 519.42, and subsequently in the platelet MOU, corresponds to the specified number of days multiplied by 8 hours. The expansion of the number of days of maximum annual administrative leave provided for in the platelet MOU does not change the meaning of "days" as established in the original 2002 ELM platelet provision. The parties simply agreed to adopt "the APWU agreement" increasing the number of days without further discussion. While the meaning of the NPMHU's platelet MOU is not necessarily controlled by how the APWU provisions have been interpreted or applied, the latter does not provide support for the Union's position in this case.

There is limited evidence in the record regarding how leave for blood platelet donations has been administered in the mail handler craft. The record in the underlying grievance includes an acknowledgement by the plant manager that: "Requests for blood platelet donations for the most part have been previously approved for eight (8) hours of administrative leave...." He added that he had reconsidered the matter in light of the position taken by the Postal Service at the National level. The Postal Service introduced evidence of

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[5] The parties agree that the provisions of 5 U.S.C. § 6129 and 6327, which preceded the Postal Service's adoption of the platelet provision in the ELM, do not apply to the Postal Service. Even if the use of "days" in ELM Section 519.42 may have been influenced by the wording of the statute, the definition of "day" as 8 hours in § 6129 does not equate to a minimum 8-hour requirement. The statute, like ELM Section 519.42, establishes maximum leave limits in terms of "days", and its definition of a "day" as being 8 hours, as the Union acknowledges, simply may reflect the fact that there are different federal work schedules -- some people work more or less hours or alternate schedules. It has not been shown to establish an 8-hour minimum for administrative leave for federal employees.

several mail handlers at other locations requesting and being granted leave of four hours or less. At best, the record shows a mixed practice and is of no real assistance in deciding the interpretive issue in this case.

If the Postal Service had wanted to designate a minimum amount of administrative leave it presumably would have specified that in ELM 519.42 in 2002 or the parties could have done so in the 2006 platelet MOU. Both clearly specify a maximum amount of administrative leave for the covered medical donations. Notably absent from the ELM provision and the platelet MOU is any reference to a minimum amount of administrative leave for such donations.

In sum, the Union has not established that the provisions in ELM Section 519.42 or the platelet MOU grant employees the right to a minimum 8 hours of administrative leave for each occasion on which they donate blood platelets, where that is not reasonably necessary in order to cover, in any particular case, the time needed to travel to and from the donation site, complete the donation procedure, and provide any necessary recuperative time.

AWARD

The grievance is denied as set forth in the above Findings.

Shyam Das, Arbitrator

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: Q00M-6Q-C 05099748
Q06M-6Q-C 11100872
CLASS
Washington, DC 20260-4100

I recently met with T.J. Branch to discuss the above-captioned grievances which are currently scheduled for national arbitration.

The issue in the above referenced grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 515, concerning the *Family and Medical Leave*, and Section 865, *Return to Duty after Medical Absences* are fair, reasonable and equitable.

After full discussion of this issue, we agree the Contract Interpretation Manual will be updated to clarify current ELM 515 language.

The current ELM 865 language does not negate management's obligation under the *MOU: Return to Duty* when returning an employee to duty after an absence for medical reasons.

The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve these cases thereby removing them from the national arbitration list.

Time limits at this level were extended by mutual consent.

Allen Mohl
Manager,
Contract Administration (NPMHU)
And Employee Workplace Programs

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 2-10-14

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

09749.pdf
S. DAS: APRIL 18, 2012
SUSTAINED: NPMHU
11001666/11008239: REGIONAL

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	Case Nos. Q06C-4Q-C 11001666 Q06C-4Q-C 11008239
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO - INTERVENOR	)	
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO - INTERVENOR	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Brian M. Reimer, Esquire
For the APWU:	Darryl J. Anderson, Esquire
For the NALC:	Keith E. Secular, Esquire
For the NPMHU:	Matthew Clash-Drexler, Esquire

Place of Hearing:	Washington, D.C.
Date of Hearing:	July 28, 2011
Date of Award:	April 18, 2012

Relevant Contract Provisions:	Articles 5, 10.2, 15 and 19, and Joint Contract Interpretation Manual
Contract Year:	2006-2010
Type of Grievance:	Contract Interpretation

Award Summary:

The issues raised in these two cases are resolved as set forth in the above Findings.

Shyam Das, Arbitrator

BACKGROUND

Q06C-4Q-C 11001666
Q06C-4Q-C 11008239

On July 6, 2010 the Postal Service sent an Article 19 notice to its unions informing them that it intended to revise certain regulations in Section 510 of the Employee and Labor Relations Manual (ELM) concerning the Family and Medical Leave Act of 1993 (FMLA), as amended. Among those revisions was a new requirement in ELM 515.52 that employees use only the Department of Labor (DOL) WH-380 forms when they seek to have their absences protected by the FMLA.

On October 4, 2010 the APWU filed an Article 19 appeal to arbitration protesting, in part, the proposed change to ELM 515.52. The Union submitted its 15-day statement of issues and facts on October 19, 2010. The Postal Service submitted its 15-day statement on October 18, 2010. As an initial matter, the Postal Service asserted that the Union's Article 19 appeal was procedurally defective because the Union had not first requested and attended a meeting concerning the proposed ELM changes.

On October 27, 2010, the APWU initiated a Step 4 national dispute under Article 15, in which it stated:

> It is the APWU's position, consistent with the Collective Bargaining Agreement, applicable Department of Labor (DOL) regulations, the parties' established accepted past practice (for over 15 years), and the mutual understanding and agreement between the parties at the national level, that: (1) employees are not required to use a specific format or form for FMLA certification; (2) employees may use APWU forms for FMLA certification, or any other format or forms that contain the information required under 29 CFR 825.306; and (3) the submission of FMLA certification using DOL WH-380 forms is optional.

The Postal Service and the APWU agreed to combine the Union's Article 19 appeal and its Article 15 grievance in a single arbitration proceeding. The NALC and the NPMHU are intervenors in this proceeding.

At arbitration, the Postal Service argued that the Article 19 appeal should be dismissed based on the APWU's failure to follow the requirement of Article 19. The Postal Service further maintained that the APWU cannot escape its failure to follow Article 19 by filing a subsequent

Article 15 grievance, and that grievance, accordingly, should be denied. On the merits, the Postal Service insisted that the challenged change to the ELM did not violate Article 19 or any other provision of the National Agreement. The Postal Service agreed not to seek bifurcation, with the understanding that the Arbitrator initially would rule on the arbitrability issue.

The FMLA first was enacted in 1993. Section 103(b), 29 USC §2613(b), sets forth the following certification provision:

> (b) SUFFICIENT CERTIFICATION.--Certification provided under subsection (a) shall be sufficient if it states
>
> (1) the date on which the serious health condition commenced;
>
> (2) the probable duration of the condition;
>
> (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
>
> (4)(A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and
> (B) for purposes of leave under section 102(a)(1))(D), a statement that the employee is unable to perform the functions of the position of the employee;
>
> (5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
>
> (6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
>
> (7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a

> statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

Current DOL regulations include the following, 29 CFR §825.306 (b):

> (b) DOL has developed two optional forms (Form WH-380E and Form WH-380F, as revised) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements.... These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Form WH-380E and WH-380F, as revised, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in §§825.306, 825.307, and 825.308. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.

The DOL Preamble to §825.306 (73 Fed. Reg. No. 222 [Nov. 17, 2008], at 68013) states:

> Current §825.306 addresses how much information an employer can obtain in the medical certification to substantiate the existence of a serious health condition (of the employee or a family member) and the employee's need for leave due to the condition. This section also explains that the Department provides an optional form (Form WH-380) for use in the medical certification process; other forms may be used, but they may only seek information related to the condition for which leave is sought, and no additional information beyond that contained in the WH-380 may be required....

In 1995, Headquarters Labor Relations managers sent memos to Human Resources Area Managers regarding documentation for FMLA requests. In one memo, Manager Anthony Vegliante stated:

> The attached APWU Forms 1 through 5, dated June 26, 1995 provide supporting documentation for leave requests covered by the Family and Medical Leave Act (FMLA). These forms have been reviewed by the appropriate Headquarters functional areas and are acceptable for usage by managers to approve or disapprove FML leave requests.
>
> The Postal Service does not require a specific format for FML documentation. Information provided by the employee is acceptable as long as it is in compliance with Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act IV, Section IV.

In another memo, Acting Manager Patricia Heath stated:

> The DOL WH-380 form does not require medical information that directly violates the employee's right to privacy. However, we realize health care providers may give more detail than requested on the form (i.e., prognosis and diagnosis) and that employees may not want to provide this information to their immediate supervisors. Therefore, to address the union's concern, the Postal Service reviewed and approved APWU and NALC FMLA forms that, when properly filled out by the health care providers, provide enough information is provided [sic] to certify that the absence qualifies as a covered condition under the FMLA.
>
> Employees do not need to use the WH-380 or the union forms, they only need to provide the required information as listed on Publication 71....

In 2000, the APWU initiated a Step 4 dispute over the implementation of Resource Management Database (RMD) software. In that case, the APWU asserted: "We believe that the Postal Service has implemented a new policy of requiring employees to only use a WH-380 form, a policy that is also contrary to an agreement between the parties concerning the use of such forms." The parties entered into a pre-arbitration settlement of that case on March 28, 2003, which states in part:

> Optional FMLA Forms: There is no required form or format for information submitted by an employee in support of an absence for a condition which may be protected under the Family and

> Medical Leave Act. Although the Postal Service sends employees the Department of Labor Form, WH-380, the APWU forms or any form or format which contains the required information (i.e. information such as that required on a current WH-380) is acceptable.

In June 2007, the parties included the RMD pre-arbitration settlement in the provisions of the USPS-APWU Joint Contract Interpretation Manual (JCIM) relating to Article 10, as well as the following statement:

> Documentation to substantiate FMLA is acceptable in any format, including a form created by the union, as long as it provides the information as required by the FMLA.

The October 2004 USPS-NPMHU Contract Interpretation Manual (CIM) also includes an equivalent provision to that in the 2003 USPS-APWU RMD settlement, citing that settlement as the source.

In revised regulations that took effect in January 2009, the DOL changed some of the FMLA certification requirements and modified its WH-380 forms. The APWU updated its FMLA certification forms and provided them to the Postal Service. The parties then engaged in a series of correspondence, in which the Postal Service raised concerns regarding the APWU's revised forms and expressed its view that they were not equivalent to the revised WH-380. The Postal Service did not, however, state that it would not accept certifications on APWU forms. Its position at that time was expressed as follows in a July 8, 2009 email from a Headquarters Labor Relations manager to Area managers:

> DOL Forms WH-380E and WH-380F are the preferred "Certification(s) of Health Care Provider." When properly completed, these forms provide all information necessary to determine if leave qualifies for FMLA. However, if you receive certification in any other form including forms provided by the unions, you cannot refuse the form. Accepting the union form does not indicate you accept the certification as complete. You must carefully examine the form received to ensure that it provides complete information, sufficient to establish a serious

> health condition. If one or more necessary entries are missing or incomplete, or if the certification is insufficient, you must notify the employee that the certification is incomplete or insufficient and give them the opportunity to cure the deficiency. You must specify in writing the additional information that is needed to make the certification complete and sufficient (WH-382, Designation Notice).

On July 6, 2010, the Postal Service issued its Article 19 notice that triggered the present disputes. The ELM change requiring that employees use only the WH-380 forms subsequently went into effect after the 60-day period provided for in Article 19.

Linda DeCarlo, Director of Health and Safety for the Postal Service, testified that it receives close to 250,000 leave requests for FMLA protection per year. After enactment of the FMLA in 1993, initially decisions as to whether to designate leave as FMLA protected leave were made by employee supervisors. That responsibility later was transferred to FMLA coordinators assigned at each Postal Service district office. DeCarlo said the Postal Service currently is in the process of centralizing decision making at a single location.

DeCarlo explained that the main reason for the ELM change in dispute was that mandatory use of the WH-380 was better for the employee. In addition, use of a uniform form allows the Postal Service to streamline its operation, which enhances its ability to issue timely decisions.

On cross-examination, DeCarlo said that if an employee brought in a statement from their physician that contained all the information required by the FMLA but not on a WH-380, the employee would be required to return to the doctor to have the information copied onto the WH-380. If that required additional payment, the employee would be responsible for it.

Margaret Adams, a Resource Management Specialist for the Postal Service, testified regarding a survey she conducted in late November 2010. She asked all the FMLA Coordinators to pull from their files any 50 FMLA certifications submitted on union forms and to determine the number of these forms which resulted in a cure or clarification request because

the information provided on the form either was incomplete or insufficient. This survey revealed that 57.14 percent of the total 3262 union forms reviewed were required cure or clarification.

Adams acknowledged that no equivalent survey was conducted regarding FMLA certifications submitted on WH-380 forms. Based on her visits to various District FMLA offices, quarterly telecons and other discussions with individual FMLA coordinators, she believed that use of the WH-380, especially in its new format (since 2009) has made a big difference. She estimated that less than 20 percent, and possibly many fewer, of the WH-380 forms result in a cure or clarification request.

Greg Bell, Executive Vice President of the APWU since November 2010, previously served as the Union's Director of Industrial Relations and oversaw FMLA issues. After the DOL's revised regulations took effect in 2009, he had discussions and corresponded with Postal Service Labor Relations managers regarding the APWU's revised FMLA certification forms. He testified that when that dialogue ended at the end of March 2010, the Postal Service had not asserted that the APWU forms would not be accepted or that the Postal Service would only accept WH-380s. In the ongoing correspondence, he added, he typically reiterated the Union's position regarding the optional aspect of the WH-380 and the Postal Service's obligation to specify any deficiencies in the information submitted by an employee on whatever form they used. He also noted that whenever the APWU headquarters heard from the field that an FMLA coordinator was not accepting APWU forms, the Union contacted the Postal Service and those issues were resolved.

Bell also testified that if the Union receives an Article 19 notice of an ELM change that it determines is a clear violation of the National Agreement, it typically exercises its discretion to file a Step 4 grievance under Article 15. He cited, as one of many such examples, a Step 4 dispute initiated in 2000 protesting a revision to ELM 510 as a violation of Article 10.

Relevant provisions of the National Agreement include the following:

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.

* * *

ARTICLE 10
LEAVE

* * *

Section 2. Leave Regulations

A. 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.

* * *

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

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.

* * *

Section 4. Grievance Procedure-General

* * *

D. It is agreed that in the event of dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated at the Step 4 level by either party. Such a dispute 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 either party....

* * *

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable....

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. The Employer shall furnish the Union with the following information about each proposed change: a narrative explanation of the purpose and impact on employees and any documentation concerning the proposed change from the manager(s) who requested the change addressing its purpose and effect. Proposed changes will be furnished to the Union by hard copy or, if available, by electronic file. At the request of the Union, the parties shall meet concerning such changes. If the Union requests a meeting concerning proposed changes, the meeting will be attended by manager(s) who are knowledgeable about the purpose of the proposed change and its impact on employees. 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 ninety (90) days after receipt of the notice of proposed change. Within fifteen (15) days after the issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues....

An MOU regarding the JCIM, included at page 328 of the National Agreement, states, in part: "The parties will be bound by these joint interpretations and grievances will not be filed asserting a position contrary to a joint interpretation." The preamble to the 2007 JCIM states:

> The 2007 APWU/USPS Joint Contract Interpretation Manual (JCIM) update is provided as a resource for the administration of the National Agreement. Jointly prepared by the American Postal Workers Union, AFL-CIO, and the United States Postal Service, this manual provides a mutually agreed to explanation on how to apply the contract to the issues addressed.
>
> When a dispute arises, the parties should first go to the JCIM to determine if the issue in dispute is addressed. If it is, the parties are required to resolve the dispute in accordance with this manual.
>
> The JCIM will continue to be updated with additional material as we continue to narrow our differences and expand our joint understanding of the National Agreement. We encourage you to use the JCIM to ensure contract compliance and to foster more professional working relationships.

EMPLOYER POSITION

Arbitrability

The Postal Service initially contends that the Union's Article 19 appeal should be dismissed because the Union did not request, much less attend, an Article 19 meeting before filing the appeal. Under Article 19, the Postal Service maintains, the Union can only file an appeal to arbitration after it has requested a meeting, attended a meeting and determined that it is not satisfied with the result of the meeting.

The Postal Service insists that an Article 19 meeting is not a mere technicality. It points out that it was the APWU that insisted on the language that requires "manager(s) who are knowledgeable about the purpose of the proposed change" to attend the meeting. In this case, the Postal Service asserts, an Article 19 meeting would have given the APWU the opportunity to discuss an argument it first raised at the arbitration hearing that the Postal Service violated

Article 10 when it made the protested change to the ELM. The Postal Service had never heard this argument before, and this is the very type of harm that an Article 19 meeting should prevent. The Postal Service cites Case No. H7C-NA-C 10 (Snow, 1989) in support of its position.

The Postal Service further argues that the APWU should not be allowed to escape its failure to follow Article 19 by raising a new dispute under Article 15. Otherwise, the requirements of Article 19 would be rendered meaningless because a union could always take such action. The Postal Service acknowledges that in Case No. HOC-3N-C 416 (1994) Arbitrator Snow allowed the Union to raise an argument in an Article 15 case that the Postal Service's interpretation of an ELM regulation violated language in the National Agreement, even though the ELM language had never been challenged. In the instant case, however, the National Agreement does not address requests for FMLA certification. That is a matter entirely dealt with by the Postal Service in its manuals and handbooks.

Merits

The Postal Service contends that the ELM change does not violate Article 19 or any other part of the National Agreement.

The Postal Service asserts that the APWU's claim, that the new policy requiring use of only the WH-380 forms violated Article 10.2.A, should be dismissed because it was raised for the first time at arbitration. The APWU's brief passing reference to violation of Article 10 in its Article 15 15-day statement of issues and facts did not reference what part of Article 10 allegedly had been violated or why Article 10 had been violated and was insufficient to put the Postal Service on notice that it was raising this issue.

Even assuming, however, that the APWU had properly raised this argument, the Postal Service maintains that Article 10.2.A does not apply to all changes in ELM Subchapter 510, but only those that relate directly to wages, hours and working conditions. The new policy requiring employees to use only the WH-380 was not a change directly relating to wages, hours

or working conditions, even though it was contained in a larger Article 19 notice that included some changes to wages, hours and working conditions. The new policy had no effect on wages paid to employees or hours that they worked. In addition, it had no effect on working conditions, as a WH-380 is filled out by the treating physician. The new policy does not change the burdens on the employee who seeks FMLA protection. Prior to the new policy, employees submitting an APWU form had to do just as much.

The Postal Service also rejects the APWU's argument that the change violates Article 5 because it allegedly violates the FMLA. To the contrary, the FMLA and its implementing regulations allow such a requirement. The DOL's regulations specifically empower employers, not employees, to decide what forms employees must use when they seek FMLA protection for their leave, so long as those forms do not ask for more information than what is printed on the WH-380. By choosing to require use of the WH-380, the Postal Service clearly is complying with the law. The Postal Service cites a federal district court decision in Miedema v. Facility Concession Services, 2011 WL 1363793 (S.D. Texas, April 11, 2001). It further asserts that federal courts have held that employers have the right to institute rules to carry out their responsibilities under the FMLA, so long as those rules do not infringe upon substantive rights or discourage use of the FMLA.

The Postal Service contends that the March 28, 2003 RMD pre-arbitration settlement relied on by the Union merely recited the then-current policy of allowing use of the APWU's forms and other forms deemed by the Postal Service to be equivalent to the DOL forms. The settlement did not give the APWU anything new, and the Postal Service did not waive its rights to make future changes that are fair, reasonable, and equitable under Article 19. See: Case No. Q98C-4Q-C 02013900 (Das, 2006). Likewise, the JCIM language also cited by the Union gave an accurate interpretation of the policy as it existed in June 2007, when this part of the JCIM was published. Obviously, the JCIM will need to be updated to reflect the new policy.

Finally, the Postal Service contends that the new policy requiring employees to use only the WH-380 form when they seek for their leave to be protected by the FMLA easily meets the test of being fair, reasonable, and equitable.

The WH-380 form is generated not by the Postal Service, but by the agency (DOL) entrusted with administering FMLA. As postal witness Adams testified, WH-380 forms require cure or clarification less than 20 percent of the time, whereas the Postal Service's survey indicates that union forms require cure or clarification more than 50 percent of the time. Decreasing the frequency of occasions when it is necessary to return forms to employees for cure or clarification should benefit employees, as they should have less need to spend time and money returning to their physicians, and will not have their FMLA entitlements delayed as often.

Mandatory use of the WH-380 also should save processing time for the Postal Service. As it moves to centralize its FMLA function, there are obvious benefits in using one standard form to cover the approximately 250,000 leave requests for FMLA protection that come in per year. Moreover, as Arbitrator Dennis Nolan pointed out, in a case where the same postal unions were challenging form letters that the Postal Service was using in FMLA-covered situations, the WH-380 is a "safe harbor" for employers. See: NALC Case No. Q98N-4Q-C 01167325 (2008).

UNION POSITION

Abitrability

The Union insists its Article 19 grievance is arbitrable. Under Article 19, only the Union, not the employer, has a right to request an Article 19 meeting. This is because the purpose of the meeting is to require the employer to inform the Union of the purpose and intended effect of the proposed change so the Union can determine whether there is a dispute and make an informed decision about whether to appeal to arbitration. It would be anomalous to give preclusive effect to the lack of a meeting when the employer has no right to request, much less to demand, a meeting, particularly when the parties -- as in this case -- have been engaged in an ongoing dialogue about the subject of the protested ELM change.

The Union notes that under Article 19 if it delays in requesting a meeting or does not request a meeting the Article 19 process is not slowed down. The employer has a right to

implement the proposed ELM change 60 days after notice has been provided and the Union must appeal within 90 days of receiving such notice. Moreover, even if there was a requirement that the Union request a meeting, the employer should be required to show that it has been prejudiced by the lack of a meeting, which it has not done in this case.

The Union argues that it would be particularly anomalous to find a strict requirement for an Article 19 meeting under the circumstances of this case. The parties' discussions and agreements about the use of the WH-380 began soon after the passage of the FMLA in 1993. Those discussions led to the 2003 RMD pre-arbitration settlement that required the employer to continue to accept and process FMLA certifications that did not use the WH-380. That settlement was then made part of the parties' JCIM. Moreover, as testified to by Union witness Bell, the requirement that the Postal Service accept and process forms other than WH-380 was routinely enforced by the Union and complied with by the Postal Service. After publication of the amended WH-380 forms in January 2009, the APWU amended its forms as well, and a lengthy correspondence then ensued in which the Postal Service and the Union debated whether the APWU forms were "equivalent" to the WH-380 forms. In each of the Union's letters in this correspondence the Union reminded the Postal Service that it could not require employees to use the WH-380 form.

In other words, the Union stresses, the Postal Service was perfectly well aware of the APWU's position on the issue, and a meeting to "discuss" the matter further would have been a mere formality that would not have served the purpose of Article 19 meetings or expediting the Article 19 process.

To the extent the Postal Service relies on Arbitrator Snow's decision in Case No. H7C-NA-C 10, the Union disagrees with his dictum that the failure of the Union to demand a meeting as if an Article 19 notice had been provided is material to the arbitrability of the Union's appeal to arbitration in that case.

The Union insists that the Postal Service was not prejudiced by a lack of an Article 19 meeting in this case. In its 15-day statement under Article 19, the Union argued that the

proposed changes were not fair, reasonable, and equitable and that they violated Articles 5, 10 and 19 of the National Agreement. In light of the long history of the parties on this issue it simply is not credible that Postal Service representatives were unaware of the fact that the APWU regularly files Article 10.2 grievances when the employer attempts to amend part 510 of the ELM. The JCIM provisions that specify that the employer will not require use of the WH-380 form both reference Article 10.

The Union also asserts that its Article 15 grievance is arbitrable. The employer seems to be arguing that because the Union also has the right to challenge the employer's new policy under Article 19, the Union's Article 15 grievance and arbitration rights are cut off. This contention is contrary to the language of Article 15 and completely unsupported by the language of Article 19. The purpose of Article 19 is not to permit the employer to change the contract. The fundamental purpose of Article 19 is to permit the employer to modify its handbooks and manuals and to permit the Union to challenge those modifications on the ground that they are not fair, reasonable, and equitable. The authors of Article 19 also provided, that the manuals "shall contain nothing that conflicts with this Agreement." This oblique statement gives the Union the right to challenge proposed handbook and manual provisions under Article 19 on the ground that they conflict with the National Agreement. But it says nothing about cutting off the right of the Union to file an Article 15 grievance challenging the violation of the National Agreement.

Article 10.2, the Union argues, unequivocally prohibits the employer from making changes in ELM subpart 510 that affect wages, hours, or working conditions. Thus a prohibited amendment of Subchapter 510 is not just "inconsistent" with the National Agreement, it is not permitted to be made part of the ELM. Article 10.2 can only be given its intended meaning if, when prohibited amendments of Subchapter 510 are attempted, the Union has a right to challenge those amendments, not just using Article 19 procedures, but also by filing an Article 15 grievance to enforce Article 10.2. As Bell testified, this is the Union's regular practice.

Merits

The Union contends that its Article 15 grievance must be sustained because the Postal Service has violated the 2003 RMD pre-arbitration settlement agreement, the JCIM, the parties' MOU concerning the JCIM, and Articles 5 and 10 of the National Agreement.

The Union notes that although the RMD settlement agreement, like the MS-47 settlement agreement at issue in Case No. Q98C-4Q-C 02013900 (Das, 2006), does not provide that the employer never can change its FMLA handbook on the subject of the WH-380, the parties' agreement did not stop with the settlement. They also placed that settlement in the JCIM, which is binding and permanent unless changed. By placing the RMD settlement in the JCIM, the parties also placed it under the aegis of the MOU on the effect of the JCIM.

The JCIM makes clear, the Union asserts, that documentation to substantiate FMLA is acceptable in any format, including a form created by the Union, as long as it provides the information required by the FMLA. Under the preamble to the JCIM and the parties' MOU, the provisions of the JCIM are binding on both parties.

The Union asserts that the FMLA and related DOL regulations make clear that the use of form WH-380 is intended to provide a "safe harbor" for employers that permits them to enforce the certification requirements of the law without violating FMLA and HIPAA provisions that prohibit the employer from demanding too much information or irrelevant information. The FMLA, however, does not permit the employer to require use of the WH-380 forms. Both the law and the DOL's explanatory information accompanying its regulations make clear that the Postal Service's requirement that employees use the WH-380 forms is inconsistent with the FMLA. Accordingly, the Postal Service's actions violated Article 5 of the National Agreement.

The Union also contends that the requirement that FMLA leave certifications be provided on a WH-380 form imposes a change in working conditions through a modification of ELM Subchapter 510 in violation of Article 10.2. Before July 6, 2010, the ELM permitted employees to use a WH-380 form or equivalent documentation. The consequence of failing to

use the WH-380 form since the protested ELM change is that FMLA protection for the leave in question is lost. At a minimum, this permits the employer to impose discipline for absences that are not the employee's fault and that would, but for the requirement that this specific form be used, be protected by the FMLA. It also hardly could be said that the right to submit FMLA qualifying information to the employer in a non-standard format is protected by federal law and regulations, but is not a significant working condition. At a minimum, many employees will suffer inconvenience and may incur substantial expense, if they do not have a WH-380 form for their medical provider to complete.

The Union contends that the disputed ELM change deprives employees of rights protected under the FMLA and its regulations, rescinds a settlement agreement that is incorporated into the JCIM, and violates the proscription of Article 10.2. As such, the change is not fair, reasonable, and equitable. In addition, required use of WH-380 forms means that employees who use any other form or who use no form, but provide all the necessary information for certification under the FMLA, nonetheless will have their request for FMLA leave rejected. To correct that problem they will have to spend their time and likely incur additional expense to obtain the protection of the statute. The required use of the WH-380 provides employees less choice and therefore less protection. The Union also stresses that the employer's evidence in support of its contention that the APWU's form too often must be returned for cure or clarification does not address the critical question "more often than what?" because the employer did not bother to "survey" the experience in using the WH-380, the revised APWU form, or a medical provider's narrative.

As remedy, the Union seeks an order directing the Postal Service to cease and desist from requiring employees to submit FMLA medical certifications using only the WH-380 forms.

FINDINGS

Arbitrability

After receiving notice of the proposed changes to ELM 510, the APWU filed a timely appeal to arbitration and subsequently provided a timely 15-day statement. The Union did not, however, request a meeting -- and no meeting was held -- prior to its arbitration appeal.

The wording of Article 19 does contemplate that such a meeting will take place. It states: "If the Union, after the meeting, believes the proposed changes violate the National Agreement..., it may then submit the issue to arbitration...." Moreover, the requirement that each party provide a statement of the "precise issues involved and the facts giving rise to such issues" strongly suggests that the parties assumed there would have been some prior discussion of those issues. There is no requirement, however, that the Union present its position at this meeting -- to be attended by manager(s) who are knowledgeable about "the purpose of the proposed change and its impact on employees" -- in advance of its decision to appeal to arbitration and submission of its 15-day statement.

In this particular case, the record leaves little doubt that the Union's position in opposition to the mandatory use of the WH-380 forms, including its reliance on Article 10, was or should have been known to the Postal Service at the time the Union submitted its Article 19 appeal to arbitration. Article 10 was cited by the Union in its 15-day statement in the RMD grievance which led to the 2003 pre-arbitration settlement that later formed the basis for the provisions in the 2007 JCIM which are identified as relating to Article 10. The Union's position regarding optional use of the WH-380 also was reiterated in the correspondence that preceded the Postal Service's Article 19 notice. Thus, it is difficult to see how the Postal Service was prejudiced by the lack of a meeting in this case. (Article 10 also is cited in the Union's 15-day statement in its Article 19 appeal.)[1]

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[1] This Article 19 15-day statement is mistakenly captioned "Article 15-15 Day Statement of Issues and Facts."

Ultimately, however, it is not necessary to rule on the issue of whether the Union's failure to request or attend a meeting precluded it from filing an Article 19 appeal challenging the ELM change in dispute. The Union also filed an Article 15 grievance asserting that the ELM change violated the National Agreement, including Articles 5, 10 and 19, and that it "is contrary to applicable regulations and law, and mutual understanding between the parties."

The Postal Service argues that if the Union's Article 19 appeal is precluded by its failure to properly follow the procedures in Article 19, then the Union should not be permitted to avoid the consequences of its failure by raising a new dispute under Article 15. In the Postal Service's view that would render the requirements of Article 19 meaningless. The Postal Service has cited no arbitral authority in support of this position. In Case No. HOC-3N-C 418 (Snow, 1994), the Postal Service argued that as a result of the Union's failure to object to rules promulgated under Article 19 fourteen years earlier, the Union forfeited its right to challenge the rules through "rights" arbitration. Arbitrator Snow noted: "It is not certain whether the parties ever intended Article 19 to have the sort of preclusive effect now asserted by the Employer." But he concluded there was no need in that case to resolve that "difficult question." In an earlier 1980 decision, Case No. N8-NA-0003, Arbitrator Gamser denied a grievance filed more than a year after the Postal Service gave Article XIX notice of changes in certain Handbooks. In the interim the parties had negotiated a new contract which readopted Article XIX without change, and Gamser concluded that by doing so the Unions agreed under Article XIX to continue in effect the terms of those Handbooks. In *dictum* he stated:

> If the Unions believed that the changes in the payroll computation contemplated by this Section [of the F-22 and F-21 Handbooks] were in conflict with the terms of the then existing National Agreement, particularly Article VIII-4-B, then a grievance should have been raised and processed to a resolution. If the contention of the Unions was that this change was neither fair, reasonable, nor equitable, a right to grieve also existed under the terms of Article XIX.

No broad pronouncements on the issue raised by the Postal Service are needed here. Even if the Union's Article 19 appeal in this case was deemed faulty, there can be no

reasonable claim that the APWU acquiesced in the protested ELM change. Its timely Article 19 appeal, even if defective, certainly put the Postal Service on notice as to the Union's position that the change violated the National Agreement, and the Union filed its Article 15 grievance within days after the Postal Service asserted its claim that the Union's Article 19 appeal was procedurally defective. On these particular facts, I am not persuaded that the Union should be barred from pursuing its Article 15 grievance, at least with respect to allegations that the change violated Articles 5 and 10 of the National Agreement. There is no necessity in this case to determine whether the Union -- having been given proper notice of the change -- could only raise a challenge that the change violates Article 19 because it is not fair, reasonable, and equitable in an Article 19 appeal, and not an Article 15 grievance.

Merits (Article 15 Grievance)

The issue here is not whether any of the Unions' forms -- which the Postal Service previously accepted if they contained the required information -- are valid, but whether the Postal Service may exclude any certification that is not on a WH-380, even if it satisfies the certification requirements set forth in Section 103(b) of the FMLA.

Article 10.2.A of the National Agreement provides that:

> A. 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.

The Postal Service maintains that the Union's Article 10 claim should be dismissed because it was raised for the first time at arbitration. The Postal Service, however, agreed to waive "any arguments it may have had regarding the lack of a Step 4 meeting, exchange of 15-day statements...." Moreover, as previously noted, the Union's reliance on Article 10 was or should have been known to the Postal Service at the time the Union submitted its Article 19 appeal to arbitration, and was included in its Article 19 15-day statement.

The Postal Service further argues that Article 10.2.A does not apply because the provisions of Subchapter 510 of the ELM that were changed do not "establish wages, hours and working conditions." That argument is not persuasive.

In its 15-day statement in the RMD grievance, the Union asserted the applicability of the provision in Article 10.2.A as part of its contentions. In the 2003 pre-arbitration settlement of that grievance the parties agreed that: "There is no required form or format for information submitted by an employee in support of an [FMLA protected] absence...." The parties subsequently included this agreement in the provisions of their JCIM relating to Article 10. As the JCIM Preamble makes clear: "this manual provides a mutually agreed to explanation on how to apply the contract to the issues addressed." (Emphasis added.) The Postal Service stresses that the form submitted by an employee is filled out by the health care provider, and argues that the new policy does not change the burdens on the employee who seeks FMLA protection. But, as a Headquarters Labor Relations manager recognized in 1995 -- shortly after the FMLA was enacted -- employees and their Unions have privacy concerns that may influence an employee's choice of form on which to submit an FMLA certification. Although the WH-380 provides the Postal Service a "safe harbor" -- so it cannot legally be challenged for privacy violation -- that does not negate an employee's interest in what information is provided by their health care provider, and, hence, what form is used. Moreover, the Postal Service's insistence that only WH-380 forms be used could have a negative effect on when, if not whether, FMLA leave is approved, cause additional inconvenience and expense to the employee, and possibly subject an employee to discipline for an unauthorized absence, even if the employee submits certification that meets the statutory requirements. In short, the ELM 510 provision that was changed established a working condition and, hence, was not subject to unilateral change by the Postal Service under Article 10.2.A.

Significantly, there has been no change in the FMLA or the related DOL regulations that would necessitate mandatory use of the WH-380. On the contrary, under current DOL regulations, use of the WH-380 by an employer is optional. Because unilaterally changing ELM 510 to mandate use of previously optional WH-380 forms violated Article 10.2.A of the National

Agreement and the JCIM, there is no need here to decide whether the Postal Service's action in requiring use of the WH-380 also violated the FMLA, as the Union contends.[2]

Accordingly, the Postal Service is directed to cease and desist from requiring employees to submit FMLA medical certifications using only the WH-380 forms.

AWARD

The issues raised in these two cases are resolved as set forth in the above Findings.

Shyam Das, Arbitrator

[2] The federal district court decision cited by the Postal Service does not, in my reading of that opinion, address this issue.

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Title 29: Labor

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Contents

AUTHORITY: 29 U.S.C. 2654; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114-74 at §701.

SOURCE: 78 FR 8902, Feb. 6, 2013, unless otherwise noted.

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Subpart A—Coverage Under the Family and Medical Leave Act

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§825.100 The Family and Medical Leave Act.

(a) The Family and Medical Leave Act of 1993, as amended, (FMLA or Act) allows eligible employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months (*see* §825.200(b)) because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty). In addition, eligible employees of a covered employer may take job-protected, unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 26 workweeks in a single 12-month period to care for a covered servicemember with a serious injury or illness. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employer may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's covered family member, the serious injury or illness of a covered servicemember, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employer generally has a right to advance notice from the employee. In addition, the employer may require an employee to submit certification to substantiate that the leave is due to the serious health condition of the employee or the employee's covered family member, due to the serious injury or illness of a covered servicemember, or because of a qualifying exigency. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employer may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (*see* §§825.312 and 825.313). The employer may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

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§825.101 Purpose of the Act.

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of a covered servicemember with a serious injury or illness, or because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. The Act is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the Act accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The FMLA was predicated on two fundamental concerns—the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships

will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

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§825.102 Definitions.

For purposes of this part:

Act or *FMLA* means the Family and Medical Leave Act of 1993, Public Law 103-3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 *et seq., as amended*).

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*, as amended).

Administrator means the Administrator of the Wage and Hour Division, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Airline flight crew employee means an airline flight crewmember or flight attendant as those terms are defined in regulations of the Federal Aviation Administration. *See also* §825.800(a).

Applicable monthly guarantee means:

(1) For an airline flight crew employee who is not on reserve status (line holder), the minimum number of hours for which an employer has agreed to *schedule* such employee for any given month; and

(2) For an airline flight crew employee who is on reserve status, the number of hours for which an employer has agreed to *pay* the employee for any given month. *See also* §825.801(b)(1).

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended (Pub. L. 99-272, title X, section 10002; 100 Stat 227; 29 U.S.C. 1161-1168).

Commerce and *industry or activity affecting commerce* mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce" as defined in sections 501(1) and 501(3) of the Labor Management Relations Act of 1947, 29 U.S.C. 142(1) and (3).

Contingency operation means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. *See also* §825.126(a)(2).

Continuing treatment by a health care provider means any one of the following:

(1) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(iii) The requirement in paragraphs (i) and (ii) of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

(iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(v) The term "extenuating circumstances" in paragraph (i) means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. *See also* §825.115(a)(5).

(2) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. *See also* §825.120.

(3) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (*e.g.,* asthma, diabetes, epilepsy, *etc.*).

(4) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(i) Restorative surgery after an accident or other injury; or

(ii) A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(6) Absences attributable to incapacity under paragraphs (2) or (3) of this definition qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Covered active duty or call to covered active duty status means:

(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,

(2) In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B). *See also* §825.126(a).

Covered servicemember means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* §825.127(b)(2).

Eligible employee means:

(1) An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence, except that an employer need not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of the employee, *unless:*

(i) The break in service is occasioned by the fulfillment of the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.,* covered service obligation (the period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by the employer, but this section does not provide any greater entitlement to the employee than would be available under the USERRA; or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service (e.g., for purposes of the employee furthering his or her education or for childrearing purposes); and

(2) Who, on the date on which any FMLA leave is to commence, has met the hours of service requirement by having been employed for at least 1,250 hours of service with such employer during the previous 12-month period, or for an airline flight crew employee, in the previous 12 months, having worked or been paid for not less than 60 percent of the applicable total monthly guarantee and having worked or been paid for not less than 504 hours, not counting personal commute time, or vacation, medical or sick leave (*see* §825.801(b)), *except that:*

(i) An employee returning from fulfilling his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining whether the employee met the hours of service requirement (accordingly, a person reemployed following absence from work due to or necessitated by USERRA-covered service has the hours that would have been worked for the employer (or, for an airline flight crew employee, would have been worked for or paid by the employer) added to any hours actually worked (or, for an airline flight crew employee, actually worked or paid) during the previous 12-month period to meet the hours of service requirement); and

(ii) To determine the hours that would have been worked (or, for an airline flight crew employee, would have been worked or paid) during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations; and

(3) Who is employed in any State of the United States, the District of Columbia or any Territories or possession of the United States.

(4) Excludes any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code.

(5) Excludes any employee of the United States House of Representatives or the United States Senate covered by the Congressional Accountability Act of 1995, 2 U.S.C. 1301.

(6) Excludes any employee who is employed at a worksite at which the employer employs fewer than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is also fewer than 50.

(7) Excludes any employee employed in any country other than the United States or any Territory or possession of the United States.

Employ means to suffer or permit to work.

Employee has the meaning given the same term as defined in section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), as follows:

(1) The term *employee* means any individual employed by an employer;

(2) In the case of an individual employed by a public agency, *employee* means—

(i) Any individual employed by the Government of the United States—

(A) As a civilian in the military departments (as defined in section 102 of Title 5, United States Code),

(B) In any executive agency (as defined in section 105 of Title 5, United States Code), excluding any Federal officer or employee covered under subchapter V of chapter 63 of Title 5, United States Code,

(C) In any unit of the legislative or judicial branch of the Government which has positions in the competitive service, excluding any employee of the United States House of Representatives or the United States Senate who is covered by the Congressional Accountability Act of 1995,

(D) In a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(ii) Any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

(iii) Any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(A) Who is not subject to the civil service laws of the State, political subdivision, or agency which employs the employee; and

(B) Who—

(1) Holds a public elective office of that State, political subdivision, or agency,

(2) Is selected by the holder of such an office to be a member of his personal staff,

(3) Is appointed by such an officeholder to serve on a policymaking level,

(4) Is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of the office of such officeholder, or

(5) Is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

Employee employed in an instructional capacity. See the definition of *Teacher* in this section.

Employer means any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and includes—

(1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;

(2) Any successor in interest of an employer; and

(3) Any public agency.

Employment benefits means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3). The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. *See also* §825.209(a).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*).

Group health plan means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees. For purposes of FMLA the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employer;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) The Act defines health care provider as:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Secretary to be capable of providing health care services.

(2) Others "capable of providing health care services" include only:

(i) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(ii) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(iii) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(iv) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(v) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(3) The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See the definition of *Teacher* in this section.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Invitational travel authorization (ITA) or *Invitational travel order* (ITO) are orders issued by the Armed Forces to a family member to join an injured or ill servicemember at his or her bedside. *See also* §825.310(e).

Key employee means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite. *See also* §825.217.

Mental disability: See the definition of *Physical or mental disability* in this section.

Military caregiver leave means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993. *See also* §825.127.

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See also* §825.127(d)(3).

Outpatient status means, with respect to a covered servicemember who is a current member of the Armed Forces, the

status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. *See also* §825.127(b)(1).

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents "in law."

Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law." *See also* §825.127(d)(2).

Person means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, and includes a public agency for purposes of this part.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.,* as amended, define these terms.

Public agency means the government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State, or any interstate governmental agency. Under section 101(5)(B) of the Act, a public agency is considered to be a "person" engaged in commerce or in an industry or activity affecting commerce within the meaning of the Act.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Reserve components of the Armed Forces, for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation. *See also* §825.126(a)(2)(i).

Secretary means the Secretary of Labor or authorized representative.

Serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in §825.114 or continuing treatment by a health care provider as defined in §825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of §825.113 are met.

Serious injury or illness means: (1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. *See also* §825.127(c).

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See also* §825.127(d)(1).

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See also* §825.126(a)(5).

Spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

(1) Was entered into in a State that recognizes such marriages; or

(2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

TRICARE is the health care program serving active duty servicemembers, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide.

[78 FR 8902, Feb. 6, 2013, as amended at 80 FR 10000, Feb. 25, 2015]

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§825.103 [Reserved]

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§825.104 Covered employer.

(a) An employer covered by FMLA is any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Employers covered by FMLA also include any person acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer, any successor in interest of a covered employer, and any public agency. Public agencies are covered employers without regard to the number of employees employed. Public as well as private elementary and secondary schools are also covered employers without regard to the number of employees employed. *See* §825.600.

(b) The terms commerce and industry affecting commerce are defined in accordance with section 501(1) and (3) of the Labor Management Relations Act of 1947 (LMRA) (29 U.S.C. 142(1) and (3)), as set forth in the definitions at §825.102 of this part. For purposes of the FMLA, employers who meet the 50-employee coverage test are deemed to be engaged in commerce or in an industry or activity affecting commerce.

(c) Normally the legal entity which employs the employee is the employer under FMLA. Applying this principle, a corporation is a single employer rather than its separate establishments or divisions.

(1) Where one corporation has an ownership interest in another corporation, it is a separate employer unless it meets the joint employment test discussed in §825.106, or the integrated employer test contained in paragraph (c)(2) of this section.

(2) Separate entities will be deemed to be parts of a single employer for purposes of FMLA if they meet the integrated employer test. Where this test is met, the employees of all entities making up the integrated employer will be counted in determining employer coverage and employee eligibility. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(i) Common management;

(ii) Interrelation between operations;

(iii) Centralized control of labor relations; and

(iv) Degree of common ownership/financial control.

(d) An employer includes any person who acts directly or indirectly in the interest of an employer to any of the employer's employees. The definition of employer in section 3(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(d), similarly includes any person acting directly or indirectly in the interest of an employer in relation to an employee. As under the FLSA, individuals such as corporate officers "acting in the interest of an employer" are individually liable for any violations of the requirements of FMLA.

[78 FR 8902, Feb. 6, 2013, as amended at 82 FR 2230, Jan. 9, 2017]

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§825.105 Counting employees for determining coverage.

(a) The definition of employ for purposes of FMLA is taken from the Fair Labor Standards Act, §3(g), 29 U.S.C. 203(g). The courts have made it clear that the employment relationship under the FLSA is broader than the traditional common law concept of master and servant. The difference between the employment relationship under the FLSA and that under the common law arises from the fact that the term "employ" as defined in the Act includes "to suffer or permit to work." The courts have indicated that, while "to permit" requires a more positive action than "to suffer," both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done for the employer by another is sufficient to create the employment relationship under the Act. The courts have said that there is no definition that solves all problems as to the limitations of the employer-employee relationship under the Act; and that determination of the relation cannot be based on isolated factors or upon a single characteristic or technical concepts, but depends "upon the circumstances of the whole activity" including the underlying "economic reality." In general an employee, as distinguished from an independent contractor who is engaged in a business of his/her own, is one who "follows the usual path of an employee" and is dependent on the business which he/she serves.

(b) Any employee whose name appears on the employer's payroll will be considered employed each working day of the calendar week, and must be counted whether or not any compensation is received for the week. However, the FMLA applies only to employees who are employed within any State of the United States, the District of Columbia or any Territory or possession of the United States. Employees who are employed outside these areas are not counted for purposes of determining employer coverage or employee eligibility.

(c) Employees on paid or unpaid leave, including FMLA leave, leaves of absence, disciplinary suspension, *etc.*, are counted as long as the employer has a reasonable expectation that the employee will later return to active employment. If there is no employer/employee relationship (as when an employee is laid off, whether temporarily or permanently) such individual is not counted. Part-time employees, like full-time employees, are considered to be employed each working day of the calendar week, as long as they are maintained on the payroll.

(d) An employee who does not begin to work for an employer until after the first working day of a calendar week, or who terminates employment before the last working day of a calendar week, is not considered employed on each working day of that calendar week.

(e) A private employer is covered if it maintained 50 or more employees on the payroll during 20 or more calendar workweeks (not necessarily consecutive workweeks) in either the current or the preceding calendar year.

(f) Once a private employer meets the 50 employees/20 workweeks threshold, the employer remains covered until it reaches a future point where it no longer has employed 50 employees for 20 (nonconsecutive) workweeks in the current and preceding calendar year. For example, if an employer who met the 50 employees/20 workweeks test in the calendar year as of September 1, 2008, subsequently dropped below 50 employees before the end of 2008 and continued to employ fewer than 50 employees in all workweeks throughout calendar year 2009, the employer would continue to be covered throughout calendar year 2009 because it met the coverage criteria for 20 workweeks of the preceding (*i.e.*, 2008) calendar year.

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§825.106 Joint employer coverage.

(a) Where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under FMLA. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(2) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or,

(3) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

(b)(1) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when a temporary placement agency supplies employees to a second employer.

(2) A type of company that is often called a Professional Employer Organization (PEO) contracts with client employers to perform administrative functions such as payroll, benefits, regulatory paperwork, and updating employment policies. The determination of whether a PEO is a joint employer also turns on the economic realities of the situation and must be based upon all the facts and circumstances. A PEO does not enter into a joint employment relationship with the employees of its client companies when it merely performs such administrative functions. On the other hand, if in a particular fact situation, a PEO has the right to hire, fire, assign, or direct and control the client's employees, or benefits from the work that the employees perform, such rights may lead to a determination that the PEO would be a joint employer with the client employer, depending upon all the facts and circumstances.

(c) In joint employment relationships, only the primary employer is responsible for giving required notices to its employees, providing FMLA leave, and maintenance of health benefits. Factors considered in determining which is the primary employer include authority/responsibility to hire and fire, assign/place the employee, make payroll, and provide employment benefits. For employees of temporary placement agencies, for example, the placement agency most commonly would be the primary employer. Where a PEO is a joint employer, the client employer most commonly would be the primary employer.

(d) Employees jointly employed by two employers must be counted by both employers, whether or not maintained on one of the employer's payroll, in determining employer coverage and employee eligibility. For example, an employer who jointly employs 15 workers from a temporary placement agency and 40 permanent workers is covered by FMLA. (A special rule applies to employees jointly employed who physically work at a facility of the secondary employer for a period of at least one year. *See* §825.111(a)(3).) An employee on leave who is working for a secondary employer is considered employed by the secondary employer, and must be counted for coverage and eligibility purposes, as long as the employer has a reasonable expectation that that employee will return to employment with that employer. In those cases in which a PEO is determined to be a joint employer of a client employer's employees, the client employer would only be required to count employees of the PEO (or employees of other clients of the PEO) if the client employer jointly employed those employees.

(e) Job restoration is the primary responsibility of the primary employer. The secondary employer is responsible for accepting the employee returning from FMLA leave in place of the replacement employee if the secondary employer continues to utilize an employee from the temporary placement agency, and the agency chooses to place the employee with the secondary employer. A secondary employer is also responsible for compliance with the prohibited acts provisions with respect to its jointly employed employees, whether or not the secondary employer is covered by FMLA. *See* §825.220(a). The prohibited acts include prohibitions against interfering with an employee's attempt to exercise rights under the Act, or discharging or discriminating against an employee for opposing a practice which is unlawful under FMLA. A covered secondary employer will be responsible for compliance with all the provisions of the FMLA with respect to its regular, permanent workforce.

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§825.107 Successor in interest coverage.

(a) For purposes of FMLA, in determining whether an employer is covered because it is a "successor in interest" to a covered employer, the factors used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Adjustment Act will be considered. However, unlike Title VII, whether the successor has notice of the employee's claim is not a consideration. Notice may be relevant, however, in determining successor liability for violations of the predecessor. The factors to be considered include:

(1) Substantial continuity of the same business operations;

(2) Use of the same plant;

(3) Continuity of the work force;

(4) Similarity of jobs and working conditions;

(5) Similarity of supervisory personnel;

(6) Similarity in machinery, equipment, and production methods;

(7) Similarity of products or services; and

(8) The ability of the predecessor to provide relief.

(b) A determination of whether or not a successor in interest exists is not determined by the application of any single criterion, but rather the entire circumstances are to be viewed in their totality.

(c) When an employer is a successor in interest, employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer. For example, the successor, whether or not it meets FMLA coverage criteria, must grant leave for eligible employees who had provided appropriate notice to the predecessor, or continue leave begun while employed by the predecessor, including maintenance of group health benefits during the leave and job restoration at the conclusion of the leave. A successor which meets FMLA's coverage criteria must count periods of employment and hours of service with the predecessor for purposes of determining employee eligibility for FMLA leave.

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§825.108 Public agency coverage.

(a) An employer under FMLA includes any public agency, as defined in section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x). Section 3(x) of the FLSA defines *public agency* as the government of the United States; the government of a State or political subdivision of a State; or an agency of the United States, a State, or a political subdivision of a State, or any interstate governmental agency. *State* is further defined in Section 3(c) of the FLSA to include any State of the United States, the District of Columbia, or any Territory or possession of the United States.

(b) The determination of whether an entity is a public agency, as distinguished from a private employer, is determined by whether the agency has taxing authority, or whether the chief administrative officer or board, *etc.*, is elected by the voters-at-large or their appointment is subject to approval by an elected official.

(c)(1) A State or a political subdivision of a State constitutes a single public agency and, therefore, a single employer for purposes of determining employee eligibility. For example, a State is a single employer; a county is a single employer; a city or town is a single employer. Whether two agencies of the same State or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

(2) The Census Bureau takes a census of governments at five-year intervals. Volume I, Government Organization, contains the official counts of the number of State and local governments. It includes tabulations of governments by State, type of government, size, and county location. Also produced is a universe list of governmental units, classified according to type of government. Copies of Volume I, Government Organization, and subsequent volumes are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, U.S. Department of Commerce District Offices, or can be found in Regional and selective depository libraries, or online at *http://www.census.gov /govs/www/index.html*. For a list of all depository libraries, write to the Government Printing Office, 710 N. Capitol St. NW., Washington, DC 20402.

(d) All public agencies are covered by the FMLA regardless of the number of employees; they are not subject to the coverage threshold of 50 employees carried on the payroll each day for 20 or more weeks in a year. However, employees of public agencies must meet all of the requirements of eligibility, including the requirement that the employer (*e.g.*, State) employ 50 employees at the worksite or within 75 miles.

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§825.109 Federal agency coverage.

(a) Most employees of the government of the United States, if they are covered by the FMLA, are covered under Title

II of the FMLA (incorporated in Title V, Chapter 63, Subchapter 5 of the United States Code) which is administered by the U.S. Office of Personnel Management (OPM). OPM has separate regulations at 5 CFR Part 630, Subpart L. Employees of the Government Printing Office are covered by Title II. While employees of the Government Accountability Office and the Library of Congress are covered by Title I of the FMLA, the Comptroller General of the United States and the Librarian of Congress, respectively, have responsibility for the administration of the FMLA with respect to these employees. Other legislative branch employees, such as employees of the Senate and House of Representatives, are covered by the Congressional Accountability Act of 1995, 2 U.S.C. 1301.

(b) The Federal Executive Branch employees within the jurisdiction of these regulations include:

(1) Employees of the Postal Service;

(2) Employees of the Postal Regulatory Commission;

(3) A part-time employee who does not have an established regular tour of duty during the administrative workweek; and,

(4) An employee serving under an intermittent appointment or temporary appointment with a time limitation of one year or less.

(c) Employees of other Federal executive agencies are also covered by these regulations if they are not covered by Title II of FMLA.

(d) Employees of the judicial branch of the United States are covered by these regulations only if they are employed in a unit which has employees in the competitive service. For example, employees of the U.S. Tax Court are covered by these regulations.

(e) For employees covered by these regulations, the U.S. Government constitutes a single employer for purposes of determining employee eligibility. These employees must meet all of the requirements for eligibility, including the requirement that the Federal Government employ 50 employees at the worksite or within 75 miles.

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§825.110 Eligible employee.

(a) An eligible employee is an employee of a covered employer who:

(1) Has been employed by the employer for at least 12 months, and

(2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave (*see* §825.801 for special hours of service requirements for airline flight crew employees), and

(3) Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. *See* §825.105(b) regarding employees who work outside the U.S.

(b) The 12 months an employee must have been employed by the employer need not be consecutive months, *provided*

(1) Subject to the exceptions provided in paragraph (b)(2) of this section, employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employer for at least 12 months.

(2) Employment periods preceding a break in service of more than seven years must be counted in determining whether the employee has been employed by the employer for at least 12 months where:

(i) The employee's break in service is occasioned by the fulfillment of his or her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.*, covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by the employer. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA; or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service (*e.g.*, for purposes of the employee furthering his or her education or for childrearing purposes).

(3) If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave

(sick, vacation) during which other benefits or compensation are provided by the employer (*e.g.*, workers' compensation, group health plan benefits, *etc.*), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as at least 12 months, 52 weeks is deemed to be equal to 12 months.

(4) Nothing in this section prevents employers from considering employment prior to a continuous break in service of more than seven years when determining whether an employee has met the 12-month employment requirement. However, if an employer chooses to recognize such prior employment, the employer must do so uniformly, with respect to all employees with similar breaks in service.

(c)(1) Except as provided in paragraph (c)(2) of this section and in §825.801 containing the special hours of service requirement for airline flight crew employees, whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. *See* 29 CFR part 785. The determining factor is the number of hours an employee has worked for the employer within the meaning of the FLSA. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employer. Any accurate accounting of actual hours worked under FLSA's principles may be used.

(2) An employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations. *See* §825.801(c) for special rules applicable to airline flight crew employees.

(3) In the event an employer does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (*e.g.*, bona fide executive, administrative, and professional employees as defined in FLSA Regulations, 29 CFR part 541), the employer has the burden of showing that the employee has not worked the requisite hours. An employer must be able to clearly demonstrate, for example, that full-time teachers (*see* §825.102 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution (who often work outside the classroom or at their homes) did not work 1,250 hours during the previous 12 months in order to claim that the teachers are not eligible for FMLA leave. *See* §825.801(d) for special rules applicable to airline flight crew employees.

(d) The determination of whether an employee meets the hours of service requirement and has been employed by the employer for a total of at least 12 months must be made as of the date the FMLA leave is to start. An employee may be on non-FMLA leave at the time he or she meets the 12-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would be FMLA leave. *See* §825.300(b) for rules governing the content of the eligibility notice given to employees.

(e) Whether 50 employees are employed within 75 miles to ascertain an employee's eligibility for FMLA benefits is determined when the employee gives notice of the need for leave. Whether the leave is to be taken at one time or on an intermittent or reduced leave schedule basis, once an employee is determined eligible in response to that notice of the need for leave, the employee's eligibility is not affected by any subsequent change in the number of employees employed at or within 75 miles of the employee's worksite, for that specific notice of the need for leave. Similarly, an employer may not terminate employee leave that has already started if the employee count drops below 50. For example, if an employer employs 60 employees in August, but expects that the number of employees will drop to 40 in December, the employer must grant FMLA benefits to an otherwise eligible employee who gives notice of the need for leave in August for a period of leave to begin in December.

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§825.111 Determining whether 50 employees are employed within 75 miles.

(a) Generally, a worksite can refer to either a single location or a group of contiguous locations. Structures which form a campus or industrial park, or separate facilities in proximity with one another, may be considered a single site of employment. On the other hand, there may be several single sites of employment within a single building, such as an office building, if separate employers conduct activities within the building. For example, an office building with 50 different businesses as tenants will contain 50 sites of employment. The offices of each employer will be considered separate sites of employment for purposes of FMLA. An employee's worksite under FMLA will ordinarily be the site the employee reports to or, if none, from which the employee's work is assigned.

(1) Separate buildings or areas which are not directly connected or in immediate proximity are a single worksite if they are in reasonable geographic proximity, are used for the same purpose, and share the same staff and equipment. For example, if an employer manages a number of warehouses in a metropolitan area but regularly shifts or rotates the same

employees from one building to another, the multiple warehouses would be a single worksite.

(2) For employees with no fixed worksite, e.g., construction workers, transportation workers (e.g., truck drivers, seamen, pilots), salespersons, *etc.*, the worksite is the site to which they are assigned as their home base, from which their work is assigned, or to which they report. For example, if a construction company headquartered in New Jersey opened a construction site in Ohio, and set up a mobile trailer on the construction site as the company's on-site office, the construction site in Ohio would be the worksite for any employees hired locally who report to the mobile trailer/company office daily for work assignments, *etc.* If that construction company also sent personnel such as job superintendents, foremen, engineers, an office manager, *etc.*, from New Jersey to the job site in Ohio, those workers sent from New Jersey continue to have the headquarters in New Jersey as their worksite. The workers who have New Jersey as their worksite would not be counted in determining eligibility of employees whose home base is the Ohio worksite, but would be counted in determining eligibility of employees whose home base is New Jersey. For transportation employees, their worksite is the terminal to which they are assigned, report for work, depart, and return after completion of a work assignment. For example, an airline pilot may work for an airline with headquarters in New York, but the pilot regularly reports for duty and originates or begins flights from the company's facilities located in an airport in Chicago and returns to Chicago at the completion of one or more flights to go off duty. The pilot's worksite is the facility in Chicago. An employee's personal residence is not a worksite in the case of employees, such as salespersons, who travel a sales territory and who generally leave to work and return from work to their personal residence, or employees who work at home, as under the concept of flexiplace or telecommuting. Rather, their worksite is the office to which they report and from which assignments are made.

(3) For purposes of determining that employee's eligibility, when an employee is jointly employed by two or more employers (*see* §825.106), the employee's worksite is the primary employer's office from which the employee is assigned or reports, unless the employee has physically worked for at least one year at a facility of a secondary employer, in which case the employee's worksite is that location. The employee is also counted by the secondary employer to determine eligibility for the secondary employer's full-time or permanent employees.

(b) The 75-mile distance is measured by surface miles, using surface transportation over public streets, roads, highways and waterways, by the shortest route from the facility where the employee needing leave is employed. Absent available surface transportation between worksites, the distance is measured by using the most frequently utilized mode of transportation (*e.g.*, airline miles).

(c) The determination of how many employees are employed within 75 miles of the worksite of an employee is based on the number of employees maintained on the payroll. Employees of educational institutions who are employed permanently or who are under contract are maintained on the payroll during any portion of the year when school is not in session. *See* §825.105(c).

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§825.112 Qualifying reasons for leave, general rule.

(a) *Circumstances qualifying for leave.* Employers covered by FMLA are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child (*see* §825.120);

(2) For placement with the employee of a son or daughter for adoption or foster care (*see* §825.121);

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition (*see* §§825.113 and 825.122);

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job (*see* §§825.113 and 825.123);

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status (*see* §§825.122 and 825.126); and

(6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember. *See* §§825.122 and 825.127.

(b) *Equal application.* The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child.

(c) *Active employee.* In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

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§825.113 Serious health condition.

(a) For purposes of FMLA, *serious health condition* entitling an employee to FMLA leave means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in §825.114 or continuing treatment by a health care provider as defined in §825.115.

(b) The term *incapacity* means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

(c) The term treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (*e.g.,* an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (*e.g.,* oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(d) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, *etc.,* are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

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§825.114 Inpatient care.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in §825.113(b), or any subsequent treatment in connection with such inpatient care.

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§825.115 Continuing treatment.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(a) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.,* physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) The requirement in paragraphs (a)(1) and (2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(5) The term *extenuating circumstances* in paragraph (a)(1) of this section means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.

(b) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. *See also* §825.120.

(c) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health

condition. A chronic serious health condition is one which:

(1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, epilepsy, *etc.*).

(d) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(e) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), or kidney disease (dialysis).

(f) Absences attributable to incapacity under paragraph (b) or (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

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§§825.116-825.118 [Reserved]

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§825.119 Leave for treatment of substance abuse.

(a) Substance abuse may be a serious health condition if the conditions of §§825.113 through 825.115 are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(b) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employer has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

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§825.120 Leave for pregnancy or birth.

(a) *General rules.* Eligible employees are entitled to FMLA leave for pregnancy or birth of a child as follows:

(1) Both parents are entitled to FMLA leave for the birth of their child.

(2) Both parents are entitled to FMLA leave to be with the healthy newborn child (*i.e.*, bonding time) during the 12-month period beginning on the date of birth. An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth. If state law allows, or the employer permits, bonding leave to be taken beyond this period, such leave will not qualify as FMLA leave. *See* §825.701 regarding non-FMLA leave which may be available under applicable State laws. Under this section, both parents are entitled to FMLA leave even if the newborn does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newborn child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition. Note, too, that many state pregnancy disability laws specify a period of disability either before or after the birth of a child; such periods would also be considered FMLA leave for a serious health condition of the birth mother, and would not be subject to the combined limit.

(4) The expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.

(5) A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition. *See* §825.124.

(6) Both parents are entitled to FMLA leave if needed to care for a child with a serious health condition if the requirements of §§825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for their newborn child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) *Intermittent and reduced schedule leave.* An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employer agrees. For example, an employer and employee may agree to a part-time work schedule after the birth. If the employer agrees to permit intermittent or reduced schedule leave for the birth of a child, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, Federal law (such as the Americans with Disabilities Act), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employer's agreement is not required for intermittent leave required by the serious health condition of the expectant mother or newborn child. *See* §§825.202—825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* §825.121 for rules governing leave for adoption or foster care. *See* §825.601 for special rules applicable to instructional employees of schools. *See* §825.802 for special rules applicable to airline flight crew employees.

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§825.121 Leave for adoption or foster care.

(a) *General rules.* Eligible employees are entitled to FMLA leave for placement with the employee of a son or daughter for adoption or foster care as follows:

(1) Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(2) An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement. If state law allows, or the employer permits, leave for adoption or foster care to be taken beyond this period, such leave will not qualify as FMLA leave. *See* §825.701 regarding non-FMLA leave which may be available under applicable State laws. Under this section, the employee is entitled to FMLA leave even if the adopted or

foster child does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the placement of the employee's son or daughter or to care for the child after placement, for the birth of the employee's son or daughter or to care for the child after birth, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newly placed child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(4) An eligible employee is entitled to FMLA leave in order to care for an adopted or foster child with a serious health condition if the requirements of §§825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for an adopted or foster child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) *Use of intermittent and reduced schedule leave.* An eligible employee may use intermittent or reduced schedule leave after the placement of a healthy child for adoption or foster care only if the employer agrees. Thus, for example, the employer and employee may agree to a part-time work schedule after the placement for bonding purposes. If the employer agrees to permit intermittent or reduced schedule leave for the placement for adoption or foster care, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employer's agreement is not required for intermittent leave required by the serious health condition of the adopted or foster child. *See* §§825.202-825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* §825.120 for general rules governing leave for pregnancy and birth of a child. *See* §825.601 for special rules applicable to instructional employees of schools. *See* §825.802 for special rules applicable to airline flight crew employees.

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§825.122 Definitions of covered servicemember, spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember.

(a) Covered servicemember means: (1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* §825.127(b)(2).

(b) *Spouse, as defined in the statute,* means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

(1) Was entered into in a State that recognizes such marriages; or

(2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

(c) *Parent.* Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in

loco parentis to the employee when the employee was a son or daughter as defined in paragraph (d) of this section. This term does not include parents "in law."

(d) *Son or daughter.* For purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

(1) *Incapable of self-care* means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, *etc.*

(2) *Physical or mental disability* means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

(3) Persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(e) *Next of kin of a covered servicemember* means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See* §825.127(d)(3).

(f) *Adoption* means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave. *See* §825.121 for rules governing leave for adoption.

(g) *Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. *See* §825.121 for rules governing leave for foster care.

(h) *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See* §825.126(a)(5).

(i) *Son or daughter of a covered servicemember* means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See* §825.127(d)(1).

(j) *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law." *See* §825.127(d)(2).

(k) *Documenting relationships.* For purposes of confirmation of family relationship, the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, *etc.* The employer is entitled to examine documentation such as a birth certificate, *etc.*, but the employee is entitled to the return of the official document submitted for this purpose.

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§825.123 Unable to perform the functions of the position.

(a) *Definition.* An employee is unable to perform the functions of the position where 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 within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. 12101 *et seq.*, and the regulations at 29 CFR 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(b) *Statement of functions.* An employer has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the employer can then determine whether the employee is unable to perform one or more essential functions of the employee's position. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier. *See* §825.306.

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§825.124 Needed to care for a family member or covered servicemember.

(a) The medical certification provision that an employee is needed to care for a family member or covered servicemember encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member or covered servicemember.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member or covered servicemember includes not only a situation where the condition of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party. *See* §§825.202-825.205 for rules governing the use of intermittent or reduced schedule leave.

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§825.125 Definition of health care provider.

(a) The Act defines *health care provider* as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Secretary to be capable of providing health care services.

(b) Others capable of providing health care services include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined

under such law.

(c) The phrase authorized to practice in the State as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

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§825.126 Leave because of a qualifying exigency.

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

(1) *Covered active duty or call to covered active duty status* in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Regular components of the Armed Forces will generally specify if the member is deployed to a foreign country.

(2) *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B).

(i) For purposes of covered active duty or call to covered active duty status, the Reserve components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to one of the provisions of law identified in paragraph (a)(2).

(ii) The active duty orders of a member of the Reserve components will generally specify if the military member is serving in support of a contingency operation by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the contingency operation and will specify that the deployment is to a foreign country.

(3) *Deployment of the member with the Armed Forces to a foreign country* means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

(4) A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (a)(2) of this section.

(5) *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* (i) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment;

(ii) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty;

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

(3) *Childcare and school activities.* For the purposes of leave for childcare and school activities listed in (i) through (iv) of this paragraph, a child of the military member must be the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;

(ii) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member;

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status;

(5) *Counseling.* To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;

(6) *Rest and Recuperation.* (i) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment;

(ii) Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and

(ii) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) *Parental care.* For purposes of leave for parental care listed in (i) through (iv) of this paragraph, the parent of the military member must be incapable of self-care and must be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;

(ii) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings;

(9) *Additional activities.* To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

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§825.127 Leave to care for a covered servicemember with a serious injury or illness (military caregiver leave).

(a) Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury.

(b) *Covered servicemember* means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness. *Outpatient status* means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(2) A covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period described in paragraph (e)(1) of this section may extend beyond the five-year period.

(i) For an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable prior to the effective date of this Final Rule, the period between October 28, 2009 and the effective date of this Final Rule shall not count towards the determination of the five-year period for covered veteran status.

(c) A *serious injury or illness* means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and,

(2) In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

(i) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a

substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(d) In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(1) *Son or daughter of a covered servicemember* means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(2) *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

(3) *Next of kin of a covered servicemember* means the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to §825.122(k).

(e) An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.

(1) The single 12-month period described in paragraph (e) of this section begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described in paragraph (e) of this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

(3) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period described in paragraph (e) of this section, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency. Thus, for example, an eligible employee may, during the single 12-month period, take 16 workweeks of FMLA leave to care for a covered servicemember and 10 workweeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 workweeks of FMLA leave to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employer is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in §825.300. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to

care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section, the employer must designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employers may retroactively designate leave as leave to care for a covered servicemember pursuant to §825.301(d).

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 26 workweeks of leave during the single 12-month period described in paragraph (e) of this section if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 26 workweeks of FMLA leave.

[78 FR 8902, Feb. 6, 2013, as amended at 80 FR 10001, Feb. 25, 2015]

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Subpart B—Employee Leave Entitlements Under the Family and Medical Leave Act

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§825.200 Amount of leave.

(a) Except in the case of leave to care for a covered servicemember with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job; and,

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status (or has been notified of an impending call or order to covered active duty).

(b) An employer is permitted to choose any one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement described in paragraph (a) of this section occurs:

(1) The calendar year;

(2) Any fixed 12-month leave year, such as a fiscal year, a year required by State law, or a year starting on an employee's anniversary date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave under paragraph (a) begins; or,

(4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave as described in paragraph (a).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the "rolling" 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the

immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2008, four weeks beginning June 1, 2008, and four weeks beginning December 1, 2008, the employee would not be entitled to any additional leave until February 1, 2009. However, beginning on February 1, 2009, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four weeks, commencing February 1, 2009. The employee would also begin to recoup additional days beginning on June 1, 2009, and additional days beginning on December 1, 2009. Accordingly, employers using the rolling 12-month period may need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested, and employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior 12 months. For example, in the example above, if the employee needs six weeks of leave for a serious health condition commencing February 1, 2009, only the first four weeks of the leave would be FMLA protected.

(d)(1) Employers will be allowed to choose any one of the alternatives in paragraph (b) of this section for the leave entitlements described in paragraph (a) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employer wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act's leave requirements.

(2) An exception to this required uniformity would apply in the case of a multi-State employer who has eligible employees in a State which has a family and medical leave statute. The State may require a single method of determining the period during which use of the leave entitlement is measured. This method may conflict with the method chosen by the employer to determine any 12 months for purposes of the Federal statute. The employer may comply with the State provision for all employees employed within that State, and uniformly use another method provided by this regulation for the leave entitlements described in paragraph (a) for all other employees.

(e) If an employer fails to select one of the options in paragraph (b) of this section for measuring the 12-month period for the leave entitlements described in paragraph (a), the option that provides the most beneficial outcome for the employee will be used. The employer may subsequently select an option only by providing the 60-day notice to all employees of the option the employer intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employer may implement the selected option.

(f) An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. An employer shall determine the single 12-month period in which the 26-weeks-of-leave-entitlement described in this paragraph occurs using the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins. *See* §825.127(e)(1).

(g) During the single 12-month period described in paragraph (f), an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *See* §825.127(e)(3).

(h) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (*e.g.*, a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in §825.205. *See* §825.802 for special calculation of leave rules applicable to airline flight crew employees.

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§825.201 Leave to care for a parent.

(a) *General rule.* An eligible employee is entitled to FMLA leave if needed to care for the employee's parent with a serious health condition. Care for parents-in-law is not covered by the FMLA. *See* §825.122(c) for definition of parent.

(b) *Same employer limitation.* Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at

accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an eligible employee entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employer grants because it is not an undue hardship. The employer advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employer maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employer policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA's provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employer to part-time employees.

(4) At the end of the FMLA leave entitlement, an employer is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employer's FMLA obligations would be satisfied if the employer offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employer to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employer may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employer offer an employee the opportunity to take such a position. An employer may not change the essential functions of the job in order to deny FMLA leave. *See* §825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employer). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a light duty position. If the employer offers such a position, the employee is permitted but not required to accept the position. *See* §825.220(d). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. *See* §825.207(e). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employer requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, an employer should provide the same benefits for women who are pregnant as the employer provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employer (and, therefore, not an eligible employee under FMLA) may not be denied maternity leave if the employer normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.*, veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked (or, for airline flight crew employees, would have worked or been paid) for the civilian employer during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked (or, for airline flight crew employees, actually worked or paid),

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

September 25, 2002

MANAGERS, HUMAN RESOURCES (AREA)

SUBJECT: Military Leave - Family Medical Leave Act - Eligibility

Based on a recently issued Department of Labor (DOL) Memorandum, the USPS is amending its position on how an authorized absence to perform military service is counted when determining eligibility for leave under the Family and Medical Leave Act (FMLA). The DOL memorandum clarifies its position on the rights of returning uniformed service members to family and medical leave under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Under the FMLA, employees must have worked for the employer for at least 12 months and must have worked at least 1250 hours for that employer during the 12 month period prior to the start of the leave. Under USERRA, employees who are reemployed are entitled to certain rights and benefits that they would have attained had they been continuously employed. DOL has determined that the months and hours that employees would have worked, but for their military service, should be combined with the months employed and the hours actually worked to determine if they meet the FMLA 12 month employment and 1250 work hour eligibility requirement.

Therefore, the Postal Service will credit the period of military service as follows:

1) Each month served performing military service counts as a month actively employed by the employer for the purpose of determining the 12 months of employment requirement. The 12 months of employment do not have to be consecutive to meet this FMLA requirement.

2) The hours that would have been worked for the employer, based on the employees work schedule prior to the military service, are added to any hours actually worked during the previous 12 month period to determine if the employee meets the 1250 work hour requirement. The hours the employee would have worked will be calculated in the same manner as back pay calculation, found in Section 436 of the Employee and Labor Relations Manual (ELM).

As a reminder, once an employee meets the 1250 work hour eligibility test, the employee remains eligible for all absences that are for the same FMLA qualifying condition during the same postal leave year.

If you have any questions concerning this matter, contact Sandra Savoie of my staff at 202-268-3823.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies and Programs

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duty and was aggravated by service in the line of duty on active duty) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. In the case of a veteran (as defined in subpart f), an injury or illness incurred in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty) and that manifested itself before or after the member became a veteran, and is (1) a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or (2) a physical or mental condition for which the veteran has received a VA Service Related Disability Rating (VASRD) of 50% or greater and such VASRD rating is based in whole or in part, on the condition precipitating the need for caregiver leave; or (3) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or (4) an injury, including a psychological injury, on the basis of which the veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

k. *Health care provider — A doctor of medicine or osteopathy;* Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, MA; Physician's Assistant or other attending practitioners as defined by Department of Labor FMLA regulations who are performing within the scope of their practice.

515.3 Eligibility

For an absence to be covered by the FMLA, the employee must have been employed by the Postal Service for an accumulated total of 12 months and must have worked a minimum of 1,250 hours during the 12-month period before the date leave begins.

515.4 Leave Requirements

515.41 Conditions

Eligible employees must be allowed a total of up to 12 workweeks of leave within a Postal Service leave year for one or more of the following:

a. For incapacity due to pregnancy, prenatal medical care or child birth.

b. To care for the employee's child after birth, or placement for adoption or foster care.

c. To care for the employee's spouse, son or daughter, or parent who has a serious health condition.

d. For a serious health condition that makes the employee unable to perform the employee's job.

e. Because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Eligible employees who are the spouse, son, daughter, parent, or next of kin of a covered service member must be allowed up to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness (as defined in 515.2(j)). The single 12-month period begins the first day the employee takes FMLA leave for this purpose and ends 12 months after that date. During this single 12-month period, the employee's entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason.

515.42 Leave Type

Absences that qualify as FMLA leave may be charged as annual leave, sick leave, continuation of pay, or leave without pay, or a combination of these. Leave is charged consistent with current leave policies and applicable collective bargaining agreements.

515.43 Authorized Hours

Eligible employees, including eligible non-career employees, are entitled to 12 workweeks of FMLA-protected absences per leave year for conditions in 515.41(a) through 515.41(e). Eligible employees who take FMLA-protected leave to care for a covered service member who has incurred a serious injury or illness as defined in 515.2 are entitled to a total of 26 workweeks during a single 12-month period.

This amount is 12 (or 26) times the hours normally, or regularly, scheduled in the employee's workweek. Thus:

a. Regular full-time employees who normally work 40 hours per week are entitled to up to 480 hours of FMLA-covered absences within a leave year for all qualifying reasons except for covered service member care. For such service member care, full-time employees who normally work 40 hours per week are entitled to up to 1046 hours in a single 12-month period that begins when the first leave is taken.

b. Part-time and Non-Traditional Full-Time (NTFT) employees who have regular weekly schedules that may be greater or less than 40 hours per week are entitled to 12 (or 26) times the number of hours normally scheduled in their workweek. For example, an employee with a regular schedule of 30 hours a week is entitled to 360 hours (12 weeks times 30 hours), or 780 hours, for service member care (26 weeks times 30 hours). A NTFT employee with a regular schedule of 44 hours a week is entitled to 528 hours (12 weeks times 44 hours), or 1144 hours, for service member care (26 weeks times 44 hours). If an employee is reassigned to a position with more or less workhours, the entitlement may change, but will be calculated so that the employee receives, but does not exceed 12 or 26 workweeks of FMLA protection.

515.5 Notice and Documentation

515.51 Notice

An employee must provide a supervisor a PS Form 3971 at least 30 days before the absence if the need for the FMLA leave is foreseeable. If 30 days notice is not practicable, the employee must give notice as soon as practicable.

two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where the spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a parent, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition. *See also* §825.127(d).

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§825.202 Intermittent leave or reduced leave schedule.

(a) *Definition.* FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. *Intermittent leave* is FMLA leave taken in separate blocks of time due to a single qualifying reason. A *reduced leave schedule* is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) *Medical necessity.* For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition and in the certification of a serious injury or illness, if required by the employer, addresses the medical necessity of intermittent leave or leave on a reduced leave schedule. *See* §§825.306, 825.310. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a serious health condition or of a covered servicemember's serious injury or illness, or for recovery from treatment or recovery from a serious health condition or a covered servicemember's serious injury or illness. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition or a covered servicemember with a serious injury or illness.

(1) Intermittent leave may be taken for a serious health condition of a spouse, parent, son, or daughter, for the employee's own serious health condition, or a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition or a serious injury or illness of a covered servicemember, even if he or she does not receive treatment by a health care provider. *See* §§825.113 and 825.127.

(c) *Birth or placement.* When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Such a schedule reduction might occur, for example, where an employee, with the employer's agreement, works part-time after the birth of a child, or takes leave in several segments. The employer's agreement is not required, however, for leave during which the expectant mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition. *See* §825.204 for rules governing transfer to an alternative position that better accommodates intermittent leave. *See also* §825.120 (pregnancy) and §825.121 (adoption and foster care).

(d) *Qualifying exigency.* Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

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§825.203 Scheduling of intermittent or reduced schedule leave.

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. *See* §825.202. Eligible employees may also take FMLA leave on an intermittent or reduced schedule

basis when necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

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§825.204 Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave.

(a) *Transfer or reassignment.* If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from one's own serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury or illness of a covered servicemember, or if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *See* §825.601 for special rules applicable to instructional employees of schools.

(b) *Compliance.* Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, Federal law (such as the Americans with Disabilities Act), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

(c) *Equivalent pay and benefits.* The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

(d) *Employer limitations.* An employer may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employer to make such a transfer will be held to be contrary to the prohibited acts of the FMLA.

(e) *Reinstatement of employee.* When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he or she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

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§825.205 Increments of FMLA leave for intermittent or reduced schedule leave.

(a) *Minimum increment.* (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employer must account for the leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employer may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. *See also* §825.205(a)(2) for the physical impossibility exception, §§825.600 and 825.601 for special rules applicable to employees of schools, and §825.802 for special rules applicable to airline flight crew employees. If an employer uses different increments to account for different types of leave, the employer must account for FMLA leave in the smallest increment used to account for any other type of leave. For example, if an employer accounts for the use of annual leave in increments of one hour and the use of sick leave in increments of one-half hour, then FMLA leave use must be accounted for using increments no larger than one-half hour. If an employer accounts for use of leave in varying increments at different times of the day or shift, the employer may also account for FMLA leave in varying increments, provided that the increment used for FMLA leave is no greater than the smallest increment used for any other type of leave during the period in which the FMLA leave is taken. If an employer accounts for other forms of leave use in

increments greater than one hour, the employer must account for FMLA leave use in increments no greater than one hour. An employer may account for FMLA leave in shorter increments than used for other forms of leave. For example, an employer that accounts for other forms of leave in one hour increments may account for FMLA leave in a shorter increment when the employee arrives at work several minutes late, and the employer wants the employee to begin work immediately. Such accounting for FMLA leave will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of FMLA leave in other circumstances. In all cases, employees may not be charged FMLA leave for periods during which they are working.

(2) Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed "clean room" during a certain period of time and no equivalent position is available, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement. The period of the physical impossibility is limited to the period during which the employer is unable to permit the employee to work prior to a period of FMLA leave or return the employee to the same or equivalent position due to the physical impossibility after a period of FMLA leave. *See* §825.214.

(b) *Calculation of leave.* (1) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The actual workweek is the basis of leave entitlement. Therefore, if an employee who would otherwise work 40 hours a week takes off eight hours, the employee would use one-fifth ($\frac{1}{5}$) of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work eight hour days works four-hour days under a reduced leave schedule, the employee would use one-half ($\frac{1}{2}$) week of FMLA leave. Where an employee works a part-time schedule or variable hours, the amount of FMLA leave that an employee uses is determined on a pro rata or proportional basis. If an employee who would otherwise work 30 hours per week, but works only 20 hours a week under a reduced leave schedule, the employee's 10 hours of leave would constitute one-third ($\frac{1}{3}$) of a week of FMLA leave for each week the employee works the reduced leave schedule. An employer may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours. An employee does not accrue FMLA-protected leave at any particular hourly rate. An eligible employee is entitled to up to a total of 12 workweeks of leave, or 26 workweeks in the case of military caregiver leave, and the total number of hours contained in those workweeks is necessarily dependent on the specific hours the employee would have worked but for the use of leave. *See also* §§825.601 and 825.602, special rules for schools and §825.802, special rules for airline flight crew employees.

(2) If an employer has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(3) If an employee's schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked (but for the taking of FMLA leave), a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement.

(c) *Overtime.* If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize eight hours of FMLA-protected leave out of the 48-hour workweek, or one-sixth ($\frac{1}{6}$) of a week of FMLA leave. Voluntary overtime hours that an employee does not work due to an FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.

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§825.206 Interaction with the FLSA.

(a) Leave taken under FMLA may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) as a salaried executive, administrative, professional, or computer employee (under regulations issued by the Secretary, 29 CFR part 541), providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. *See* 29 CFR 541.602(b)(7). This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employer may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employer provides FMLA leave, whether paid or unpaid, and maintains records required by this part regarding FMLA leave, will not be relevant to the determination whether an employee is exempt within the meaning of 29 CFR part 541.

(b) For an employee paid in accordance with the fluctuating workweek method of payment for overtime (*see* 29 CFR 778.114), the employer, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employer chooses to follow this exception from the fluctuating workweek method of payment, the employer must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employer does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

(c) This special exception to the salary basis requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of covered employers who are eligible for FMLA leave, and to leave which qualifies as FMLA leave. Hourly or other deductions which are not in accordance with 29 CFR part 541 or 29 CFR 778.114 may not be taken, for example, from the salary of an employee who works for an employer with fewer than 50 employees, or where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by 29 CFR part 541 or 29 CFR 778.114 be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under State law or under an employer's policy or practice for a reason which does not qualify as FMLA leave, *e.g.*, leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition or serious injury or illness; or for leave which is more generous than provided by FMLA. Employers may comply with State law or the employer's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, or may take such deductions, treating the employee as an hourly employee and pay overtime premium pay for hours worked over 40 in a workweek.

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§825.207 Substitution of paid leave.

(a) Generally, FMLA leave is unpaid leave. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term substitute means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employer's applicable paid leave policy during the period of otherwise unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy. When an employee chooses, or an employer requires, substitution of accrued paid leave, the employer must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. *See* §825.300(c). If an employee does not comply with the additional requirements in an employer's paid leave policy, the employee is not entitled to substitute accrued paid leave, but the employee remains entitled to take unpaid FMLA leave. Employers may not discriminate against employees on FMLA leave in the administration of their paid leave policies.

(b) If neither the employee nor the employer elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the employee's FMLA leave entitlement. For example, paid sick leave used for a medical condition which is not a serious health condition or serious injury or illness does not count against the employee's FMLA leave entitlement.

(d) Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under FMLA if it meets the criteria set forth above in §§825.112 through 825.115. In such cases, the employer may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employer may require the substitution of paid leave. However, employers and employees may agree, where state law permits, to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee's salary.

(e) The Act provides that a serious health condition may result from injury to the employee on or off the job. If the employer designates the leave as FMLA leave in accordance with §825.300(d), the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, the provision for substitution of the

employee's accrued paid leave is not applicable, and neither the employee nor the employer may require the substitution of paid leave. However, employers and employees may agree, where state law permits, to have paid leave supplement workers' compensation benefits, such as in the case where workers' compensation only provides replacement income for two-thirds of an employee's salary. If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light duty job but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a light duty job. As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employer may require the use of accrued paid leave. *See also* §§825.210(f), 825.216(d), 825.220(d), 825.307(a) and 825.702(d)(1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(f) Section 7(o) of the Fair Labor Standards Act (FLSA) permits public employers under prescribed circumstances to substitute compensatory time off accrued at one and one-half hours for each overtime hour worked in lieu of paying cash to an employee when the employee works overtime hours as prescribed by the Act. This section of the FLSA limits the number of hours of compensatory time an employee may accumulate depending upon whether the employee works in fire protection or law enforcement (480 hours) or elsewhere for a public agency (240 hours). In addition, under the FLSA, an employer always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employer requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

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§825.209 Maintenance of employee benefits.

(a) During any FMLA leave, an employer must maintain the employee's coverage under any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employers covered by FMLA, including public agencies, are subject to the Act's requirements to maintain health coverage. The definition of group health plan is set forth in §825.102. For purposes of FMLA, the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employer;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, *etc.*, must be maintained during leave if provided in an employer's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employer changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (*e.g.*, in coverage, premiums, deductibles, *etc.*) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the

group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employer.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, *etc. See* §825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and for key employees (as discussed below), an employer's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (*e.g.,* if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employer of his or her intent not to return from leave (including before starting the leave if the employer is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a key employee (*see* §825.218) does not return from leave when notified by the employer that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employer that the employee does not desire restoration to employment at the end of the leave period, or the FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (*e.g.,* holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

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§825.210 Employee payment of group health benefit premiums.

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employer's group health plan, as described in §825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employer has a number of options for obtaining payment from the employee. The employer may require that payment be made to the employer or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employer may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employer's existing rules for payment by employees on leave without pay would be followed, provided that such rules do not require prepayment (*i.e.,* prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or,

(5) Another system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums (*e.g.,* through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made. *See* §825.300(c).

(e) An employer may not require more of an employee using unpaid FMLA leave than the employer requires of other employees on leave without pay.

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employer for payment of group health plan benefits when simultaneously taking FMLA leave. *See* §825.207(e).

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§825.211 Maintenance of benefits under multi-employer health plans.

(a) A multi-employer health plan is a plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employers.

(b) An employer under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employers party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use banked hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in §825.209(f) of this part, group health plan coverage must be maintained for an employee on FMLA leave until:

(1) The employee's FMLA leave entitlement is exhausted;

(2) The employer can show that the employee would have been laid off and the employment relationship terminated; or,

(3) The employee provides unequivocal notice of intent not to return to work.

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§825.212 Employee failure to pay health plan premium payments.

(a)(1) In the absence of an established employer policy providing a longer grace period, an employer's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employer has established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid premium payment was due, the employer may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employer has no obligation regarding the maintenance of a health insurance policy which is not a group health plan. *See* §825.209(a).

(3) All other obligations of an employer under FMLA would continue; for example, the employer continues to have an obligation to reinstate an employee upon return from leave.

(b) The employer may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employer maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. *See* §825.215(d)(1)-(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employer terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the

employee's return, the employer may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.

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§825.213 Employer recovery of benefit costs.

(a) In addition to the circumstances discussed in §825.212(b), an employer may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than a covered family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a key employee who decides not to return to work upon being notified of the employer's intention to deny restoration because of substantial and grievous economic injury to the employer's operations and is not reinstated by the employer. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of either a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered servicemember, thereby precluding the employer from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employer may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness. Such certification is not required unless requested by the employer. The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employer's request. For purposes of medical certification, the employee may use the optional DOL forms developed for these purposes. *See* §§825.306(b), 825.310(c)-(d). If the employer requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employer may recover 100 percent of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employer may elect to maintain other benefits, e.g., life insurance, disability insurance, *etc.*, by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employer can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employer elects to maintain such benefits during the leave, at the conclusion of leave, the employer is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have returned to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employer requires paid leave to be substituted for FMLA leave, the employer may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employers may recover is limited to only the employer's share of allowable premiums as would be calculated under COBRA, excluding the two percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employer to recover are a debt owed by the non-returning employee to the employer. The existence of this debt caused by the employee's failure to return to work does not alter the employer's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employer may recover the costs through deduction from any sums due to the employee (*e.g.*, unpaid wages, vacation pay, profit sharing, *etc.*), provided such deductions do not otherwise violate applicable

Federal or State wage payment or other laws. Alternatively, the employer may initiate legal action against the employee to recover such costs.

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§825.214 Employee right to reinstatement.

General rule. On return from FMLA leave, 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. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. *See also* §825.106(e) for the obligations of joint employers.

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§825.215 Equivalent position.

(a) *Equivalent position.* An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) *Conditions to qualify.* If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, *etc.*, as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) *Equivalent pay.* (1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary, made to employees consistent with the provisions of paragraph (c)(1) of this section. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

(d) *Equivalent benefits.* Benefits include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer through an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3).

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employers may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. *See* §825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (*e.g.*, paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employer is required to follow established policies or practices for

continuing such benefits for other instances of leave without pay. If the employer has no established policy, the employee and the employer are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example, if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, §825.209 addresses health benefits.)

(e) *Equivalent terms and conditions of employment.* An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (*i.e.*, one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employer transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employer to accept a different position against the employee's wishes.

(f) *De minimis exception.* The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis, intangible, or unmeasurable aspects of the job.

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§825.216 Limitations on an employee's right to reinstatement.

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employer's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee cease at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise. An employer would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration. Restoration to a job slated for lay-off when the employee's original position is not would not meet the requirements of an equivalent position.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore

the employee if it is a successor employer. *See* §825.107.

(b) In addition to the circumstances explained above, an employer may deny job restoration to salaried eligible employees (key employees, as defined in §825.217(c)), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; or may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work under the conditions described in §825.312.

(c) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA. The employer's obligations may, however, be governed by the Americans with Disabilities Act (ADA), as amended. *See* §825.702, state leave laws, or workers' compensation laws.

(d) An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration or maintenance of health benefits provisions.

(e) If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employer which does not have such a policy may not deny benefits to which an employee is entitled under FMLA on this basis unless the FMLA leave was fraudulently obtained as in paragraph (d) of this section.

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§825.217 Key employee, general rule.

(a) A *key employee* is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

(b) The term *salaried* means paid on a salary basis, as defined in 29 CFR 541.602. This is the Department of Labor regulation defining employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA as executive, administrative, professional, and computer employees.

(c) A key employee must be among the highest paid 10 percent of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employer within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, *e.g.*, stock options, or benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employer's employees within 75 miles of the worksite may be key employees.

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§825.218 Substantial and grievous economic injury.

(a) In order to deny restoration to a key employee, an employer must determine that the restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the employer, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employer may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the company of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employer which must be sustained. If the reinstatement of a key employee threatens the economic viability of the firm, that would constitute substantial and grievous economic injury. A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employer would experience in the normal course of doing business would certainly not constitute substantial and grievous economic injury.

(d) FMLA's substantial and grievous economic injury standard is different from and more stringent than the undue hardship test under the ADA. *See also* §825.702.

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§825.219 Rights of a key employee.

(a) An employer who believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employer must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employer should determine that substantial and grievous economic injury to the employer's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employer who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employer makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employer shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employer will ordinarily be able to give such notice prior to the employee starting leave. The employer must serve this notice either in person or by certified mail. This notice must explain the basis for the employer's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employer's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employer may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employer actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employer's notice. The employer must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employer shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

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§825.220 Protection for employees who request leave or otherwise assert FMLA rights.

(a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.

(2) An employer is prohibited from discharging or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the Act.

(3) All persons (whether or not employers) are prohibited from discharging or in any other way discriminating against any person (whether or not an employee) because that person has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to this Act;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under this Act;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under this Act.

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* §825.400(c). Interfering with the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid

responsibilities under FMLA, for example:

(1) Transferring employees from one worksite to another for the purpose of reducing worksites, or to keep worksites, below the 50-employee threshold for employee eligibility under the Act;

(2) Changing the essential functions of the job in order to preclude the taking of leave;

(3) Reducing hours available to work in order to avoid employee eligibility.

(c) The Act's prohibition against interference prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under no fault attendance policies. *See* §825.215.

(d) Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA. For example, employees (or their collective bargaining representatives) cannot trade off the right to take FMLA leave against some other benefit offered by the employer. This does not prevent the settlement or release of FMLA claims by employees based on past employer conduct without the approval of the Department of Labor or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a light duty assignment while recovering from a serious health condition. *See* §825.702(d). An employee's acceptance of such light duty assignment does not constitute a waiver of the employee's prospective rights, including the right to be restored to the same position the employee held at the time the employee's FMLA leave commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

(e) Individuals, and not merely employees, are protected from retaliation for opposing (*e.g.*, filing a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations.

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Subpart C—Employee and Employer Rights and Obligations Under the Act

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§825.300 Employer notice requirements.

(a) *General notice.* (1) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. An employer that willfully violates the posting requirement may be assessed a civil money penalty by the Wage and Hour Division not to exceed $166 for each separate offense.

(2) Covered employers must post this general notice even if no employees are eligible for FMLA leave.

(3) If an FMLA-covered employer has any eligible employees, it shall also provide this general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

(4) To meet the requirements of paragraph (a)(3) of this section, employers may duplicate the text of the Department's prototype notice (WHD Publication 1420) or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice. Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall provide the general notice in a language in which the employees are literate. Prototypes are available from the nearest office of the Wage and Hour Division or on the Internet at www.dol.gov/whd. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under Federal or State law.

(b) *Eligibility notice.* (1) When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. *See* §825.110 for definition of an eligible employee and §825.801 for special hours of service eligibility requirements for airline flight crews. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-

qualifying reason in the applicable 12-month period. *See* §§825.127(c) and 825.200(b). All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

(2) The eligibility notice must state whether the employee is eligible for FMLA leave as defined in §825.110. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer, the hours of service with the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. Notification of eligibility may be oral or in writing; employers may use optional Form WH-381 (Notice of Eligibility and Rights and Responsibility) to provide such notification to employees. Prototypes are available from the nearest office of the Wage and Hour Division or on the Internet at www.dol.gov/whd. The employer is obligated to translate this notice in any situation in which it is obligated to do so in §825.300(a)(4).

(3) If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed (*e.g.,* if the employee has not met the hours of service requirement in the 12 months preceding the commencement of leave for the subsequent qualifying reason or the size of the workforce at the worksite has dropped below 50 employees), the employer must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

(c) *Rights and responsibilities notice.* (1) Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The employer is obligated to translate this notice in any situation in which it is obligated to do so in §825.300(a)(4). This notice shall be provided to the employee each time the eligibility notice is provided pursuant to paragraph (b) of this section. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

(i) That the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualifying (*see* §§825.300(c) and 825.301) and the applicable 12-month period for FMLA entitlement (*see* §§825.127(c), 825.200(b), (f), and (g));

(ii) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of covered active duty or call to covered active duty status, and the consequences of failing to do so (*see* §§825.305, 825.309, 825.310, 825.313);

(iii) The employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave (*see* §825.207);

(iv) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (*see* §825.210), and the possible consequences of failure to make such payments on a timely basis (*i.e.,* the circumstances under which coverage may lapse);

(v) The employee's status as a key employee and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (*see* §825.218);

(vi) The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave (*see* §§825.214 and 825.604); and

(vii) The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (*see* §825.213).

(2) The notice of rights and responsibilities may include other information—*e.g.,* whether the employer will require periodic reports of the employee's status and intent to return to work—but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) If the specific information provided by the notice of rights and responsibilities changes, the employer shall, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employer may need to give notice of the arrangements for making premium payments.

(5) Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA.

(6) A prototype notice of rights and responsibilities may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd*. Employers may adapt the prototype notice as appropriate to meet these notice requirements. The notice of rights and responsibilities may be distributed electronically so long as it otherwise meets the requirements of this section.

(d) *Designation notice.* (1) The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employer has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (*e.g.,* after receiving a certification), the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be designated as FMLA-qualifying (*e.g.,* if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the employer must notify the employee of that determination. If the employer requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employer must inform the employee of this designation at the time of designating the FMLA leave.

(2) If the employer has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time.

(3) If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. *See* §825.312. If the employer handbook or other written documents (if any) describing the employer's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances (*e.g.,* by stating that fitness-for-duty certification will be required in all cases of back injuries for employees in a certain occupation), the employer is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd*. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

(5) If the information provided by the employer to the employee in the designation notice changes (*e.g.,* the employee exhausts the FMLA leave entitlement), the employer shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employer must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the employer designates the leave as FMLA-qualifying, the employer must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement (such as in the case of unforeseeable intermittent leave), then the employer must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be in any form, including a notation on the employee's pay stub.

(e) *Consequences of failing to provide notice.* Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered *See* §825.400(c).

[78 FR 8902, Feb. 6, 2013, as amended at at 81 FR 43452, July 1, 2016; 82 FR 5382, Jan. 18, 2017]

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§825.301 Designation of FMLA leave.

(a) *Employer responsibilities.* The employer's decision to designate leave as FMLA-qualifying must be based only on information received from the employee or the employee's spokesperson (*e.g.,* if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, *etc.,* may provide notice to the employer of the need to take FMLA leave).

In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, the employer should inquire further of the employee or the spokesperson to ascertain whether leave is potentially FMLA-qualifying. Once the employer has acquired knowledge that the leave is being taken for a FMLA-qualifying reason, the employer must notify the employee as provided in §825.300(d).

(b) *Employee responsibilities.* An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements set forth in §825.302 or §825.303 depending on whether the need for leave is foreseeable or unforeseeable. An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the employer to determine whether the leave qualifies under the Act. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employer to designate the leave as FMLA leave. An employee using accrued paid leave may in some cases not spontaneously explain the reasons or their plans for using their accrued leave. However, if an employee requesting to use paid leave for a FMLA-qualifying reason does not explain the reason for the leave and the employer denies the employee's request, the employee will need to provide sufficient information to establish a FMLA-qualifying reason for the needed leave so that the employer is aware that the leave may not be denied and may designate that the paid leave be appropriately counted against (substituted for) the employee's FMLA leave entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for a FMLA-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employer may count the leave used after the FMLA-qualifying reason against the employee's FMLA leave entitlement.

(c) *Disputes.* If there is a dispute between an employer and an employee as to whether leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employer. Such discussions and the decision must be documented.

(d) *Retroactive designation.* If an employer does not designate leave as required by §825.300, the employer may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by §825.300 provided that the employer's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employer and an employee can mutually agree that leave be retroactively designated as FMLA leave.

(e) *Remedies.* If an employer's failure to timely designate leave in accordance with §825.300 causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* §825.400(c). For example, if an employer that was put on notice that an employee needed FMLA leave failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that the employee suffered harm as a result of the employer's actions. However, if an employee took leave to provide care for a son or daughter with a serious health condition believing it would not count toward his or her FMLA entitlement, and the employee planned to later use that FMLA leave to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employer's failure to designate properly. The employee might establish this by showing that he or she would have arranged for an alternative caregiver for the seriously ill son or daughter if the leave had been designated timely.

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§825.302 Employee notice requirements for foreseeable FMLA leave.

(a) *Timing of notice.* An employee must provide the employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. For foreseeable leave due to a qualifying exigency notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least 30 days notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employer for such

information.

(b) *As soon as practicable* means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

(c) *Content of notice.* An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), and that the requested leave is for one of the reasons listed in §825.126(b); if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. When an employee seeks leave due to a FMLA-qualifying reason, for which the employer has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave. In all cases, the employer should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave. *See* §825.305. An employer may also request certification to support the need for leave for a qualifying exigency or for military caregiver leave. *See* §§825.309, 825.310). When an employee has been previously certified for leave due to more than one FMLA-qualifying reason, the employer may need to inquire further to determine for which qualifying reason the leave is needed. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA-qualifying.

(d) *Complying with employer policy.* An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. An employee also may be required by an employer's policy to contact a specific individual. Unusual circumstances would include situations such as when an employee is unable to comply with the employer's policy that requests for leave should be made by contacting a specific number because on the day the employee needs to provide notice of his or her need for FMLA leave there is no one to answer the call-in number and the voice mail box is full. Where an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied. However, FMLA-protected leave may not be delayed or denied where the employer's policy requires notice to be given sooner than set forth in paragraph (a) of this section and the employee provides timely notice as set forth in paragraph (a) of this section.

(e) *Scheduling planned medical treatment.* When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. For example, if an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employer to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider. *See* §§825.203 and 825.205.

(f) Intermittent leave or leave on a reduced leave schedule must be medically necessary due to a serious health condition or a serious injury or illness. An employee shall advise the employer, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

(g) An employer may waive employees' FMLA notice requirements. *See* §825.304.

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§825.303 Employee notice requirements for unforeseeable FMLA leave.

(a) *Timing of notice.* When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer's usual and customary notice requirements applicable to such leave. *See* §825.303(c). Notice may be given by the employee's spokesperson (*e.g.*, spouse, adult family member, or other responsible party) if the employee is unable to do so personally. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee would not be required to leave his or her child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee would be expected to call the employer promptly after ensuring the child has used the inhaler.

(b) *Content of notice.* An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), that the requested leave is for one of the reasons listed in §825.126(b), and the anticipated duration of the absence; or if the leave is for a family member that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. When an employee seeks leave due to a qualifying reason, for which the employer has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in "sick" without providing more information will not be considered sufficient notice to trigger an employer's obligations under the Act. The employer will be expected to obtain any additional required information through informal means. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA-qualifying.

(c) *Complying with employer policy.* When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employer may require employees to call a designated number or a specific individual to request leave. However, if an employee requires emergency medical treatment, he or she would not be required to follow the call-in procedure until his or her condition is stabilized and he or she has access to, and is able to use, a phone. Similarly, in the case of an emergency requiring leave because of a FMLA-qualifying reason, written advance notice pursuant to an employer's internal rules and procedures may not be required when FMLA leave is involved. If an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

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§825.304 Employee failure to provide notice.

(a) *Proper notice required.* In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employer's proper posting of the required notice at the worksite where the employee is employed and the employer's provision of the required notice in either an employee handbook or employee distribution, as required by §825.300.

(b) *Foreseeable leave—30 days.* When the need for FMLA leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employer may delay FMLA coverage until 30 days after the date the employee provides notice. The need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient to establish the leave was clearly foreseeable 30 days in advance.

(c) *Foreseeable leave—less than 30 days.* When the need for FMLA leave is foreseeable fewer than 30 days in advance and an employee fails to give notice as soon as practicable under the particular facts and circumstances, the extent to which an employer may delay FMLA coverage for leave depends on the facts of the particular case. For example, if an employee reasonably should have given the employer two weeks notice but instead only provided one week notice, then the employer may delay FMLA-protected leave for one week (thus, if the employer elects to delay FMLA coverage and the employee nonetheless takes leave one week after providing the notice (*i.e.*, a week before the two week notice period has been met) the leave will not be FMLA-protected).

(d) *Unforeseeable leave.* When the need for FMLA leave is unforeseeable and an employee fails to give notice in

accordance with §825.303, the extent to which an employer may delay FMLA coverage for leave depends on the facts of the particular case. For example, if it would have been practicable for an employee to have given the employer notice of the need for leave very soon after the need arises consistent with the employer's policy, but instead the employee provided notice two days after the leave began, then the employer may delay FMLA coverage of the leave by two days.

(e) *Waiver of notice.* An employer may waive employees' FMLA notice obligations or the employer's own internal rules on leave notice requirements. If an employer does not waive the employee's obligations under its internal leave rules, the employer may take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances, as long as the actions are taken in a manner that does not discriminate against employees taking FMLA leave and the rules are not inconsistent with §825.303(a).

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§825.305 Certification, general rule.

(a) *General.* An employer may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employer may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification, as described in §§825.309 and 825.310, respectively. An employer must give notice of a requirement for certification each time a certification is required; such notice must be written notice whenever required by §825.300(c). An employer's oral request to an employee to furnish any subsequent certification is sufficient.

(b) *Timing.* In most cases, the employer should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the employer within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employer provides more than 15 calendar days to return the requested certification.

(c) *Complete and sufficient certification.* The employee must provide a complete and sufficient certification to the employer if required by the employer in accordance with §§825.306, 825.309, and 825.310. The employer shall advise an employee whenever the employer finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employer must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employer are not cured in the resubmitted certification, the employer may deny the taking of FMLA leave, in accordance with §825.313. A certification that is not returned to the employer is not considered incomplete or insufficient, but constitutes a failure to provide certification.

(d) *Consequences.* At the time the employer requests certification, the employer must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employer with a complete and sufficient certification, despite the opportunity to cure the certification as provided in paragraph (c) of this section, or fails to provide any certification, the employer may deny the taking of FMLA leave, in accordance with §825.313. It is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employer to support the employee's FMLA request. This provision will apply in any case where an employer requests a certification permitted by these regulations, whether it is the initial certification, a recertification, a second or third opinion, or a fitness for duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient. *See* §§825.306, 825.307, 825.308, and 825.312.

(e) *Annual medical certification.* Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year (as defined in §825.200), the employer may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in §825.307, including second and third opinions.

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§825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *Required information.* When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employer may require an employee to obtain a medical certification from a health care provider that sets forth the following information:

(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;

(2) The approximate date on which the serious health condition commenced, and its probable duration;

(3) A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regimen of continuing treatment;

(4) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability (*see* §825.123(b) and (c));

(5) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, as described in §825.124, and an estimate of the frequency and duration of the leave required to care for the family member;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;

(7) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and

(8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, as described in §§825.124 and 825.203(b), which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

(b) DOL has developed two optional forms (Form WH-380E and Form WH-380F, as revised) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. Optional form WH-380E is for use when the employee's need for leave is due to the employee's own serious health condition. Optional form WH-380F is for use when the employee needs leave to care for a family member with a serious health condition. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Form WH-380-E and WH-380-F, as revised, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in §§825.306, 825.307, and 825.308. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. Prototype forms WH-380-E and WH-380-F may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd*.

(c) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to request additional information from the employee's workers' compensation health care provider, the FMLA does not prevent the employer from following the workers' compensation provisions and information received under those provisions may be considered in determining the employee's entitlement to FMLA-protected leave. Similarly, an employer may request additional information in accordance with a paid leave policy or disability plan that requires greater information to qualify for payments or benefits, provided that the employer informs the employee that the additional information only needs to be provided in connection with receipt of such payments or benefits. Any information received pursuant to such policy or plan may be considered in determining the employee's entitlement to FMLA-protected leave. If the employee fails to provide the information required for receipt of such payments or benefits, such failure will not affect the employee's entitlement to take unpaid FMLA leave. *See* §825.207(a).

(d) If an employee's serious health condition may also be a disability within the meaning of the Americans with Disabilities Act (ADA), as amended, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA. Any information received pursuant to these procedures may be considered in determining the employee's entitlement to FMLA-protected leave.

(e) While an employee may choose to comply with the certification requirement by providing the employer with an

authorization, release, or waiver allowing the employer to communicate directly with the health care provider of the employee or his or her covered family member, the employee may not be required to provide such an authorization, release, or waiver. In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* §825.305(d).

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§825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions.

(a) *Clarification and authentication.* If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider. However, the employer may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the employer has given the employee an opportunity to cure any deficiencies as set forth in §825.305(c). To make such contact, the employer must use a health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the employee's direct supervisor contact the employee's health care provider. For purposes of these regulations, *authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested. *Clarification* means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Employers may not ask health care providers for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (*see* 45 CFR parts 160 and 164), which governs the privacy of individually-identifiable health information created or held by HIPAA-covered entities, must be satisfied when individually-identifiable health information of an employee is shared with an employer by a HIPAA-covered health care provider. If an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear. *See* §825.305(d). It is the employee's responsibility to provide the employer with a complete and sufficient certification and to clarify the certification if necessary.

(b) *Second opinion.* (1) An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employer's established leave policies. In addition, the consequences set forth in §825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a second opinion in order to render a sufficient and complete second opinion.

(2) The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited (*e.g.*, a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) *Third opinion.* If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith. In addition, the consequences set forth in §825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a third opinion in order to render a sufficient and complete third opinion.

(d) *Copies of opinions* The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within five business days unless extenuating circumstances prevent such action.

(e) *Travel expenses.* If the employer requires the employee to obtain either a second or third opinion the employer

must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) *Medical certification abroad.* In circumstances in which the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English, the employee must provide the employer with a written translation of the certification upon request.

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§825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *30-day rule.* An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.

(b) *More than 30 days.* If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless paragraph (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employer must wait 40 days before requesting a recertification. In all cases, an employer may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (*e.g.*, for a lifetime condition), the employer would be permitted to request recertification every six months in connection with an absence.

(c) *Less than 30 days.* An employer may request recertification in less than 30 days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (*e.g.*, the duration or frequency of the absence, the nature or severity of the illness, complications). For example, if a medical certification stated that an employee would need leave for one to two days when the employee suffered a migraine headache and the employee's absences for his or her last two migraines lasted four days each, then the increased duration of absence might constitute a significant change in circumstances allowing the employer to request a recertification in less than 30 days. Likewise, if an employee had a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every 30 days; or

(3) The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on FMLA leave for four weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the employer to request a recertification in less than 30 days.

(d) *Timing.* The employee must provide the requested recertification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) *Content.* The employer may ask for the same information when obtaining recertification as that permitted for the original certification as set forth in §825.306. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the initial certification process. *See* §825.305(d). As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(f) Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.

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§825.309 Certification for leave taken because of a qualifying exigency.

(a) *Active Duty Orders.* The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active

duty)of a military member (*see* §825.126(a)), an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the employer once. A copy of new active duty orders or other documentation issued by the military may be required by the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member;

(b) *Required information.* An employer may require that leave for any qualifying exigency specified in §825.126 be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and

(6) If the qualifying exigency involves *Rest and Recuperation* leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(c) DOL has developed an optional form (Form WH-384) for employees' use in obtaining a certification that meets FMLA's certification requirements. Form WH-384 may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd*. This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. Form WH-384, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section.

(d) *Verification.* If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the employer may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employer. An employer also may contact an appropriate unit of the Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty); no additional information may be requested and the employee's permission is not required.

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§825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

(a) *Required information from health care provider.* When leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense ("DOD") health care provider;

(2) A United States Department of Veterans Affairs ("VA") health care provider;

(3) A DOD TRICARE network authorized private health care provider;

(4) A DOD non-network TRICARE authorized private health care provider, or

(5) Any health care provider as defined in §825.125.

(b) If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD Recovery Care Coordinator) or an authorized VA representative. An employer may request that the health care provider provide the following information:

(1) The name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:

(i) A DOD health care provider;

(ii) A VA health care provider;

(iii) A DOD TRICARE network authorized private health care provider;

(iv) A DOD non-network TRICARE authorized private health care provider; or

(v) A health care provider as defined in §825.125.

(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty;

(3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration;

(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave.

(i) In the case of a current member of the Armed Forces, such medical facts must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy.

(ii) In the case of a covered veteran, such medical facts must include:

(A) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is the continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or

(B) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(C) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(D) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(5) Information sufficient to establish that the covered servicemember is in need of care, as described in §825.124, and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments;

(7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment (*e.g.*, episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) *Required information from employee and/or covered servicemember.* In addition to the information that may be requested under §825.310(b), an employer may also request that such certification set forth the following information provided by an employee and/or covered servicemember:

(1) The name and address of the employer of the employee requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) Whether the covered servicemember is a current member of the Armed Forces, the National Guard or Reserves, and the covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list;

(6) Whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employer may require the employee to provide documentation issued by the military which indicates that the covered servicemember is a veteran, the date of separation, and that the separation is other than dishonorable. Where an employer requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status. *See* §825.127(c)(2).

(7) A description of the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care.

(d) DOL has developed optional forms (WH-385, WH-385-V) for employees' use in obtaining certification that meets FMLA's certification requirements, which may be obtained from local offices of the Wage and Hour Division or on the Internet at www.dol.gov/whd. These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember with a serious injury or illness. WH-385, WH-385-V, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists. An employer may seek authentication and/or clarification of the certification under §825.307. Second and third opinions under §825.307 are not permitted for leave to care for a covered servicemember when the certification has been completed by one of the types of health care providers identified in §825.310(a)(1)-(4). However, second and third opinions under §825.307 are permitted when the certification has been completed by a health care provider as defined in §825.125 that is not one of the types identified in §825.310(a)(1)-(4). Additionally, recertifications under §825.308 are not permitted for leave to care for a covered servicemember. An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to §825.122(k) of the FMLA.

(e) An employer requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification, in lieu of the Department's optional certification forms (WH-385) or an employer's own certification form, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary. An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an employer may request that the employee have one of the authorized health care providers listed under §825.310(a) complete the DOL optional certification form (WH-385) or an employer's own form, as requisite certification for the remainder of the employee's necessary leave period.

(2) An employer may seek authentication and clarification of the ITO or ITA under §825.307. An employer may not utilize the second or third opinion process outlined in §825.307 or the recertification process under §825.308 during the period of time in which leave is supported by an ITO or ITA.

(3) An employer may require an employee to provide confirmation of covered family relationship to the seriously

injured or ill servicemember pursuant to §825.122(k) when an employee supports his or her request for FMLA leave with a copy of an ITO or ITA.

(f) An employer requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Such documentation is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.

(1) An employer may seek authentication and clarification of the documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers under §825.307. An employer may not utilize the second or third opinion process outlined in §825.307 or the recertification process under §825.308 when the servicemember's serious injury or illness is shown by documentation of enrollment in this program.

(2) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to §825.122(k) when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation. An employer may also require an employee to provide documentation, such as a veteran's Form DD-214, showing that the discharge was other than dishonorable and the date of the veteran's discharge.

(g) Where medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents. *See* §825.305(b). In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* §825.305(d).

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§825.311 Intent to return to work.

(a) An employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employer's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employer may require that the employee provide the employer reasonable notice (*i.e.,* within two business days) of the changed circumstances where foreseeable. The employer may also obtain information on such changed circumstances through requested status reports.

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§825.312 Fitness-for-duty certification.

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires all similarly-situated employees (*i.e.,* same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employer) in the fitness-for-duty certification process as in the initial certification process. *See* §825.305(d).

(b) An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work. Additionally, an employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employer must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by §825.300(d), and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions. If the employer satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of his or her job.

Following the procedures set forth in §825.307(a), the employer may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions on a fitness-for-duty certification may be required.

(c) The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(d) The designation notice required in §825.300(d) shall advise the employee if the employer will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.

(e) An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the notice required in paragraph (d) of this section. If an employer provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. *See* §825.313(d).

(f) An employer is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. However, an employer is entitled to a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took such leave. If an employer chooses to require a fitness-for-duty certification under such circumstances, the employer shall inform the employee at the same time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days. Alternatively, an employer can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employer advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave. The employer may not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence. *Reasonable safety concerns* means a reasonable belief of significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employer should consider the nature and severity of the potential harm and the likelihood that potential harm will occur.

(g) If State or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied.

(h) Requirements under the Americans with Disabilities Act (ADA), as amended, apply. After an employee returns from FMLA leave, the ADA requires any medical examination at an employer's expense by the employer's health care provider be job-related and consistent with business necessity. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employer may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his or her job or to his/her impairment. If an employee's serious health condition may also be a disability within the meaning of the ADA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA.

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§825.313 Failure to provide certification.

(a) *Foreseeable leave.* In the case of foreseeable leave, if an employee fails to provide certification in a timely manner as required by §825.305, then an employer may deny FMLA coverage until the required certification is provided. For example, if an employee has 15 days to provide a certification and does not provide the certification for 45 days without sufficient reason for the delay, the employer can deny FMLA protections for the 30-day period following the expiration of the 15-day time period, if the employee takes leave during such period.

(b) *Unforeseeable leave.* In the case of unforeseeable leave, an employer may deny FMLA coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. For example, in the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. Absent such extenuating circumstances, if the employee fails to timely return the certification, the employer can deny FMLA protections for the leave following the expiration of the 15-day time period until a sufficient certification is provided. If the employee never produces the certification, the leave is not FMLA leave.

(c) *Recertification.* An employee must provide recertification within the time requested by the employer (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances. If

an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employer may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

(d) *Fitness-for-duty certification.* When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (*see* §825.312(a)) if the employer has provided the required notice (*see* §825.300(e)); the employer may delay restoration until the certification is provided. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. *See also* §825.213(a)(3).

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Subpart D—Enforcement Mechanisms

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§825.400 Enforcement, general rules.

(a) The employee has the choice of:

(1) Filing, or having another person file on his or her behalf, a complaint with the Secretary of Labor, or

(2) Filing a private lawsuit pursuant to section 107 of FMLA.

(b) If the employee files a private lawsuit, it must be filed within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful.

(c) If an employer has violated one or more provisions of FMLA, and if justified by the facts of a particular case, an employee may receive one or more of the following: wages, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or, where no such tangible loss has occurred, such as when FMLA leave was unlawfully denied, any actual monetary loss sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 26 weeks of wages for the employee in a case involving leave to care for a covered servicemember or 12 weeks of wages for the employee in a case involving leave for any other FMLA qualifying reason. In addition, the employee may be entitled to interest on such sum, calculated at the prevailing rate. An amount equaling the preceding sums may also be awarded as liquidated damages unless such amount is reduced by the court because the violation was in good faith and the employer had reasonable grounds for believing the employer had not violated the Act. When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion. When the employer is found in violation, the employee may recover a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action from the employer in addition to any judgment awarded by the court.

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§825.401 Filing a complaint with the Federal Government.

(a) A complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, U.S. Department of Labor. A complaint may be filed at any local office of the Wage and Hour Division; the address and telephone number of local offices may be found in telephone directories or on the Department's Web site.

(b) A complaint filed with the Secretary of Labor should be filed within a reasonable time of when the employee discovers that his or her FMLA rights have been violated. In no event may a complaint be filed more than two years after the action which is alleged to be a violation of FMLA occurred, or three years in the case of a willful violation.

(c) No particular form of complaint is required, except that a complaint must be reduced to writing and should include a full statement of the acts and/or omissions, with pertinent dates, which are believed to constitute the violation.

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§825.402 Violations of the posting requirement.

Section 825.300 describes the requirements for covered employers to post a notice for employees that explains the Act's provisions. If a representative of the Department of Labor determines that an employer has committed a willful violation of this posting requirement, and that the imposition of a civil money penalty for such violation is appropriate, the

representative may issue and serve a notice of penalty on such employer in person or by certified mail. Where service by certified mail is not accepted, notice shall be deemed received on the date of attempted delivery. Where service is not accepted, the notice may be served by regular mail.

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§825.403 Appealing the assessment of a penalty for willful violation of the posting requirement.

(a) An employer may obtain a review of the assessment of penalty from the Wage and Hour Regional Administrator for the region in which the alleged violation(s) occurred. If the employer does not seek such a review or fails to do so in a timely manner, the notice of the penalty constitutes the final ruling of the Secretary of Labor.

(b) To obtain review, an employer may file a petition with the Wage and Hour Regional Administrator for the region in which the alleged violations occurred. No particular form of petition for review is required, except that the petition must be in writing, should contain the legal and factual bases for the petition, and must be mailed to the Regional Administrator within 15 days of receipt of the notice of penalty. The employer may request an oral hearing which may be conducted by telephone.

(c) The decision of the Regional Administrator constitutes the final order of the Secretary.

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§825.404 Consequences for an employer when not paying the penalty assessment after a final order is issued.

The Regional Administrator may seek to recover the unpaid penalty pursuant to the Debt Collection Act (DCA), 31 U.S.C. 3711 *et seq.*, and, in addition to seeking recovery of the unpaid final order, may seek interest and penalties as provided under the DCA. The final order may also be referred to the Solicitor of Labor for collection. The Secretary may file suit in any court of competent jurisdiction to recover the monies due as a result of the unpaid final order, interest, and penalties.

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Subpart E—Recordkeeping Requirements

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§825.500 Recordkeeping requirements.

(a) FMLA provides that covered employers shall make, keep, and preserve records pertaining to their obligations under the Act in accordance with the recordkeeping requirements of section 11(c) of the Fair Labor Standards Act (FLSA) and in accordance with these regulations. FMLA also restricts the authority of the Department of Labor to require any employer or plan, fund, or program to submit books or records more than once during any 12-month period unless the Department has reasonable cause to believe a violation of FMLA exists or the Department is investigating a complaint. These regulations establish no requirement for the submission of any records unless specifically requested by a Departmental official.

(b) No particular order or form of records is required. These regulations establish no requirement that any employer revise its computerized payroll or personnel records systems to comply. However, employers must keep the records specified by these regulations for no less than three years and make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request. The records may be maintained and preserved on microfilm or other basic source document of an automated data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period, and that extensions or transcriptions of the information required herein can be and are made available upon request. Records kept in computer form must be made available for transcription or copying.

(c) Covered employers who have eligible employees must maintain records that must disclose the following:

(1) Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

(2) Dates FMLA leave is taken by FMLA eligible employees (*e.g.*, available from time records, requests for leave, *etc.*, if so designated). Leave must be designated in records as FMLA leave; leave so designated may not include leave required under State law or an employer plan which is not also covered by FMLA.

(3) If FMLA leave is taken by eligible employees in increments of less than one full day, the hours of the leave.

(4) Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all written notices given to employees as required under FMLA and these regulations *See* §825.300(b)-(c). Copies may be maintained in employee personnel files.

(5) Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.

(6) Premium payments of employee benefits.

(7) Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

(d) Covered employers with no eligible employees must maintain the records set forth in paragraph (c)(1) of this section.

(e) Covered employers in a joint employment situation (*see* §825.106) must keep all the records required by paragraph (c) of this section with respect to any primary employees, and must keep the records required by paragraph (c)(1) with respect to any secondary employees.

(f) If FMLA-eligible employees are not subject to FLSA's recordkeeping regulations for purposes of minimum wage or overtime compliance (*i.e.,* not covered by or exempt from FLSA), an employer need not keep a record of actual hours worked (as otherwise required under FLSA, 29 CFR 516.2(a)(7)), provided that:

(1) Eligibility for FMLA leave is presumed for any employee who has been employed for at least 12 months; and

(2) With respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record maintained in accordance with paragraph (b) of this section.

(g) Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA (*see* 29 CFR 1635.9), which permit such information to be disclosed consistent with the requirements of FMLA. If the ADA, as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements (*see* 29 CFR 1630.14(c)(1)), except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

(2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

(3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

(h) Special rules regarding recordkeeping apply to employers of airline flight crew employees. *See* §825.803.

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Subpart F—Special Rules Applicable to Employees of Schools

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§825.600 Special rules for school employees, definitions.

(a) Certain special rules apply to employees of local educational agencies, including public school boards and elementary and secondary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA (and these special rules) and the Act's 50-employee coverage test does not apply. The usual requirements for employees to be eligible do apply, however, including employment at a worksite where at least 50 employees are employed within 75 miles. For example, employees of a rural school would not be eligible for FMLA leave if the school has fewer than 50 employees and there are no other schools under the jurisdiction

of the same employer (usually, a school board) within 75 miles.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. *Instructional employees* are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

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§825.601 Special rules for school employees, limitations on intermittent leave.

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. *Periods of a particular duration* means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (*see* §825.302) to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employer may require the employee to delay the taking of leave until the notice provision is met.

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§825.602 Special rules for school employees, limitations on leave near the end of an academic term.

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employer may require the employee to continue taking leave until the end of the term if —

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave during the five-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employer may require the employee to continue taking leave until the end of the term if—

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave during the three-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employer may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

(b) For purposes of these provisions, *academic term* means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

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§825.603 Special rules for school employees, duration of FMLA leave.

(a) If an employee chooses to take leave for periods of a particular duration in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employer has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employer to the end of the school term is not counted as FMLA leave; however, the employer shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

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§825.604 Special rules for school employees, restoration to an equivalent position.

The determination of how an employee is to be restored to an equivalent position upon return from FMLA leave will be made on the basis of "established school board policies and practices, private school policies and practices, and collective bargaining agreements." The "established policies" and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to an equivalent position must provide substantially the same protections as provided in the Act for reinstated employees. *See* §825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

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Subpart G—Effect of Other Laws, Employer Practices, and Collective Bargaining Agreements on Employee Rights Under FMLA

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§825.700 Interaction with employer's policies.

(a) An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the Act may not be diminished by any employment benefit program or plan. For example, a provision of a CBA which provides for reinstatement to a position that is not equivalent because of seniority (*e g.,* provides lesser pay) is superseded by FMLA. If an employer provides greater unpaid family leave rights than are afforded by FMLA, the employer is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA), to the additional leave period not covered by FMLA.

(b) Nothing in this Act prevents an employer from amending existing leave and employee benefit programs, provided they comply with FMLA. However, nothing in the Act is intended to discourage employers from adopting or retaining more generous leave policies.

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§825.701 Interaction with State laws.

(a) Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA. The Department of Labor will not, however, enforce State family or medical leave laws, and States may not enforce the FMLA. Employees are not required to designate whether the leave they are taking is FMLA leave or leave under State law, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws. Examples of the interaction between FMLA and State laws include:

(1) If State law provides 16 weeks of leave entitlement over two years, an employee needing leave due to his or her own serious health condition would be entitled to take 16 weeks one year under State law and 12 weeks the next year under FMLA. Health benefits maintenance under FMLA would be applicable only to the first 12 weeks of leave entitlement each year. If the employee took 12 weeks the first year, the employee would be entitled to a maximum of 12 weeks the second year under FMLA (not 16 weeks). An employee would not be entitled to 28 weeks in one year.

(2) If State law provides half-pay for employees temporarily disabled because of pregnancy for six weeks, the employee would be entitled to an additional six weeks of unpaid FMLA leave (or accrued paid leave).

(3) If State law provides six weeks of leave, which may include leave to care for a seriously-ill grandparent or a "spouse equivalent," and leave was used for that purpose, the employee is still entitled to his or her full FMLA leave entitlement, as the leave used was provided for a purpose not covered by FMLA. If FMLA leave is used first for a purpose also provided under State law, and State leave has thereby been exhausted, the employer would not be required to provide additional leave to care for the grandparent or "spouse equivalent."

(4) If State law prohibits mandatory leave beyond the actual period of pregnancy disability, an instructional employee of an educational agency subject to special FMLA rules may not be required to remain on leave until the end of the academic term, as permitted by FMLA under certain circumstances. *See* Subpart F of this part.

(b) [Reserved]

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§825.702 Interaction with Federal and State anti-discrimination laws.

(a) Nothing in FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (*e.g.,* Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act). FMLA's legislative history explains that FMLA is "not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990 [as amended] or the regulations issued under that act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employers covered under the [ADA], employers who receive Federal financial assistance, employers who contract with the Federal government, or the Federal government itself. The purpose of the FMLA is to make leave available to eligible employees and employers within its coverage, and not to limit already existing rights and protection." S. Rep. No. 103-3, at 38 (1993). An employer must therefore provide leave under whichever statutory provision provides the greater rights to employees. When an employer violates both FMLA and a discrimination law, an employee may be able to recover under either or both statutes (double relief may not be awarded for the same loss; when remedies coincide a claimant may be allowed to utilize whichever avenue of relief is desired. *Laffey* v. *Northwest Airlines, Inc.,* 567 F.2d 429, 445 (D.C. Cir. 1976), *cert. denied,* 434 U.S. 1086 (1978).

(b) If an employee is a qualified individual with a disability within the meaning of the ADA, the employer must make reasonable accommodations, *etc.,* barring undue hardship, in accordance with the ADA. At the same time, the employer must afford an employee his or her FMLA rights. ADA's "disability" and FMLA's "serious health condition" are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employers to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employer did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employer to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule for planned medical treatment to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: B00M-1B-C06008265
Robert Johnson Jr.
Manchester, NH 03103-9997
Local Union #05246

Dear John:

Our representatives met, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who works his holiday but did not work the last hour of the employee's scheduled workday prior to or the first hour of the employee's scheduled workday after the holiday is entitled to holiday pay.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. Section 11.2 states, "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." Therefore, determination of this issue is based on the fact circumstances involved.

Accordingly, we agreed to remand this case to regional level arbitration in keeping with the provisions of the Memorandum of Understanding, Step 4 Procedures.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to regional level arbitration.

Time limits at this level were extended by mutual consent.

Sincerely,

Allen Mohl
Labor Relations Specialist
Contract Administration (NPMHU)

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 11-20-09

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

MAY 4 [illegible]

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7C-NA-C 9
M. Biller
Washington, DC 20005

Gentlemen:

On February 9, 1988, David Cybulski and Charles Dudek met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who is on extended absence and wishes to continue eligibility for health and life insurance benefits, and those protections for which an employee may be eligible under Article 6 of the National Agreement may use sick leave and/or annual leave in conjunction with leave without pay (LWOP) prior to exhausting his/her leave balance.

During our discussions, we mutually agreed that an employee in the above circumstances may use sick leave and/or annual leave in conjunction with LWOP prior to exhausting his/her respective leave balance. In addition, this settlement does not limit management's prerogative to grant leave requests at its discretion according to normal leave approval procedures. Furthermore, the Employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

David P. Cybulski
Acting General Manager
Grievance & Arbitration Division

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

Lawrence G. Hutchins
Vice President
National Association of Letter Carriers, AFL-CIO

5/4/88
DATED

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

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 83
W. Burrus
Washington, DC

Dear Mr. Neill:

Recently, Bobby Kennedy and Randy Sutton met in a prearbitration discussion of the above-referenced case.

The issue in this grievance concerns the utilization of paid leave requested in conjunction with holidays, when the request originates from an employee in an extended leave without pay (LWOP) status.

The parties mutually agree it is inappropriate for employees in an extended LWOP status to manipulate the utilization of paid leave for the purpose of obtaining paid holidays. The parties further agree management should not deny paid leave requests from employees in an extended LWOP status solely because it provides an entitlement to a paid holiday.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case and remove it from the pending national arbitration listing.

Sincerely,

David P. Silvestre
for Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

Thomas A. Neill
Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

Date: 10-29-93

MEMORANDUM OF UNDERSTANDING

LEAVE SHARING

The Postal Service will continue a Leave Sharing Program during the term of the **2019** National Agreement under which career postal employees are able to donate annual leave from their earned annual leave account to another career postal employee. 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 including pregnancy **or must need leave to care for a child born to or placed for adoption with the employee within the twelve months prior to taking leave** and (b) must be known or expected to miss at least 40 more hours from work than his or her own annual leave and/or sick leave balance(s), as applicable, will cover, and (c) must have his or her absence approved pursuant to standard attendance policies. Donated leave may be used to cover the 40 hours of LWOP required to be eligible for leave sharing.

For purposes other than pay and legally required payroll deductions, employees using donated leave will be subject to regulations applicable to employees in LWOP status and will not earn any type of leave while using donated leave.

Donated leave may be carried over from one leave year to the next without limitation. Donated leave not actually used remains in the recipient's account (i.e., is not restored to donors). Such residual donated leave at any time may be applied against negative leave balances caused by a medical exigency. At separation, any remaining donated leave balance will be paid in a lump sum.

(The preceding MOU, Leave Sharing, shall apply to Mail Handler Assistant employees.)

434.4 Holiday Leave Pay

434.41 Policy

434.411 Holidays Observed

Provisions for holiday observance are as follows:

a. The following 10 days are observed as holidays:

(1) New Year's Day.

(2) Martin Luther King Jr.'s Birthday.

(3) Washington's Birthday (Presidents' Day).

(4) Memorial Day.

(5) Independence Day.

(6) Labor Day.

(7) Columbus Day.

(8) Veterans' Day.

(9) Thanksgiving Day.

(10) Christmas Day.

b. Variations in schedule for holiday observance are as follows:

(1) If a holiday falls on an eligible employee's regular scheduled workday, including Saturday or Sunday, the employee observes the holiday on that day.

(2) If a holiday falls on an eligible employee's scheduled nonworkday, the first scheduled day preceding the holiday is designated as the employee's holiday except as provided in 434.411b3 and 434.421.

(3) If a holiday falls on a Sunday that is a nonscheduled workday for an eligible employee, Monday is designated as the employee's holiday. However, if Monday is also a nonscheduled workday, then Saturday is designated as the employee's holiday. For postal police officers, see the USPS-PPO Agreement.

(4) For all full-time postmasters, if a holiday falls on a Saturday that is a nonscheduled workday, the preceding Friday is designated as the postmaster's holiday. Additional workhour allowances are authorized for those Post Offices without a senior supervisor to provide relief coverage during the postmaster's absence on holiday leave, where necessary.

434.412 Application

On these holidays, eligible employees receive holiday leave pay for the number of hours equal to their regular daily work schedule, not to exceed 8 hours (see 434.421). This holiday pay is instead of other paid leave to which employees might otherwise be entitled on their holiday.

Eligible employees who work their holiday, at their option, may elect to have their annual leave balance credited with up to 8 hours of annual leave in lieu of holiday leave pay (see 434.422). When this option is chosen, the deferred holiday leave pay is subject to all applicable rules for requesting and

scheduling annual leave and is combined with annual leave and counted as annual leave for purposes of annual leave carryover (see 512.32).

Note: Holiday leave pay should not be confused with holiday-worked pay, holiday scheduling premium, or Christmas-worked pay (see 434.5).

434.42 Eligibility

434.421 Eligibility for Holiday Leave Pay

Eligibility is shown by category on the following chart:

Employee Category		Eligible
Full-time		Yes
Part-time regular, including A–E postmasters, regularly scheduled to work	Minimum of 5 days (per service week)	Yes
	Less than 5 days (per service week)	No[1]
Part-time flexible		No[2]
Casual		No
Temporary		No
Transitional		No

1. *Unless the holiday falls on their scheduled workday.*
2. *Holiday pay is included in the hourly rate.*

To receive holiday leave pay, employees must be in a pay status either the last scheduled hour before or the first scheduled hour after the holiday or designated holiday.

However, for an employee on any form of extended LWOP, paid leave for the last scheduled hour before or the first scheduled hour after the holiday or designated holiday is not approved for the purpose of qualifying the employee for holiday pay.

434.422 Eligibility for Annual Leave in Lieu of Holiday Leave Pay

Categories of employees eligible for annual leave in lieu of holiday leave pay are shown on the following chart:

Salary Schedule	Salary Schedule Acronym	Rate Schedule Code (RSC)
Information Technology/Accounting Service Centers	IT/ASC	N
Postal Service Schedules 1 and 2 (salary tables P and P9)	PS-1 PS-2	P PB
Mail Equipment Shops/Material Distribution Center (salary tables C and C9)	MESC-1 MESC-2	C CB
Operating Services Division	OSD	K
Mail Handlers	MH	M
Executive and Administrative Schedule*	EAS	E

* *Applies to FLSA-nonexempt employees. Also applies to EAS-23 and below FLSA-exempt employees who receive additional pay (i.e., special exempt) and also choose to substitute an entire 8 hours of holiday leave pay for annual leave. Excludes EAS postmasters, officers in charge, postal inspectors, and employees in management development programs.*

434.4 Holiday Leave Pay

434.41 Policy

434.411 Holidays Observed

Provisions for holiday observance are as follows:

a. The following 10 days are observed as holidays:

(1) New Year's Day.

(2) Martin Luther King Jr.'s Birthday.

(3) Washington's Birthday (Presidents' Day).

(4) Memorial Day.

(5) Independence Day.

(6) Labor Day.

(7) Columbus Day.

(8) Veterans' Day.

(9) Thanksgiving Day.

(10) Christmas Day.

b. Variations in schedule for holiday observance are as follows:

(1) If a holiday falls on an eligible employee's regular scheduled workday, including Saturday or Sunday, the employee observes the holiday on that day.

(2) If a holiday falls on an eligible employee's scheduled nonworkday, the first scheduled day preceding the holiday is designated as the employee's holiday except as provided in 434.411b3 and 434.421.

(3) If a holiday falls on a Sunday that is a nonscheduled workday for an eligible employee, Monday is designated as the employee's holiday. However, if Monday is also a nonscheduled workday, then Saturday is designated as the employee's holiday. For postal police officers, see the USPS-PPO Agreement.

(4) For all full-time postmasters, if a holiday falls on a Saturday that is a nonscheduled workday, the preceding Friday is designated as the postmaster's holiday. Additional workhour allowances are authorized for those Post Offices without a senior supervisor to provide relief coverage during the postmaster's absence on holiday leave, where necessary.

434.412 Application

On these holidays, eligible employees receive holiday leave pay for the number of hours equal to their regular daily work schedule, not to exceed 8 hours (see 434.421). This holiday pay is instead of other paid leave to which employees might otherwise be entitled on their holiday.

Eligible employees who work their holiday, at their option, may elect to have their annual leave balance credited with up to 8 hours of annual leave in lieu of holiday leave pay (see 434.422). When this option is chosen, the deferred holiday leave pay is subject to all applicable rules for requesting and

scheduling annual leave and is combined with annual leave and counted as annual leave for purposes of annual leave carryover (see 512.32).

Note: Holiday leave pay should not be confused with holiday-worked pay, holiday scheduling premium, or Christmas-worked pay (see 434.5).

434.42 Eligibility

434.421 Eligibility for Holiday Leave Pay

Eligibility is shown by category on the following chart:

Employee Category		Eligible
Full-time		Yes
Part-time regular, including A–E postmasters, regularly scheduled to work	Minimum of 5 days (per service week)	Yes
	Less than 5 days (per service week)	No[1]
Part-time flexible		No[2]
Casual		No
Temporary		No
Transitional		No

1. *Unless the holiday falls on their scheduled workday.*
2. *Holiday pay is included in the hourly rate.*

To receive holiday leave pay, employees must be in a pay status either the last scheduled hour before or the first scheduled hour after the holiday or designated holiday.

However, for an employee on any form of extended LWOP, paid leave for the last scheduled hour before or the first scheduled hour after the holiday or designated holiday is not approved for the purpose of qualifying the employee for holiday pay.

434.422 Eligibility for Annual Leave in Lieu of Holiday Leave Pay

Categories of employees eligible for annual leave in lieu of holiday leave pay are shown on the following chart:

Salary Schedule	Salary Schedule Acronym	Rate Schedule Code (RSC)
Information Technology/Accounting Service Centers	IT/ASC	N
Postal Service Schedules 1 and 2 (salary tables P and P9)	PS-1 PS-2	P PB
Mail Equipment Shops/Material Distribution Center (salary tables C and C9)	MESC-1 MESC-2	C CB
Operating Services Division	OSD	K
Mail Handlers	MH	M
Executive and Administrative Schedule*	EAS	E

* *Applies to FLSA-nonexempt employees. Also applies to EAS-23 and below FLSA-exempt employees who receive additional pay (i.e., special exempt) and also choose to substitute an entire 8 hours of holiday leave pay for annual leave. Excludes EAS postmasters, officers in charge, postal inspectors, and employees in management development programs.*

Exhibit 434.52
Holiday-Worked Pay Eligibility Table

Rate Schedule	Employee Classification			
	Full-time Regular	Part-time Regular	Part-time Flexible	Casual,* Temporary, and PM Relief
B — Rural Auxiliary	–	–	No[3]	No[3]
C — MESC	Yes[4]	Yes	No[3]	–
E — EAS	Yes[1,2]	Yes[1,2]	–	No[3]
F — Postmasters (A–E)	–	Yes[2]	–	No[3]
G — Nurses	Yes	–	No[3]	No[3]
K — HQ Op. Services Div.	Yes	–	–	–
L — Postmaster Replacement	–	–	–	No[3]
M — Mail Handlers	Yes[4]	Yes	No[3]	–
N — Data Center	Yes[4]	–	No[3]	–
P — PS	Yes[4]	Yes	No[3]	–
Q — City Carriers	Yes[4]	Yes	No[3]	–
R — Rural Carriers	Yes	–	No[3]	–
S — PCES	No	–	–	–
T — Tool and Die	Yes[4]	–	No[3]	–
Y — Postal Police	Yes[4]	–	No[3]	–

* *Casual employees are covered in RS-E regardless of the bargaining unit they supplement.*

1. *FLSA-nonexempt employees only, including nonexempt postmasters and officers in charge, except some exempt supervisors, may be eligible for "additional pay" for working on a holiday (see 434.143).*
2. *Postmasters, officers in charge, and FLSA-exempt employees are not eligible for Christmas-Worked Pay (see 434.53).*
3. *Hours worked on a holiday are charged to Workhours, except that part-time flexible employees are eligible for Christmas-Worked Pay on December 25 only (See 434.52).*
4. *Under certain conditions, eligible employees may qualify for Holiday Scheduling Premium (See 434.53).*

434.53 Pay Computation

Provisions concerning pay computation are as follows:

a. Eligible employees who are required to work on their holiday or designated holiday are paid (in addition to any pay for holiday leave to which they may be entitled) their basic hourly straight time rate for each hour worked up to 8. Eligible FLSA special exempt employees are paid EAS additional pay for each authorized hour worked on their holiday or designated holiday.

b. Eligible employees, excluding postmasters and officers in charge, who are required to work on Christmas day or their designated Christmas holiday are paid, in addition to authorized holiday leave pay (434.4) and holiday-worked pay, Christmas-worked pay at 50 percent of their basic hourly straight-time rate. Work performed beyond 8 hours is treated as overtime for bargaining unit employees. The Christmas-worked premium is not paid for overtime hours. Also Christmas-worked pay is not authorized during hours of overnight travel on a nonscheduled day (438.133).

434.43 Pay Computation for Holiday Leave Pay

Provisions concerning pay computation are as follows:

a. Eligible employees are paid for the holiday at their basic hourly rate for those hours equal to their regular daily working schedule, not to exceed 8 hours. Eligible employees may elect to receive annual leave in lieu of holiday leave pay (see 434.412).

b. Holiday leave pay is in lieu of other paid leave to which an employee might otherwise be entitled on the designated holiday.

c. Holiday leave pay is payable in addition to compensation for hours actually worked on a designated holiday (see 434.5).

d. Eligible full-time and part-time regular employees require no specific authorization to be absent from work on a holiday or a designated holiday, unless scheduled to work.

e. A full-time or part-time regular employee who is scheduled to actually work on a holiday or on a designated holiday, but does not work, is placed in LWOP status and does not receive holiday leave pay, unless the absence is based on an extreme emergency situation and the absence is excused by the employee's supervisor.

f. Holiday leave paid to an employee who is on a COP status should be recorded as holiday leave and is counted as one of the 45 calendar days of COP for OWCP purposes.

g. When a full-time employee has partially overcome a compensable disability and is working a partial schedule under the rehabilitation program, holiday leave is payable up to the number of hours in the partial schedule. The remainder of the holiday leave pay is received from OWCP.

434.5 Holiday-Worked Pay

434.51 Policy

Holiday-worked pay is paid to eligible employees for the hours worked on a recognized holiday or for the hours worked on the employee's designated holiday, except Christmas. (See 434.4 for recognized holidays.)

Christmas-worked pay is paid to eligible employees for the hours worked on Christmas day or the day designated as the employee's Christmas holiday.

434.52 Eligibility

Exhibit 434.52 indicates that employees are eligible to receive holiday-worked pay and Christmas-worked pay.

Part-time flexible employees receive Christmas-worked pay for up to 8 straight-time hours only if they work on December 25 (see 432.21c).

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E — EAS	Yes[1,2]	Yes[1,2]	–	No[3]
F — Postmasters (A–E)	–	Yes[2]	–	No[3]
G — Nurses	Yes	–	No[3]	No[3]
K — HQ Op. Services Div.	Yes	–	–	–
L — Postmaster Replacement	–	–	–	No[3]
M — Mail Handlers	Yes[4]	Yes	No[3]	–
N — Data Center	Yes[4]	–	No[3]	–
P — PS	Yes[4]	Yes	No[3]	–
Q — City Carriers	Yes[4]	Yes	No[3]	–
R — Rural Carriers	Yes	–	No[3]	–
S — PCES	No	–	–	–
T — Tool and Die	Yes[4]	–	No[3]	–
Y — Postal Police	Yes[4]	–	No[3]	–

* *Casual employees are covered in RS-E regardless of the bargaining unit they supplement.*

1. *FLSA-nonexempt employees only, including nonexempt postmasters and officers in charge, except some exempt supervisors, may be eligible for "additional pay" for working on a holiday (see 434.143).*
2. *Postmasters, officers in charge, and FLSA-exempt employees are not eligible for Christmas-Worked Pay (see 434.53).*
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4. *Under certain conditions, eligible employees may qualify for Holiday Scheduling Premium (See 434.53).*

434.53 Pay Computation

Provisions concerning pay computation are as follows:

a. Eligible employees who are required to work on their holiday or designated holiday are paid (in addition to any pay for holiday leave to which they may be entitled) their basic hourly straight time rate for each hour worked up to 8. Eligible FLSA special exempt employees are paid EAS additional pay for each authorized hour worked on their holiday or designated holiday.

b. Eligible employees, excluding postmasters and officers in charge, who are required to work on Christmas day or their designated Christmas holiday are paid, in addition to authorized holiday leave pay (434.4) and holiday-worked pay, Christmas-worked pay at 50 percent of their basic hourly straight-time rate. Work performed beyond 8 hours is treated as overtime for bargaining unit employees. The Christmas-worked premium is not paid for overtime hours. Also Christmas-worked pay is not authorized during hours of overnight travel on a nonscheduled day (438.133).

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: E00M-1E-C07087183
Class Action
Des Moines, IA 50318-9997

Dear John:

Our representatives met, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether part-time flexible (PTF) employees are entitled to Christmas worked-pay for hours worked on December 24 or December 26.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. PTF employees are eligible for Christmas-worked pay for hours worked on December 25 only. Therefore, determination of this issue is based on the fact circumstances involved.

Accordingly, we agree to remand this grievance to Step 3 for further processing and/or regional arbitration, if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to regional level arbitration.

Time limits at this level were extended by mutual consent.

Sincerely,

12-13-10

Allen Mohl
Labor Relations Specialist
Contract Administration (NPMHU)

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 3/25/10

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

434.43 Pay Computation for Holiday Leave Pay

Provisions concerning pay computation are as follows:

a. Eligible employees are paid for the holiday at their basic hourly rate for those hours equal to their regular daily working schedule, not to exceed 8 hours. Eligible employees may elect to receive annual leave in lieu of holiday leave pay (see 434.412).

b. Holiday leave pay is in lieu of other paid leave to which an employee might otherwise be entitled on the designated holiday.

c. Holiday leave pay is payable in addition to compensation for hours actually worked on a designated holiday (see 434.5).

d. Eligible full-time and part-time regular employees require no specific authorization to be absent from work on a holiday or a designated holiday, unless scheduled to work.

e. A full-time or part-time regular employee who is scheduled to actually work on a holiday or on a designated holiday, but does not work, is placed in LWOP status and does not receive holiday leave pay, unless the absence is based on an extreme emergency situation and the absence is excused by the employee's supervisor.

f. Holiday leave paid to an employee who is on a COP status should be recorded as holiday leave and is counted as one of the 45 calendar days of COP for OWCP purposes.

g. When a full-time employee has partially overcome a compensable disability and is working a partial schedule under the rehabilitation program, holiday leave is payable up to the number of hours in the partial schedule. The remainder of the holiday leave pay is received from OWCP.

434.5 Holiday-Worked Pay

434.51 Policy

Holiday-worked pay is paid to eligible employees for the hours worked on a recognized holiday or for the hours worked on the employee's designated holiday, except Christmas. (See 434.4 for recognized holidays.)

Christmas-worked pay is paid to eligible employees for the hours worked on Christmas day or the day designated as the employee's Christmas holiday.

434.52 Eligibility

Exhibit 434.52 indicates that employees are eligible to receive holiday-worked pay and Christmas-worked pay.

Part-time flexible employees receive Christmas-worked pay for up to 8 straight-time hours only if they work on December 25 (see 432.21c).

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E — EAS	Yes[1,2]	Yes[1,2]	–	No[3]
F — Postmasters (A–E)	–	Yes[2]	–	No[3]
G — Nurses	Yes	–	No[3]	No[3]
K — HQ Op. Services Div.	Yes	–	–	–
L — Postmaster Replacement	–	–	–	No[3]
M — Mail Handlers	Yes[4]	Yes	No[3]	–
N — Data Center	Yes[4]	–	No[3]	–
P — PS	Yes[4]	Yes	No[3]	–
Q — City Carriers	Yes[4]	Yes	No[3]	–
R — Rural Carriers	Yes	–	No[3]	–
S — PCES	No	–	–	–
T — Tool and Die	Yes[4]	–	No[3]	–
Y — Postal Police	Yes[4]	–	No[3]	–

* *Casual employees are covered in RS-E regardless of the bargaining unit they supplement.*

1. *FLSA-nonexempt employees only, including nonexempt postmasters and officers in charge, except some exempt supervisors, may be eligible for "additional pay" for working on a holiday (see 434.143).*
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b. Eligible employees, excluding postmasters and officers in charge, who are required to work on Christmas day or their designated Christmas holiday are paid, in addition to authorized holiday leave pay (434.4) and holiday-worked pay, Christmas-worked pay at 50 percent of their basic hourly straight-time rate. Work performed beyond 8 hours is treated as overtime for bargaining unit employees. The Christmas-worked premium is not paid for overtime hours. Also Christmas-worked pay is not authorized during hours of overnight travel on a nonscheduled day (438.133).

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K — HQ Op. Services Div.	Yes	–	–	–
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Q — City Carriers	Yes[4]	Yes	No[3]	–
R — Rural Carriers	Yes	–	No[3]	–
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UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

July 2, 1982

Mr. Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: R. Rivenbark
Orlando, FL 32802
E1C-3W-C-4572

Dear Mr. Anderson:

On June 2, 1982, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.

The question in this grievance is whether the grievant is entitled to Christmas Worked Pay for time worked from 2030 hours to 2400 hours on December 25, 1981.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The Union contends that since the hours cited were on the calendar day of December 25, then the grievant is entitled to Christmas Worked Pay.

It is the position of the Postal Service that under circumstances present in this case that the grievant is not entitled to Christmas Worked Pay. Article 11, Section 4.B, sets forth the provisions for receiving Christmas Worked Pay. This section authorizes Chistmas Worked Pay only on the employee's holiday. Specifically, "... in addition to the holiday pay to which the employee is entitled..." The grievant, in this case, was non-scheduled on his Christmas holiday which was the service day, December 25, 1981. When the grievant reported to work at 2030 hours on December 25, he was reporting for the service day, December 26. Therefore, the grievant's work was not in conjunction with Holiday Leave and does not qualify for the Christmas Worked

Based upon the above considerations, this grievance is hereby denied.

Time limits were extended by mutual consent.

Sincerely,

A. J. Johnson
Labor Relations Department

An Arbitration in the Matter of:

THE UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

GRIEVANCE NO. NC-C-6085

W. LITTRELL
KANSAS CITY, MISSOURI

ISSUED: August 16, 1978

THE GRIEVANCE

This grievance arose in the Kansas City, Missouri Post Office when the Postal Service failed to assign the Grievant to work on a holiday for which he had volunteered to work. The parties agreed to present the issues involved to the Associate Impartial Chairman on the basis of the following stipulation:

> 'Have the parties agreed upon a remedy applicable to grievances which arise under Article XI, Section 6, of the 1973 or 1975 national agreement, when the Postal Service admits that an employee who volunteered to work a holiday or a day designated as a holiday was erroneously not scheduled to work; and if not, what, if any, is the appropriate remedy?'

It was agreed that the grievance would be argued on the basis of the stipulation rather than the facts surrounding the specific incident in the Kansas City Post Office.

BACKGROUND

The issues center around the language of Article XI, Section 6 of the 1973[1] National Agreement which reads:

> "Section 6. Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls. 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. 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."

As stated in Section 6, the priority sequence of assignment on a given holiday, for purposes of this case, can be taken to be as follows:

(a) all casuals and part-time flexibles are to be utilized to the maximum extent possible;

(b) all full-time and part-time regulars with needed skills who wish to work on the holiday shall be afforded the opportunity to work;

(c) those full-time and part-time regular employees who cannot "be spared" from work on the holiday.

---

[1] The language of this Section was not changed in the 1975 negotiations.

This effectively establishes three categories of employees for use in performing work on holidays, but does not spell out the order in which individual employees are to be selected within each category. This matter is left to local negotiations and is a proper subject for negotiations under Article XXX of the 1973 National Agreement which reads in relevant part:

"ARTICLE XXX - LOCAL IMPLEMENTATION

A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1973 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.

B. There shall be a 30-day perio of local implementation to commence 45 days after the effective date of this Agreement, on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement:

. . .

13. The method of selecting employees to work on a holiday.

. . ."

Local agreements are reported to vary considerably dealing with this matter. Obviously, no local agreement can vary the order of selection as among the three categories set forth in Article XI, Section 6. But in each such category there are important practical

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1/ For purposes of Item 13, only the implementation dates were changed in the 1973 National Agreement.

problems to determine which employees shall be assigned first -- i.e., as between (1)"casuals" and "flexibles"; (2)"part-time" and "full-time" regulars; and (3)in determining how to select employees who cannot be spared. These intensely practical problems seemingly are left to the local parties under Article XXX.

In April, 1975, the parties were faced with "10 or 15" grievances under Article XI, Section 6. James Rademacher, President of the National Association of Letter Carriers, and David Charters, Director of the Office of Grievance Procedures, met to discuss the grievances. As a result of those discussions, an informal, oral arrangement was made to categorize the grievances and dispose of them. The arrangement was said to be as follows[1]:

> "The agreed remedy . . . is that the aggrieved employee who should have been selected to work the holiday . . . will be compensated at the straight time rate for one-half of the hours involved."

This arrangement apparently related only to full-time regular "volunteers" under the second category in Article XI, Section 6.

It appears that Rademacher and Charters applied it until October, 1975 when Charters transferred to the Central Region. The parties assiduously avoided arguing details of individual settlements on the basis that each settlement was non-citable and non-precedential. The Postal Service stresses that such an approach was part of the arrangement with Rademacher. Details of the nature and number of settlements are, therefore, not available. Even though Charters was

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[1] From the Postal Service Post-Hearing Brief.

no longer available to meet with Rademacher in regard to the arrangement, his successor issued the following memorandum in July, 1976:

DATE: 7/26/76
SUBJECT: NALC Holiday Grievance Settlements

General Managers, Labor Relations
All Regions

In April, 1975, a settlement agreement was reached with the NALC relative to the remedy for 'pecking order' violations regarding the scheduling of full time employees to work on holidays pursuant to the provisions of Article XI of the National Agreement. These grievances have previously only been settled at Step 4 or in pre-arbitration decisions. Authorization is now being granted to settle holiday scheduling violations at Step 3 regarding NALC grievance cases in accordance with the instructions provided below.

The agreed remedy, which is provided on a non-precedent and non-citable basis, is that the aggrieved employee who should have been selected to work the holiday pursuant to the National Agreement or local agreement will be compensated at the straight time rate for one-half of the hours involved. This remedy does not apply to an aggrieved employee who actually worked.

Mr. Rademacher has delegated authority to the Union officials at the regional level to settle grievance cases as outlined above.

/s/
John B. Mitchell, Director
Office of Grievance and Arbitration
Labor Relations Department

cc: Regional Directors, ELLR
All Regions
James Rademacher

There is no reason to doubt that this memorandum accurately reflects the arrangement developed with Rademacher. Nevertheless, there is no evidence that Rademacher subsequently delegated such authority to Union officials as spelled out in the memo nor is there evidence that any Union Representative, other than Rademacher, actually dealt with such a grievance. In any event, incoming NALC President, Joseph Vacca, faced with the Kansas City grievance, refused to settle it on the basis of the Rademacher-Charters arrangement.

The Postal Service, in the present case agrees that the Kansas City Post Office did not follow the agreed sequence established under Article XI, Section 6 within the category of employees' volunteering for holiday work.

CONTENTIONS

The Union argues that it is not bound by the Rademacher-Charters arrangement. It says that the arrangement was used by the two men to settle grievances on a non-citable, non-precedential basis and the arrangement is not necessarily binding on the Union.

In regard to the remedy, the Union maintains that, no matter the "pecking order" established by local agreement within the volunteer category, an employee has the clear right to volunteer for holiday work and, all other things being equal, he thereby becomes entitled to be assigned to work on that holiday in the proper order. When

another employee is assigned to work the holiday in favor of the employee with a prior right, the Postal Service is in violation of the National Agreement and should make up to the employee that which he lost; i.e., the additional pay he would have received for working the holiday had he been given his proper opportunity to work.

The Union says that an employee volunteers to work a holiday for the pay involved and, to the extent that he is improperly denied that holiday assignment, he suffers a loss of the pay which he volunteered, and thereby gained a right, to earn.

The Postal Service maintains that the Rademacher-Charters arrangement, even though unwritten, is a binding agreement and when the parties entered into the agreement they contemplated that it would cover not only current but also prospective holiday work grievances. It says that such arrangements are commonplace in settling groups of grievances with common elements and that negating the Rademacher-Charters agreement would undermine future arrangements to handle grievance problems.

In regard to the remedy, the Postal Service proposes that, if it is determined that no binding agreement arose between Rademacher and Charters, the parties should be instructed to work each grievance out on a case-by-case basis since, "these matters are matters inherently in which a right arises, if at all, only under a local memorandum (of) understanding."1/

1/ Transcript p. 18.

It says further that, if the Associate Impartial Chairman rejects that approach, it would be appropriate that no penalty be assessed and the offending Post Office be informed that it should not violate Article XI, Section 6. The Postal Service claims that the purpose of Article XI, Section 6 is to provide, to the extent possible, full-time and part-time regular employees with the holiday off work. It says that, to the extent that an employee who volunteered to work the holiday and due to Postal Service error did not work the holiday, he was nevertheless given the full measure of the "day off" principle set out in the National Agreement.

The Service denied that any right to be paid for the missed holiday assignment accrues to a properly sequenced volunteer. It claims that, at best, he should be offered an assignment to work a future holiday since, in the first instance, he suffered no loss. For this proposition the Service relies on the language of the National Agreement set out in Article VIII, Section 5,C(2) which deals with the distribution of overtime among City Letter Carriers on a quarterly basis.

FINDINGS

The first issue here is raised by stipulation, and no elaboration is necessary concerning the facts surrounding the Kansas City grievance. The Postal Service agrees that a local violation of Article XI, Section 6 occurred when holiday work was given to another

employee when the Grievant had established a prior right to that work.

In dealing with such grievances, Rademacher and Charters fashioned a formula which apparently rested on their respective evaluations of the language of Article XI, Section 6. Their oral arrangement obviously reflected a compromise (designed to dispose of grievances in hand) because Article XI, Section 6 does not precisely spell out a remedy for such an infraction. The view of the Postal Service that such an oral, informal arrangement must be observed in perpetuity is not sound. The oral arrangement was just that -- an arrangement. It represented a transitory compromise that arose from a problem under Section 6, but the application of the compromise was on a "non-precedent and non-citable basis."

The Postal Service's argument, that if a right exists it arises only under the local memorandum of understanding, is not valid. Article XXX, Item 13 refers only to the method of selecting employees to work on a holiday within the three categories clearly established in Article XI, Section 6 since the local parties obviously have no authority to change the National Agreement. There is nothing in Item 13 to suggest the need for local agreement to remedy violations of Article XI, Section 6. The parties made a good faith effort to provide certain rights to a holiday volunteer when they negotiated Article XI, Section 6. To maintain that the language, "shall be afforded the opportunity to work," is meaningless is to fly in the face of that good faith effort. The Local Memorandum of Agreement establishes only the "pecking order" among employees to whom that right

accrues. Certainly, there would have been no reason for Rademacher and Charters to enter into the "non-precedential, non-citable" compromise if the local parties had available to them the mechanism of Article XXX to resolve such issues. Under these circumstances, to remand each grievance to be reviewed in the light of the Local Memorandum of Understanding would be pointless.

The negotiators in the 1975 negotiations were aware of the problem but made no change in Article XI, Section 6 to reflect the informal case-by-case compromise. Certainly, a permanent arrangement acceptable to principals for both parties who were on the scene during the negotiations would have received consideration for inclusion in the National Agreement. Perhaps the most important factor that made the arrangement exclusively that of Rademacher and Charters was the metho by which it was applied. Rules for categorizing overlooked holiday volunteer grievances are not in evidence. If there were any, they apparently resided with Rademacher and Charters. Moreover, the parties respected the non-citable and non-precedential nature of the individual settlements. No light is shed on the criteria that Rademacher used to determine whether a grievance fell within the purview of the arrangement. Given the oral and informal nature of the arrangement and its case-by-case application of a non-citable, non-precedential basis, it cannot now be held to constitute a binding agreement.

The second question, under the stipulation, is to determine the appropriate remedy for violation of Article XI, Section 6. The Postal Service suggests that the affected employee be given the next

opportunity to work a holiday within the quarter much as the distribution of overtime for City Letter Carriers is handled. But holiday work problems are not similar to overtime problems. A holiday not worked is lost forever. Overtime situations occur frequently and those on the "overtime desired" list have an opportunity, over the course of a calendar quarter, to work a relatively equal number of overtime hours. Moreover, an employee may desire to work on Memorial Day but not on Independence Day or some other holiday.

The Service suggests that the overlooked holiday volunteer is no worse off than other employees who do not work on the holiday since the purpose of Article XI, Section 6 is to maximize the n[illegible] ployees who are off on the holiday. This argument is not persuasive when it is considered that the overlooked holiday volunteer elected not to be off on the holiday and the employee who worked in his stead was covered by the same language.

Additionally, the Service's argument that the overlooked holiday volunteer lost nothing since he did not work the holiday and should, therefore not be entitled to payment for such hours, has no merit. Such a construction of Article XI, Section 6 would effectually negate the part of that Section pertinent to this case and any local agreement worked out in accordance with Article XXX,(B)13. Clearly, the overlooked holiday volunteer suffered the loss of pay for the hours that he would have worked except for Postal Service error.

The thrust of Article XI, Section 6 is to permit the maximum number of full-time and part-time regulars to enjoy holidays off work if they do not desire to work. It also makes clear that employees

who are not scheduled for the holiday (or are scheduled off) have a right to volunteer to work on that holiday. Once a volunteer is reached (in whatever order the parties may have agreed locally), he is entitled to be assigned to work the holiday if his services are required. Here the Postal Service admits that it violated Article XI, Section 6 by failing to work the grieving employee on a holiday according to his rank in the volunteer category.

There is no purpose to be served by instructing the parties (as the Service suggests) to deal with each incident on a case-by-case basis since this would simply evade the issue raised by the parties' stipulation. Thus the only reasonably appropriate remedy available, in the light of the plain language of Article XI, Section 6, is to require that the overlooked holiday volunteer be compensated for the total number of hours lost.

AWARD

The oral, informal, case-by-case, non-precedent technique used to remedy individual grievances under Article XI, Section 6 of the 1973 National Agreement is not binding for cases other than those actually settled thereunder. The appropriate remedy now is to compensate the overlooked holiday volunteer for the total number of hours of work lost.

Paul J. Fasser, Jr.
Associate Impartial Chairman

APPROVED:

Sylvester Garrett
Impartial Chairman

R.MITTENTHAL, APR 15, 1983: 1DENIED: MH

ARBITRATION CASE SUMMARY

#279

Reference No. 0326 - MAIL HANDLER

Arbitrator: Richard Mittenthal

Region: Northeastern

Articles: 8,11 and 30

Union: APWU

Article 16:

Agrreement 1978

Article9:

Date of Decision 4-15-83

Case No: H8C-5D-C-14577

Decision: Denied

BACKGROUND

The USPS selected employees from the "overtime desired list" to work overtime November 10, 1980. The Union claims that other employees for whom November 10th was a holiday and who had volunteered to work that day had a superior claim to this work. It contends that the Postal Service's failure to allow them to work was a violation of Article XI, Section 6 of the National Agreement.

The three full-time regular employees who worked are scheduled off on Tuesdays and Wednesdays. The Veteranrs day holiday fell orI Tuesday November 11, 19$(3. Pursuant to Article XI, Section 5-B, Monday, November 10th was considered " a designated holiday for these three employees. The holiday schedule was posted on Wednesday, November 5th. Prior to the posting, the three employees volunteered to work on on day November 10th, their designated holiday. Managenment did not list them on the schedule to work that day. The problem arose when the Service, sometime after Wednesday, November 5th but before Monday November 10 th decided it would need additional full-time regulars on Monday November 10th. It choose seven, from the "overtime desired list." They worked at the time and one-half rate on Monday November 10th of which was not a designated holiday for any of the seven. The three employees not on the list did not work and filed a grievance contending that their right to work on the designated holiday violated the provisions of Article XI, Section 6.

UNION'S POSITION

Management's obligation to prefer regular volunteers did not end with the posting of the holiday schedule. The obligation continued to exist after the posting.

USPS' POSITION

Its obligation to regular volunteers ceases with the posting of the schedule. The Service did not become aware of the need for additional employees until after the November 5th posting. Had it known at the time the schedule was posted that additional employees would be needed on Monday, November 10th it would have placed the &rieued employees on the schedule. The Service concedes that their claim to extra work being available on November 10th would, in these circumstances negate utilizing the three volunteers, rather then those on the overtime desired list. Therefore, it was free to resort to the overtime desired list to satisfy the needs on November 10th.

ARBITRATOR'S OPINION

A close reading does not support the Union's claim. Only the applicable provisions of Article XI, Section 6 specifically the second and third sentences apply to this case. Article XI, Section 6 does not give regular volunteers any right in relation to employees on the overtime desired list,

None of the documents submitted by the Union warrant a different conclusion. This includes the arbitration settlement in Case No. AB-N-2746 where employees on the overtime desired list were improperly passed over. That is not the situation here. The other grievance settlement contain statements that "the overtime desired list . . . is not applicable to holiday scheduling." That appears to refer to initial posted holiday schedule, not to later additions to the schedule due to changed circumstances.

AWARD

Grievance denied.

MTW: brk

Hol. Vol vrs O.T. Desired list
-Hol. scheduled + posted

ARBITRATION AWARD

April 15, 1983

RECEIVED
APR 19 1983
Arbitration Division
Labor Relations Department

UNITED STATES POSTAL SERVICE

-and-

Case No. H8C-5D-C-14577

AMERICAN POSTAL WORKERS UNION

Subject: Holiday Schedule - Use of "Overtime Desired List" Rather than Volunteers

Statement of the Issue: Whether the Postal Service's action in selecting employees from the "overtime desired list" rather than volunteers to work an November 10, 1980, a designated holiday for the volunteers, was a violation of the National Agreement?

Contract Provisions Involved: Article VIII, Section 5 and Article XI, Sections 5 and 6 of the July 21, 1978 National Agreement and Article XI, Section 6 of the Local Memorandum of Understanding.

Grievance Data:

	Date
Grievance Filed:	November 25, 1980
Step 2 Answer:	December 5, 1980
Step 3 Answer:	March 13, 1981
Seep 4 Answer:	April 27, 1981
Appeal to Arbitration:	May 1, 1981
Case Heard:	Novernber 16, 1982
Transcript Received:	December 1, 1982
Briefs Submitted:	March 22, 1983 and April 9, 1983

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the PasCal Service's action in selecting employees from the "overtime desired list" to work overtime on November 10, 1980. The APWU says others for wham November 10 was a holiday and who had volunteered to work that day had a superior claim to this work. It believes the Postal Service's failure to allow them to work was a violation of Article XI, Section 6 of the National Agreement. The Postal Service disagrees.

The essential facts are not in dispute. M. Avery, M. Bettman and D, Lane are full-time regular Distribution Clerks in the Bellview, Washington Post Office. They are scheduled off on Tuesdays and Wednesdays. The Veterans Day holiday fell on Tuesday, November 11, 1980. Pursuant to Article XI, Section 5-B, Monday, November 10 was considered a designated holiday for these three Clerks. That provision states: "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."

The holiday schedule was posted on Wednesday, November S. Avery, Bettman and Lane had, prior to-this posting, volunteered to work on Monday, November 10, their designated holiday. Management did not list them on the schedule to work that day. It apparently had no need of their services at the time of the posting. The parties stipulated at the arbitration hearing that the posted schedule, as of Wednesday, November 5, was "proper."

The problem arose when Management, sometime after Wednesday, November 5 but before Monday, November 10, decided it would need additional full-time regular Distribution Clerks on Monday, November 10. It chose seven such Clerks from the "overtime desired list." They worked at the time and one-half rate on Monday, November 10.* Their use is covered by Article VIII, Section 5 which reads in part:

> "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:

* Monday, November 10 was not a designated holiday for any of these seven employees.

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an 'Overtime Desired' list.

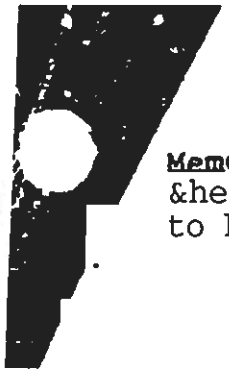
B. Lists will be established by craft, section or tour in accordance with Article XXX, Local Implementation.

c. 1. . . ..when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis...

Avery, Bettman and Lane did not work on Monday November 10. They grieved, alleging that their right to work on designated holiday was superior to the rights of other Clerks on the "overtime desired list." They maintain that because they had volunteered to work this holiday, they should have been chosen. Their claim rests largely on Article XI, Section 6:

"Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be pasted as of the Wednesday preceding the service week in which the holiday falls. 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 there 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. 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." (Emphasis added)

A few remaining points should be noted. No employee for whom Monday, November 10 was a designated holiday was required to work that day against his wishes. The grievants worked on Tuesday, November 11, the Veterans Day holiday, and were paid time and one-half for their work. The Local



Memorandum of Understanding in effect in November 1980 had the following provision, Article XI, Section 6, with respect to holiday schedules:

> "A. After determination has been made by Management as to the number of employees needed on a holiday or designated holiday, scheduling of employees will be accomplished in the following order:
>
> 1. Full or part-time regular employees who have volunteered to work the holiday.
>
> 2. Part-time flexible employees who have volunteered to work the holiday.
>
> 3* Casual employees.
>
> 4. Part-time flexible employees.
>
> 5. Full or part-time regular's who have not volunteered to work on the holiday by inverse seniority."

DISCUSSION AND FINDINGS

This grievance concerns the Postal Service's obligation regarding additional Clerk jobs which had to be filled on November 10, 1980. The APWU says the Clerks fur whom November 10 was a designated holiday and who had volunteered to work that day should have been chosen pursuant to Article XI, Section 6. The Postal Service states that it had no such contract obligation and that it was within its rights in choosing Clerks from the "overtime desired list" pursuant to Article VIII, Section 5. The question here is which of these contract provisions, if either, Management was required to apply under the facts of this case.

The Postal Service's position at the arbitration hearing is a helpful starting point in this analysis. It acknowledges that had it known at the time the schedule was posted on Wednesday, November 5 that additional Clerks would be needed on Monday, November 10, it would have placed the aggrieved Clerks on the schedule. It concedes that their claim to the extra Clerk work on November 10 would, in these circumstances, be superior to the claim of anyone m the

"overtime desired list." This concession derives, it seems to me, from the Local Memorandum of Understanding. Article or section 6A of this Memorandum describes the "order" in which people will be "scheduled" after Management determines "the number of employees needed on a holiday or designated holiday..." First priority on such a schedule is given to "full or part-time regular [s]...who have volunteered to work the holiday."

However, the Postal Service insists that its obligation to regular-volunteers ceases with the posting of the schedule. It stresses that Management did not become aware of the need for additional Clerks until after the November 5 posting. It believes it was then no longer bound by the Local Memorandum of Understanding. It urges that it was free, after November 5, to resort to the "overtime desired list" to satisfy its needs on November 10.

The APWU maintains that Management's obligation to prefer regular-volunteers did not end with the posting of the holiday schedule. It states that this obligation continued to exist after the posting. It relies not on the Local Memorandum of Understanding but rather Article .X1, Section 6 of the National Agreement.

A close reading of this provision-does not support the APWU'S case. Article XI, Section 6 consists of four sentences. only the second and third have any possible application to this dispute. But the purpose of-these sentences is to require, where possible, that full-time (or part-time) regulars be given their holiday off.* The second sentence calls for Management to "excuse" from holiday work "as many full-time and part-time regulars as can be spared..." The third sentence recognizes+ that these regulars may be required to work on their holiday. But it provides that this cannot happen "unless all casuals and part-time flexibles are utilized to the maximum extent possible" and "unless all full-time and part-time regulars. . . who wish to work on the holiday have been afforded an opportunity to do so." All regular-volunteers, in other words, must be used for holiday work before Management can compel regular, non-volunteers to perform such work. That is the only preference granted to regular-volunteers. section 6 allows them to exercise this right only in relation to regular, non-volunteers. Or, to express the point in terms of the present grievance, Article XI, Section 6 does not give regular-volunteers any right in relation to employees on the "overtime desired list."

* Throughout this discussion, the word "holiday" should be taken to mean the actual holiday or the designated holiday.

For these reasons, the APWU'S reliance on Article X1, Section 6 seems misplaced. It attempts to bring this case withim the ambit of this provision by arguing that the **grievants** "deserved to work rather than require employees from the overtime desired list." But, to repeat, regular-volunteers in the situation presented here do not have a preference ever employees on the "overtime desired list.?' Their preference is limited in the manner set forth in Article XI, Section 6. The APWU seeks to enlarge this preference. That cannot be done without modifying or adding to the terms of the National Agreement.

None of the documents referred to by the APWU warrant a differen& conclusion in this case. The March 1974 Holiday Settlement Agreement relates almost entirely to holiday pay questions. It has no bearing on the issue raised by the instant grievance. The pre-arbitration settlement in Case No. AB-N-24,76 was concerned with employees on the "overtime desired list" who were "improperly passed over by Management in the selection for overtime work assignments." That is not the situation here. Other grievance settlements contain statements that "the overtime desired list... is riot applicable to holiday scheduling." But that appears ,to refer to the initial posted holiday schedule, not to later additions to the schedule due to changed circumstances.*

There has been no violation of the National Agreement.

AWARD

The grievance is denied.

Richard Mittenthal, Arbitrator

* This would be true too of the Postal Service Northeast Region's internal memorandum concerning "holiday scheduling procedure vs. overtime desired list."

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

April 6, 1973

Mr. Tony R. Huerta
Director of Appeals
National Association of
Letter Carriers
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: A. Santos
New Bedford, Ma
N-E-2574(41V2)/E-PROV-283

Dear Mr. Huerta:

On March 28, 1973, we met with you to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been carefully reviewed. Without prejudice to our position, regarding the filing of a grievance by the union at Step 1, the following disposition is provided in this particular factual circumstance.

The posting of a holiday schedule on the Wednesday preceding the service week in which the holiday falls shall include part-time flexible employees who at that point and time are scheduled to work on the holiday in question.

Sincerely,

J. G. Merrill
Labor Relations Department

In the Matter of the Arbitration between AMERICAN POSTAL WORKERS UNION and UNITED STATES POSTAL SERVICE	Re: Case No. H8C-SD-C-15429 Salem Oregon (A8-W-1517) OPINION AND AWARD

APPEARANCES:

For the USPS - J. K. Hellquist, Mgr., Arb., Branch
Central Region

For the APWU - Gerald "Andy" Anderson, Executive
Aide, Clerk Craft

BACKGROUND:

On Wednesday, December 17, 1980, the Christmas Holiday schedule was posted at the Salem, Oregon Post Office pursuant to the provisions of Article XI, Section 6 of the then current 1978-1981 National Agreement. On December 21, 1980, the schedule was revised by Managment for Tour III and Tour I employees. Because of this revision, seven (7) full-time regular employees, who had been scheduled to work the holiday, were no longer required to work on that holiday. For them it was a designed holiday, and they were paid their regular holiday pay.

The Union took the position that once the schedule was posted, pursuant to the provisions of Article XI, Section 6, and the terns of a settlement agreement between the USPS and the APWU NALC and the Mailhandlers, made on March 4, 1974, the employees on the posted schedule were "guaranteed" those holiday hours and they should be paid as if they had worked the holdiay.

The USPS argued that subsequent to the signing of the March 4, 1974 settlement agreement, referred to in the paragraph above, the Employer issued several provisions of the the F-21 Time and Attendance, Handbook as well as the Employee and Labor Relations Manual which related to the times when employees were guaranteed hours under the terms of Article VIII of the National Agreement. Guarantees, according to these provisions, are only provided for hours actually worked. If the APWU deisred to con-

test the provisions of the F-21 Handbook and the E&LR Manual, it should have done so as provided for in Article XIX of the National Agreement or those provisions become part of the terms of the National Agreement. Additionally, the Postal Service claimed that the March 4, 1974 settlement agreement did not create any "guarante According to the Service, the terms of that agreement did not provi a payment compensation requirement when the Postal Service changed the posted schedule for that holiday. In fact, the USPS asserted, Article XI, Section 6 indicated a clear desire not to use regular or part-time regular employees whenever possible on holidays, and this is what the Postal Service did on this occasion by deleting the names of these seven regular employees after the indicated mail volume showed that they could be spared.

The Union referred to a decision issued by a Regional Arbitrator in Case No. AC-C-1397/S-Min.44 on November 12, 1979, wherein the Union claimed that the Arbitrator determined that scheduled employees had a right to work the hours they were scheduled to work on the notice posted pursuant to Articls XX, Section 6. The Postal Service said that the case referred to by the Union could be distinguished because those employees had their ported hours of work changed on the very dry they were scheduled to work, and they were then called upon to work hours other than those which had been initially posted.

THE ISSUE:

Based upon the undisputed statement of operative facts which triggered this grievance, and the contentions of the Parties, as set out above, the issue beform the Arbitrator can be stated as follows:

> Are the seven regular employees of the Salem, Oregon Post Office entitled to be paid as if they had workrd the Christmas Holiday in 1980? If so, what shall the appropriate remedy be?

OPINION OF THE ARBITRATOR:

In this case, the Union made a point of emphasizing that Management has an obligation to manage. Under the terms of the Agreement and the settlement agreement made in 1974, the Union alleged that once a management decision was made to notify these employees they were to work the holiday, Management could not change its mind and be relieved of the obligation to pay these grievants as if they had worked.

Section 6 of Article XI read as follows:

Section 6. Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls. 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 nut be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexible8 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. An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based upon an extreme emergency situation and is excused by the Employee.

Obviously, Section 6, quoted above, does not address the subject of employees initially scheduled to work whose work assignment is later revoked. For this reason, the APWJ referred to the settlement agreement made in 1974 to "flesh out" the understanding on this issue which they claimed had been reached.

Referring to this settlement, the Union claimed that Section 3(b) and (c) of that agreement spelled out the Postal Service's only right to replace an employee on the posted schedule. Those provisions read:

> 3) a . . . .
>
> b. In the event that, subsequent to the Article XI, Section 6 posting period, an emergency situation attributable to an "Act(s) of God" arises which requires the use of manpower on that holiday in excess of that posted pursuant to Article XI, Section 6, full time regular employees required to work in this circumstance(s) shall only be paid for such holiday in accordance with Article XI, Sections 2, 3, and 4.

C. When a full time regular employee scfied-uled to work on a holiday in accordance with the provisions of Article XI, Section 6, is unable to or fails to work on the holiday, the Employer may require another full time regular employee to work such schedule and such replacement employee shall only be paif for such holiday in accordance with Article XI, Scctions 2, 3 and 4. The selection of such replacement employees shall be made in accordance with any applicable local aqreement consisent with the terms of the 1973 National Agreement.

Once again, the specific provisions relied upon in this settlement agreement do not address any rights or guaranteres accruing to a scheduled regular employees whose name is later deleted from the posted holiday work schedule. Only Section 5 of that 1974 agreement deals with a guarantee and that is concerned with the guarantee of eight hours "of work or pay in lieu thereof, in addition to the holiday pay to which he is entitled under Article XI, Sections 2 and 3.", for an employee who does work on his holiday. No guarantee to an employee who does not work is provided by the terms of this 1974 settlement.

Since that is so, the Union pointed to the instructions issued to the field shortly aftor the 1974 settlement was reached. In tha first of these documents, identified as Union Exhibit 2, and dated April 17, 1974, all Postmasters were advised as follows:

"No manager should attempt to 'play it safe' by adopting a policy of scheduling everybody to work on a holiday and then later releasing those employee not required. Such a tactic absolutely will not be tolerated since it would completely subvert our obligation under Article XI, Section 6, of the National Agreement.

That obligation undertaken by the Postal Service in Article XI, Section 6 was to use as few regular and part-time regulate employee as possible on a holiday and to allow them to be off fron work on their regularly scheduled holidays. Clearly, if all employees were scheduled and then regulars and part time regulars were later released, that would improperly avoid the commitment the Postal Service had made to allow as many of such employeess as possible to enjoy the holiday with advance knowledge that this would be their earned right under the contract. Once again, however, no

commitment to vest a right to be paid or to guarantee that the employee would be paid in lieu of working, if the schedule were later amended to delete their names, is expressed in these instructions or guidance issued to the field with regard to the application and interpretation of Section 6 of Article XI.

The Union, with knowledge that an express guarantee was not to be found in the documents referred to above, also submitted as Union Exhbit 3, a Postal Bulletin dated May 16, 1974, and more specifically instructions contained therein dealing with "Timely Posting of Holiday Work Schedules." After repeating the requirement of Section 6 and the previous instructions which had been published this Postal Bulleting provision went on to advise:

> "The holiday for full time employeses will be treated as any other day in terms of the call-in. A full-time employee will be entitled to eight hours work or pay in lieu thereof. The same provision will be applicable on the holiday or the day designated as the employee's holiday. You must take this into consideration in scheduling employees, so that you don't schedule manpower in excess of that which your workload is likely to require."

An examination of the thrust an actual language used in this instruction indicates quite clearly that it is concerned with the USPS obligation when employees are actually called in who are not needed and who may be sent home, on their holiday, before having eight hours of work to complete.

The Union also called attention to other instructions issued in Labor Relations Reporter No. 20, in July of 1974, dealing with the March 4, 1974 settlement.

Most specifically, the Union made reference to the guidance provided starting on page 2 of that document. That particular. provision reads as follows:

1. That the obligations set forth in the entire settlement agreement pertain only to full-time regular employees.

2. That if the postmaster complies with the Wednesday posting provision found in Article XI,

Section 6, and works the employee in accordance with that schedule that was posted the Wednesday preceding the service week in which the holiday falls, the employee will be entitled to payment only in accordance with the terms of the National Agreement. There will be no penalty pay provision upon management for this employee.

3. That an employee ha8 no right to work his normal schedule on a holiday--his schedule is that which is posted for him in accordance with Article XI, Section 6.

4. That an employee does, howwer, have a fight to work the schedule which management posts for him on the Wednesday preceding the service week in which the holiday falls. *

5. . .n

As can be seen, the instructions referred to above only provide that an employee who has been scheduled to work can expect to work and can be required to work the scheduled time for him or her that has been posted and not his or her regular schedule or some hours other than those which were posted for that employee to work on the holiday. No guarantee or inference of a guarantee or penalty for not working an employee at all on the holiday is to be found in the language quoted above.

This same item in the Labor Relations Reporter goes on to state there is only one guarantee contained in Article XI and that is a provision for penalty pay for an employee who is not time scheduled to work and is then called in or volunteers to come in to meet manpower needs on his holiday.

It is axiomatic that if guarantees or vested rights are to be created by the application of the provisions of an agreement, it is incumbent upon the beneficiary of such rights or guarantees to see to it that these are clearly apalled out in the agreement and not to be discerned by inference or innuendo. For this reason, merit must be found in the argumemt of the Employor that specific provisions were written into the F-21 Time and Attendance Handbook and to the E&LR Manual, subsequent to the making of the March 4, 1974 settlement and well after Section 6 of Article XI first appeal in National Agreements, which clearly define when payment is to

* This is the provision relied upon in the Regional Award cited by Union.

made for time not worked aa well as when guarantees and penalties are imposed for time woked which was not properly scheduled.

Certain obligations are imposed upon management by virtue of the specific language of Section 6 and the instructions contained in the documents placed in evidence by both Parties. With regard to the factual situation which gave rise to this case, Management certainly would not have had the right to schedule all regulars and part-time regulars just to be sure that sufficient manpower was on hand on the holiday and then to delete all such names and only require casuals to work the holiday. If that were the case present the Union clearly would have been entitled to have the arbitrator direct that Management cease and desist from scheduling in that manner. That would have been an abuse of the obligation which Management had undertaken. Management admitted such in its advice to the field. Such a situation did not occur in the case at hand or we must assure that it did not occur or it would have been made part of the record in the processing of this grievance.

What must have happened was that Panaqement did overestimate the volume of mail or duties to be performed during the two tours in question on the holiday. When that became apparent, a few days after the Wednesday schedule had been posted, but prior to the holiday itself, the schedule was revised to delete seven name No evidence is to be found in this record that Management "played it safe" and schedule well above any rationally estimated manpower requirements for the holiday and alerted regular full-time emplovees unnecessarily that they ware required to work and in that fashion disrupted their holiday plans. Section 6 of Article XI was specific ally designed to minimize the possibility that would occur and to require that Management schedule accordingly. That Management knowingly ignored such an obligation is not the case presented in this proceeding.

Once a schedule is posted and an employee is called in to work, that employee can rely upon the fact that he or she will only work the hours on the posted schedule and not his or her regular hours or some other hours without the Employer suffering an additional penalty. That, too, was not the case presented in this proceeding. Such a case is more skin to the case referred to by the Union and decided as Case No. AC-C- 1397/5-MIN-44.

For the reasons set forth above, the Undersigned makes the following

A W A R D

This grievance is denied. The seven grievants are not entitled to be paid as if they worked the Christmas Holiday in 1980.

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
October 25, 1982

ARBITRATION AWARD

April 15, 1983

UNITED STATES POSTAL SERVICE

-and-

Case No. H8C-5D-C-14577
(A8-W-1641)

AMERICAN POSTAL WORKERS UNION

Subject: Holiday Schedule - Use of "Overtime Desired List" Rather than Volunteers

Statement of the Issue: Whether the Postal Service's action in selecting employees from the "overtime desired list" rather than volunteers to work on November 10, 1980, a designated holiday for the volunteers, was a violation of the National Agreement?

Contract Provisions Involved: Article VIII, Section 5 and Article XI, Sections 5 and 6 of the July 21, 1978 National Agreement and Article XI, Section 6 of the Local Memorandum of Understanding.

Grievance Data:	Date
Grievance Filed:	November 25, 1980
Step 2 Answer:	December 5, 1980
Step 3 Answer:	March 13, 1981
Step 4 Answer:	April 27, 1981
Appeal to Arbitration:	May 1, 1981
Case Heard:	November 16, 1982
Transcript Received:	December 1, 1982
Briefs Submitted:	March 22, 1983 and April 9, 1983

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in selecting employees from the "overtime desired list" to work overtime on November 10, 1980. The APWU says others for whom November 10 was a holiday and who had volunteered to work that day had a superior claim to this work. It believes the Postal Service's failure to allow them to work was a violation of Article XI, Section 6 of the National Agreement. The Postal Service disagrees.

The essential facts are not in dispute. M. Avery, M. Bettman and D. Lane are full-time regular Distribution Clerks in the Bellview, Washington Post Office. They are scheduled off on Tuesdays and Wednesdays. The Veterans Day holiday fell on Tuesday, November 11, 1980. Pursuant to Article XI, Section 5-B, Monday, November 10 was considered a designated holiday for these three Clerks. That provision states: "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."

The holiday schedule was posted on Wednesday, November 5. Avery, Bettman and Lane had, prior to this posting, volunteered to work on Monday, November 10, their designated holiday. Management did not list them on the schedule to work that day. It apparently had no need of their services at the time of the posting. The parties stipulated at the arbitration hearing that the posted schedule, as of Wednesday, November 5, was "proper."

The problem arose when Management, sometime after Wednesday, November 5 but before Monday, November 10, decided it would need additional full-time regular Distribution Clerks on Monday, November 10. It chose seven such Clerks from the "overtime desired list." They worked at the time and one-half rate on Monday, November 10.* Their use is covered by Article VIII, Section 5 which reads in part:

> "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:

* Monday, November 10 was not a designated holiday for any of these seven employees.

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an 'Overtime Desired' list.

B. Lists will be established by craft, section or tour in accordance with Article XXX, Local Implementation.

C. 1....when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis..."

Avery, Bettman and Lane did not work on Monday, November 10. They grieved, alleging that their right to work on their designated holiday was superior to the rights of other Clerks on the "overtime desired list." They maintain that because they had volunteered to work this holiday, they should have been chosen. Their claim rests largely on Article XI, Section 6:

"Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls. 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. 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." (Emphasis added)

A few remaining points should be noted. No employee for whom Monday, November 10 was a designated holiday was required to work that day against his wishes. The grievants worked on Tuesday, November 11, the Veterans Day holiday, and were paid time and one-half for their work. The Local

Memorandum of Understanding in effect in November 1980 had the following provision, Article XI, Section 6, with respect to holiday schedules:

> "A. After determination has been made by Management as to the number of employees needed on a holiday or designated holiday, scheduling of employees will be accomplished in the following order:
>
> 1. Full or part-time regular employees who have volunteered to work the holiday.
>
> 2. Part-time flexible employees who have volunteered to work the holiday.
>
> 3. Casual employees.
>
> 4. Part-time flexible employees.
>
> 5. Full or part-time regulars who have not volunteered to work on the holiday by inverse seniority."

DISCUSSION AND FINDINGS

This grievance concerns the Postal Service's obligation regarding additional Clerk jobs which had to be filled on November 10, 1980. The APWU says the Clerks for whom November 10 was a designated holiday and who had volunteered to work that day should have been chosen pursuant to Article XI, Section 6. The Postal Service states that it had no such contract obligation and that it was within its rights in choosing Clerks from the "overtime desired list" pursuant to Article VIII, Section 5. The question here is which of these contract provisions, if either, Management was required to apply under the facts of this case.

The Postal Service's position at the arbitration hearing is a helpful starting point in this analysis. It acknowledges that had it known at the time the schedule was posted on Wednesday, November 5 that additional Clerks would be needed on Monday, November 10, it would have placed the aggrieved Clerks on the schedule. It concedes that their claim to the extra Clerk work on November 10 would, in these circumstances, be superior to the claim of anyone on the

"overtime desired list." This concession derives, it seems to me, from the Local Memorandum of Understanding. Article XI, Section 6A of this Memorandum describes the "order" in which people will be "scheduled" after Management determines "the number of employees needed on a holiday or designated holiday..." First priority on such a schedule is given to "full or part-time regular[s]...who have volunteered to work the holiday."

However, the Postal Service insists that its obligation to regular-volunteers ceases with the posting of the schedule. It stresses that Management did not become aware of the need for additional Clerks until after the November 5 posting. It believes it was then no longer bound by the Local Memorandum of Understanding. It urges that it was free, after November 5, to resort to the "overtime desired list" to satisfy its needs on November 10.

The APWU maintains that Management's obligation to prefer regular-volunteers did not end with the posting of the holiday schedule. It states that this obligation continued to exist after the posting. It relies not on the Local Memorandum of Understanding but rather Article XI, Section 6 of the National Agreement.

A close reading of this provision does not support the APWU's case. Article XI, Section 6 consists of four sentences. Only the second and third have any possible application to this dispute. But the purpose of these sentences is to require, where possible, that full-time (or part-time) regulars be given their holiday off.* The second sentence calls for Management to "excuse" from holiday work "as many full-time and part-time regulars as can be spared..." The third sentence recognizes that these regulars may be required to work on their holiday. But it provides that this cannot happen "unless all casuals and part-time flexibles are utilized to the maximum extent possible" and "unless all full-time and part-time regulars... who wish to work on the holiday have been afforded an opportunity to do so." All regular-volunteers, in other words, must be used for holiday work before Management can compel regular, non-volunteers to perform such work. That is the only preference granted to regular-volunteers. Article XI, Section 6 allows them to exercise this right only in relation to regular, non-volunteers. Or, to express the point in terms of the present grievance, Article XI, Section 6 does not give regular-volunteers any right in relation to employees on the "overtime desired list."

* Throughout this discussion, the word "holiday" should be taken to mean the actual holiday or the designated holiday.

For these reasons, the APWU's reliance on Article XI, Section 6 seems misplaced. It attempts to bring this case within the ambit of this provision by arguing that the grievants "deserved to work rather than require employees from the overtime desired list." But, to repeat, regular-volunteers in the situation presented here do not have a preference over employees on the "overtime desired list." Their preference is limited in the manner set forth in Article XI, Section 6. The APWU seeks to enlarge this preference. That cannot be done without modifying or adding to the terms of the National Agreement.

None of the documents referred to by the APWU warrant a different conclusion in this case. The March 1974 Holiday Settlement Agreement relates almost entirely to holiday pay questions. It has no bearing on the issue raised by the instant grievance. The pre-arbitration settlement in Case No. AB-N-2476 was concerned with employees on the "overtime desired list" who were "improperly passed over by Management in the selection for overtime work assignments." That is not the situation here. Other grievance settlements contain statements that "the overtime desired list...is not applicable to holiday scheduling." But that appears to refer to the initial posted holiday schedule, not to later additions to the schedule due to changed circumstances.*

There has been no violation of the National Agreement.

AWARD

The grievance is denied.

Richard Mittenthal, Arbitrator

* This would be true too of the Postal Service Northeast Region's internal memorandum concerning "holiday scheduling procedure vs. overtime desired list."

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

July 16, 1974

Mr. Tony R. Huerta
Assistant Secretary Treasurer
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: Daniel Wells
West Palm Beach, FL
NB-S-1739(N-26)3SR-1212

Dear Mr. Huerta:

On June 24, 1974, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The record evidence shows that employees whose designated holiday was February 16, 1974 were required to work on that day and that non-scheduled full-time employees were not given the opportunity to work if they wished to do so. To this extent, we find that the grievance is sustained.

It is our position that an employee classified as a letter carrier possesses the "needed skills", as provided in Article XI Section 6 the 1973 Agreement, to perform carrier duties on a holiday, provided he meets the necessary qualifications unique to a particular route, such as possession of a valid SP-46, etc. There is no provision in this section which provides for the assignment of "best qualified" employees to perform carrier work on a holiday. In the absence of any local memorandum of understanding providing to the contrary, full-time and part-time regular letter carriers who wish to work on a holiday must be afforded an opportunity to do so before arbitrarily assigning employees to work on their designated holiday.

By copy of this letter the Postmaster is instructed to comply with the provision set forth in Article XI Section 6 of the National Agreement with respect to affording the opportunity to work on a holiday to all full-time and part-time regular employees who wish to do so.

Sincerely Yours,

W. E. Henry

William E. Henry, Jr.
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 30, 1982

Mr. Kenneth Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: Class Action
Cincinnati, OH 45234
B1C-4F-C-2041

Dear Mr. Wilson:

On March 3, 1982, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure as set forth in Article 15, Section 2 of the National Agreement.

The question in this grievance is whether management violated Article 11, Section 6 of the National Agreement, when light duty employees were precluded from the holiday schedule.

During our investigation, local management indicated that the only reason the three (3) light duty employees named in the grievance were precluded from the holiday schedule, was because they were not needed for Tour 3.

Furthermore, it is our position that all full-time and part-time regulars, including those who are on light duty, who possess needed skills and wish to work on the holiday be afforded an opportunity to do so. However, when local management is determining the number and categories of employees needed to work, a factor to be considered in scheduling a light duty employee, who wishes to work the holiday, is the medical restrictions imposed by the employees medical practitioner and whether that employee could in fact be utilized to do the work that would be available on the holiday.

Sincerely,

Harvey White

Harvey White
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

September 21, 1982

Mr. Leon W. Hopton
Administrative Vice President,
Motor Vehicle Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: Class Action
Cincinnati, OH 45234
H1C-4F-C-2430

Class Action
Cincinnati, OH 45234
H1C-4F-C-2437

Dear Mr. Hopton:

On September 9, 1982, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The question in these grievances is whether management violated Article 11 of the National Agreement by not scheduling light duty employees for holiday work.

During our discussion, we agreed to resolve the grievances based on our agreement to the following:

> All full-time and part-time regulars, including those who are on light duty, who possess needed skills and wish to work on the holiday may be afforded an opportunity to do so. However, when local management is determining the number and categories of employees needed to work, a factor to be considered in scheduling a light duty employee, who wishes to work the holiday, is the medical restrictions imposed by the employees medical practitioner and whether that employee could in fact be utilized to do the work that would be available on the holiday.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve these cases.

Sincerely,

Margaret H. Oliver
Margaret H. Oliver
Labor Relation Department

Leon Bopton
Leon Bopton
Administrative Vice President
American Postal Workers Union,
AFL-CIO

03914.pdf
H. GAMSER,OCTOBER 25,1982
SUSTAINED: APWU
H8C-5D-C 15429/A8-W-1517

In the Matter of the Arbitration between AMERICAN POSTAL WORKERS UNION and UNITED STATES POSTAL SERVICE	Re: Case No. H8C-SD-C-15429 Salem Oregon (A8-W-1517) OPINION AND AWARD

APPEARANCES:

For the USPS - J. K. Hellquist, Mgr., Arb., Branch
Central Region

For the APWU - Gerald "Andy" Anderson, Executive
Aide, Clerk Craft

BACKGROUND:

On Wednesday, December 17, 1980, the Christmas Holiday schedule was posted at the Salem, Oregon Post Office pursuant to the provisions of Article XI, Section 6 of the then current 1978-1981 National Agreement. On December 21, 1980, the schedule was revised by Managment for Tour III and Tour I employees. Because of this revision, seven (7) full-time regular employees, who had been scheduled to work the holiday, were no longer required to work on that holiday. For them it was a designed holiday, and they were paid their regular holiday pay.

The Union took the position that once the schedule was posted, pursuant to the provisions of Article XI, Section 6, and the terns of a settlement agreement between the USPS and the APWU NALC and the Mailhandlers, made on March 4, 1974, the employees on the posted schedule were "guaranteed" those holiday hours and they should be paid as if they had worked the holdiay.

The USPS argued that subsequent to the signing of the March 4, 1974 settlement agreement, referred to in the paragraph above, the Employer issued several provisions of the the F-21 Time and Attendance, Handbook as well as the Employee and Labor Relations Manual which related to the times when employees were guaranteed hours under the terms of Article VIII of the National Agreement. Guarantees, according to these provisions, are only provided for hours actually worked. If the APWU deisred to con-

test the provisions of the F-21 Handbook and the E&LR Manual, it should have done so as provided for in Article XIX of the National Agreement or those provisions become part of the terms of the National Agreement. Additionally, the Postal Service claimed that the March 4, 1974 settlement agreement did not create any "guarante According to the Service, the terms of that agreement did not provi a payment compensation requirement when the Postal Service changed the posted schedule for that holiday. In fact, the USPS asserted, Article XI, Section 6 indicated a clear desire not to use regular or part-time regular employees whenever possible on holidays, and this is what the Postal Service did on this occasion by deleting the names of these seven regular employees after the indicated mail volume showed that they could be spared.

The Union referred to a decision issued by a Regional Arbitrator in Case No. AC-C-1397/S-Min.44 on November 12, 1979, wherein the Union claimed that the Arbitrator determined that scheduled employees had a right to work the hours they were scheduled to work on the notice posted pursuant to Articls XX, Section 6. The Postal Service said that the case referred to by the Union could be distinguished because those employees had their ported hours of work changed on the very dry they were scheduled to work, and they were then called upon to work hours other than those which had been initially posted.

THE ISSUE:

Based upon the undisputed statement of operative facts which triggered this grievance, and the contentions of the Parties, as set out above, the issue beform the Arbitrator can be stated as follows:

> Are the seven regular employees of the Salem, Oregon Post Office entitled to be paid as if they had workrd the Christmas Holiday in 1980? If so, what shall the appropriate remedy be?

OPINION OF THE ARBITRATOR:

In this case, the Union made a point of emphasizing that Management has an obligation to manage. Under the terms of the Agreement and the settlement agreement made in 1974, the Union alleged that once a management decision was made to notify these employees they were to work the holiday, Management could not change its mind and be relieved of the obligation to pay these grievants as if they had worked.

Section 6 of Article XI read as follows:

Section 6. Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls. 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 nut be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexible8 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. An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based upon an extreme emergency situation and is excused by the Employee.

Obviously, Section 6, quoted above, does not address the subject of employees initially scheduled to work whose work assignment is later revoked. For this reason, the APWJ referred to the settlement agreement made in 1974 to "flesh out" the understanding on this issue which they claimed had been reached.

Referring to this settlement, the Union claimed that Section 3(b) and (c) of that agreement spelled out the Postal Service's only right to replace an employee on the posted schedule. Those provisions read:

> 3) a . . . .
>
> b. In the event that, subsequent to the Article XI, Section 6 posting period, an emergency situation attributable to an "Act(s) of God" arises which requires the use of manpower on that holiday in excess of that posted pursuant to Article XI, Section 6, full time regular employees required to work in this circumstance(s) shall only be paid for such holiday in accordance with Article XI, Sections 2, 3, and 4.

> C. When a full time regular employee scfied-uled to work on a holiday in accordance with the provisions of Article XI, Section 6, is unable to or fails to work on the holiday, the Employer may require another full time regular employee to work such schedule and such replacement employee shall only be paif for such holiday in accordance with Article XI, Scctions 2, 3 and 4. The selection of such replacement employees shall be made in accordance with any applicable local aqreement consisent with the terms of the 1973 National Agreement. ***ment.***

Once again, the specific provisions relied upon in this settlement agreement do not address any rights or guaranteres accruing to a scheduled regular employees whose name is later deleted from the posted holiday work schedule. Only Section 5 of that 1974 agreement deals with a guarantee and that is concerned with the guarantee of eight hours "of work or pay in lieu thereof, in addition to the holiday pay to which he is entitled under Article XI, Sections 2 and 3.", for an employee who does work on his holiday. No guarantee to an employee who does not work is provided by the terms of this 1974 settlement.

Since that is so, the Union pointed to the instructions issued to the field shortly aftor the 1974 settlement was reached. In tha first of these documents, identified as Union Exhibit 2, and dated April 17, 1974, all Postmasters were advised as follows:

> "No manager should attempt to 'play it safe' by adopting a policy of scheduling everybody to work on a holiday and then later releasing those employee not required. Such a tactic absolutely will not be tolerated since it would completely subvert our obligation under Article XI, Section 6, of the National Agreement.

That obligation undertaken by the Postal Service in Article XI, Section 6 was to use as few regular and part-time regulate employee as possible on a holiday and to allow them to be off fron work on their regularly scheduled holidays. Clearly, if all employees were scheduled and then regulars and part time regulars were later released, that would improperly avoid the commitment the Postal Service had made to allow as many of such employeess as possible to enjoy the holiday with advance knowledge that this would be their earned right under the contract. Once again, however, no

commitment to vest a right to be paid or to guarantee that the employee would be paid in lieu of working, if the schedule were later amended to delete their names, is expressed in these instructions or guidance issued to the field with regard to the application and interpretation of Section 6 of Article XI.

The Union, with knowledge that an express guarantee was not to be found in the documents referred to above, also submitted as Union Exhbit 3, a Postal Bulletin dated May 16, 1974, and more specifically instructions contained therein dealing with "Timely Posting of Holiday Work Schedules." After repeating the requirement of Section 6 and the previous instructions which had been published this Postal Bulleting provision went on to advise:

> "The holiday for full time employeses will be treated as any other day in terms of the call-in. A full-time employee will be entitled to eight hours work or pay in lieu thereof. The same provision will be applicable on the holiday or the day designated as the employee's holiday. You must take this into consideration in scheduling employees, so that you don't schedule manpower in excess of that which your workload is likely to require."

An examination of the thrust an actual language used in this instruction indicates quite clearly that it is concerned with the USPS obligation when employees are actually called in who are not needed and who may be sent home, on their holiday, before having eight hours of work to complete.

The Union also called attention to other instructions issued in Labor Relations Reporter No. 20, in July of 1974, dealing with the March 4, 1974 settlement.

Most specifically, the Union made reference to the guidance provided starting on page 2 of that document. That particular. provision reads as follows:

1. That the obligations set forth in the entire settlement agreement pertain only to full-time regular employees.

2. That if the postmaster complies with the Wednesday posting provision found in Article XI,

Section 6, and works the employee in accordance with that schedule that was posted the Wednesday preceding the service week in which the holiday falls, the employee will be entitled to payment only in accordance with the terms of the National Agreement. There will be no penalty pay provision upon management for this employee.

3. That an employee ha8 no right to work his normal schedule on a holiday--his schedule is that which is posted for him in accordance with Article XI, Section 6.

4. That an employee does, howwer, have a fight to work the schedule which management posts for him on the Wednesday preceding the service week in which the holiday falls. *

5. . .n

As can be seen, the instructions referred to above only provide that an employee who has been scheduled to work can expect to work and can be required to work the scheduled time for him or her that has been posted and not his or her regular schedule or some hours other than those which were posted for that employee to work on the holiday. No guarantee or inference of a guarantee or penalty for not working an employee at all on the holiday is to be found in the language quoted above.

This same item in the Labor Relations Reporter goes on to state there is only one guarantee contained in Article XI and that is a provision for penalty pay for an employee who is not time scheduled to work and is then called in or volunteers to come in to meet manpower needs on his holiday.

It is axiomatic that if guarantees or vested rights are to be created by the application of the provisions of an agreement, it is incumbent upon the beneficiary of such rights or guarantees to see to it that these are clearly apalled out in the agreement and not to be discerned by inference or innuendo. For this reason, merit must be found in the argumemt of the Employor that specific provisions were written into the F-21 Time and Attendance Handbook and to the E&LR Manual, subsequent to the making of the March 4, 1974 settlement and well after Section 6 of Article XI first appeal in National Agreements, which clearly define when payment is to

* This is the provision relied upon in the Regional Award cited by Union.

made for time not worked aa well as when guarantees and penalties are imposed for time woked which was not properly scheduled.

Certain obligations are imposed upon management by virtue of the specific language of Section 6 and the instructions contained in the documents placed in evidence by both Parties. With regard to the factual situation which gave rise to this case, Management certainly would not have had the right to schedule all regulars and part-time regulars just to be sure that sufficient manpower was on hand on the holiday and then to delete all such names and only require casuals to work the holiday. If that were the case present the Union clearly would have been entitled to have the arbitrator direct that Management cease and desist from scheduling in that manner. That would have been an abuse of the obligation which Management had undertaken. Management admitted such in its advice to the field. Such a situation did not occur in the case at hand or we must assure that it did not occur or it would have been made part of the record in the processing of this grievance.

What must have happened was that Panaqement did overestimate the volume of mail or duties to be performed during the two tours in question on the holiday. When that became apparent, a few days after the Wednesday schedule had been posted, but prior to the holiday itself, the schedule was revised to delete seven name No evidence is to be found in this record that Management "played it safe" and schedule well above any rationally estimated manpower requirements for the holiday and alerted regular full-time emplovees unnecessarily that they ware required to work and in that fashion disrupted their holiday plans. Section 6 of Article XI was specifically designed to minimize the possibility that would occur and to require that Management schedule accordingly. That Management knowingly ignored such an obligation is not the case presented in this proceeding.

Once a schedule is posted and an employee is called in to work, that employee can rely upon the fact that he or she will only work the hours on the posted schedule and not his or her regular hours or some other hours without the Employer suffering an additional penalty. That, too, was not the case presented in this proceeding. Such a case is more skin to the case referred to by the Union and decided as Case No. AC-C- 1397/5-MIN-44.

For the reasons set forth above, the Undersigned makes the following

A W A R D

This grievance is denied. The seven grievants are not entitled to be paid as if they worked the Christmas Holiday in 1980.

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
October 25, 1982

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

APR 14 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: T. Wilson
Steubenville, OH
NC-C-4322/5-CLE-572

Dear Mr. Riley:

This will supersede and replace the Step 4 decision issued on the above-captioned grievance under date of March 25, 1977.

On the basis of our further discussion on this case, we have reconsidered the matter in dispute in the light of the particular language set forth in item (3)c. of the "Settlement Agreement" of March 4, 1974, concerning the scheduling of employees for holiday work under Article XI, Section 6 of the National Agreement.

The particular language in the referenced agreement pertains only to those situations where it is necessary to replace a properly scheduled full-time employee with another full-time employee. This language does not apply to replacing properly scheduled part-time flexible employees with a full-time regular employee.

In the particulars presented in this case, it is clear that a properly scheduled part-time flexible employee was replaced on the schedule by a full-time regular employee after the part-time flexible advised of being ill and of his inability to report as scheduled. Under such circumstances, the full-time regular employee is entitled to be compensated an additional fifty percent (50%) of his basic hourly straight-time rate of pay for each hour worked on the holiday schedule up to eight hours.

Accordingly, by copy of this letter, the postmaster is instructed to pay the grievant an additional fifty percent (50%) of his basic hourly straight-time rate of pay for the work performed on his designated holiday, July 3, 1976.

Sincerely,

W. F. Henry

William F. Henry Jr.
Labor Relations Department

OPINION AND AWARD

In the Matter of Arbitration Between

UNITED STATES POSTAL SERVICE

And

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Nicholas H. Zumas, Arbitrator

Grievant: Victoria Comstock
Number: H1C-4C-C 27352

and

Grievant: Roberta Rand
Number: H1C-4C-C 27351

Background

This is a Step 4 appeal to National level arbitration, pursuant to the provisions or Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union"). Hearing was held in Washington, D.C. on January 18, 1985, at which time exhibits were offered and made part of the record, and argument was heard. Post-hearing briefs were received on February 25, 1985.

Appearance

For the Service: D. James Shipe

For the Union: Darryl J. Anderson, Esq.

Statement of the Case

The Union, on behalf of two terminated probationary employees, seeks remedy alleging that the Service violated

Article 2 (which prohibits discrimination on the basis of handicap), and Article 21 (which requires the Service to abide by the Federal Employees Compensation Act prohibiting retaliatory action against employees who file claims for workers' compensation). The Service contends that these employees were terminated during their probationary period and that grievances alleging discriminatory and retaliatory acts are not arbitrable.

Issue

The question to be resolved is whether a probationary employee who is terminated during the probation period is entitled access to the grievance-arbitration procedure in relation to that termination where violations of Article 2 or Article 21 are alleged.

Statement of Facts

Grievants herein were terminated during their 90-day probationary period. It is agreed that the notifications of separation were issued and received within the 90-day period.

Grievant Roberta Rand was hired on October 8, 1983. In November, she began suffering from a pain in her arms and hands, which was later diagnosed as Carpal Tunnel Syndrome,

an occupational disease. On December 2, 1983, Grievant Rand filed a notice of occupational disease and a Claim for compensation for work injuries under Article 21, Section 4 of the Agreement. On December 20, 1983, she was notified that she would be separated. Three days later, she was terminated.

Grievant Victoria Comstock was hired on October 15, 1983. In early November, she began to suffer from Carpal Tunnel Syndrome. On December 5, 1983, she filed a notice of occupational disease and a Claim for compensation. On December 27, 1983, Grievant Comstock was notified that she would be separated. Three days later she was terminated.

The Union filed a grievance on behalf of Grievant Rand on December 29, 1983, and on behalf of Grievant Comstock on January 10, 1984. The grievances alleged that the Grievants had been retaliated against for filing workers' compensation claims, in violation of Article 21; and had been the victims of handicap discrimination in violation of Article 2.

The Service denied the grievances at each Step of the grievance procedure contending that these Grievants did not have access to the grievance-arbitration procedure to contest a probationary separation.

Relevant Contract Provisions

ARTICLE 2
NON-DISCRIMINATION AND CIVIL RIGHTS

Section 1. Statement of Principle

The Employer and the Unions agree that there shall be no discrimination by the Employer or the Unions against employees because of race, color, creed, religion, national origin, sex, age, or marital status or because of a physical handicap with respect to a position the duties of which can be performed efficiently by an individual with such a physical handicap without danger to the health or safety of the physically handicapped person or to others.

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.

ARTICLE 12
PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

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.

* * * * *

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.

ARTICLE 16
DISCIPLINE PROCEDURE

Section 1. Principles

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, violations 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.

ARTICLE 21

Section 4. Injury Compensation

Employees covered by this Agreement shall be covered by subchapter 1 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.

Position of the Service

The Service contends that a probationary employee who is separated during the 90-day probationary period does not have access to the grievance-arbitration procedure. In support of its position, the Service relies on Article 12, Section 1A of the National Agreement.

The Service asserts that Article 12 is a specific exception to the broad provisions of Article 16 which prohibits the Service from discharging an employee except for just cause. Since the provisions of Article 12 are comprehensive, Article 12 bars access to the grievance-arbitration procedure for separated probationary employees no matter what the reason, even where, as here, the Union alleges separation by reason of retaliation for filing workers' compensation claims or discrimination.

The Service points out that Regional arbitrators have consistently held that a probationary employee does not have access to the grievance-arbitration procedure to contest a separation. The Service does acknowledge, however, that a probationary employee does have access to the grievance-arbitration procedure for disputes other than those involving the employee's termination. As an example, the Service points out that a probationary employee who is not paid the proper wages would have the right to grieve that dispute.

Position of the Union

The Union vigorously asserts that probationary employees, despite their probationary status, are employees with contractual rights established under the Agreement. They are, for example, entitled to be paid in accordance with Article 9; and entitled to a safe and healthy work place under Article 14. Probationary employees are also, as in the present dispute, entitled to the protections afforded by Articles 2 and 21 which guarantee that they will be free from discrimination on the basis, inter alia, of handicap, and from retaliation for filing workers' compensation claims.

While the Union concedes that Article 12 prohibits a probationary employee from filing a grievance for separation during the probationary period, it argues that this prohibition is only a narrow exception to the right of a probationary employee or the Union to file a grievance alleging that such employee was not terminated for "just cause" as required by the provisions of Article 16.

Article 12, the Union asserts, was not intended to exclude probationary employees from all contractual protection. Rather, according to the Union, "the Article is intended to provide a period of time during which Management can observe, evaluate and determine whether to retain probationary employees without reference to the 'just cause' standard articulated in Article 16"

To accept the position of the Service, the Union argues, would go far beyond denying probationary employees the benefit of the "just cause" standard. It would lead to the conclusion that probationary employees have no enforceable contractual rights, and this would be contrary to the plain language of contractual provisions such as Article 2 prohibiting discrimination against employees because of, as in this case, physical handicap. The Union points out that the contractual language in Articles 2 and 21 is unqualified by reference to probationary or non-probationary status -- the provisions merely refer to "employees"

The Union next argues that while it has traditionally agreed not to pursue "just case" cases involving the performance of probationary employees, the Union has certain rights under the agreement in situations, such as here, where the Service was motivated to discharge Grievants for discriminatory or unlawful reasons. In its post-hearing brief, the Union states:

> [i]n this situation, the familiar adage that an employee may be fired for a good cause, or no cause, but not for a wrongful cause finds application. Where an employee has been discharged for such wrongful, even unlawful cause, then the interest of the work force as a whole are at stake and it should not matter that the particular victims are probationary employees.

In further support of its contention that the position of the Service is unjust and illogical, the Union argues that the Service could, through discharge or harassment of probationary employees, develop a work force consisting of "white, able-bodied males", and that the Union "would have no recourse under the Agreement". While individual probationary employees might have recourse to other forums to remedy such discrimination, the Union contends that it would not necessarily be party to such litigation; and that the availability of other forums would in no way mitigate against the Union's important institutional interest in resolving these matters through arbitration.

The Union further contends that if its position were upheld, it would not be a loophole that would allow any separated probationary employee falling within a class protected by the anti-discrimination provisions of Article 2 to grieve "just cause" cases under the guise of discrimination or retaliation. The Union states:

> Where the grievant cannot allege specific facts to support a finding of discrimination, but merely alleges membership in a protected group, the case would be readily dismissed. Under the circumstances, the Union will not repeatedly waste its money and resources by making unfounded allegations. In a case where evidence of discrimination or retaliation exists, however, such as in this case, facts sufficient to state a cause of action will be alleged and must be tried before the arbitrator. This result gives practical effect to Article 12.1 upon which the Employer

> so heavily relies, but also preserves the important contractual protections unquivocally provided to probationary employees by Articles 2 and 21, and elsewhere in the Agreement.

Finally, in response to the numerous Regional awards cited by the Service which, directly or indirectly, support its position, the Union implies that they should be given no force or effect since they were referred to Regional arbitration under the stipulation that no "interpretative issue under the National Agreement was involved". Since neither the Union nor the Service sought an authoritative interpretation of the National Agreement at the National level, the Union asserts that this is a case of first impression.

Findings and Conclusions

The Union asserts that these Grievants, as terminated probationary employees, were entitled to enforce rights and protections granted under Article 2 and 21 through the grievance-arbitration procedure.

Central to the resolution of this dispute is the scope and effect of Article 12.1 of the Agreement, and its application to the other contractual provisions of the Agreement. Article, Section 1A states in pertinent part:

> 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. . . . (Underscoring added.)

As the Union agrees, this specific language is clearly an exception to the general language of Article 16 relative to terminations for just cause. Critical inquiry is whether, as the Union contends, the language of Article 12.1A is applicable only as an exception to the "just cause" provisions of Article 16.

This Arbitrator thinks not.

Article 12.1A, in clear, unqualified, unrestricted, and all encompassing language, denies probationary employees access to the grievance-arbitration process if they are terminated for any reason during the probationary period. There is simply no contractual basis that would warrant a conclusion that the Article 12.1A exception has application only to "just cause" terminations.

Over the last decade, numerous Regional awards (with one exception that will be discussed below) have consistently held that a probationary employee, terminated during the probationary period, has no right to the grievance-arbitration procedure. */

Even though probationary employees are not barred from the grievance procedure for all purposes, it is clear that

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*/ While Regional awards, as the Union asserts, may have no binding precedential effect at the National level, they do, nonetheless, interpret the National Agreement and are entitled to be given weight.

probationary employees do not have access to the grievance procedure in matters relating to a separation.

The one deviation, noted above, from the long line of Regional arbitrable authority on this issue is Award No. CIT-4H-C 3278 (Arbitrator Roumell). The Roumell award, in effect, held that Article 2 of the National Agreement, which bars discrimination, has application to all employees, including probationary employees. Arbitrator Roumell reasons:

> . . . [w]hen the parties agreed to Section 1 of the Agreement and referred to 'employee', without reference to whether those employees were probationary or regular employees, that every employee of the postal service covered by the Agreement would be covered by Article 2 of the Agreement. Since Article 2 also provides in Section 1 that grievances arising under Article 2 may be filed and does not refer to the class of employee affected, the arbitrator must assume that all employees in the Bargaining Unit were to be protected by the Article 2 anti-discrimination proscription and the right to grieve thereunder.

Regional arbitrators have refused to follow the Roumell award. In case no. SIC-3N-C 6735, Arbitrator Caraway stated:

> Article 12.1A in very clear and unambiguous language, states that a probationary employee is not entitled to invoke the grievance and arbitration procedure in the event of his termination. The parties specifically negotiated on this direct subject matter, namely, the right of a probationary employee who is terminated prior to his 90-day probation ry period. He has no right to the grievance and arbitration procedure. The prohibition agreed to by the parties was all encumpassing. They did not exclude terminations which are based on a charge of discrimination. The conclusion must

> be that the parties intended when they negotiated the National Agreement that any termination of a probationary employee, regardless of the reason, was not subject to the grievance and arbitration procedure.

In case no. N1T-1E-D 29164, Arbitrator Levin held:

> Article 2 clearly states the position of the parties with regard to non-discrimination and Civil Rights. But to enforce such rights through the grievance procedure, an employee must have passed the probationary period. No exception is made for probationary employees and there is no basis to imply the existence of such an exception.

This Arbitrator, in Award No. N1C-1E-D 27195, held that the grievance of a probationary employee was not arbitrable, even where the basis of the grievance was discrimination. This Arbitrator rejected the reasoning of the Roumell award "because it simply ignores the universally accepted axiom in contract interpretation that all the provisions of a contract must be interpreted with reference to all other parts so as to give effect to its entire general purpose".

In case no. N1C-1E-D 27210, involving a probationary employee who was physically handicapped, this Arbitrator stated:

> [S]imilarly, grievant's charge of being discriminated against by reason of his physical disability being violative of the Civil Rights Act of 1964, may be presented for resolution to the Equal Employment Opportunity Commission. There is no recourse to the grievance procedure under the National Agreement in order to seek redress for the alleged violations which may or may not have resulted in his termination. As a

> probationary employee, grievant has no claim of entitlement, under the terms of the National Agreement, sufficient to create any property interest in his continued employment.

The Rousell award is palably erroneous, and is to be given no weight.

Finally, the Union argues that it has a right, under Article 15, to pursue a grievance on behalf of a probationary employee where such an employee has been terminated for wrongful or unlawful reasons. In Award No. AC-S-22,995-D, Arbitrator Ushman persuasively rejected this contention as follows:

> The Union argues further that Article 12 excludes access to the grievance procedure with regard to discharge of a probationary employee only as regards the employee himself and contends that the Union may file a grievance about such a discharge and pursuant through the grievance procedure up to and including arbitration. The Union says that the Union, as such, has been given such a right because of the definition of a grievance as set forth in Section 1 of Article XV. The Union's contention is contrary to the wording and meaning of Article XII, Section I. As stated above, that section states the Postal Service has a right to separate any probationary employee at any time during the probationary period. The fact that the sentence goes on to state that these probationery employees shall not be permitted access to the grievance procedure was not intended to mean that action taken by the Postal Service to separate an employee during a probationary period is subject to the challenge by the Union although not by the employee, at least if the challenge is to the merits of the Postal Service's action. Section 1 of Article XII properly read prevails over the general provision of Article XV

> that the grievance procedure shall include the complaint of an employee or the Union. It follows that where a probationary employee is precluded from using the grievance procedure on a complaint involving his discharge, the Union acting at his representative is likewise so precluded. Otherwise the purpose of the exception of the probationer from the grievance procedure would be meaningless.

On the basis of the foregoing, the grievances are not arbitrable.

AWARD

The grievance are not arbitrable, and they are therefore dismissed.

Nicholas H. Zumas, Arbitrator

Date: September 23, 1985

In the Matter of Arbitration Between UNITED STATES POSTAL SERVICE And AMERICAN POSTAL WORKERS UNION, AFL-CIO	OPINION AND AWARD Nicholas H. Zumas, Arbitrator Grievant: Jane Ramsey Number: HlC-5L-C 25010

Background

This is a Step 4 appeal to National level arbitration pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union"). Hearing was held in Washington, D.C. on December 13, 1984, at which time argument was heard, and exhibits were offered and made part of the record. The post-hearing brief of the Service was received on February 15, 1985. The Union's post-hearing brief was received or February 10, 1985.

Appearances

For the Service: Primo A. Marquez

For the Union: Jim Connors

Statement of the Case

This dispute involves a probationary employee who received a poor evaluation. Grievant sought Shop Steward's time in order to investigate with her supervisor what she felt was an erroneous evaluation. The request was refused by the Service contending that she did not have access to the grievance procedure in disputes involving evaluations, relying on Article 12 of the National Agreement. Soon after, Grievant was terminated because of the poor evaluation.

Being unable to resolve the dispute, the parties submitted the dispute to impartial arbitration at the National level pursuant to Article 15, Section 4(D) because it involved an interpretative issue involving provisions of the National Agreement.

Issue

The question to be resolved in this dispute is whether a probationary employee has access to the grievance procedure when it concerns an evaluation of work performance.

Statement of Facts

The essential facts are not in dispute: Grievant was hired on March 3, 1984 at the main facility in Salt Lake City,

Utah as a Mail Distributor.

On March 30, 1984, Grievant was evaluated by her supervisor. On that day she was shown a copy of the Employee Probationary Period Evaluation Report (Form 1750) which included the following comments:

> [Grievant] is not meeting the job requirements and will be terminated unless she shows better progress in learning her job assignments. Her productivity must greatly increase, she must understand her instructions quicker, and must learn all assigned areas or she will be separated for failure to qualify.

On April 6, 1984, Grievant was further evaluated by another supervisor who recommended that Grievant "be terminated as sufficient time has gone by for her to bring her overall production up to the same level as her co-workers of equal time in the postal service".

On April 13, 1984, Grievant approached her Shop Steward and advised him that she had requested grievance time from her supervisor in order to inquire about her evaluation and that the request was refused. The Shop Steward approached Grievant's supervisor, who denied his request for Union grievance time, contending that probationary employees do not have access to the grievance procedure.

On that same day, the Service notified Grievant by letter that she had been terminated. The termination letter was received by Grievant on April 16, 1984.

Position of the Service

The Service contends that, under Article 12, Grievant does not have access to the grievance procedure. The Service argues that if a probationary employee is separated for poor work performance, his or her evaluation is considered a matter relating to his or her separation, and Article 12 bars the employee from filing a grievance on the matter.

The Service acknowledges that a probationary employee does have access to the grievance procedure in matters other than those relating to separation. Under Article 16, a probationary employee may file a grievance on wages, hours, or working conditions. But Article 12 is a specific exception to Article 16 when matters relating to separation are involved.

The Service further contends that the Union, by requesting access to the grievance procedure in relation to the evaluation, is really attempting to grieve the separation, which is barred by Article 12.

Position of the Union

While the Union recognizes that Article 12 bars the filing of a grievance for a separation of a probationary employee, it asserts that Article 12 has no application to evaluations; and a probationary employee, therefore, may file a grievance concerning his or her evaluation.

Grieving an evaluation of a probationary employee, according to the Union, is not related to termination. Rather, it falls in the category of other instances where a probationary employee may grieve, such as wages, hours and working conditions. A Shop Steward should be allowed to review the probationary employee's evaluation in order to ascertain whether such employee receives proper training, or whether such employee was discriminated against in violation of the provisions of Article 2 of the Agreement.

Findings and Conclusions

After review of the record and the applicable contractual provisions, it is the finding of this Arbitrator that a probationary employee does not have access to the grievance procedure in matters concerning an evaluation of work performance.

Article 12, Section 1A provides, in pertinent part:

> The probationary period for a new employee shall be nineth (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. (Underscoring added.)

While Article 12 makes no specific reference to the evaluation, it is clear that evaluations are the essential instruments utilized by the Service in determining whether

a probationary employee will or will not be separated. It would be illogical, therefore, not to consider the evaluation part of the decision to separate (or not to separate) probationary employee even though the evaluation takes place prior to such action.

Article 12, Section 1A gives the Service the unilateral right to separate probationary employee. If the Union were able, through the grievance procedure, to participate in the evaluation of probationary employee (affecting ultimately the decision to separate), the Service would be deprived of its unilateral right to separate such probationary employees granted under the National Agreement.

AWARD

Grievance dismissed.

Nicholas H. Simms, Arbitrator

Date: September 19, 1985

National Arbitration Panel

In the Matter of Arbitration	)	
	)	
between	)	
	)	
United States Postal Service	)	
	)	Case No.
and	)	
	)	Q98C-4Q-C 99251456
American Postal Workers Union	)	
	)	
and	)	
	)	
National Association of Letter Carriers - Intervenor	)	

Before: Shyam Das

Appearances:

For the Postal Service:	Larissa Omelchenko Taran, Esquire
For the APWU:	Susan L. Catler, Esquire
For the NALC:	Keith E. Secular, Esquire
Place of Hearing:	Washington, D.C.
Dates of Hearing:	February 28, 2001 April 4, 2001
Date of Award:	September 10, 2001
Relevant Contract Provision:	Article 12.1.A
Contract Year:	1998-2000
Type of Grievance:	Contract Interpretation

Award Summary

1. Article 12.1.A denies a probationary employee access to the grievance procedure to challenge his or her separation on the grounds of alleged noncompliance with the procedures in Section 365.32 of the ELM.

2. A dispute as to whether or not the Postal Service's action separating the employee occurred during his or her probationary period is arbitrable because that is a precondition to the applicability of Article 12.1.A.

Shyam Das, Arbitrator

BACKGROUND Q98C-4Q-C 99251456

This case arises under the 1998-2000 National Agreement between the American Postal Workers Union (APWU) and the Postal Service. The National Association of Letter Carriers (NALC) has intervened in support of the position taken by the APWU. The dispute involves the interpretation of Article 12.1.A of the National Agreement, which provides as follows:

> 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.

The Unions assert that a grievance over whether the Postal Service has actually effectuated a separation of an employee during his or her probationary period is subject to the grievance-arbitration procedure. More particularly, the Unions maintain that Section 365.32 of the Employee and Labor Relations Manual (ELM) sets forth four procedural requirements for effectuating the separation of a probationary employee, and that the Union may file a grievance that challenges whether those separation procedures were followed.

The Postal Service maintains that Article 12.1 clearly denies a probationary employee access to the grievance procedure to challenge his or her separation on any grounds, including alleged noncompliance with Section 365.32 of the ELM.

The principle provisions of Section 365.32 of the ELM cited by the Unions provide as follows:

> 365.3 Separations - Involuntary
>
> * * *
>
> 365.32 Separation-Disqualification (S-Disqual)
>
> 365.321 Applicability
>
> This type of separation applies only to employees who have not completed their probationary period, except where the separation is caused by a finding that employees who have completed the probationary period have failed to meet certain conditions attached to their appointment.
>
> * * *
>
> 365.323 Probationary Period
>
> *Separation-disqualification* must be effected during the probationary period except as provided in 365.321. Action is initiated at any time in the probationary period when it becomes apparent that the employee is lacking in fitness and capacity for efficient service. Any separation based on disqualification not effected during the probationary period, as provided in 365.321,

even though the action is based on unsatisfactory performance during the probationary period, must be effected as a removal.

* * *

365.325 Who Initiates Action

Supervisors may recommend separation-disqualification, but such recommendations must be referred for decision to the official having authority to take the action.

365.326 Procedure in Separating

If an appointing official decides to terminate an employee who is serving a probationary period due to conditions arising prior to appointment, or because work performance or conduct during this period fails to demonstrate fitness or qualification for continued postal employment, the employee's services are terminated by notifying the employee in writing why she or he is being terminated and the effective date of the action. The information in the notice regarding the termination must, at a minimum, consist of the appointing official's conclusions as to the inadequacies of performance or conduct.

365.327 Effective Date

The effective date of separation by disqualification must be before the end of the probationary period but may not be retroactively effective. The notice of separation must be given to the employee before the end of the probationary or trial period.

Article 19 of the National Agreement provides that:

> 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....

The issue in this case has not been addressed in a National Arbitration decision. Evidently, the only National Arbitration decision dealing with Article 12.1.A is the 1985 decision of Arbitrator Zumas in Case No. H1C-4C-C 27351/2. In that case, the APWU challenged the separation of two probationary employees. The Union alleged that the grievants had been retaliated against for filing workers compensation claims, in violation of Article 21, and had been the victims of handicap discrimination in violation of Article 2. Arbitrator

Zumas rejected the Union's contentions that the grievants were entitled to enforce their rights under Articles 2 and 21 through the grievance-arbitration procedure, and that the language of Article 12.1.A applies only as an exception to the "just cause" provision of Article 16. In his decision, Arbitrator Zumas stated:

> Article 12.1A, in clear, unqualified, unrestricted, and all encompassing language, denies probationary employees access to the grievance-arbitration process if they are terminated for any reason during the probationary period. There is simply no contractual basis that would warrant a conclusion that the Article 12.1A exception has application only to "just cause" terminations.

There have been a considerable number of regional arbitration cases in which the Unions challenged the purported separation of a probationary employee on various grounds, including that the separation was not properly effectuated in accordance with one or more of the requirements of Section 365.32 of the ELM. Prior to 1999, a large majority of the regional arbitrators who were presented with a claim that a purported separation did not comply with the cited ELM provisions applied those provisions, even in cases where the Postal Service insisted the grievance was not arbitrable under Article 12.1.A. Prior to 1998, the Postal Service never challenged any of the decisions which ruled in the Unions' favor on that issue in a court of law.

Regional Arbitrator Miles issued a decision in Case No. K94C-4K-D 97080929 on June 16, 1998. The APWU had filed a grievance challenging the separation of the grievant on the grounds that the Postal Service violated the procedures in Section 365.32 of the ELM. More particularly, as articulated by Arbitrator Miles, the Union claimed that the Postal Service failed to provide a specific statement that the grievant was being terminated for a particular reason and that the notice of separation was not issued by the appointing official. The Postal Service asserted that the grievance was not arbitrable under Article 12.1.A. The case was bifurcated, and Arbitrator Miles issued a decision holding that the question of whether the Postal Service adhered to the proper ELM procedures was an arbitrable matter. Arbitrator Miles stated:

> There is no question that Article 12, Section 1 of the Agreement entitles the Postal Service to terminate probationary employees prior to the expiration of their probationary period. However, Article 12 does not stand alone, rather it must be considered in conjunction with all other provisions of the Agreement. Thus, when taking action to separate a probationary employee, the Postal Service must do so in accordance with the provisions of the Agreement and the applicable provisions which are contained in Section 365.32 of the ELM. This provision is every bit a part of the Agreement, pursuant to Article 19, as is Article 12, Section 1.

The Postal Service brought an action to vacate the Miles award in the United States District Court for the Eastern

District of Virginia. The APWU counterclaimed for enforcement of the award. The district court vacated the Miles award, ruling that the arbitrator had exceeded his authority by issuing an award that was directly contrary to the language of Article 12.1 of the parties' collective bargaining agreement. Thereafter, the APWU appealed that decision to the United States Court of Appeals for the Fourth Circuit. It also initiated this Step 4 interpretive dispute.

The Fourth Circuit Court of Appeals issued its ruling on February 25, 2000 (USPS v. APWU, 204 F.3d 523.) By a 2 to 1 majority, the court affirmed the district court's judgment vacating the Miles award. The court rejected the APWU's argument that the Miles award does not violate Article 12.1.A because nothing in that provision precludes an arbitrator from determining whether a probationary employee was actually separated in the first place. The Court stated:

> ...The arbitrator's decision that procedural attacks on the separation of a probationary employee are arbitrable contravenes the unambiguous language of Article 12.1.A. The terms of this provision are worth repeating: "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*" (emphasis added). This language is unqualified and admits of no exception. The provision makes no distinction whatsoever between procedural attacks on separations and substantive challenges. The sweeping

> phrase "in relation thereto" brings any separation-related grievance by a probationary employee within the ambit of the prohibition. In other words, so long as the matter involves probationary employees and the question of separation, no grievance may be brought. In fact, it is difficult to see how the parties could have been any clearer in prohibiting every kind of separation-related grievance by a probationary employee.
>
> The arbitrator ruled that notwithstanding the clear language of Article 12, Article 19 somehow renders this matter grievable. He claimed that Article 19 incorporates Postal Service handbooks and manuals into the National Agreement, and that ELM violations are grievable by probationary employees because ELM violations are also violations of the National Agreement.
>
> This argument, however, has no basis whatsoever in the National Agreement. Even assuming, *arguendo*, that Article 19 incorporates the ELM into the National Agreement, there is no language either in the ELM or in Article 19 that even suggests ELM violations are grievable by probationary employees. Further, even if there were any hint in the ELM that probationary employees could grieve ELM violations, this hint would run smack into Article 12. And Article 19 unequivocally states that Postal Service handbooks and manuals "shall contain nothing that conflicts with this Agreement."

In addition to the action it filed to vacate the Miles award, the Postal Service has since filed similar actions to vacate other regional arbitration awards holding that a grievance that protests that a purported separation violates

Section 365.32 of the ELM is arbitrable. The Union has counterclaimed to enforce those awards. These actions in various United States District Courts have been stayed (or a motion to stay has been filed), pending issuance of this National Arbitration decision.

UNION POSITION

Initially, the Unions point out that Article 15.5.A.9 of the National Agreement provides that: "Any dispute as to arbitrability may be submitted to the arbitrator and be determined by such arbitrator".

The Unions contend that Article 12.1.A must be interpreted in the context of the separation procedures set forth in Postal Service Manuals and Regulations. Since at least the 1950's the Postal Service had regulations set forth in its Post Office Manuals governing the separation of probationary employees. Although the language changed slightly over the years, the core requirements for the Postal Service to effectuate a probationary separation always have been: (1) written notice; (2) by the appointing official; (3) stating, at a minimum, the reasons for the termination; (4) provided to the employee prior to the end of the probationary period. These regulations also provide that if an employee is not separated during the probationary period, that employee can only be removed by following the procedures for permanent employees,

even if the action is based on unsatisfactory performance during the probationary period.

The Unions stress that prior to adoption of Article 12 in 1971, the Postal Service had to satisfy all the requirements for separating a probationary employee in order to effectuate such a separation. The Unions argue that it was in this context that they entered into negotiations with the Postal Service for the first National Agreement in 1971, and that the language in the Post Office Manual provided the basis for the parties agreeing to Article 12. The language in Article 12 was intended to operate in tandem with the separation procedures in the Post Office Manual, which remained in effect. Thus, there was no reason to include any language defining probationary separations in the National Agreement. The Postal Service would effectuate a probationary separation by following the procedures in the Post Office Manual. Once there was a separation, the language of Article 12 would bar challenges to that separation, which was the Postal Service's central concern. For decades after the first National Agreement, the Unions assert, the Postal Service continued to apply the probationary separation procedures and arbitrators continued to review whether the Postal Service had complied with those procedures.

The Unions point out that the Postal Service could hardly have negotiated Article 12 with the belief that Article 19 would eliminate the separation procedures as contradictory language, because Article 19 did not come into existence until the second National Agreement was negotiated in 1973. Moreover,

the Postal Service's claim that the ELM provisions are in conflict with Article 12 is controverted by its promulgation of the ELM in 1978, which reincorporated the separation procedures previously set forth in the Postal Manual. The Unions also emphasize that the provisions of the ELM are part of the official regulations governing the Postal Service, as provided in 39 C.F.R. §211.2(a)(1).

The Unions contend that the contract language supports its interpretation. The language of Article 12 is far from clear. It speaks of the right to the Postal Service to separate employees and the prohibition on the right to file grievances in relation to that separation, but there is no guidance as to when a separation has occurred. Absent language elsewhere incorporated into the National Agreement or past practice, it reasonably could be argued that common sense or industrial common law could be used to determine the threshold issue of whether an employee was separated during the probationary period. Here, however, the language of the ELM and the past practice of the parties spells out exactly what it means to "separate" a probationary employee.

The Unions assert that ELM provisions in Section 365.32 clearly and specifically define when a separation of a probationary employee occurs. These provisions have been specifically incorporated into the National Agreement by Article 19 and have been in effect for at least a half century. There is no conflict between these provisions and Article 12, and they should be followed in applying that provision.

The Unions adamantly reject the Postal Service's claim that the Unions' position will deprive the Postal Service of the benefit of its bargain. Nothing in the Unions' argument diminishes the Postal Service's right to separate probationary employees during the probationary period without adhering to the just cause standard. All the Unions are seeking here is a decision requiring the Postal Service to adhere to its own almost 50-year-old regulation when effecting the separation. The benefit of the bargain argument also cuts both ways. The Unions have negotiated just cause protection for all employees who have not been properly separated before the end of their 90th day of employment. A ruling which undermines the standards for effectuating separations diminishes this protection.

The Unions maintain that the 2000 Fourth Circuit Court of Appeals decision upholding the vacating of the Miles award misinterpreted the National Agreement. Moreover, that court did not have the benefit of the parties' negotiating history and the foundation of the Post Office Manual serving as a governing document when the parties first negotiated Article 12. The Unions also assert that the Zumas National Arbitration Award and two earlier Federal Court of Appeal decisions cited by the Postal Service are not on point. Those cases merely held that once a separation is effected during the probationary period, the basis for the separation cannot be challenged through the grievance procedure even if the Union alleges that the basis for the separation violated another provision of the National Agreement.

The Unions also insist that the post-1971 bargaining history cited by the Postal Service does not support the Postal Service's claim that the Unions are trying to achieve by arbitration what they failed to gain in negotiations. The Unions never sought to include into the National Agreement the right to challenge whether a separation occurred during the probationary period, always believing it had that right by way of the ELM. The bargaining proposals the Unions submitted sought to shorten the probationary period and to include just cause dismissal rights enforceable in the grievance procedure, for probationary employees. The just cause proposals went to the reasons for separation, not whether a separation occurred.

POSTAL SERVICE POSITION

The Postal Service contends that the language of Article 12.1.A is as clear and unequivocal as contract language can be. The probationary period is intended to be a trial period designed to determine if the initial decision to employ a person was appropriate. The purpose of Article 12.1.A is to allow the Postal Service to make such evaluations and, if necessary, to separate a probationary employee without becoming entangled in the complicated and time-consuming procedures afforded to permanent employees by Article 15 (Grievance-Arbitration Procedure) and Article 16 (Discipline Procedure). The Postal Service asserts that this right is especially important in an organization as large as the Postal Service, and

becomes increasingly important as the Postal Service moves away from the notion of a traditional personnel office, and toward a system where the supervisor has increased autonomy and uses shared web-based applications to process personnel actions directly.

The Postal Service maintains that in the negotiation of the first National Agreement in 1971, its negotiators insisted that management have the unequivocal right to dismiss an employee during the probationary period without having the decision challenged through the grievance-arbitration procedure. This was the *quid pro quo* for its agreement to shorten the probationary period, which had been one year under the Postal Manual, to 90 days. The parties unambiguously agreed that a certain class of disputes is not subject to the grievance-arbitration procedure. Only the parties, by mutual agreement, may change that.

Over the years, the Postal Service asserts, the Unions have unsuccessfully sought to amend Article 12.1.A to secure probationary employees access to the grievance procedure. They cannot gain through arbitration what they could not gain through negotiation.

The Postal Service states that the provisions of the Postal Manual relating to probationary separations were in large part continued in Section 365.32 of the ELM in 1978, despite the negotiated language of Article 12, because they continue to apply to non-bargaining unit employees.

The Postal Service insists that Article 12.1.A does not differentiate between substantive and procedural challenges to a probationary employee's separation -- both are precluded by the blanket prohibition contained in that provision. It asserts that the Fourth Circuit Court of Appeals recognized the Unions' argument for what it is -- a "back door" attempt to obtain access for probationary employees to the grievance-arbitration procedure. To allow probationary employees access to the grievance procedure to challenge alleged "procedural" violations of Section 365.32 of the ELM would open the flood gates to grievances alleging violation of that and other ELM provisions. Apart from eviscerating the Postal Service's bargain, permitting probationary employees to challenge the manner in which their separations were effectuated would render the language of Article 12.1.A meaningless. As the Fourth Circuit noted, the Unions' distinction between procedural and substantive challenges is a "false dichotomy", and substantive challenges to probationary employee separations can often be formulated as procedural ones.

The Postal Service maintains that the Unions' argument that ELM violations are grievable violations of the National Agreement because Article 19 incorporates the ELM into the Agreement is fundamentally flawed and blatantly ignores the plain meaning of Article 12.1.A. This argument was flatly rejected by the Fourth Circuit's decision. Under Article 19, ELM provisions cannot supersede the clear and unequivocal language of Article 12.1.A.

The Postal Service cites USPS v. APWU, 922 F 2d.256 (5th Cir. 1991), a case in which the Union grieved the separation of a probationary employee on the ground that the Postal Service separated the employee due to compensable work-related injury in violation of the Federal Employees Compensation Act (FECA) and postal regulations implementing FECA. A regional arbitrator found the grievance was arbitrable and that the Postal Service violated Articles 19 and 21. The Court of Appeals affirmed the district court's ruling that the arbitrator exceeded his authority under Article 15.4.A.6, because Article 12.1.A denies probationary employees "any right to resort to grievance and arbitration procedures".[1]

Arbitrator Zumas in his 1985 National Arbitration decision likewise rejected a similar attempt by the Union to challenge the separation of a probationary employee on the grounds that it violated Articles 2 and 21. As Arbitrator Zumas declared: "Article 12.1.A, in clear, unqualified, unrestricted, and all-encompassing language, denies probationary employees access to the grievance-arbitration process if they are terminated for any reason during the probationary period."

Finally, the Postal Service explains that the reason it does not dispute that notice of separation must be provided to a probationary employee within a 90-day period is that

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[1] The Postal Service also cites APWU v. USPS, 940 F.2d 704 (D.C. Cir. 1991). Although the court in that case relied on Article 12.1.A to dismiss the Union's breach of contract claim, access to the grievance-arbitration procedure was not an issue in that case.

Article 12.1.A defines the probationary period as 90 days. That is an enforceable contract provision, unlike the remaining elements in Section 365.32 of the ELM cited by the Unions that are superseded by Article 12.1.A.

FINDINGS

The 2000 decision of the Court of Appeals for the Fourth Circuit serves at the very least as a sharp reminder that an arbitrator must focus first and foremost on the language of the parties' agreement. As explicitly stated in Article 15.5.A.6 of the National Agreement:

> 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.

Article 12.1.A grants the Postal Service the unqualified right "to separate from its employ any probationary employee at any time during the probationary period" and mandates that "these probationary employees shall not be permitted access to the grievance procedure in relation thereto". Looking solely to the language of Article 12.A.1, I have to agree with the finding of the Fourth Circuit that:

> This language is unqualified and admits of no exception. The provision makes no distinction whatsoever between procedural attacks on separations and substantive

> challenges. The sweeping phrase "in relation thereto" brings any separation-related grievance by a probationary employee within the ambit of the prohibition.

The Unions, of course, are correct in asserting that there must have been a separation before the end of the employee's probationary period in order for Article 12.1.A to apply. Absent such a separation, the probationary employee becomes a permanent employee and can only be discharged or removed for just cause in accordance with Article 16. The discharge of a permanent employee, in contrast to the separation of a probationary employee, is subject to the grievance-arbitration procedure.

The Unions also are correct in pointing out that Article 12 does not define what constitutes a separation. That definition is provided, however, in Section 365.11 of the ELM which states:

> *Separations* are personnel actions that result in employees' being removed from the rolls of the Postal Service.

Section 365.32 then goes on to provide the procedures to be followed in involuntarily separating a probationary employee. I agree with the Unions that these provisions of the ELM, in effect, are incorporated in the National Agreement pursuant to Article 19. There is nothing in the National Agreement or the ELM to suggest that these provisions do not apply to bargaining unit probationary employees. These provisions are not in any

way inconsistent with Article 12.1.A. By the same token, however, these ELM provisions do not address or govern access to the grievance-arbitration procedure.

The issue, in my view, is not whether the ELM provisions the Unions rely on "conflict" with Article 12.1.A. They do not. The issue, however, is whether Article 12.1.A nonetheless precludes a probationary employee and the Union from grieving that the employee's separation did not comply in one or more respects with those ELM provisions. Or put a different way, whether Article 12.1.A permits a probationary employee and the Union to grieve that a separation action taken by the Postal Service was not a "separation", for purposes of Article 12.1.A, because the Postal Service did not comply in one or more respects with the ELM provisions.

The 1985 National Arbitration decision by Arbitrator Zumas is instructive in answering this question. It holds, as did the 1991 Fifth Circuit Court of Appeals decision, that a probationary employee and the Union cannot resort to the grievance procedure to challenge a separation on the grounds that the separation violated some other valid provision of the National Agreement. Thus, even if Article 19 incorporates the provisions of Section 365.32 of the ELM into the National Agreement, and even if those provisions do not conflict with Article 12.1.A, that does not provide a contractually valid basis on which to disregard Article 12.1.A's broad prohibition on access to the grievance procedure.

Similarly, even accepting the Union's contention that the parties negotiated Article 12.1.A in 1971 with the implicit understanding that the separation procedures in the Post Office Manual (later included in the ELM) would continue to apply to the separation of probationary employees, it does not follow that they intended to permit probationary employees to grieve alleged violations of those procedures. The broad sweep of the language they agreed to, in my opinion, compels a finding that the prohibition on access to the grievance procedure applies equally to such procedural challenges.

Not permitting a probationary employee to grieve a procedural defect in the processing of his or her separation is fully consistent with the evident purpose of Article 12.1.A, which is to permit the Postal Service to elect to separate a probationary employee before that employee attains permanent employee status without having to defend its action in the grievance procedure. The Unions have not established a convincing contractual basis on which to conclude that, notwithstanding the broad language in Article 12.1.A, the parties agreed to permit procedural attacks on such separations in the grievance procedure.

I recognize that, starting in the late 1970's, many regional arbitrators have applied the ELM provisions and, when they have found violations, have upheld grievances challenging the separation of probationary employees. Since Arbitrator Zumas' 1985 National Arbitration decision, however, there have

been a number of regional decisions that have found such grievances not to be arbitrable.

My review of the cases indicates that, like the recently vacated Miles award, many of the regional decisions that ruled in the Unions' favor on arbitrability did so on the basis that, as Arbitrator Miles put it, the ELM provisions are "every bit a part of the Agreement, pursuant to Article 19, as is Article 12, Section 1". What is missing in these decisions is a convincing analysis that gets around the prohibition on access to the grievance procedure set forth in Article 12.1.A. Even assuming that the National Agreement requires the Postal Service to comply with the ELM provisions -- just as it requires the Postal Service not to discriminate on the basis of handicap (Article 2) and not to retaliate against employees for filing workers compensation claims (Article 21) -- Article 12.1.A bars access to the grievance procedure "in relation" to the separation of a probationary employee.[2]

In all these cases, the individual on whose behalf the Union has filed a grievance has been removed from the rolls, that is, separated by an action taken by the Postal Service. Otherwise, there would have been no reason to file a grievance. The one issue that legitimately can be raised in a case where the Postal Service claims that a grievance is barred by Article

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[2] Arbitrator Zumas' 1985 National Arbitration decision held that Article 12.1.A denies probationary employees access to the grievance procedure to protest that their separations violated Articles 2 and 21.

12.1.A, is that the separation action did not occur during the probationary period.[3] The Postal Service acknowledges this, as it must, because Article 12.1.A has no application if the separation action does not occur during the probationary period. That is a fundamentally different issue, however, from whether or not the separation action complied with all the particular requirements set forth in Section 365.32 of the ELM. A challenge to the validity of the procedures followed in effecting a separation is barred by the broad prohibitory language of Article 12.1.A.

For the reasons set forth in this decision, I conclude that Article 12.1.A denies a probationary employee access to the grievance procedure to challenge his or her separation on the grounds of alleged noncompliance with the procedures in Section 365.32 of the ELM. A dispute as to whether or not the Postal Service's action separating the employee occurred during his or her probationary period is arbitrable because that is a precondition to the applicability of Article 12.1.A.

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[3] This was an issue in a significant number of the regional arbitration cases involving Article 12.1.A.

AWARD

The grievance is resolved on the following basis:

1. Article 12.1.A denies a probationary employee access to the grievance procedure to challenge his or her separation on the grounds of alleged noncompliance with the procedures in Section 365.32 of the ELM.

2. A dispute as to whether or not the Postal Service's action separating the employee occurred during his or her probationary period is arbitrable because that is a precondition to the applicability of Article 12.1.A.

Shyam Das

Shyam Das, Arbitrator

775 Reemployment Positions

Returnees from the uniformed services are to be reemployed promptly based on their length of military service as defined in sections 775.1 through 775.3.

775.1 Length of Service

The following length of service time periods are used to establish reemployment priorities for returnees from military service:

a. *One to ninety days of service.* Without exercising any other options, the returnee will be restored in accordance with the following priority:

(1) The returnee will be restored to the seniority, step, and position he or she would have held if he or she had remained continuously employed. This is known as the *escalator position*. This means that bargaining employees progress in accordance with the provisions of the appropriate contract as if they had been active with the Postal Service during the period of military service.

(2) If the employee is unable to qualify for a position in (1), then the employee is assigned to the position prior to entry in the service with full seniority.

(3) If not qualified after reasonable effort, then to a position of lesser status and pay, with full seniority, that the returnee is qualified to perform.

b. *Ninety-one days and more service.* Without exercising any other option, the returnee will be restored according to the following priority:

(1) To the escalator position with full seniority, or position of like seniority, status, and pay.

(2) If not qualified after reasonable effort, then to a position of like seniority, status, and pay.

(3) If not qualified after reasonable effort, then to the position held prior to entry in the uniformed service, with full seniority, status, and pay, or position of like seniority, status, and pay.

(4) If not qualified after reasonable effort, then to any position of lesser status, and pay that most closely approximates the positions in (1), (2), or (3) above that the returnee is qualified to perform, with full seniority.

c. *Probationary period.* Employees who were serving their probationary period at the time of entry into active duty and who met the probationary time period while serving on active duty are considered as having met the probationary time.

775.2 Returnees With a Service-Connected Disability

The following is the priority for reemploying individuals who return from the uniformed service with a service-connected disability:

a. Restore the returnee to the escalator position with reasonable accommodation.

b. If not qualified for the position after a reasonable effort to accommodate the disability, then employ the individual in any other

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case Nos. B11M-1B-C 16189293
	)	J11M-1J-D 16441426
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	)	
	)	
	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Lucy Coolidge, Esq. Brian M. Reimer, Esq.
For the NPMHU:	Matthew Clash-Drexler, Esq.

Place of Hearing:	Remote Video Conference
Date of Hearing:	June 2, 2020
Date of Award:	October 14, 2020
Relevant Contract Provisions:	Articles 15 and 16 and MOU Re: Mail Handler Assistant Employees
Contract Year:	2011 and 2016
Type of Grievance:	Contract Interpretation

Award Summary:

As set forth in the above Findings, discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may not be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status.

Shyam Das, Arbitrator

The issue in this national level interpretive dispute is whether discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status, or whether the noncareer employee's disciplinary record is eliminated and his or her record starts anew upon conversion and appointment to the career position.

The parties have consolidated two Step 4 appeals in which full-time career Mail Handlers faced disciplinary action -- in Nashua, New Hampshire and Milwaukee, Wisconsin, respectively -- and where the disciplinary action cited infractions and disciplines incurred during the employee's time as an MHA.

MHAs were established by an interest arbitration award issued by Arbitrator Herbert Fishgold in February 2013 and incorporated into the 2011-2016 National Agreement.[1] MHAs are noncareer bargaining unit employees who are hired for terms of 360 days with a break in service of five days if reappointed. When full-time career Mail Handler vacancies arise, MHAs are converted to fill the vacancy in the order of their relative standing on an MHA roster which they are placed on in the order of their initial appointment in the installation.

The parties' Memorandum of Understanding Re: Mail Handler Assistant Employees (MHA MOU), as set forth in the 2016-2019 National Agreement, includes the following provisions:

> 3. Other Provisions
>
> A. Article 15
>
> * * *
>
> 3. The separation of MHAs upon completion of their 360-day term and the decision to not reappoint MHAs to a new term are not grievable, except where it is alleged that the decision to not reappoint is pretextual....

[1] Earlier, in 2011, the Postal Service and the APWU negotiated the equivalent Postal Support Employee (PSE) noncareer position, and an NALC/Postal Service interest arbitration award created the equivalent City Carrier Assistant (CCA) position.

> MHAs may be disciplined or removed within the term of their appointment for just cause and any such discipline or removal will be subject to the grievance arbitration procedure, provided that within the immediately preceding six months, the employee has completed ninety (90) work days, or has been employed for 120 calendar days (whichever comes first) of their initial appointment.
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> In the case of removal for cause within the term of an appointment, a MHA 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.
>
> 4. Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.

Bruce Lerner, General Counsel for the NPMHU, testified generally about the differences between MHAs and career employees. He pointed out:

> MHAs have a different pay scale. They really just have a pay rate. They get no retirement, little health insurance, very little leave. Their schedules are unfixed. They really basically are a separate category of employees in many, many ways. The ways have changed over the years and the negotiations have changed those ways, but coming out of the 2011 contract...there were all sorts of issues about how the MHAs would get implemented, and that led us to extensive bargaining over those issues in 2016 and '19.

In 2016 negotiations, one of the Union's proposals was to include in Article 16 (Discipline Procedure) the following provision:

> The disciplinary record of an MHA employee shall be removed from his/her file upon conversion to career status and may not be cited or considered in a subsequent disciplinary action against that employee.

Lerner testified that he "stated on the record that we were proposing this to clarify our understanding of what the national agreement already meant." He noted that by that time the issue had arisen in local grievances and that the NPMHU was "winning the issue in regional arbitration," as was the APWU.[2]

Patrick Devine, Manager of Contract Administration for the NPMHU contract, was the Postal Service's chief spokesperson in 2016 bargaining. He testified that he did not remember the Union claiming it already had the right to have MHA discipline expunged prior to its proposal or stating that the purpose of the proposal was to clarify existing contract language. (He added that there was no language to clarify.) He said he was aware there might have been some grievance activities, but there had been no request to move the issue to the national level as an interpretive issue.

The issue came up again in 2019 negotiations, but there is no dispute that by then the grievances in the present case had been appealed to arbitration at the national level.

Lerner stressed that the issue here is what happens if, after conversion to a career position, an employee engages in conduct that management determines justifies discipline and the Postal Service seeks to cite or rely on discipline issued to the employee prior to conversion. The Union concedes that if an MHA is issued a notice of removal, which the employee challenges, and then is up for conversion, the employee does not acquire career status prior to the removal action being resolved. Devine maintained, however, that the general practice in such circumstances has been to go ahead with the conversion.

In 2015 I issued a national level award in a grievance filed by the NALC involving the right of former CCAs to use annual leave following their conversion to full-time career status. The NPMHU and the APWU both intervened in that arbitration. Case No. Q11N-4Q-C 14239951, hereinafter referred to as "the 2015 arbitration." At issue in that case was the

[2] The Union cites an NPMHU regional arbitration award, Case No. B11M1BD15279427-N15084 (Thomas July 20, 2016).

requirement in ELM Section 512.313 that: "new employees are not credited with and may not take annual leave until they complete 90 days of continuous employment...." The Unions argued that CCAs (and MHAs and PSEs) are not "new employees." The Postal Service contended that this ELM provision applies only to new career employees. I upheld the Postal Service position.

UNION POSITION

The National Agreement is silent on whether the Postal Service may consider or cite to discipline of a noncareer MHA when determining whether to issue discipline to the employee after conversion to career status. The Union argues, however, that review of the National Agreement as a whole, confirms that the parties' did not intend MHA discipline to carry over to career employment.

ELM Section 421.41 recognizes that a "career appointment" is a "new hire for an appointment without time limit...that confers full employee benefits and privileges." The ELM's declaration that an MHA converted to a career appointment is a "new hire," the Union asserts, is confirmed by a review of the National Agreement. When an MHA is hired into a career position, the employee: has no seniority; receives no credit for any service as a noncareer MHA for placement on the salary schedule; is not permitted to carry over any annual leave -- but instead such leave must be paid out as terminal leave; and has no service credit for retirement purposes or for leave accrual. Moreover, as held in the 2015 arbitration, time as an MHA does not count for satisfying the 90-day qualifying period to utilize annual leave.

The Union also points to unchallenged testimony of its General Counsel, Bruce Lerner, that in both 2016 and 2019 bargaining the Postal Service repeatedly stressed the importance of maintaining the demarcation between noncareer and career to avoid legal challenges to their separate treatment for purposes such as participation in federal retirement and health insurance programs. Not surprisingly, the Union asserts, where the parties wanted

to depart from the general rule that career employees were "new hires" without a link to their noncareer appointment, they did so expressly.[3]

The Union contends that, consistent with the 2015 arbitration, it would be improper for the Postal Service to discipline a career employee by relying upon prior discipline imposed under a different set of rules and standards than those applicable to career employees, including the full protections of just cause and the disciplinary procedures set out in Article 16. The Union stresses that this is particularly true in the two grievances leading to this case, both of which involved attendance issues. MHAs have unfixed schedules and reduced leave, as well as lower standards for "just cause," which may well have contributed to the underlying attendance issues.

The Union adamantly rejects the Postal Service's claim that the NPMHU is attempting in this case to achieve in arbitration what it failed to achieve in bargaining. During bargaining for the 2016 and 2019 contracts, the NPMHU made, and later withdrew, proposals seeking to prohibit the carryover of MHA discipline. Notably, by the spring of 2016, when the parties were in negotiations, there was an ongoing dispute between the parties on this issue. Not only had the Union filed numerous grievances, including the two at issue here, but the NPMHU had prevailed in regional arbitration on this issue -- as had the APWU. Lerner credibly testified that in both rounds of bargaining he stated on the record that the purpose of the proposal was to clarify the National Agreement to conform to the Union's position as to what it already meant.

The Union also rejects the Postal Service's arguments that barring the Postal Service from considering discipline imposed while an employee was an MHA is impractical or

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[3] The Union points to the following instances where linkage between noncareer and career appointments is set out in the National Agreement: (1) relative standing of MHAs hired as career employees on the same day is based on service as an MHA; (2) MHAs who have successfully completed a 360-day term are not required to serve a probationary period when hired for a career appointment; (3) dues deduction authorization forms stay in effect, subject to a proviso; (4) time as an MHA is counted for determining FMLA eligibility; and (5) MHA time is counted for the lock-in period for transfers from one postal installation to another.

unreasonable. In particular, the NPMHU conceded at arbitration that in the rare case where a removal is pending at the time of conversion, the MHA is not going to get a career position unless that removal is overturned.

POSTAL SERVICE POSITION

The Postal Service contends that, in the absence of specific contract language addressing the issue in this case, an arbitrator should apply the long-held principle of "just cause" to gauge the appropriateness of management's disciplinary actions. The concept of just cause has long been fundamental to contracts between the parties. As stated in Article 16.1 of the National Agreement, "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...."[4] Application of just cause necessarily must be highly fact-specific, and any deciding party must be able to consider the totality of the circumstances. See USPS and NALC, Case No. NC-NAT-16, 285 (Garrett 1979). The Postal Service insists that regional arbitrators are more than equipped to consider the facts and circumstances of each case and employee, and determine if consideration of that individual's MHA record is appropriate. Just cause, the Postal Service argues, demands that arbitrators have that flexibility. Automatically absolving an employee of their record taints not only the principle of just cause, but the purpose of progressive discipline.

The Postal Service maintains that the 2015 arbitration case can be distinguished from the present case because it dealt with the interpretation of very specific ELM handbook language -- not the absence of any language. A blanket application of the 2015 award misses the nuance that interpretation deserves.

The Postal Service also contends that the Union is attempting to gain rights through arbitration that it was unable to achieve in bargaining. In 2016, the NPMHU made a proposal to achieve what it is seeking in this arbitration -- expungement of records of an employee upon conversion from MHA to career. Postal Service negotiator Patrick Devine

[4] Likewise, the MHA MOU provides for application of just cause elements in discipline of MHAs.

testified he had no recollection of hearing the Union state that it considered its proposal to be a clarification proposal as Lerner testified. Moreover, Devine testified that at the time he received the 2016 proposal he had not previously been aware of any Union position, including in a local grievance, that mail handlers already had expungement rights. The Postal Service stresses that if the Union previously had understood that MHA records were to be expunged upon conversion to career, there would have been no need to make the changes it proposed.

The Postal Service argues that adopting the Union's position would lead to unworkable and absurd results. It stresses that when a career vacancy opens up, management is required to convert an MHA based on their relative standing. It might be that, as in one of the underlying grievances, an MHA is converted when on the brink of being issued a Notice of Removal. In that case, it makes no sense that the employee start with a clean slate. The Postal Service asserts:

> If the newly converted employee continues to have attendance issues, management would have to start at square one in implementing progressive discipline. This would be true even though the employee had actual notice and opportunity -- during his time as an MHA -- to correct the offending behavior. That is to say, he already knew that such absences were unacceptable, and management had already attempted to deter him from such behavior with gradual discipline.
>
> Additionally, while employees who do not improve their attendance work their way through the disciplinary process *for a second time*, management may be forced to make on-the-spot adjustments to preserve operational integrity and function, possibly placing additional burdens on the employee's coworkers.

The Postal Service also points to certain positive vestiges of employment that carry over upon conversion to career. For example on-the-job training which is not repeated upon an MHA's conversion to career. Similarly, when individuals are converted, they bring their relative standing, vis-à-vis others converted at the same time. It argues this only emphasizes that newly converted career employees are not "brand new persons."

FINDINGS

Article 16 of the National Agreement addresses Discipline Procedure. It provides:

> Section 16.1 Statement of Principle
>
> 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.... Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement....

The parties' Contract Interpretation Manual further elaborates:

> 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)....

MHAs who convert to career status are hired as "new employees." ELM Section 421.41 includes the following description:

> a. Career appointment -- a new hire for an appointment without time limit requiring the completion of a probationary period that confers full employee benefits and privileges. The term applies to (a) new employees, (b) former employees who are being reinstated, (c) employees transferring from federal agencies, and (d) current Postal Service employees who choose to transfer to or from the rural carrier craft.

As the Union points out, MHAs who are hired as new career employees do not receive service credit for seniority or retirement purposes or, as determined in the 2015 arbitration, for eligibility to start taking annual leave upon being hired as a career employee.

In Article 12.1.E of the National Agreement, the parties expressly provided:

> MHAs who successfully complete at least one 360-day term will not serve a probationary period when hired for a career appointment, provided such career appointment directly follows an MHA appointment.

The parties also expressly agreed in an MOU Re: Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handlers that:

> MHAs will be converted to career positions in the Mail Handler craft in precisely the same order as the relative standing list. If more than one MHA is converted to career status on the same date in the same installation, seniority ranking will be based on their position on the MHA relative standing list.

The parties notably did not provide for carryover of the disciplinary record acquired as an MHA when an MHA is converted and hired as a new career employee.

The evidence does not show that the Union's 2016 (or 2019) bargaining proposal on this matter was an acknowledgement that -- absent agreement on such proposal -- the Postal Service contractually could consider MHA discipline. In addition to the testimony of its General Counsel that he stated during bargaining that the Union's proposal was to clarify its understanding that the existing contract did not permit such consideration, the Union had asserted that position in the grievance process. And while the issue had not yet been elevated to the national level -- which the Postal Service chose to do in this case -- the Union's position was successfully presented in regional arbitration cases by both the NPMHU and the APWU. Where an existing contract is ambiguous or open to different interpretations and the parties appear not to agree, a party may seek to obtain agreement on an explicit provision consistent with its position as to the meaning of the existing contract without detracting from that position.

The Postal Service argues that it makes more sense and better comports with the concept of just cause to take into account an employee's entire discipline record including discipline previously imposed when in a noncareer position. The Postal Service seems to recognize that the situations are not entirely the same, by arguing that the deciding party -- such as a regional arbitrator -- should and can consider the appropriate weight to accord to discipline imposed while the individual was employed as an MHA. It also does not dispute that MHAs not only are subject to different working conditions -- particularly as regards scheduling -- but do not have the full scope of just cause protection afforded to career employees.[5]

From a policy perspective, arguably there may be some appeal to the Postal Service's position -- just as in the 2015 arbitration I noted that the Union's position to credit service as a CCA (or MHA) for leave-taking status did not seem unjustifiable as a policy matter. But, on balance, the record supports a finding that when the parties to the National Agreement wanted to include or carry over experience while an MHA after conversion to new career employee status they did so expressly, as they did for probationary period and relative standing.[6]

In conclusion, consistent with their status as new hires, former MHAs who are converted to career positions start afresh for disciplinary purposes.[7]

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[5] It also is noteworthy that upon completion of each 360-day term the Postal Service is free not to reappoint an MHA to a new term without having to justify its decision, provided the decision is not pretextual.

[6] The Postal Service points out that employees who convert from MHA to career status, unlike other new hires, do not undergo on-the-job training although this is not spelled out in the contract. A decision by management not to provide redundant training, even if it could be subject to bargaining, hardly is comparable to the issue at hand, particularly as discipline of both career and MHA employees is addressed in some detail in the contract.

[7] The Union essentially has conceded that if an MHA is the subject of a notice of removal at the time the individual otherwise would be converted to a career position, that removal process -- including any challenge by the MHA -- is first to be completed.

AWARD

As set forth in the above Findings, discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may not be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status.

Shyam Das, Arbitrator

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 15, 1981

Mr. Lonnie L. Johnson
National Director
National Post Office Mail Handlers,
Watchmen, Messengers and Group Leaders,
AFL-CIO
1225 19th Street, NW
Suite 450
Washington, DC 20036

Re: Szolusha, M.
Worcester, MA 01600
H8M-1E-C-15324

Dear Mr. Johnson:

On April 10, 1981, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we mutually agreed that there is no interpretive dispute between the parties at the National level as to the meaning and intent of the language set forth in Article XLII, Section 1.D.4., of the National Agreement as that language relates to the assignment given the employee on behalf of whom this grievance was filed.

Based upon information contained in the file, an agreement was reached between local union and management officials relative to the operation of the 010/020 culling area. We recognize the responsibility of the parties to adhere to the provisions of that agreement. We also recognize, however, that it was not the intent of the parties who negotiated the National Agreement to have the referenced contract language serve as a basis for allowing employees to select particular preferred duties (or tasks they would like to perform) from among the duties in the preferred duty assignments which they are awarded through the bidding procedure. With this understanding, we can consider the case closed.

Please sign a copy of this letter as your acknowledgment of agreement to close this case.

Sincerely,

George S. McDougald
Labor Relations Department

Lonnie L. Johnson
National Director
National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

December 30, 1982

Mr. Lonnie L. Johnson
National Director
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 450
1225 - 19th Street, N.W.
Washington, D.C. 20036

Re: Mail Handlers - Local
Salt Lake City, UT 84119
H1M-5L-C-6488

Dear Mr. Johnson:

On November 22, 1982, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by your representative as well as the applicable contractual provisions have been reviewed and given careful consideration.

The question in this grievance is whether or not management violates Article 12 of the National Agreement when full-time regular employees are not given their preference of assignments within their bids.

During our discussion, we mutually agreed that there is no contractual requirement to give a full-time regular his choice of work assignments within his bid.

Please sign and return the enclosed copy of this decision as acknowledgment of agreement to close this grievance.

Time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Lonnie L. Johnson
National Director
National Post Office Mail
Handlers, Watchmen,
Messengers and Group

ANGELO FOSCO
General President

ARTHUR A. COIA
General Secretary-Treasurer

ROBERT J. CONNERTON
General Counsel

LABORERS' INTERNATIONAL UNION of NORTH AMERICA
Mail Handlers Division

CONTRACT ADMINISTRATION DEPARTMENT
Louis D. Elesie, Liaison
Joseph N. Amma, Jr., Director

Headquarters: 905 16th Street, N.W., Washington, D.C. 20006-1765 (202) 783-0573

September 25, 1990

William J. Downes
Director of Office of
Contract Administration
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

RE: Reassignment Under Article 12.6C5

Dear Mr. Downes:

I am writing to you in regards to the anticipated impact of reassignments made to the Mail Handler craft under Article 12.6C5 of the Agreement due to new and advanced automation.

A number of questions have arisen regarding the status and seniority standing of employees who may be involuntarily reassigned to the Mail handler craft under the aforementioned provisions.

Specifically, the provisions of Article 12.2G3, provide that when an employee changes from one craft to another (involuntarily) the employee begins a new period of seniority. The Union contends that the employee so effected would have seniority in the Mail Handler craft established as of the date he/she enters the Mail Handlers craft.

For example: A full-time clerk craft employee is involuntarily reassigned to the Mail Handler craft effective October 1, 1990.

It is the Union's position in the example cited that the employee would be placed in the Mail Handler craft with a seniority date of October 1, 1990.

Please advise as to whether you concur with the Union's position in this regard.

Thank you for your attention to this matter.

Sincerely,

Joseph N. Amma, Jr.
Director of Contract Administration

JNA:WJS:dah:c

cc: Arthur A. Coia, General Secretary-Treasurer
NCAC

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3818
FAX (202) 268-3074

OFFICE OF THE
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

October 16, 1990

Mr. Joseph N. Amma, Jr.
Director of Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
905 16th Street N.W.
Washington, DC 20006-1765

Dear Mr. Amma:

This is in response to your of letter of September 25 regarding the anticipated impact of reassignments made to the the Mail Handler Craft under Article 12.6C5 of the National Agreement due to new and advanced automation.

Your concerns centered around the status and seniority standing of employees who may be involuntarily reassigned to the Mail Handler Craft under Article 12.6C5.

You raised as a example a full-time clerk craft employee who was involuntarily reassigned to the Mail Handler Craft, effective October 1.

It is the Union's position in the example cited above that the affected employee would be placed in the Mail Handler Craft with a seniority date of October 1.

The Postal Service concurs with the Union's position that the affected employee who was involuntarily reassigned from the Clerk Craft to the Mail Handler Craft under Article 12.6C5 would begin a new period of seniority.

Should there be any questions on this matter, please contact William Scott of my staff at 268-3841.

Sincerely,

David P. Cybulski

David P. Cybulski
Acting Director
Office of Contract Administration

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020**.

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before they may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2, the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5/27/20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: E 11M-1E-C 13256828
Lopez, Thomas
Colorado Springs, CO 80910-9731

Recently, I met with Tim Dwyer to discuss the above captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the senior volunteer in lieu of takes the seniority of the senior full-time employee subject to involuntary reassignment.

After full discussion of this issue, we agree that no national interpretive issue is fairly presented in this case. Per Article 12.5.C.5.B.9 of the National Agreement, "Any senior employee in the same 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". Article 12.2.G.6 does not apply to senior in lieu of volunteers.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case, thereby removing it from the pending Step 4 listing.

Time limits at this level were extended by mutual consent.

Vicki Benson
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 4/27/14

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 6/27/14

ARBITRATION AWARD

April 23, 1981

UNITED STATES POSTAL SERVICE

-and-

Case No. N8-NA-0383

NATIONAL ASSOCIATION OF LETTER CARRIERS

Subject: Temporary Supervisors - Accumulation of Seniority within the Letter Carrier Craft

Statement of the Issue: Whether the Postal Service's practice of permitting employees to accumulate seniority within the letter carrier craft during such time as they serve as temporary supervisors is a violation of the National Agreement?

Contract Provisions Involved: Article XII, Section 2A and Article XLI, Sections 2A and 2F of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	July 1, 1980
Step 4 Answer:	September 26, 1980
Appeal to Arbitration:	October 8, 1980
Case Heard:	February 26, 1981
Transcript Received:	March 13, 1981
Briefs Submitted:	April 10 & 13, 1981

Statement of the Award: The grievance is denied.

BACKGROUND

This dispute raises the question of whether an employee accumulates seniority within the letter carrier craft during such time as he serves as a temporary supervisor. The Postal Service says he does; NALC says he does not.

Supervisors are absent for a variety of reasons. They may miss a day or two because of illness; they may be gone a week or more because of vacation; they may be away even longer because of a special detail. Management ordinarily replaces them with craft employees. The latter become temporary supervisors.* While working in that capacity, they have the authority to adjust grievances on behalf of Management and to discipline employees. Appointment to such a temporary supervisor's position is strictly voluntary on the part of the employee.

Employees have always accumulated seniority within the letter carrier craft for time spent as temporary supervisors. Their original dates of hire were unaffected by such a supervisory stint.

However, this subject has been a source of conflict between the parties in recent years. NALC amended the membership eligibility provisions of its constitution at an August 1976 convention. Its constitution thereafter provided that "...any regular member of the NALC who is temporarily... promoted to a supevisory position...will not be eligible to continue their membership in the NALC." NALC subsequently interpreted this provision to mean that anyone accepting a temporary supervisor's position would not be eligible to participate in the NALC health benefits plan. These actions prompted a Postal Service charge that NALC was engaging in "unfair labor practices." The charge led to extensive NLRB litigation.

Also, during the negotiation of the 1978 National Agreement, NALC proposed the following clause: "Seniority does

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* They are also known as 204(b) supervisors, a reference to Section 204(b) of the Postal Field Service Compensation Act of 1955.

not continue to accrue during service in temporary (204b)... supervisory positions." The Postal Service rejected this proposal on two grounds. First, it believed adoption of such a clause would pose severe administrative problems in maintaining seniority rosters. Second, it believed adoption of such a clause would significantly reduce the pool of craft employees willing to accept temporary supervisory positions. Bargaining on this issue led NALC to drop its proposal in return for a Postal Service concession on a related seniority matter.*

The instant grievance was filed in July 1980, two years after the execution of the 1978 National Agreement. It protests Management's action in continuing to permit employees to accrue seniority in the letter carrier craft during the period they are working as temporary supervisors. It was prompted by a November 8, 1979 Postal Service memorandum signed by Senior Assistant Postmaster General Ulsaker which stated in part:

> "Recent arbitration and NLRB decisions hold that bargaining unit employees while temporarily assigned...to supervisory...positions are not employees under the collective bargaining agreements; and therefore not governed by the provisions of, nor entitled to the benefits provided by, such agreements.
>
> "Our policy with respect to such assignments outside of the bargaining units will be to treat them as non-bargaining unit employees and to grant benefits consistent with those provided for other employees in the non-bargaining unit salary schedules to which assigned. Thus such employees will not be entitled to Out of Schedule Overtime, Guaranteed Time, PDC On-Call Time and Holiday Scheduling Premium.

* The concession involved employees who moved into permanent supervisor positions and were later involuntarily returned to the letter carrier craft. They received seniority credit within the craft for their supervisory time pursuant to Article XLI, Section 2G2 of the 1975 National Agreement. The parties eliminated that seniority credit in Article XLI, Section 2F of the 1978 National Agreement.

"Such employees will assume the schedule for the non-bargaining unit position to which assigned but will not be eligible for Out of Schedule Overtime or Non-Bargaining Rescheduling Premium due to a schedule change upon accepting the temporary assignment. They will, of course, be eligible for overtime and other special pay provisions applicable to their assigned non-bargaining position..." (Emphasis added)

DISCUSSION AND FINDINGS

NALC relies on Article XLI, Section 2A2 of the 1978 National Agreement:

"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."

It claims the Postal Service had for years considered temporary supervisors to be bargaining unit employees. It believes it necessarily followed that their "service" in the letter carrier craft was "uninterrupted" and that they hence were entitled to accrue craft seniority while filling a supervisory assignment. It believes all of this was changed by the November 1979 memorandum, by the Postal Service statement that temporary supervisors would thereafter be treated as non-unit employees. It argues that such non-unit status means their "service" in the letter carrier craft has been "...interrupted" and that they hence cannot accrue seniority while working as a supervisor. Its position, in short, is that the proper application of Article XLI, Section 2A2 has been substantially altered by the Postal Service memorandum.

Any analysis of this argument must begin with the terms of the National Agreement itself. Article XLI, Section 2A2 addresses the issue in dispute. It says an employee's seniority accrues only "so long as service is uninterrupted in the letter carrier craft..." Nowhere in the National Agreement did the parties explain how this clause was to be applied. They did not describe situations in which "service" would be considered to have been "...interrupted" or "uninterrupted." These words were simply left undefined.

There are, notwithstanding this silence, several ways of determining what the parties intended. The Postal Service has, from the inception of this collective bargaining relationship, given employees seniority credit within the letter carrier craft for time spent working as a temporary supervisor. This seniority accrual has occurred routinely in most, if not all, postal installations. NALC accepted these arrangements for years. It did not challenge this seniority accrual through the grievance procedure until July 1980. This long-standing practice indicates the parties fully understood that employees accumulate craft seniority during those periods in which they serve as temporary supervisors. The parties never deemed an employee's "service" to have been "...interrupted" by reason of such supervisory status.

The language of Article XLI, Section 2A2 has remained the same for years.* The practice of employees accruing seniority within the letter carrier craft while working as temporary supervisors has been in effect for years. Hence, the general contract language with respect to "service" being "...interrupted" or "uninterrupted" should be construed in light of this practice. The established way of doing things is usually the contractually correct way of doing things.

These views are reinforced by the parties' bargaining history. NALC proposed the following clause in the 1978 negotiations: "Seniority does not continue to accrue during service in temporary (204b)...supervisory positions." It thus sought to eliminate the practice described in the previous paragraphs. But its proposal was unacceptable to the Postal Service. After further discussion, NALC dropped this proposal in return for some other seniority concession. Under these circumstances, it seems obvious that NALC knew at the time the 1978 National Agreement was executed that Article XLI, Section 2A2 did not contemplate an employee's "service" being "...interrupted" by his working as a temporary supervisor.

* Only the article and section numbers may have changed.

In reaching these conclusions, I have considered the memorandum issued by the Postal Service in November 1979. That memorandum, to repeat, says employees will not be regarded as part of the bargaining unit while functioning as temporary supervisors. It says too that these temporary supervisors will no longer be entitled to certain benefits under the National Agreement. None of this alters my interpretation of Article XLI, Section 2A2. That contract clause has been given its own special meaning through long-standing practice. The memorandum, a unilateral statement by the Postal Service, cannot change the meaning of this clause. Only a revision of the contract language itself or a mutual understanding to modify (or nullify) the practice could effect such a change.

It is commonplace in American industry to make some provision in collective bargaining contracts for seniority accrual for employees promoted to supervision. That accrual takes place even though the employee, during his supervisory stint, is not covered by the collective bargaining contract. This is essentially what the parties did in Article XLI, Section 2A2. That provision was designed to deal with the seniority accrual issue. The only difference is that it does not expressly mention employee assignments to temporary supervisor. Instead, it relates seniority accrual to "service" in the letter carrier craft being "uninterrupted." These words cannot be read in a vacuum. They have been construed for many years to provide for seniority accrual during the time employees are working as temporary supervisors. The employees' non-unit status, during this period, in no way detracts from this seniority accrual.*

Accordingly, the Postal Service memorandum offers no sound basis for upsetting a well-established interpretation of Article XLI, Section 2A2. Past practice must prevail in this case. It follows that employees are properly permitted to accrue seniority during the time they serve as temporary supervisors. There has been no violation of the National Agreement.

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* This entire discussion assumes that the Postal Service is correct in declaring temporary supervisors to be outside the bargaining unit. Perhaps that assumption is supported by a NLRB decision but there is no arbitration award which holds that temporary supervisors are outside the unit for purposes of seniority accrual under Article XLI, Section 2A2.

AWARD

The grievance is denied.

Richard Mittenthal, Arbitrator

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

NOV [illegible]

Mr. Louis D. Elesie
International Trustee
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 525
1 Thomas Circle, N.W.
Washington, D.C. 20005-5802

Re: Local
San Francisco BMC, CA
H4M-5C-C 17168

Dear Mr. Elesie:

On July 31, 1986, we met with your representative, Marcellus Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management properly reassigned a former supervisor to a full-time mail handler position.

After reviewing this matter, we mutually agreed that the case is to be remanded for application of the following:

> An employee reassigned from another craft to the mail handler craft on or after January 7, 1985, would be subject to the provisions of Article 12.2.F.1b of the 1984 National Agreement. We agreed that the meaning and intent of that section is that reassignments from another craft to the mail handler craft are to part-time flexible positions. Employees reassigned from another craft prior to January 7, 1985, would be subject to the provisions of the 1981 National Agreement which did not limit such reassignments to part-time flexible positions.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Louis D. Elesie
International Trustee
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between AMERICAN POSTAL WORKERS UNION and NATIONAL ASSOCIATION OF LETTER CARRIERS and UNITED STATES POSTAL SERVICE	Case Nos.: H7N-4U-C 3766 H7N-2A-C 4340 H7N-2U-C 4618 H7N-5K-C 10423 H4N-5N-C 41526

BEFORE: Professor Carlton J. Snow

APPEARANCES: Mr. L. G. Handy

Mr. Thomas Neill

Mr. Keith Secular

PLACE OF HEARING: Washington, D.C.

DATES OF HEARING: August 11, 1989, November 28, 1989,
December 7, 1989, March 20, 1990

AWARD:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievances should be sustained in a manner consistent with this report, recognizing the need to remand Case No. H4N-5N-C 41526 for a factual determination and ultimate decision consistent with this award. It is so ordered and awarded.

Date: _____

_____
Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION BETWEEN AMERICAN POSTAL WORKERS UNION AND NATIONAL ASSOCIATION OF LETTER CARRIERS AND UNITED STATES POSTAL SERVICE. (Case Nos. H7N-4U-C 3766, H7N-2A-C 4340, H7N-2U-C 4618, H7N-5K-C 10423, and H4N-5N-C 41526)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from July 21, 1987 to November 21, 1990. Case No. H4N-5N-C 41526 arose under the 1984-87 National Agreement, but relevant portions of the agreement are the same in both labor contracts. This was a three party hearing, and the American Postal Workers Union intervened in a dispute involving the United States Postal Service and the National Association of Letter Carriers.

Arbitration hearings occurred on August 11, November 28, and December 7, 1989, as well as on March 20, 1990. All hearings took place in a conference room of the USPS headquarters at 475 L'Enfant Plaza located in Washington,

D.C. Mr. L. G. Handy, Manager of Labor Relations, represented the United States Postal Service. Mr. Keith Secular of the Cohen, Weiss and Simon law firm in New York City represented the National Association of Letter Carriers. Mr. Thomas Neill, Industrial Relations Director, initially represented the American Postal Workers Union, but Mr. Richard Wevodau, Director of the Maintenance Division, assumed Mr. Neill's position at the hearing when he had to leave in order to see a doctor. In subsequent hearings, Mr. Phillip Tabbita, Special Assistant to the President, represented the American Postal Workers Union.

The hearings proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. A representative of Diversified Reporting Services, Inc., recorded the proceedings and submitted a transcript of 572 pages.

There were no challenges to the jurisdiction of the arbitrator. The parties elected to submit post-hearing briefs, and the arbitrator officially closed the hearing on June 11, 1990 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUE

The parties stipulated that the issues before the arbitrator are as follows:

(1) In Case Nos. H7N-2A-C 4340 (St. George, Utah); No. H7N-2U-C 4618 (Clifton Heights, Pennsylvania); No. H7N-5K-C 10423 (Fairfax, Virginia); and No. H4N-5N-C 41526 (Santa Clara, California), the issue is whether the Employer violated the National Agreement by assigning a former supervisor to a full-time position in the Letter Carrier craft. If so, what should the remedy be?

(2) In Case No. H7N-4U-C 3766 (Laramie, Wyoming), the issue is whether the Employer violated the National Agreement by assigning a former supervisor to a part-time flexible position in the Letter Carrier craft. If so, what should the remedy be?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 12 - PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

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.

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

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.

ARTICLE 41 - LETTER CARRIER CRAFT

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, utility or T-6 swings,m 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.

. . . .

2. Letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant Letter Carrier Craft duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b detail and returning to their craft position. Upon return to the craft position, such employees may exercise their right to bid on vacant Letter Carrier Craft duty assignments.

The duty assignment of a full-time carrier detailed to a supervisory position, including a supervisory training program in excess of four months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return to the craft the carrier will become an

unassigned regular. A letter carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of Section 1.A.2.

. . . .

C. Successful Bidder

1. The senior bidder meeting the qualification standards established for that position shall be designated the "successful bidder."

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.

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 T-6 and utility assignments, unless the local agreement provides otherwise.

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.

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.

B. Definitions

6. (b) Part-time flexible letter carriers shallbe 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.

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.

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 Servixce entering the Letter Carrier Craft by reemployment or reinstatement shall begin a new period of seniority, except as provided in subsections D.1 and 0.4 above.

5. Any surplus employees from non-processing and non-mail delivery installations, regional offices or the United States Postal Service Headquarters, begin a new period of seniority effective the date of reassignment.

IV. STATEMENT OF FACTS

In this case, the Union has challenged management's reassignment of supervisors to the employment status of full-time, regular or part-time, flexible employes in the Letter Carrier craft. In four of the five grievances in this dispute, the Employer reassigned supervisors to the National Association of Letter Carriers bargaining unit as full-time regular employes; and the NALC has challenged those assignments. The fifth grievance involves a supervisor who was returned to the Letter Carrier craft as a part- time flexible employe, and

the Union has maintained that he should have been returned with full-time, regular status. Supervisors in all five grievances had their paygrade lowered when they returned to the bargaining unit.

One of the cases appealed to the national level arose in Laramie, Wyoming. The grievant left the Letter Carrier craft for less than two years while he worked as a full-time supervisor. He requested a return to the craft, and management reassigned him as a part-time, flexible employe. The grievant argued that the grievant should have been entitled to retain his seniority and that management should have reassigned him to a full-time, regular position. He seeks restoration of his seniority and reassignment to a full-time position as well as a make whole monetary remedy. (See, Joint Exhibit No. 2).

Another of the cases arose in St. George, Utah. Mr. Jerry Turnbeaugh left the Letter Carrier craft and worked as a supervisor for over two years before he requested a reassignment to the craft. The Employer created an unassigned full-time, regular craft position and assigned it to Mr. Turnbeaugh, giving him a new seniority date. The Union contended that the unassigned, regular position should have been made available for bid and that Mr. Turnbeaugh should have been placed on the part-time, flexible seniority list with a new seniority date. (See Joint Exhibit No. 3.

A third case arose in Clifton Heights, Pennsylvania. A former letter carrier became a supervisor, but the Employer

demoted him for disciplinary reasons pursuant to a Merit Systems Protection Board order. Management transferred him to a different postal facility and gave him a full-time, regular carrier position. The Union contended that the Employer should have promoted a part-time, flexible employe from the office of transfer to the regular position in that facility. The requested remedy is that the demoted supervisor be reassigned to the part-time, flexible list in order of seniority. (See, Joint Exhibit No. 4).

A fourth case arose in Fairfax, Virginia and involved a letter carrier in Fairfax who received a promotion to the rank of supervisor in July of 1987 and transferred to a different office. After three months he requested a return to the Letter Carrier craft in Fairfax, Virginia. The Employer reassigned him there as a full-time letter carrier, and his "letter carrier" seniority was restoreed. It is the contention of the Union that the former supervisor should not have received his previous seniority because he had left Fairfax, Virginia and transferred back to the facility from another office. It is the belief of the Union that the former supervisor should be reassigned as a junior, part-time, flexible employe. (See, Joint Exhibit No. 5).

The final case arose in Santa Clara, California. It involved a letter carrier who became a supervisor of another office in July of 1985. In November of 1986, he submitted his resignation to the Employer. There is a factual dispute between the parties with respect to whether or not management

ever accepted the resignation. In January of 1987, the Employer demoted the supervisor and reassigned him as a full-time letter carrier in a different office, giving him credit for his previous seniority in the craft. The Union contended that the former supervisor was not entitled to his prior seniority because he had transferred from another office where he had served as a supervisor and also because he had resigned from the U.S. Postal Service and, subsequently, had been rehired in Santa Clara, California. It is the belief of the Union that the former supervisor should be reassigned to the position of a part-time flexible employe and that any full-time assignment for which he had successfully bid should be reposted., (See, Joint Exhibit No. 6).

V. POSITION OF THE PARTIES

A. The National Association of Letter Carriers

The National Association of Letter Carriers takes the position that management must make assignments to full-time positions in the Letter Carrier craft strictly in compliance with seniority provisions in the National Agreement. A former letter carrier reassigned to that craft from a supervisory position, thus, would be eligible for reassignment as a full-time, regular employe only if the supervisor retains greater craft seniority than any other full-time or part-time flexible carrier who, otherwise, would be entitled to the assignment,

according to the NALC's theory of the case. The National Association of Letter Carriers argues that management fails to honor the seniority provisions in the parties' agreement when it asserts that it has complete discretion to reassign supervisors as either full-time, regular or part-time, flexible employes.

B. The American Postal Workers Union

The American Postal Workers Union intervened in this arbitration proceeding in order to dispute management's position that it has unilateral authority to return supervisory personnel to any craft at any installations in any status. It is the position of the American Postal Workers Union that the full-time or part-time flexible status of a returning supervisor is determined by numerous contractual and manual provisions, which vary from craft to craft. Accordingly, the APWU takes the position that the results of this arbitration proceeding may well determine how returning letter carriers are reassigned but that it does not necessarily decide how members of other crafts are to be reassigned.

C. The Employer

The Employer's first line of argument is that the issues in this case are governed by the concept of res judicata (the matter previously has been decided) because the parties to this proceeding allegedly settled the issue at Step 4 of several grievances in national pre-arbitration settlements. Those settlements, according to management's theory of the case, confirmed the right of management to place supervisors returning to the Letter Carrier craft in any status it sees fit.

Alternatively, it is the position of the Employer that there is no contractual provision restricting its right to determine the status of a supervisor reassigned to the Letter Carrier craft. Management maintains that Article 3 of the National Agreement gives it the exclusive right to determine the "craft" status of a reassigned employe, and the Employer contends that nothing in the agreement has restricted this managerial prerogative. Moreover, management maintains that past practice, supported by the parties' mutual agreement as manifested in negotiated settlements, establishes the Employer's right to determine the "craft" status of a reassigned employe, according to management's theory of the case.

The Employer contends that the Union has attempted to broaden the issue in the arbitration proceeding so that it includes seniority and not merely "status." According to the Employer, the only issue before the arbitrator is whether or not management has a right to determine whether a supervisor

returning to the craft will be returned as a part-time flexible or as a full-time regular employe. Seniority, in the view of the Employer, is a separate issue..

VI. ANALYSIS

A. Nature of the Issue

The parties disagreed strongly about whether or not the dispute is about employment status or seniority. There are three types of employes in the bargaining unit, namely, (1) full-time regular employes, who are assigned five eight-hour days a week; (2) full-time flexible employes, who work flexible hours while they wait for conversion to full-time regular status; and (3) part-time regular employes, who permanently work less than forty hours a week. Part-time regular employes are governed by different seniority and assignment provisions than the other two types of employes and are not part of this dispute. Of concern in this case is the status of part-time flexible employes (hired for future full-time regular work) and full-time regular employes. References to employment "status" in the case have been to part-time flexible employes and full-time regular employes, and not to part-time regular employes.

Seniority, on the other hand, is concerned with "the length of service an individual employee has in a unit." (See, Robert's Dictionary of Industrial Relations, 657 (1986)).

Seniority determines the relative priority of full-time regular employes and part-time flexible employes with respect to a variety of privileges, such as the right to bid on certain positions for full-time regular employes, the order of selection for qualified bidders, and the order of conversion of part-time flexible employes to full-time regular employes. For purposes of this arbitration proceeding, the most important seniority right is concerned with the conversion of part-time flexible employes to full-time regular status. The Employer has not argued that it has a right to disturb provisions on seniority in the parties' National Agreement. Management, however, has contended that its reassignment of supervisors to full-time regular or part-time flexible status has nothing to do with the concept of seniority. It is the belief of the Employer that it has a reserved right in Article 3 of the National Agreement to make such reassignments. The contractual provision states:

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
> (b) to hire, promote, transfer, assign and retain employes in positions within the Postal Service and to suspend, demote, discharge or take other disciplinary action against such employees.

B. Some General Guidelines

The parties have balanced their interests in the way they designed their collective bargaining agreement, and one manifestation of the balancing mechanism is to be found in the way the parties described their rights and obligations in the management's rights clause and the seniority provisions. The importance of disputes implicating such provisionscannot be underestimated. The role of an arbitrator in such cases is to review the language of the parties' agreement in order to construe the way they have ordered their relationship with regard to management rights and seniority.

The parties' agreement is an arbitrator's touchstone, and an arbitration award is "legitimate only so long as it draws its essence from the collective bargaining agreement." (See, United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960)). The point is that a source of seniority rights is to be found in the parties' collective bargaining agreement. As one arbitrator has observed:

> An employee's seniority as such does not by itself confer any right upon him. Seniority, without more, is merely the service status of a particular employee, in relation to the service status of other employees. (See, General Electric Co., 54 LA 351, 352 (1970)).

In other words, the meaning of seniority must find its explanation in the collective bargaining relationship between the parties. An arbitrator's assumption must be that the parties have decided seniority rights encourage loyalty and stability in the work force and have balanced those values against any lost flexibility as a result of using seniority as a basis

for making employment decisions. An arbitrator is obligated to interpret and, then, to apply such contractual terms in a given case, recognizing that an application of seniority is almost never neutral. As the eminent Ralph Seward observed almost four decades ago:

> In seniority matters, the advantage of one employe is the disadvantage of another. To "stretch" the agreement to be "fair" to Smith is to stretch it to be "unfair" to Jones. Fairness, then, exists when each employe has the relative seniority right he is entitled to under the Agreement--no more and no less. (See, Bethlehem Steel Co., 23 LA 538, 541-42 (1954)).

It is an arbitrator's obligation to understand and implement the bargain of the parties, no more and no less. This is accomplished by interpreting the language of the parties' agreement. If the language of the collective bargaining agreement fails to be clear and unambiguous, it becomes necessary for an arbitrator to seek other sources of the parties' negotiated intent. Settlement agreements between the parties provide one source of such information. Past practices of the parties also may make clear their contractual intent. If the parties have been silent throughout their relationship with regard to the issue in dispute, it is reasonable for an arbitrator to assume that they expected their agreement to be interpreted in light of established arbitral principles. As one scholar has observed, "there is a whole set of implicit relationships not spelled out in the agreement and not confined to any particular employer, which an arbitrator assumes to exist." (See, 2 Ind. Rel. L.J. 97, 104 (1977)). As Professor Archibald Cox has noted, 'these

arbitral principles are "drawn out of the institutions of labor relations and shaped by their needs." (See, 69 Harv. L. Rev. 601, 605 (1956)).

It is not uncommon for collective bargaining agreements to be specific about the effect of work outside a bargaining unit on an employe's accumulation of seniority. (See, e.g., Firestone Tire & Rubber Co., 61 LA 136 (1973); and National Cash Register Co., 48 LA 743 (1967)). In the absence of clear and unambiguous language, arbitrators often have scrutinized the practices of the parties to understand their mutual intent. (See, U.S. Steel Corp., 28 LA 740 (1957); and Mississippi Lime Co., 31 LA 869 (1969)). Numerous arbitration decisions have concluded that employes who return to a bargaining unit should be permitted to exercise their retained seniority. (See, e.g., Folger Coffee Co., 60 LA 353 (1953); Alpha Portland Cement Co., 40 LA 495 (1962); Pannier Corp., 41 LA 1228 (1964); and Leesona Corp., 56 LA 668 (1971)).

C. The Impact of Settlement Agreements

The Employer presented a number of negotiated settlement agreements and argued that they constituted binding precedents between the parties, precedents that already had resolved the disputed issue. (See, Exhibit Nos. 1, 2, 3, 5, and 8). The Employer argued that those "Step 4" decisions supported its position in the case and established that management's conduct is consistent with its rights under Article 3 of the parties'

agreement. In other words, the Union allegedly had agreed to settle grievances involving the same set of issues because it recognized the rights of management in Article 3. The Employer argued that those settlement agreements disposed of the issue in this case because they reflect uncoerced, consensual agreements by national representatives of the parties and show management's rights to determine the status of former supervisors who are placed in the crafts by a demotion. As binding precedent, the Employer argued that they must determine the parties' interpretation of their agreement and be dispositive in this dispute. Alternatively, the Employer argued that even if the Step 4 settlement agreements are not automatically dispositive, they at least show how the parties' view their agreement and how it should be interpreted. (See, Tr. I, pp. 20, 85, 100; and Tr. II, p. 62).

In one of the settlement agreements, a grievance had been filed by the National Association of Letter Carriers after management reassigned a former carrier who had served as a supervisor for eight years. (See, Employer's Exhibit No. 1). The employe received the lowest seniority in the postal authority, but management awarded him a position as a full-time regular letter carrier. The Union took the position in the dispute that the former supervisor should have been reassigned to the bargaining unit as the last part-time flexible employe and should have started a new period of seniority, in accordance with Articles 12.2 and 41.2 of the National Agreement. Although this settlement agreement

presented a similar issue as the grievance before the arbitrator in this case, the parties signed an actual agreement which stated:

> After reviewing this matter, we mutually agree that no national interpretive issue is fairly presented in this case. There is no dispute between the parties at Step 4 relative to the meaning and intent of Article 12.2 of the National Agreement. We find no agreement to return an employe to a part-time flexible position under the circumstances described. (See, Employer's Exhibit No. 1, emphasis added).

The parties remanded the grievance to Step 3 for further processing. By the parties' explicit intent not to provide an interpretation of the National Agreement, they made this negotiated settlement agreement nonbinding on the arbitrator in this case. While it is not necessary to decide the effect of the settlement agrement on postal managers and union representatives, it is clear that the parties did not make it binding on the arbitrator.

The same analysis must be applied in another one of the settlement agreements submitted by the Employer. (See, Employer's Exhibit No. 8). In that case, a supervisor had been demoted to the position of a full-time regular clerk and had been assigned to a different office. Management created a full-time regular position for the supervisor, and the Union grieved the fact that a part-time flexible clerk should have been converted prior to making such an assignment. The parties again "mutually agreed that no national interpretive issue is fairly presented in this case" and remanded it to the regional level. (See, Employer's Exhibit No. 8). Accordingly, that decision is not binding on the arbitrator

in this case. The settlement agreement is not binding for another reason as well. It involves the American Postal Workers union, and the National Association of Letter Carriers was not a party to it. Likewise, another of the settlement agreements did not involve the National Association of Letter Carriers. (See, Employer's Exhibit No.5). It would not be rational to impose a binding interpretation of a contractual provision on a party when it had no opportunity to represent itself at the negotiated settlement. Yet another settlement agreement involved the National Association of Letter Carriers, but again it was an agreement to remand the dispute to Step 3 because the parties "mutually agreed that no national interpretive issue was fairly presented in this case." (See, Employer's Exhibit No. 3).

Only one of the negotiated settlement agreements might have precedential value in this dispute. (See, Employer's Exhibit No. 2). In that case, the Union protested when a supervisor was transferred from another office and given a vacant, full-time position in the Letter Carrier craft, despite the availability of a part-time flexible letter carrier for conversion to a full-time regular position. The settlement agreement at Step 4 incorporated a memorandum on transfers prepared during Postmaster General Bolger's administration. (See, Tr. II, p. 39 re: The Bolger Memorandum of April 6, 1979). The arbitrator received evidence to the effect that the Bolger memorandum was devised to provide guidelines for voluntary reassignments and transfers. The

parties incorporated the following verbiage into the agreement:

> Full-time nonbargaining unit employees will be reassigned into full-time positions unless the reassignment is to a vacant bargaining unit position.
>
> All employes reassigned to positions in the bargaining unit will have their seniority established in accordance with the applicable collective bargaining agreement. (See, Employer's Exhibit No. 2).

The Bolger Memorandum gave support to the Union's contention that seniority for reassigned employes is to be determined in accordance with the National Agreement and that such reassignments are to respect the contractual seniority provisions. While the Bolger Memorandum purported only to furnish guidelines, its incorporation into the Settlement Agreement gave it the potential force of a binding precedent. The Settlement Agreement gave the grievant, a part-time flexible employe, the status of a full-time regular employe and placed him in the bid position that previously had been awarded to the reassigned supervisor. The supervisor was not reassigned as a part-time flexible employe, however, but as an "unassigned regular."

The remedial portion of the grievance in this settlement agreement has not been read as permitting reassignment of supervisory personnel in an "unassigned regular" status in all cases. In this grievance, the Union did not ask that the former supervisor be reclassified as a part-time flexible employe in its request for corrective action. More importantly, the record showed that, when the Step 4 negotiated settlement agreement was reached by the parties, the postal facility in question had no part-time flexible employes at

that particular work site. (See, Union's Exhibit No. 13 and Tr. IV, p. 61). In other words, no employe's seniority rights were implicated in the decision to classify the former supervisor as an unassigned regular. The point is that the only aspect of this settlement agreement binding in this case is the statement of principle from the Bolger Memorandum. The remedial section, because it failed adequately to address the same issues as those before the arbitrator in this case, is limited to its own facts and does not decide the issues of whether and under what circumstances a reassigned supervisor may be given full-time regular status when there are part-time flexible employes awaiting conversion. None of the settlement agreements submitted to the arbitrator proved to be instructive in this regard.

D. The Matter of Past Practice

The Employer argued that the precedential value of the negotiated settlement agreements it submitted to the arbitrator, should determine the outcome of this proceeding. There however, was nothing in the settlement agreements that indicated a mutual intent of the parties to supersede the language of their agreement or the Handbook with respect to seniority. (See, Case No. H4C-3W-C 28547, p. 32). Alternatively, the Employer argued that past practice between the parties modified or interpreted the language of the National Agreement to

permit the Employer to reassign former craft members to the craft in a status designated by management. Almost three decades ago, the parties' own Richard Mittenthal set forth the preeminent instruction on the topic of past practice, and nothing since has surpassed its insightfulness and wisdom, although others have borrowed heavily from it. (See, e.g., NYU Fifteenth Annual Conference on Labor, 311 (1962)). Arbitrator Mittenthal set forth the virtually universally accepted tests of a past practice when he asked if it has (1) clarity and consistency; (2) longevity and repetition; (3) acceptability; and (4) mutuality. (See, Mittenthal, "Past Practice and the Administration of Collective Bargaining Agreements," Proceedings of the Fourteenth Annual Meeting, National Academy of Arbitrators, 30, 32-3 (1961)). Evidence submitted by the Employer with respect to the past practice of the parties failed to establish that management's decisions to reassign supervisors to bargaining unit positions met these well-established criteria, and it is clear that the Employer has the burden of establishing the past practice whose existence it has asserted. (See, Case No. W1N-5C-C 23743, p. 11).

Evidence submitted to the arbitrator failed to establish a clear pattern of reassigning former supervisors to full-time regular status. Nor did the evidence clearly establish an enunciated policy to do so. Instead, the data showed that management has acted at its discretion, sometime assigning returning supervisors to full-time regular status and sometimes

to part-time flexible status. (See, Employer's Exhibit No. 9). Nationwide data on reassignment of supervisors from 1981 to 1989 showed that approximately thirty percent of supervisors returning to the craft in a different installation were reassigned as full-time regular employes. But eighty-seven percent of those returning to the same office were reassigned as full-time regular employes. Other data for fourteen selected cities showed that, except in Richmond, Virginia, returning supervisors were overwhelmingly reassigned as full-time regular employes. (See, Employer's Exhibit Nos. 10-20, 42, 43, 44, and 45(A)).

The problem with these data is that they fail consistently to show whether the returning supervisor was out of the craft for more or less than two years. A supervisor who returns to the same installation in the Letter Carrier craft after an absence of less than two years does not forfeit accumulated seniority under Article 41.2 of the parties' agreement. In other words, reassignment of a full-time regular employe would be consistent with the seniority provisions of the agreement. Nor have the data indicated the underpinning for decisions to reassign some supervisors as part-time flexible employes. Moreover, some of the personnel actions on data submitted to the arbitrator might later have been modified. (See, Tr. II, 17). Finally, not all supervisors involved were returned to the Letter Carrier craft. The Maintenance Craft does not have part-time flexible employes, so a return to full-time regular status in that craft would

not indicate a practice of reassigning supervisors as full-time regulars at the expense of eligible part-time bargaining unit employes.

In summary, the data are not clear, consistent evidence of management's past practice of reassigning supervisors to full-time regular status in the Letter Carrier craft. Some of the data are consistent with the National Agreement. Some appear to violate it. Some are irrelevant to this dispute. The point is that management failed to show a clear and consistent practice of reassignment contrary to seniority provisions in the parties' National Agreement. Nor has it shown that such a practice, even if it existed, enjoyed mutual agreement. The existence of a number of grievances from a variety of geographical areas argue against such a position. The evidence failed to establish that the parties modified their agreement by past practice.

E. The Teaching of the Agreement

It is the teaching of the parties' agreement which is paramount in guiding an arbitrator. Although other sources such as negotiated settlement agreements or past practices of the parties might be instructive in the absence of clear contractual guidance, it is the negotiated agreement which is always preeminent. Article 41.2(D)(6)(b) of the parties' agreement states:

> 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. (See, Joint Exhibit 1(B), p. 109).

Part-time flexible employes have been expressly covered in the seniority clause of the parties' agreement. One of their important seniority rights is the order of conversion to full-time regular status. To argue that status and seniority are separable issues overlooks the fact that reassignment of a supervisor into full-time regular status may cost a part-time flexible employe his or her advancement to full-time regular status. But for the reassigned supervisor, a part-time flexible employe could have converted to a more secure position. Accordingly, the reassignment of a supervisor who has not retained his or her seniority to full-time regular status violates the seniority right of part-time flexible employes waiting to convert. It should be noted that this contractual right is consistent with presumptions applied by arbitrators in the absence of contractual language about the seniority status of individuals returning to a bargaining unit. As one arbitrator has observed, "the great weight of arbitral authority" supports the proposition that an employe who leaves the bargaining unit and returns should not be preferred over an employe with the same or equal seniority who remains in the unit. (See, Folger Coffee Co., 60 LA 353, 355 (1973)).

At the arbitration hearing, Mr. William Henry, Special Assistant to the Assistant Postmaster General for Labor Relations, testified about his understanding of the difference

between status and seniority rights. He stated:

ANSWER: When [a former supervisor] would go back to the craft, he went back at full-time status, but-we're obligated by contract to maintain the seniority provisions, which put this individual at the one date junior to the junior part-time flexible employee or substitute employee at that time.

QUESTION: Was there and is there a difference between seniority and status?

ANSWER: Well, yes, there is a difference. If a person is returned to craft as a full-time individual, he has the right to bid. Whereas, a part-time flexible doesn't. Seniority places him in the appropriate order for bidding among full-time employees, if you will. Now, this individual who is placed one day junior to the junior part-time flexible, as each part-time flexible who is on the list above him becomes full-time, he goes ahead of him on the seniority register. So that any given point in time when they're converted to full-time status, they have bidding rights by virtue of their seniority which is senior to this individual. Until that happens, he has a right to bid. But his seniority, not just for bidding but for other purposes under the Agreement, is one day junior to the junior part-time flexible. (See, Tr. II, p. 28).

Management's explanation of the difference between status and seniority, however, did not take into account the impact of part-time flexible seniority for conversion to full-time regular status. Inevitably, reassigning a former supervisor to full-time regular status impedes the advancement a part-time flexible employe could, otherwise, have expected to occur.

The Employer's position, in effect, has been that conversion to full-time regular status is not an automatic right for part-time flexible employes. The National Agreement determines the order in which part-time flexible employes are

converted, but it does not guarantee that they will automatically be converted to the first full-time regular vacancy. Although this is a potentially valid construction of the agreement, Section 522 of the P-11 Handbook narrow this possible construction of the agreement. It states:

> Promotions to positions where full time employees and part-time flexible employees are authorized are usually to part-time flexible positions. A full-time regular position is not normally filled by promotion, reinstatement, reassignment, transfer or appointment if qualified part-time flexible employees of the same designation or occupational code are available for conversion to the position. Part-time flexible employees must be changed to full-time regular positions within the installation in the order specified by any applicable collective bargaining agreement. (See Employer's Exhibit No. 33, emphasis added.)

In other words, the parties' agreement, pursuant to Article 19, makes clear that the norm is to fill full-time regular vacancies from the ranks of part-time flexible employes. This provision does not preclude filling vacancies from other than the ranks of part-time flexible employes. It, however, does establish that the Employer does not have unfettered discretion to determine the status of a reassigned supervisor. The point is that this language in the P-11 Handbook, which has been incorporated into the agreement through Article 19, places the burden on management to establish why it is reassigning a supervisor to full-time regular status, if such reassignment impairs seniority rights of part-time flexible employes. This construction is consistent with the overall contractual framework of protecting important rights of seniority for bargaining unit members. As the

United States Supreme Court has recognized,"more than any other provision of the collection agreement ... seniority affects the economic security of the individual employee covered by its terms." (See, Franks v. Bowman Transportation Co., Inc., 424.U.S. 747, 766 (1976)).

In view of this interpretation of the parties' agreement and P-11 Handbook, the Employer has failed to justify its decisions to place former supervisors into full-time regular positions in Case Nos. H7N-2A-C 4340 (St. George, Utah); H7N-2U-C 4618 (Clifton Heights, Pennsylvania); H7N-5K-C 10423 (Fairfax, Virginia); and H4N-5N-C 41526 (Santa Clara, California). In the case from St. George, Utah, management reassigned a former carrier who had been a supervisor for more than two years as a full-time regular employe, even though he was placed at the bottom of the seniority list so that converted part-time flexible employes would have senior bidding rights to his after their conversion. In that case, the former supervisor should have been placed on part-time flexible status, and the unassigned regular position created for him should have been filled as a reserve position.

In the Clifton Heights, Pennsylvania case, the former carrier who was demoted to a junior carrier at a different installation was given full-time regular status. Under Article 41 of the National Agreement, transferring to a different installations obliterates accumulated seniority rights regardless of how long the supervisor has been out of the craft. The agreement states that:

> 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. (See, Joint Exhibit 1(D), p. 108, emphasis added).

In other words, the reassigned supervisor should have been reassigned to a different office, and the senior part-time flexible employe at the Clifton Heights facility should have been promoted to fill the vacancy.

In the Fairfax, Virginia case, Article 41.2(A)(2) also applied. The former carrier should have lost his seniority because he transferred to a different office as a supervisor. He should have been reassigned as a junior part-time flexible employe.

The case from Santa Clara, California presented an unresolved fact. Did the reassigned supervisor's Letter of Resignation ever go into effect, and, consequently, should he have been considered a "rehire?" That particular case needs to be remanded to the parties for consideration of this factual issue, and a determination consistent with this decision should be reached.

In the case from Laramie, Wyoming, the grievant served as a supervisor for less than two years. Then, he returned to the craft. All the time was spent at the same installation. The Employer reassigned him as a part-time flexible employe, but he had not lost his seniority rights and should have been reassigned as a full-time regular worker. He must be made whole for any losses.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievances should be sustained in a manner consistent with this report, recognizing the need to remand Case No. H4N-5N-C 41526 for a factual determination and ultimate decision consistent with this award. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: August 13, 1990

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers
Union
Suite 500
1101 Connecticut Avenue, NW
Washington, DC 20036-4303

Re: E98M-1I-C 00222755
WEIGER JR.
TRAVERSE CITY, MI 49686-9997

Dear John:

Recently, I met with your representative Dallas Jones to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether military service time counts as federal service for the purpose of a tie breaker.

After reviewing this matter we mutually agreed that the leave computation date, currently box 14 of PS Form 50, is used to determine "total federal service" for the purposes of applying Article 12.2.G8 (f).

Accordingly, we agreed to remand this case to the parties at Step 3 for application of the above settlement.

Please sign and return the enclosed copy of this letter acknowledging your agreement to remand this case Step 3 of the grievance process.

Time limits at this level were extended by mutual consent.

Gloria J. Gray
Labor Relations Specialist
Contract Administration
(NPMHU), Labor Relations

John F. Hegarty
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 01-23-03

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: B98M-1B-C 00022520
Class Action
Syracuse, NY 13220-9504
Local Union # 9944SYR

Dear Billy:

I recently met with your representative, Richard Collins, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether or not management violated Article 12.2.I2 of the 1998 National Agreement when it failed to automatically place Dan Ellithorpe, a Mailhandler MH-4 into the newly established assignment of Mail Handler Equipment Operator MH-5.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. Determination of this issue is based on the fact circumstances involved. We further agreed that the provisions of Article 12.2.I2 apply to those situations where an established position (see Article 12.2.H) is upgraded by appropriate authority. It does not apply to the replacement or addition of an assignment when the new assignment requires an established position that is ranked at a higher grade. Such newly established assignments shall be posted for bid pursuant to Article 12.2B3.

Accordingly, we agreed to remand this case to regional level arbitration in keeping with the provisions of the Memorandum of Understanding, Step 4 Procedures.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to regional level arbitration.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

Time limits at this level were extended by mutual consent.

Sincerely,

Frank X. Jacquette III
Labor Relations Specialist
Contract Administration
(NRLCA/NPMHU)

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 9/8/00

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: W. Lucas
Columbia, SC 29201
HIC-3P-C 36488

Dear Mr. Neill:

On September 20, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the bidding exceptions in Article 12, Section 3A, are applied from the first bid or whether the exceptions are applied only after the employee is bidding for the sixth time.

In full settlement of this grievance, the parties agree that the subject provision is to be applied in the following manner:

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

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to sustain this case.

Time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Thomas A. Neill
Industrial Relations Department
American Postal Workers

MEMORANDUM OF UNDERSTANDING

EMPLOYEE BIDDING

The following conditions have been agreed to in the implementation of the telephone bidding system:

1. There will be a one hundred and twenty (120) day transition period following the implementation of telephone bidding at an installation, during which employees may submit bids either by telephone or in writing. The one hundred and twenty (120) days will run from the first day on which telephone bidding is implemented at an installation.

2. There will be a toll-free telephone number available from any telephone, as well as TDD.

3. Telephone bidding shall be available during the following days and hours (including holidays): Monday through Friday, 6:00 a.m. to Midnight (Central Time), and Saturday, 6:00 a.m. to 6:00 p.m. (Central Time).

4. All bids shall close at midnight (Central Time) on a weekday on which the telephone bidding system is available until midnight.

5. Employees can enter, withdraw and/or review the status of their bids.

6. Employees will need their Employee Identification Number (EIN) and Personal Identification Number (PIN) to access the telephone bidding system.

7. When an employee has reached his/her successful bid limit, as set forth in Article 12.3A of the National Agreement, the system will still allow bids to be entered, but the bid will be flagged by the system as "ineligible". A system message will notify the employee to contact management. The personnel office will routinely review job bidding reports prior to awarding the bid to investigate ineligible bids, and to determine if there are situations as provided for in Article 12.3A for which the employee's bid count must be manually adjusted to make the bid(s) eligible. It is the responsibility of the employee to notify management if a bid flagged as ineligible is proper under Article 12.3A3 because the employee is bidding on an assignment that is "closer to the employee's place of residence." It is the responsibility of management to identify and rectify all other situations in which eligible bids are erroneously flagged by the system as ineligible.

UNITED STATES POSTAL SERVICE

Washington, DC 20260

DATE: October 2, 1986

OUR REF: LR100:JSPalmer:mrb:20260-4110

SUBJECT: Part-Time Regular Mail Handlers

TO: Field Directors, Human Resources

Recently, the Joint National Study Committee on Part-time Regular Mail Handlers met. During that meeting, it was agreed that a need exists to reemphasize the procedures on bidding rights and scheduling part-time regular mail handlers.

Article 12 of the Mail Handlers National Agreement provides that part-time fixed schedule employees shall be afforded an opportunity to bid on vacant duty assignments. Accordingly, all part-time regular mail handlers should be provided an opportunity to bid. This opportunity is limited to those vacancies having part-time fixed schedules.

As an aside, full-time regular mail handlers may apply for residual vacancies having a part-time fixed schedule. Article 12.3.B.2 provides that the senior full-time regular employee who meets the qualification standard will be selected. That employee's seniority would be computed in accordance with Article 12.2.D.2.b. which provides that seniority begins on the date of appointment as a part-time fixed schedule employee and continues to accrue as long as service in the craft, the part-time fixed schedule category, and the installation is uninterrupted.

With regard to scheduling, part-time regular mail handlers are to be regularly scheduled during specific hours of duty. The practice of routinely changing their starting times or altering their hours of work (e.g., day-to-day or week-to-week as may be the case with part-time flexible employees) should not occur.

Please assure that this information is disseminated to offices within your division.

If you have any questions concerning this matter, please contact Joan Palmer of my staff on (PEN or 202) 268-3842.

William J. Downes

William J. Downes, Director
Office of Contract Administration
Labor Relations Department

cc: Regional Managers, Labor Relations

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020**.

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

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    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2, the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5/27/20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
THE LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, MAIL HANDLERS
DIVISION

The parties to the Joint National Study Committee on Part-time Regular Mail Handlers mutually agree to the following:

1. That the United States Postal Service will not hire or assign part-time regular Mail Handlers in lieu of or to the detriment of full-time regular or part-time flexible Mail Handlers.

2. With regard to scheduling, part-time regular Mail Handlers are to be regularly scheduled during specific hours of duty. Only in emergency or unanticipated circumstances will part-time regular Mail Handler work hours be expanded beyond their fixed schedules.

3. When it is necessary that fixed scheduled day(s) of work or starting times in the basic work week for a part-time regular craft assignment be permanently changed, the provisions of Article 12, Sections 3.B4 and 3.B6 will be followed.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department

DATE 9/19/88

Joseph N. Amma, Jr.
Director of Contract
Administration
Laborers' International Union
of North America, AFL-CIO
Mail Handlers Division,

DATE 9/22/88

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020**.

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

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5/27/20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: C00M-1C-C05179842
Moore, Aldonette
Philadelphia PA 19116-9751

C00M-1C-C06002195
Class Action
Philadelphia PA 19116-9751

K00M-1K-C05016441
Class Action
Richmond VA. 23232-9997

Dear John:

I recently met with your representative, T.J. Branch, to discuss the above captioned cases at the fourth step of our contractual grievance procedure.

The issue(s) in these grievances are whether a light/limited duty employee can be assigned to a residual vacancy that they cannot physically perform.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties agree that an unassigned employee cannot be assigned to a residual vacancy unless the employee is able to perform the core functions of the position, with or without reasonable accommodation.

Accordingly, we agree to remand these grievances to Step 3 for further processing and/or regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Sincerely,

Allen Mohl
Labor Relations Specialist
Contract Administration (NPMHU) and WEI

John F. Hegarty
National President
National Postal Mail Handlers Union, AFL-CIO

Date: 12-13-11

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

2019 National Agreement
Between the
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and the
National Postal Mail Handlers Union
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    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

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5/27/20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

January 28, 1997

Certified P 862 744 440

Mr. William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: C94-4C-C 97008282
(MH4-E 409)
Class Action
Erie, PA 16515-9998

Dear Mr. Quinn:

Recently, I met with your representative, T.J. Branch, to discuss the aforementioned grievance at the fourth step of the contractual grievance procedure.

The issue in this case is whether the Postal Service violated Article 12.2.B.12 of the National Agreement when it assigned mail handler, Al Smith, to a vacant residual assignment while he was temporally detailed to a supervisory position.

After reviewing this matter, we mutually agreed that no national interpretive issues were fairly presented in this case. The parties agree that pursuant to Article 12.2.B.12 "[u]pon return to the craft the mail handler will become an unassigned full-time mail handler with a fixed schedule", therefore, employees working in a 204-B assignment may not be assigned to vacant residual assignments while so detailed.

Based on the aforementioned analysis, Mr. Smith may not be placed into the vacant residual assignment until he returns to the craft and becomes an unassigned mail handler employee.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing or to be rescheduled for arbitration, as appropriate.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits at this level were extended by mutual consent.

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

Date: JAN 29, 1997

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 1/30/97

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

MAY 22 1987

Re: Class Action
Laramie, WY 82070
H4N-4U-C 26041

Dear Mr. Overby:

On April 23, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management must provide copies of Form 1723 to the local union in advance of the detail it reflects.

During the discussion, we mutually agreed that the following would represent a full settlement of this case.

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

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

for Frank E. Polli
Grievance & Arbitration
Division

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 31 1985

Mr. Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: See Attached List

Dear Mr. Johnson:

On December 10, 1985, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether employees on 204B assignments are required to work in the assignments exclusively for the duration of time periods shown on Forms 1723.

During our discussion, we mutually agreed that when an employee is detailed to a higher level (204B) by executing a Form 1723, the beginning and ending dates of the assignment are effective unless otherwise amended by a premature termination of the higher level assignment.

Accordingly, the cases are hereby remanded to the parties at Step 3 for application of the above and for the purpose of fashioning an appropriate remedy.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle these cases.

Time limits were extended by mutual consent.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H1N-5B-C 26031
Lodi, CA

Dear Mr. Hutchins:

On January 12, 1989, we met to discuss the above-captioned grievance currently pending national level arbitration.

In full and complete settlement of this case, it is agreed:

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 nonscheduled 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, William Morehouse, will be paid eight (8) hours at the overtime rate.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle case no. H1N-5H-C 26031 and remove it from the pending national arbitration listing.

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration Division

Lawrence G. Hutchins
Vice President
National Association of Letter Carriers, AFL-CIO

DATE 1/12/89

Enclosure

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

I81N-4I-C 8201598b
Case No. H1N-4J-C8187
(Bidding on VOMA Vacancies by 204(b) Supervisor)

APPEARANCES: L. G. Handy for the Postal Service; Cohen Weiss and Simon, by Keith E. Secular, Esq., for the Union

DECISION

This grievance arose under and is governed by the 1981-1984 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly chosen by the parties to serve as sole arbitrator, a hearing was held on 22 September 1983, in Washington, D. C. Both parties appeared and presented evidence and argument on the following issue (Tr. 15):

> Did the Postal Service violate Article 41 of the [1981-1984] National Agreement by accepting the bid of a regular city letter carrier temporarily detailed to a supervisory position (204(b)) for a vacant Vehicle Operations Maintenance Assistant (VOMA)?

A verbatim transcript was made of the arbitration proceeding, and each side filed a post-hearing brief. Upon receipt of the briefs on 18 January 1984, the record in the case was closed.

On the basis of the entire record, the arbitrator makes the following

AWARD

The Postal Service did not violate Article 41 of the [1981-1984] National Agreement by accepting the bid of a regular city letter carrier temporarily detailed to a supervisory position (204(b)) for a vacant Vehical Operations Maintenance Assitant (VOMA).

The grievance is denied.

Benjamin Aaron
Arbitrator

Los Angeles, California
19 March 1985

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case No. H1N-4J-C8187
(Bidding on VOMA Vacancies by 204(b) Supervisor)

OPINION

I

This grievance originated in the Brookfield, Wisconsin, Post Office. On 27 May 1982, a bid was posted for a vacancy in the position of Vehicle Operations Maintenance Assistant (VOMA) -- Level 6. It is undisputed that full-time regular bidders from the clerk craft, special delivery craft, motor vehicle craft and carrier craft were eligible to bid for this vacancy. The successful bidder, Paul Whettam, whose seniority date was 4 October 1969, was a member of the carrier craft who, at the time he submitted his bid, was serving as a temporary supervisory position, known as a "204b position." Contending that Whettam was ineligible to bid for the VOMA vacancy, the Union filed this grievance.

The following provisions of the 1981-1984 National Agreement have been cited by the parties in support of their respective positions:

Article 1 (UNION RECOGNITION), Section 2-1, provides in part that "Managerial and Supervisory personnel" are not covered by the National Agreement.

Article 3 (MANAGEMENT RIGHTS) provides in part that the Postal Service "shall have the exclusive right, subject to the provisions of this Agreement . . . B. To . . . promote . . . [and] assign . . . employees in positions within the Postal Service . . . . "

Article 40 (SPECIAL DELIVERY MESSENGER CRAFT), Section 1-D-3-c, provides in part that "Full-time regular special delivery messengers are entitled to bid on the positions of . . . Vehicle Operations-Maintenance Assistant SP2-195."

Article 41 (LETTER CARRIER CRAFT) reads in part as follows:

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 5 working days of the day it becomes vacant or is established . . . .

Positions currently designated in the letter carrier craft:

KP 11 City Carrier, PS-5 (includes the duty assignment of Official Mail Messenger Service in the Washington, D. C. Post Office)

KP 11 Special Carrier, PS-5

SP 2-261 Carrier Technician, PS-6 . . . .

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. . . .

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.

The parties agreed to the following stipulations (Tr. 18):

First . . . a letter carrier who serves as a VOMA continues to be represented . . . by NALC.

Second, he continues to accrue seniority in the letter carrier craft . . . .

Third, while serving as a VOMA, the employee may bid for letter carrier assignments."

The Union makes two basic arguments. First, it contends that inasmuch as a letter carrier, once he has successfully bid for a VOMA vacancy, will continue to be treated as a letter carrier, the assignment should be considered as a letter carrier duty assignment that is covered by the language in Article 41, Section 1-A-2, which states: "Letter carriers

temporarily detailed to a supervisory position (204b) may not bid on vacant letter carrier craft duty assignments while so detailed."

Second, the Union maintains that under the National Agreement 204b supervisors have no bidding rights of any kind. In support of that position it cites a 1977 award by arbitrator Paul Fasser that a city carrier in a Fort Lauderdale, Florida, Post Office, who had been detailed as a 204b supervisor, could not bid on a carrier route other than that to which he had been assigned prior to the detail.

The Postal Service points out that the VOMA position is not one of the specified letter carrier craft positions, but is open to bidding by eligible members of the special delivery messenger, motor vehicle, and clerk crafts.

In response to the Union's argument based on the language of Article 41, Section 1-A-2, the Postal Service asserted during the hearing and in its post-hearing brief that "there is a long history of allowing craft employees (while acting as 204B) to bid on open positions" (USPS Br., p. 4). No evidence to that effect, however, was introduced at the hearing.

In addition, the Postal Service emphasizes that Article 41, Section 1-A-2 prohibits letter carriers temporarily detailed to a 204b position from bidding on "vacant <u>letter carrier craft duty assignments</u> while so detailed." (Underscoring added) It argues that this provision is not applicable in

this case because the VOMA position is not exclusively a letter carrier duty assignment.

II

The Union's first argument is unconvincing. That a successful letter carrier bidder for a VOMA vacancy continues to be represented by NALC and to accrue seniority in the clerk carrier craft does not alter the fact that members of three other crafts may also bid for the same job and have the possibility of being the successful bidder, depending upon their seniority.

The Union's second argument is also unconvincing. As the Postal Service points out, Article 41, Section 1-A-2, prohibits 204b supervisors from bidding on vacant letter carrier craft positions. In the case considered by arbitrator Fasser, the vacancy involved was a carrier route -- indisputably a letter carrier craft duty assignment. His decision, therefore, cannot control this case.

The Union's inferential argument that 204b supervisors cannot bid on VOMA (or any other) bargaining unit duty assignments because of the language of Article 1, Section 2, is not persuasive; the National Agreement does give 204b supervisors some rights, including the right voluntarily to terminate a 204b detail and to return to their craft position. Moreover, if 204b supervisors had no rights under the National Agreement, it would not have been necessary to specify that they cannot

bid on a vacant letter carrier craft duty assignment.

For the foregoing reasons, I conclude that the grievance must be denied.

Benjamin Aaron
Arbitrator

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between AMERICAN POSTAL WORKERS UNION and UNITED STATES POSTAL SERVICE	GRIEVANT: C. Hernandez POST OFFICE: Phoenix, AZ CASE NO. H1C-5K-C 24191

BEFORE: Professor Carlton J. Snow

APPEARANCES: Mr. Martin I. Rothbaum

Mr. C. J. "Cliff" Guffey

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: December 11, 1990

POST-HEARING BRIEFS: March 4, 1991

AWARD:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Article 37 of the National Agreement when, on approximately March 28, 1984, management denied the grievant a bid assignment due to her inability to work overtime. Because the grievant was the senior bidder for the open position and met all published qualification standards, she should have been awarded the position. An inability to work overtime does not necessarily prohibit an employe from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty." Employes restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment. The parties did not intend the 1987 Memorandum of Understanding to control individuals who are unable to work overtime but have no other medical restrictions.

The parties shall have sixty days from the date of this report to negotiate a remedy for the specific grievant involved in the case. If they are unable to accomplish this objective, they, by mutual agreement, may activate the arbitrator's jurisdiction any time during the ninety days period following the date of this report or by the request of either party after sixty days have passed from the date of this report but expiring ninety days after the date of this report. Further evidentiary hearings might be necessary

in order for the arbitrator to fashion an appropriate remedy. It is so ordered and awarded.

Date:_____

_____
Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION BETWEEN AMERICAN POSTAL WORKERS UNION AND UNITED STATES POSTAL SERVICE (Case No. H1C-5K-C 24191) (C. Hernandez Grievance)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to an appeal to arbitration from the American Postal Workers Union on January 18, 1985. The matter came to arbitration pursuant to Article 15, Sections 2 and 4 of the National Agreement. A hearing occurred on December 11, 1990 in a conference room of the United States Postal Service headquarters located at 475 L'Enfant Plaza, S.W., in Washington, D.C. Mr. Martin I. Rothbaum, Labor Relations Program Analyst, represented the United States Postal Service. Mr. C.J. "Cliff" Guffey, Assistant Director of the Clerk Division, represented the American Postal Workers Union.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. Ms. Ashorethea

Cleveland of the Diversified Reporting Services, Inc., recorded the proceeding for the parties and submitted a transcript of 91 pages.

At the hearing, the Employer challenged the substantive arbitrability of the dispute. The parties agreed, however, that the issue of arbitrability was so enmeshed in the merits of the case that the arbitrator should hear all relevant evidence and proceed to an award on the merits of the case only if the matter proved to be substantively arbitrable. The parties elected to submit post-hearing briefs, and the arbitrator officially closed the hearing on March 4, 1991 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUE

The parties failed to agree at the arbitration hearing regarding a statement of the issue before the arbitrator. The Employer maintained that the issue is" "Was there a violation of Articles 13 and 37 of the National Agreement when an employe was denied a bid assignment on or about March 28, 1984 due to her inability to work the full duties of the assignment?" According to the Union, the correct issue before the arbitrator is: "Did the Postal Service violate Article 37 when the Service denied the grievant, who was the senior qualified bidder, bid Assignment 3711?"

The primary difference between the issues presented by the parties is whether Article 13 of the National Agreement

was violated by management. At the arbitration hearing, the Union alleged that only Article 37 of the National Agreement had been violated. According to Mr. Guffey, the Union "never alleged that they [management] violated Article 13." (See, Tr., 6). According to Mr. Rothbaum, management believed "it was the Union's position all along that Articles 13 and 37 were the issue, and there are Union documents that substantiate that." (See, Tr., 9).

A careful review of evidence submitted to the arbitrator supports a conclusion that the Union is claiming only a violation of Article 37 of the National Agreement. At Step 2, documents in the grievance procedure refer to a possible violation of Article 19 of the National Agreement; but no one has argued to the arbitrator that Article 19 is a focal point of this dispute. Based on authority from the parties, the arbitrator states the issues as follows:

1. Is the grievance substantively arbitrable?
2. If so, did the Employer violate Article 37 of the National Agreement when, on approximately March 28, 1984, the Employer denied the grievant a bid assignment due to her inability to work overtime? If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 37 - CLERK CRAFT

Section 1. Definitions

B. Duty Assignment. A set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty.

Section 3. Posting and Bidding

A. 1. All newly established craft duty assignments shall be posted for full-time regular craft employees eligible to bid within 10 days. All vacant duty assignments, except those positions excluded by the provisions of Article 1, Section 2, shall be posted within 21 days unless such vacant duty assignments are reverted or where such vacancy is being held pursuant to Article 12.

E. Information on Notices

Information shall be as shown below and shall be specifically stated:

1. The duty assignment by position, title and number (e.g., key or standard position)

4. Hours of duty (beginning and ending) and tour.

6. Qualification standards.

F. Results of Posting

1. The senior qualified bidder meeting the qualification standards for the position shall be designated the successful bidder.

IV. STATEMENT OF FACTS

In this case, the Employer has challenged the arbitrator's subject matter jurisdiction. On the merits, the Union has challenged the decision of management to deny a work assignment based on an employe's inability to work overtime. Although the meaning of the facts is in dispute, there is substantial agreement on the underlying context of the dispute. The grievant became an employe of the U.S. Postal Service some time prior to October of 1980. On October 4, 1980, she suffered an injury which resulted in her subsequent inability to perform certain normal work duties. From October of 1980 until January of 1984, the grievant underwent various medical treatments and was classified during this time with either a "limited duty" or a "light duty" status. At one point, the grievant's doctor limited her to answering the telephone at work.

On January 31, 1984, the grievant's doctor signed a "work limitation" slip which indicated that the grievant "may return to regular duties with no limitations on January 31, 1984." The doctor also indicated that the grievant "may work eight hours per day." (See, Union's Exhibit No. 5, p. 2). On January 31, 1984, a medical doctor for the Employer concurred with the report of the grievant's personal physician. According to the Employer's doctor, the grievant "is medically approved for regular duty, eight hours only, per day." (See, Union's Exhibit No. 5, p. 1).

On approximately February 17, 1984, management posted job No. 3711, a job entitled "Mark-up Clerk--Automated."

The job involved operating an electro-mechanical operator paced machine used to process mail that was undeliverable as addressed. On March 9, 1984, the Employer announced that the grievant was the senior bidder and that job No. 3711 had been awarded to the grievant. (See, Union's Exhibit No. 7).

On March 16, 1984, management notified the grievant that she did not meet physical requirements for the job because of her "limited duty restrictions." (See, Employer's Exhibit No. 3(R)). The Employer asked the grievant to provide medical documentation of her ability to meet physical requirements of the position, or she would risk losing the bid. The grievant responded by re-submitting the form completed by her doctor on January 31, 1984 which allowed her to return to regular duties but limited her to no more than eight hours of work a day. On March 28, 1984, the Employer acknowledged receipt of the doctor's statement and added that

> The documentation provided states that you may work 8 hours per day. Your job duty requirements may require you to work more than 8 hours per day.
>
> Please provide us with a current evaluation of your ability to meet the physical requirement of this position prior to April 4, 1984.
>
> Failure to provide the required documentation will result in your bid being disallowed, and you will not be awarded the position. (See, Employer's Exhibit No. 3(S)).

On April 11, 1984, the grievant submitted a Step 1 complaint in the matter. Subsequently, she submitted a work limitation slip prepared by her doctor on April 12, 1984 which referred to notes of April 3, 1984. (See, Employer's

Exhibit No. 3(T) and (U). The grievant's doctor recommended the following:

> The patient is apparently being asked to work a 50 hour a week shift. That is, 10 hours a day, 5 days a week. She's willing to work an 8 hour shift, a regular 40 hour work week, and I think it is reasonable to try this. I'm concerned, however, with the fact that, in time, that still she may not be able to handle this repetitive type of activity; and although I will give her medical clearance to try this on a 40 hour work week schedule, I would wish to indicate to her administrators . . . that it may become necessary for her to be considered for a job transfer to a job that does not include this kind of repetitive activity. (See, Employer's Exhibit No. 3(U).

On receiving this medical documentation, management concluded that the employe was not able to perform all requirements of the position and that she could not be awarded job No. 3711. The grievance was denied at each step of the procedure, and the Union appealed it to arbitration on January 18, 1985. When the parties were unable to resolve their differences, the matter came for hearing on December 11, 1990 with no challenge on the basis of procedural arbitrability.

V. POSITION OF THE PARTIES

A. The Employer

According to the Employer, the arbitrator is without subject matter jurisdiction in this case because "the parties resolved any national interpretive issue discussed in the grievance procedure in September of 1987 with the signing of a Memorandum of Understanding." (See, Employer's Post-hearing Brief, p. 11). The Employer has offered two distinct arguments for its theory of the case that the grievance is not arbitrable. First, the Employer maintains that the parties consistently considered the grievant to be in a "light duty" status during all relevant times, including the time period immediately before she bid on job No. 3711. Second, the Employer maintains that changes in language of the Local Memorandum of Understanding highlight a Union agreement to the effect that an inability to work overtime amounts to "light duty" status. In either case, the Employer believes that "light duty" status is a condition which the parties fully addressed and is controlled by the 1987 Memorandum of Understanding between the parties and that no national interpretive issue remains for resolution by the arbitrator.

Mr. George S. McDougald, General Manager of the Grievance and Arbitration Division for the Employer, and Mr. William Burrus, Executive Vice-president for the Union, signed the Memorandum of Understanding on September 1, 1987. This Memorandum established procedures to be followed when "an

employee, as a result of illness or injury or pregnancy, is temporarily unable to work all of the duties of his or her normal assignment. Instead, such an employee is working on (1) light duty; or (2) limited duty." (See, Employer's Exhibit No. 1).

The Employer contends that the grievant was on "light duty" during the time period when she bid on job No. 3711. Accordingly, it is the belief of the Employer that the grievance which arose out of management's denial of her bid must be resolved in accordance with the 1987 Memorandum of Understanding. Hence, it is the belief of management that no issue remains for the arbitrator to consider. The Union, likewise, has considered the grievant to be in a "light duty" status throughout the grievance process, according to the Employer. (See, Employer's Post-hearing Brief, p. 11).

As evidence of this proposition, the Employer has pointed to Union statements during the grievance procedure. At Step 3, the Union argued that "the Local Memoranda of Understanding [sic] reads 'Employees with a light duty status must be allowed to bid and be awarded a position provided he/she can perform the duties of the new assignment.'" (See, Joint Exhibit No. 2, p. 5). In addition to this document, the Employer maintains that the medical documentation confirms the fact that the grievant was never removed from "light duty" status. According to the Employer, notes of the grievant's doctor indicate that he was not certain the grievant could perform even a 40 hour work week schedule.

According to the Employer, the doctor gave the grievant permission to "try" to work. He was not saying she could perform the work even for an eight hour day, according to the Employer's interpretation of the doctor's statements. (See, Employer's Post-hearing Brief, p. 12).

The Employer has acknowledged that there was some discussion with the Union during the grievance procedure which suggested that the Union believed the grievant was able to perform the assignment for eight hours a day and that she should not be denied the job because she could not work beyond this time period. (See, Employer's Post-hearing Brief, p. 12). It is the position of the Employer, however, that this discussion failed to amount to a disagreement about the fact that the employe was on "light duty" status. According to management, the grievant's status was precisely the status which the parties had covered in their 1987 Memorandum of Understanding. The Employer described its position as follows:

> It is our position that a person being unable to work more than eight hours, being considered on light duty, is no different than a person with a sit-down job and unable to walk being considered on light duty. (See, Employer's Post-hearing Brief, p. 12).

Alternatively, the Employer argues that the grievant was never removed from "light duty" status because she was under the control of a "Disability Reassignment Board established by the Local Memorandum of Understanding for the Phoenix Post Office. The Local Memorandum of Understanding had a provision which stated that "if the employee being qualified

for permanent light duty bids off that assignment (with the approval of the Disability Reassignment Review Board, and supported by medical evidence), he will not be able to have his new assignment tailored to light duty." (See, Employer's Exhibit No. 2). According to the Employer, this contractual provision "required the approval of the Committee to bid off. She could not arbitrarily leave the control of the Committee." (See, Employer's Post-hearing Brief, p. 13). Management argues that, because the grievant was still under the control of the Committee, her circumstances were covered by the 1987 Memorandum of Understanding between the parties.

It is also the position of the Employer that bargaining history for the Local Memorandum of Understanding shows that it was the intent of the parties to cover the present case with the 1987 Memorandum of Understanding at the national level. The parties submitted a portion of the 1982 Local Memorandum of Understanding to the arbitrator. It states that:

> Light duty is defined as a restriction on the type of duties that can be performed by the clerk during the tour. Limited hours is defined as a restriction on the number of hours that may be worked on any tour and shall not be construed as light duty. (See, Employer's Exhibit No. 2, p. 8).

Management argues that this provision was marked by an asterisk in the 1982 agreement between the parties. The marking allegedly indicates that management considered the provision to be inconsistent or in conflict with the National Agreement. (See, Tr., p. 72). According to the Employer, the provision was one of a number of provisions

discussed at impasse in May or June, 1982; and the provision quoted by the arbitrator allegedly was negotiated out of the agreement prior to 1983. (See, Tr., 72).

It is the belief of the Employer that "the Union in agreeing to remove the existing language considered work beyond eight hours to be part of the light duty provisions." (See, Employer's Post-hearing Brief, p. 13). In other words, management argues that, when the parties agreed to remove the provision which stated "limited hours is defined as a restriction on the number of hours that may be worked on any tour and shall not be construed as light duty," this meant that a "limited hours" restriction for an employe would be construed as a "light duty" assignment for that employe.

B. The Union

The Union maintains that the grievance is substantively arbitrable. It acknowledges that the 1987 Memorandum of Understanding established a procedure to resolve situations in which an employe, "as a result of illness or injury or pregnancy, is temporarily unable to work all the duties of his or her normal assignment." (See, Union's Post-hearing Brief, p. 2). It is the belief of the Union, however, that there remains a legitimate dispute regarding the meaning of the words "normal assignment" in the 1987 Memorandum of Understanding. According to the Union, "whether a restriction to

not work overtime modifies the employee's normal assignment is not just the threshold issue, but is the core of the case" in dispute before the arbitrator. (See, Union's Post-hearing Brief, p. 3). The Union maintains that the dispute in this case concerns whether the ability to work overtime is included within the duties of a "normal assignment."

To resolve the dispute, the Union focuses on language in the National Agreement in an effort to help define the verbiage of the 1987 Memorandum of Understanding. That Memorandum applies to all employes "temporarily unable to work all the duties of his or her normal assignment." According to the Union, "regular" or "normal" assignments are identified in all contracts and manuals of the parties as eight hour work days. From this fact, the Union concludes that overtime is not part of a "normal duty assignment" and that, therefore, the 1987 Memorandum of Understanding does not apply to employes who are capable of working the normal eight hour work day. (See, Union's Post-hearing Brief, pp. 13-14). Further, the Union maintains that a limitation to work no more than eight hours a day does not necessarily constitute "light duty." According to the Union, Article 13 describes light duty as a 'reassignment to other duties because employes are 'unable to perform their regularly assigned duties.'" (See, Union's Post-hearing Brief, p. 14).

It is the position of the Union that, regardless of what the grievant's restrictions were at other times, her doctor had released her to full duty at the time of her bid

on job No. 3711, with only a restriction that she not work overtime. Accordingly, the Union argues that the grievant, in fact, was able to perform her "normal assignment" and that, therefore, the circumstances of her case and others like hers do not fall within and are not covered by the 1987 Memorandum of Understanding. As a consequence, it is the conclusion of the Union that the dispute before the arbitrator is substantively arbitrable.

It is the belief of the Union that no weight should be accorded testimony and evidence which management introduced with regard to the 1982 Local Memorandum of Understanding. The Union argued that such evidence involved a new argument which had not been raised at prior steps of the grievance procedure. (See, Tr., 34-35). Furthermore, the Union argues that the 1982 Local Memorandum of Understanding included language which stated "limited hours is defined as a restriction on the number of hours that may be worked on any tour and shall not be construed as light duty." According to the Union, management's witness on the matter acknowledged that the local agreement which included this language was "the local memo we were being guided by at that time." (See, Tr. 61). The Union acknowledges that this language subsequently was deleted from the Local Memorandum of Understanding. It, nevertheless, is the Union's position that this subsequent deletion of local language "cannot add an 'overtime limitation' to the National Agreement's definition of light duty." (See, Union's Post-hearing Brief, p. 17).

VI. ANALYSIS

A. The Matter of Substantive Arbitrability

1. Did the Union acknowledge that the Grievant Was on "Light Duty"?

The Employer has argued the Union conceded in the grievance procedure that the grievant was on "light duty" status at the time she bid for the disputed job. As a consequence, it is management's conclusion that the present case is governed by the 1987 Memorandum of Understanding signed by Messrs. McDougald and Burrus on September 1, 1987. Hence, the parties already would have negotiated principles covering this dispute, and it would not present a justiciable issue for the arbitrator, according to management.

It is correct that the Step 3 appeal included a statement which said "employees with light duty status must be allowed to bid and be awarded a position provided he/she can perform the duties of the new assignment." (See, Joint Exhibit No. 2, p. 5). The Employer did not submit the status report at the appeal to Step 2 into evidence,although both were cited during the hearing. When management was attempting to demonstrate that the Union had acknowledged the grievant's "light duty" status, Mr. Rothbaum had Mr. Guffey read a portion of the Step 4 appeal. There occurred the following exchange:

> Mr. Rothbaum: Go on. Read it.
>
> Mr. Guffey: There is no dispute the employee can perform the job eight hours a day and forty hours a week. The problem is, management takes the position, because

the employee cannot work overtime, she is not entitled to the position. The Union takes the position, the employee is entitled to bid while on permanent light duty as long as it is within the medical restrictions.

Mr. Rothbaum: Acknowledgement that the person is on permanent light duty, Mr. Arbitrator,

Mr. Guffey: That is not an acknowledgement. Produce a document that put her on permanent light duty. Did she have five years in at the time? She couldn't be on permanent light duty. (See, Tr., 14).

The point is the Union took issue with management's contention that the grievant was always on "light duty" status. It is reasonable to understand earlier arguments of the Union within the context of concurrent arguments of management. In other words, it is clear that management has found an admission against interest or an acknowledgement where none existed.

From early stages of the grievance procedure, the Employer asserted that overtime is a requirement of regular positions in the bargaining unit. In its Step 2 response to the grievance on May 2, 1984, the Employer noted that the grievant had been restricted from working more than eight hours a day. Despite this observation, the Employer reached the following conclusion:

> It is management's position that overtime, as needed, is a requirement of regular positions in the Postal Service, and therefore the failure to award her this position was in compliance with the agreement. (See, Joint Exhibit No. 2, p. 6).

Later, in the Step 4 response of January 4, 1985, the

Employer stated that:

> The question in this grievance is whether the grievant was improperly denied a bid because of her physical inability to work overtime.
>
> It is the position of the Postal Service that the ability to work overtime is a bona fide physical requirement which must be met in order to qualify for the position involved. (See, Joint Exhibit No. 2, p. 2).

Throughout the grievance procedure, the Employer has maintained that the ability to work overtime is a part of an employe's "normal assignment." It is precisely this interpretation which the Union challenged, and the question of whether that interpretation is correct has not been answered by the 1987 Memorandum of Understanding between the parties. By focusing on whether or not the grievant was under "light duty status," the Employer failed to interact completely with the fundamental question in dispute between the parties. The 1987 Memorandum of Understanding established procedures to be used when an employe is "temporarily unable to work all of the duties of his or her normal assignment." This agreement between the parties failed to answer the question pursued by the Union into this arbitration proceeding. The 1987 Memorandum of Understanding did not answer the fundamental question regarding whether or not the ability to work overtime is part of the ability to work "all of the duties of his or her normal assignment."

Evidence submitted to the arbitrator makes it reasonable to conclude that the Union's past references to employes on light duties failed to constitute an admission against

interest that the grievant in this case was, in fact, in a "light duty" status. Union references to "light duty" status in various fields has not conclusively demonstrated that the Union considered the grievant in this case to be in a "light duty" status. The prior grievance procedure, including statements by the Employer which the arbitrator previously has discussed, support a conclusion that the continuing dispute has been about whether the ability to work overtime is a part of a "normal assignment." Management has acknowledged that "there was some discussion by the Union during the grievance procedure alleging that the employe was able to work the assignment for eight hours per day and should not be denied the job because she could not work beyond the eight hours." (See, Employer's Post-hearing Brief, p. 12). Although management considered this statement to be an insignificant concession, it acknowledged the core of the present dispute.

Testimony from Renee Breeden, Clerk Craft Director at the time the Union filed the grievance, demonstrated that the Union did not consider the grievant to be on a "light duty" assignment. The testimony was as follows?

> I'm saying, in this case, management took the position that it was light duty. The Union was saying, No, it is not light duty because we have this document that was dated 1/31/84 which goes to your previous question.
>
> She was on light duty prior to 1/31/84 by virtue of this document being marked in the second box, 'may be returned to light duty.'
>
> Those documents that you showed me said, yes, at that point in time, she was on light duty.

> However, in this document that she received on 1/31/84, it came back stating that she could return to regular duties with limitations. (See, Tr., 85-86).

The document referred to by the witness is the form completed by the grievant's doctor. (See, Union's Exhibit No. 5, p.2). The Union stressed the fact that the doctor did not check the box on the form signifying that the grievant "may return to light duty." Instead, the doctor checked the box next to the statement "a return to regular duties with no limitations on 1/31/84." (See, Tr., 70-71). The Union also established that the medical doctor for the Employer, who had authority to make the final decision with respect to the grievant's medical status, stated that the grievant "is medically approved for regular duty, 8 hours only/day." (See, Union's Exhibit No. 5, p. 1, and Tr., 57-58).

The Employer's contention that the medical examination conducted by the grievant's doctor after the grievant bid on job No. 3711 confirmed her ongoing "light duty" status was an unpersuasive contention. The analysis and comments of the grievant's doctor in April of 1984 were more complete than comments made in conjunction with the evaluation on January 31, 1984. Yet, the evaluation and recommendation were essentially the same. On January 31, the doctor indicated that the grievant "may return to regular duties with no limitations on January 31, 1984" and also that the grievant "may work eight hours per day." While definitely voicing a concern about the grievant working more than a regular forty hour a week shift, the doctor did not impose further

limitations on April 3, 1984 beyond those that existed in his report of January 31, 1984. The fact that the grievant or the grievant's doctor may have been aware that the job might have required overtime is not directly relevant to the issue of arbitrability.

2. The Local Memorandum of Understanding

Management argued that the 1987 Memorandum of Understanding resolved the present dispute because the grievant was under the control of a Local Disability Reassignment Review Committee. The 1982 Local Agreement cited by management established a Disability Reassignment Board, and the agreement stated that, "if the employee being qualified for permanent light duty bids off that assignment (with the approval of the Disability Reassignment Review Board and supported by medical evidence), he will not be able to have his new assignment tailored to light duty." Those provisions were marked with an asterisk, indicating that management believed the provisions were inconsistent or in conflict with the National Agreement. (See, Tr., 72). While management argued that the grievant "could not arbitrarily leave the control of the Committee," the Employer submitted no evidence which convincingly established that the grievant was under the control of the Committee in the first place. The closest it came was in questioning Mr. Deapen, a Labor

Relations representative in Phoenix from 1980 through mid-1984. There occurred the following exchange at the arbitration hearing:

> QUESTION: These are all restrictive documents, are they not, Mr. Deapen?
>
> ANSWER: Well, the document that I'm referring to, dated 6/21/83 is entitled, "Employee Work Limitation Slip," but the copy I have, I I don't see anything on it but a doctor's statement. I don't see any restrictions.
>
> QUESTION: OK. But it still says restrictions?
>
> ANSWER: Yes, it does. Beyond that, I don't see any of them that say that she could do the full duties of her position.
>
> QUESTION: Would a person who has this type of medical history have been covered by that Committee under the Local Agreement?
>
> ANSWER: I can't say that for a certainty because I don't have the documents; but certainly, she could apply under that Committee for an assignment. (See, Tr., 50-51, emphasis added).

Evidence submitted to the arbitrator failed to establish that the grievant, in fact, was under the control of the Disability Reassignment Review Board. Initially, neither of the letters which the Employer sent to the grievant on March 16 and March 28, 1984 made any reference to a requirement that the Disability Reassignment Review Board approve her bid for a new position. The correspondence merely asked for additional medical documentation. The evidence simply never established that the grievant was under the control of the Local Disability Reassignment Review Board. Although he speculated that the grievant might have been under the auspices of the Board, Mr. Deapen was unable to answer with

certainty about this matter. (See, Tr., 52).

Nor did testimony from Renee Breeden establish that the grievant, in fact, had been covered by the Disability Reassignment Review Committee. Because the Employer advanced the argument that the control of this Committee is relevant to the issue of substantive arbitrability, it was management's burden to prove the matter of control. Evidence submitted by the Employer simply was unpersuasive in this regard. Although the grievant might have been a logical candidate for committee review, witnesses who addressed the issue did so within the context of many disclaimers. Arguably, even if the Committee was controlling with regard to the grievant's status, the fact that it may not have released her from "light duty" status (if that had been the case) failed to require a conclusion that the 1987 Memorandum of Understanding is controlling in this case. Arguably, a limitation to eight hours a day did not require "tailoring" to light duty. It also could be argued that when an individual has shown an ability to perform work during the regular eight hour shift, he or she has established an ability to perform a new assignment. In other words, the grievant arguably satisfied the requirements which the Committee could have asserted under the local agreement. In other words, the ultimate question remained unanswered in the 1987 Memorandum of Understanding, namely, do the duties of a normal assignment include the ability to work overtime? This is the unanswered question the parties have placed before the arbitrator.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievance is substantively arbitrable and that the arbitrator has jurisdiction to proceed to the merits of the case. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: April 29, 1991

B. Merits of the Case

1. Theories of the Case

It is instructive to review the positions the parties have taken on the merits of the dispute in order to place their arguments in context. The Union believes that, "whether a restriction to not work overtime modifies the employee's normal assignment is not just the threshold issue, but is the core of the case." (See, Union's Post-hearing Brief, p. 3). As the senior qualified bidder for job No. 3711, the grievant should have received the bid, according to the Union. Even though the grievant was unable to work more than eight hours a day, she, nevertheless, was able to perform fully the normally scheduled duties of the position and met all the published qualification standards for it. Consequently, when management denied the grievant the bid assignment for the job, it allegedly violated Article 37 of the parties' agreement.

According to the Union's theory of the case, Article 37 of the parties' agreement has set forth a clear procedure by which vacant assignments are filled. Section 1(B) of Article 37 has defined "duty assignment" as "a set of duties and responsibilities within recognized positions regularly scheduled during specific hours off duty. (See, Joint Exhibit No. 1, p. 91). There are clear-cut procedures for posting and bidding on vacant duty assignments. The parties have identified information which must be posted on notices of vacant assignments. Such notices must include hours of duty (beginning and ending) and tour as well as qualification

standards. (See, Joint Exhibit No. 1, p. 103).

The Union has argued that Article 37(3)(F) requires the Employer to designate the senior qualified bidder meeting the qualification standards as the "successful bidder." Article 37(3)(F)(2) states that the successful bidder "must" be placed in the new assignment. (See, Joint Exhibit No. 1, p. 103). As the successful bidder, the grievant should have been placed in the position, according to the Union.

According to the Union, the qualification standards on which the parties have agreed do not include the ability to work overtime, and any insistence that an individual meet this unpublished qualification allegedly is a violation of the National Agreement. The qualification standards set forth in the parties' agreement are specific and have been negotiated with precision. It is the belief of the Union that the qualification standards established for job No. 3711 included no requirement that the successful bidder be able to work overtime. It is the position of the Union that the "overtime" requirement of management is neither an element of a duty assignment nor any sort of bona fide requirement for the position. (See, Union's Post-hearing Brief, p. 11). It is the contention of the Union that the qualification standard set forth in the official handbooks and manuals of the parties are the sole source of job qualifications, and management has no authority to add to, delete, or alter the published qualification standards in the face of objection from the Union. Accordingly, the Union believes

that management is prohibited from adding the ability to work overtime as a qualification standard for job No. 3711 without first successfully negotiating the matter with the Union.

The Employer has argued just as vigorously that (1) the grievant always was in a "light duty" status; (2) that she did not request and was not released by the Local Disability Reassignment Review Board to bid on a new position; and (3) that she at all times had a restriction which prevented her from doing the work in the job for which she bid. It is the position of the Employer that negotiations for the 1982 Local Memorandum of Understanding and the removal of certain language from the Local Agreement demonstrated that "all parties to the Local Agreement understood that a person who could not work more than eight hours was considered on light duty." (See, Employer's Post-hearing Brief, p. 16).

The Union has responded that, despite those negotiations, a dispute remains between the parties with respect to whether a person who could work no more than eight hours was considered on light duty. The Employer has maintained that the Union has asserted a new argument in arbitration which is inappropriate and that it is a new position for the Union to assert that "the employee was not on light duty because she could work the posted schedule for the position for which she bid." (See, Employer's Post-hearing Brief, p. 16). Accordingly, the Union's argument should not be considered by the arbitrator, according to management.

In support of its contention, the Employer has relied on a case by Arbitrator Benjamin Aaron in which he stated:

> I am fully in agreement with Arbitrator Mittenthal that the provisions of Article XV require that all the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration should be strictly enforced. (See, Case No. H8N-5B-C 17682).

The Employer has offered the following justification for the rule:

> The reason for the rule is obvious; neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which it has not previously considered and for which it has had no time to prepare rebuttal evidence and argument. (See, Employer's Post-Hearing Brief, p.17).

These principles have practical utility and should be closely followed in appropriate cases. The contention that the Union is raising a completely new argument which was not previously disclosed, however, is not persuasive. As previously noted, even at Step 2 of this grievance, management took the position "that overtime, as needed, is a requirement of regular positions in the Postal Service." (See, Joint Exhibit No. 2). This position of management is precisely what the Union is disputing in this case. It is not credible to argue that the issue previously has not been considered nor that management has had no time to prepare rebuttal evidence and argument since it articulated its position regarding the matter in 1984.

Management's position on the merits in this case is straightforward. It contends that:

> Overtime is an integral part of the job. It need not be placed in the job description or in the

> qualification standards any more than a need to be regular in attendance must be specified. (See, Employer's Post-hearing Brief, p. 17).

In this case, management allegedly proceeded on the premise that an employe must perform the entire job, including possible overtime.

The Employer has conceded that the published position description and qualification standards described an eight hour day and relevant physical abilities without mentioning the need to work overtime. Moreover, the Employer has acknowledged that relevant manuals and handbooks used by the parties refer to a basic eight hour work day. On the other hand, it is the position of the Employer that a requirement of an ability to work overtime need not be expressly included in the written qualification standards. It is the belief of the Employer that it retains an inherent managerial prerogative to require overtime from employes.

Since the Employer allegedly retained the right to require overtime of employes, there was no need to include the overtime requirement as part of a job description or as a qualification standard for the position. At the same time, the Employer has recognized that some positions within the operation require little or no overtime. The Employer argues that the difference in the amount of overtime which might be required of any given position is the precise reason why management needs to know the extent of an employe's ability to work overtime before the Employer can grant an employe a position.

2. Managerial Right to Require Overtime

It would be a daunting task to argue persuasively that, as a general rule, management may not require employes to work overtime. Such an argument would fly in the face of a deeply rooted presumption that it is a right of management to require employes to perform overtime assignments, absent some exceptions. As one arbitrator has stated:

> A long line of arbitration decisions has fairly well established the right of management to require its employees to work overtime unless there is a contractual restriction which specifically takes away this right. This right of management, however, requires that the overtime so assigned be of a reasonable duration under reasonable circumstances. There is also a requirement that management accept certain reasonable excuses advanced by employees to be excused from such overtime.
>
> If there is no reference to management's right to require overtime, the provisions of the agreemnent establishing pay for overtime work certainly imply that occasional overtime work may be mandated. (See, Pennwalt Corp., 77 LA 626, 631 (1981)).

There is general agreement among arbitrators that management may require overtime as long as the assignment is "of reasonable duration, commensurate with employee health, safety and endurance, and the direction is issued under reasonable circumstances." (See, Texas Co., 14 LA 146, 149 (1949)).

The collective bargaining agreement between the parties in this case is not silent on the issue of overtime assignments. In Article 8 of the parties' National Agreement, they have made extensive provision for the assignment of overtime work by management. Section 8.5(A) has codified the parties' agreement that management will establish an

Overtime Desired List. Article 8.5(D) of the National Agreement states:

> 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. (See, Joint Exhibit No. 1, p. 16).

This contractual provision makes clear that, when necessary, management is permitted to require overtime work even from employes who may not wish to work overtime. This conclusion is strengthened by other negotiated restrictions contained in the National Agreement as well as in handbooks and manual, which have been incorporated into the parties' agreement by Article 19. Article 8.5(F) and Section 432.32 of the Employee and Labor Relations Manual established maximum hours which the Employer may require of different employes except in emergency circumstances.

A logical implication of including Article 8.5(F) in the National Agreement and Section 432.32 in the Manual is that the parties expected management occasionally to need to require overtime of employes. Moreover, the provisions manifest a desire to place limitations on managerial discretion with regard to overtime requirements. The fact that the parties agreed to limit managerial discretion supports an implication that such discretion exists in the first place. In other words, the Employer has not negotiated away a presumption that management may require overtime from its employes. But this conclusion does not dispose of the dispute in this case.

3. Limitations on Management's Discretion

Some positions in the bargaining unit may require much overtime, while other positions require little or none. Even within the same type of position, some duty assignments require much overtime, while other duty assignments require little or none. Management has argued that the differences in the amounts of overtime that might be required in any given duty assignment constitutes a reason why the Employer must know of any limitations on an employe's ability to work overtime. Consequently, the Employer has concluded that the ability to work overtime must be considered an inherent qualification for any position.

Any decision with respect to whether the ability to work overtime is an inherent job qualification will have different effects depending on the size of the operation. In a large operation, if an employe does not want to work overtime, the availability of other willing workers in the same position would make it easy for an unwilling employe to avoid overtime and for management to accommodate the wishes of the unwilling employe. In the context of a large operation with many employes working the same position, it would be far less important for management to know the extent of an employe's ability to work overtime.

The guiding principle is the rule of reasonableness. For almost half a century in the United States, highly regarded arbitrators have maintained that an employer's right to require overtime must be analyzed within the context

of a reasonable person rule. In Connecticut River Mills, Inc., the eminent Saul Wallen confronted the following contractual provision:

> The eight (8) hour day and forty (40) hour week commencing Monday, at 12:01 A.M. and ending Friday (inclusive), shall be in effect without revision during the term of this contract. Time and one half shall be paid for all work done in excess of eight (8) hours in any day or forty (40) hours in any one week, and overtime paid for on a daily basis shall not be duplicated on a weekly basis. (See, 6 LA 1017 (1947)).

After the employer removed an employe for refusing to work overtime, Arbitrator Wallen overturned the discharge and stated that "once forty hours of service has been rendered, the obligation imposed by the contract has been met." (See, 6 LA 1017 (1947)). He found that the rule of reasonableness restricted the employer in scheduling overtime work. Numerous cases have followed the analysis used by Arbitrator Wallen. (See, e.g., National Electric Coil Co., 1 LA 468 (1945); Campbell Soup Co., 11 LA 715 (1948); and A.D. Julliard & Co., 17 LA 606 (1951)). The point is that, even if management has the right to require overtime work, there is an implied condition of reasonableness which must be applied in each case. Some decisions have found that the rule of reasonableness permitted even a legitimate employer request to work overtime to be refused. (See, e.g., Sylvania Electric Products, Inc., 24 LA 199 (1954)). The eminent Harry Shulman has taught that an employe has a right to reject overtime if there is a justified reason for doing so. (See, Ford Motor Co., 11 LA 158 (1948)).

The important point is that no single, simple formula can be applied to resolve all overtime problems. The facility in Phoenix, Arizona is a large one. The posting containing the position sought by the grievant included bid invitations for five other identical positions with the same regular hours. Management filled all five positions through the bidding process. (See, Union's Exhibit Nos. 6 and 7). Theoretically, all five individuals who received identical positions could place their names on the Overtime Desired List and be able to handle emergency situations requiring overtime.

It is also possible that the Overtime Desired List might not provide sufficient qualified people to fill all overtime requirements. In such a situation, management might be forced to consider less willing employes to work the overtime. This possibility would seem more likely in smaller facilities where a single position of a certain type might exist. In such situations, it could disrupt management's ability to direct the work force if it could not rely on every employe to perform overtime work.

4. An Express Limitation

The parties have established a precise method through which vacant positions are to be filled. Article 37 of the parties' National Agreement established a bidding process which requires that notices of vacant positions be posted and that the notice include qualification standards. Article 37.3(F)(1) makes clear that "the senior qualified bidder meeting the qualification standards for the position shall be designated the 'successful bidder'." (See, Joint Exhibit No. 1, p. 103). Article 37.3(F)(2) makes clear that "the successful bidder must be placed in the new assignment . . . ." (See, Joint Exhibit No. 1, p. 103).

No published qualification standard for the position sought by the grievant included the ability to work overtime. The EL-303 Handbook is equally clear about the fact that management may not alter posted qualification standards. Section 171 of the Handbook states:

> The qualification standard appropriate for the particular position is included in the announcement. This Handbook shall be the source of such qualification standards. No additions, deletions, or alterations will be allowed by any local, district, or regional office, except as provided in 142. (See, Union's Exhibit No. 4, emphasis added).

The EL-303 Handbook is clear about the fact that qualification standards are to be established on a national level but that pursuant to Section 142, local, district, or regional offices may add narrowly limited exceptions to the qualification standards, for example, the ability to type or drive when such needs constitute a bona fide occupational qualification. The parties, however, did not include

in Section 171 a qualification standard that applicants must be able to work overtime. The Handbook is the source of qualification standards, and it is inappropriate to expand the narrow exceptions provided for in Section 171. This conclusion finds support in Section 174 of the EL-303 Handbook. It states that:

> The senior bidders' qualifications will then be compared to the published qualification standard, and the senior bidder will be selected if qualified. (See, Union's Exhibit No. 4, emphasis added.)

The point is that bidders are to be evaluated by express, published qualification standards. The parties have limited management's presumptive discretion with regard to overtime work, and that limitation is inconsistent with the sort of implied qualification standard asserted by management. Rather, the express limitation has activated the rule of reasonableness.

The grievant in this case was performing the full duties of an eight hour day. Unrebutted testimony at the hearing established that, at the time the grievant bid for the position, she was working a regular eight hour day. Renee Breeden, Clerk Craft Director in Phoenix, testified as follows:

> QUESTION: Could you tell us what hours and days off she [the grievant] was working prior to the bid?
>
> ANSWER: Prior to the bid Christina Hernandez had Saturdays and Sundays as days off. She was working 1450 to 2300 hours, and she was performing her duty assignment for eight hours a day.
>
> QUESTION: Has she ever had a step increase withheld?
>
> ANSWER: No, she has not.

QUESTION: The hours and days off she was working, Saturday and Sunday off, 1450 to 2300, is that identical to the job that she was bidding?

ANSWER: Yes, it was. (See, Tr., 70).

5. Another Potential Limitation

There is another reason for concluding that the parties did not bargain for management to enjoy an unfettered right to include overtime as a requirement of any job. The parties intended their relationship to be circumscribed by the law, including such legislation as the Rehabilitation Act of 1973 and the ADEA. Such implicit limitations on the parties' relationship cannot be ignored.

The rule of reasonableness with regard to overtime assignments must be construed within the context of the Americans with Disabilities Act which President Bush signed into law on July 26, 1990. This legislation provides federal protection for persons with disabilities. It extends rights associated with the Rehabilitation Act of 1973 to private employers, while the 1973 Act focused primarily on the federal government.

The legislation defines a "physical impairment" as:

> Any physiological disorder or condition . . . or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; . . . (See, 45 C.F.R. § 84.3(j)(2)(i) (2989)).

If a person has such a physical impairment, it must substantially limit the individual in a major life activity.

The legislation also makes clear that the Americans with Disabilities Act extends to "persons who have recovered--in whole or in part--from a handicapping condition such as a mental or neurological illness, but who may nevertheless be discriminated against on the basis of prior medical

history . . . ." (See, 120 Cong. Rec. 30531, 30534 (Sept. 10, 1974). In other words, the definition of a disability under ADA extends to an individual who had an impairment in his or her life and who, then, recovered from the disability. The new legislation prohibits discrimination against such individuals.

The Americans with Disabilities Act also covers individuals who are "regarded" as having an impairment. In other words, even if an individual has a physical impairment that does not substantially limit a significant life activity, but the person has been treated by the employer as though the person had such a limitation, that person is protecfed by the legislation. (See, 45 C.F.R. § 84.3(j)(2)(iv) (1989)). That is, the new legislation prohibits discrimination against a person who has been treated by the employer as though the individual were impaired. (See, School Board of Nassau County v. Arline, 480 U.S. 273 (1987)).

It is important to recognize that an impairment under the ADA must not be of any particular duration. In other words, a person with a temporary impairment would be covered by the legislation. One need only establish an impairment that substantially limits a major life activity. It would be possible to establish coverage under the legislation without regard to the duration of the impairment.

If a worker is a qualified individual with a disability, management has an obligation to make a reasonable accommodation for that person. The legislation states that the

employer commits discrimination by

> not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation or business of such covered entity. (See, ADA § 102(b)(5)(A), 104 Stat. 332).

Section 101(9) of the legislation defines "reasonable accommodation" to include job restructuring as well as modifying work schedules. It is clear from the legislative history for the Act that the intent of the drafters was for management to make a determination about a specific accommodation on the basis of particular facts for individual cases. (See, Senate Rep. 116, 101 1st Cong., 1st Sess. 26, 31 (1989)). Legislators expected that management would be flexible with regard to job restructuring and modifying schedules. (See, Sen. Rep. 31). Legislators were clear about the fact that, even if the job restructuring or modified schedule reduced efficiency of an operation, it must be made, unless the inefficiencies could be defined as an "undue hardship" in specific cases.

The point is that the Employer has an obligation to look to laws such as the Americans with Disabilities Act for general guidance about the nature of the Employer's obligation to provide reasonable accommodation for individuals who are impaired. The Employer's obligation extends to all employment decisions. Decisions must be made on a case-by-case basis looking at the facts of each specific problem. The legislation suggests that the Employer must use a problem

solving approach to the matter. This means management must identify aspects of the job that limit the person's performance; determine potential accommodations; evaluate the reasonableness of the alternative accommodations in terms of their impact on the employer; and, assuming no undue hardship on the employer, implement the most effective accommodation. (See, e.g., Davis v. Frank, 711 Fed. Supp. 447 (N.D. Ill. 1989)).

Management's authority to assign overtime work must be understood within the context of laws such as the Americans with Disabilities Act. The Employer's authority to order overtime is not unfettered, and such overtime assignments cannot be viewed as an implied part of every job description. Management's right to require overtime of employes must be understood not only within the context of the parties' contractual agreement but also as informed by relevant legislation. Those sources make clear that the right of management to require overtime does not translate into an implied or inherent qualification for every postal position.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Article 37 of the National Agreement when on approximately March 28, 1984, management denied the grievant a bid assignment due to her inability to work overtime. Because the grievant was the senior bidder for the open position and met all published qualification standards, she should have been awarded the position. An inability to work overtime does not necessarily prohibit an employe from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty." Employes restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment. The parties did not intend the 1987 Memorandum of Understanding to control individuals who are unable to work overtime but have no other medical restrictions.

The parties shall have sixty days from the date of this report to negotiate a remedy for the specific grievant involved in the case. If they are unable to accomplish this objective, they, by mutual agreement, may activate the arbitrator's jurisdiction any time during the ninety day period following the date of this report or by the request of either party after sixty days has passed from the date of this report but expiring ninety days after the date of this report. Further evidentiary hearings might be necessary

in order for the arbitrator to fashion an appropriate remedy. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: April 29, 1991

Mr. Louis D. Eleele
International Trustee
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 525
1 Thomas Circle, N.W.
Washington, DC 20005-5802

NOV 10 '.:,

Re: Morrow
Roanoke, VA 24022
H4M-2U-C 6165

Dear Mr. Eleele:

On March 4, 1986, we met with your representative, Karen Seavey, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether full-time mail handlers may elect to perform specific duties of their job assignment prior to management utilizing casual employees in the Mail Handler Craft.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Whether such movement was accomplished in accordance with Article 12, Section 3.E.3, of the National Agreement is a non interpretive issue.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Saul Arroyo-Acosta
Grievance & Arbitration
Division

Louis D. Eleele
International Trustee
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

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In the Matter of the National Arbitration Between

UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Case No. Q06N-4Q-C 12114440
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION Intervenor	)	NTFT Excessing
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION Intervenor	)	
	)	

****

Before: Dennis R. Nolan, Arbitrator

Appearances:

For the USPS:	Brian M. Reimer, Attorney, USPS, Washington, DC
For the NALC:	Keith E. Secular, Cohen, Weiss and Simon, LLP, New York, NY
For the APWU:	Darryl J. Anderson, O'Donnell, Schwartz & Anderson, P.C., Washington, DC
For the NPMHU:	Matthew Clash-Drexler, Bredhoff & Kaiser, P.L.L.C., Washington, DC

Place of Hearing: Washington, D.C.

Date of Hearing: August 27 and October 3, 2013

Date of Award: February 16, 2014

Relevant Contract Provision(s): USPS/NALC National Agreement, Articles 7, 8, and 12

	USPS/NALC MOU ("Bridge Memo") USPS/APWU MOU (NTFT Duty Assignments)
Contract Year:	USPS/NALC 2006-2011 Contract and USPS/APWU 2010-2015 Contract
Type of Grievance:	Contract Interpretation

Award Summary:

The Postal Service may not reassign into a full-time carrier position any clerk craft employee who does not meet the definition of full-time employee specified in the Postal Service's Agreement with the NALC.

Dennis R. Nolan

Dennis R. Nolan, Arbitrator

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In the Matter of the National Arbitration Between

UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Case No. Q06N-4Q-C 12114440
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION Intervenor	)	NTFT Excessing
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION Intervenor	)	
	)	

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For the NPMHU:	Matthew Clash-Drexler, Bredhoff & Kaiser, P.L.L.C., Washington, DC

OPINION

I. Statement of the Case

The NALC filed this grievance as a class action on November 7, 2011 to contend that the Postal Service violated Articles 3 and 12 by improperly excessing a clerk craft employee into a full-

time city letter carrier position. The parties could not resolve the dispute in the grievance procedure, so the Union demanded arbitration. The APWU and NPMHU intervened because of the potential impact on their represented employees.

The arbitration hearings took place in Washington, DC on August 27 and October 3, 2013. Both parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence. Both parties filed lengthy post-hearing briefs with supporting documents, and both intervenors submitted shorter briefs.

II. Statement of the Facts

There are no significant factual disputes. The real controversy is over the interpretation of the collective bargaining agreement, so this grievance stands as a proxy. Although the grievance formally involves just one employee at the Westerly, Rhode Island post office, the NALC filed many similar grievances elsewhere because the issue here could affect many other employees.

A. Background[1]

Of course there is a lot of background to that simple statement of the facts. It begins with a 2011 MOU between the APWU and the Postal Service that provided for the use of Non-Traditional Full-Time (NTFT) duty assignments. The MOU allowed the Postal Service to create NTFT assignments in the clerk and motor vehicle crafts consisting of 30-48 hours a week. The object of those assignments was to give the Postal Service more flexibility while providing more work opportunities for APWU employees, and thereby reduce the possibility of layoffs (termed "excessing" in this agency). In return, the Postal Service agreed to convert clerk craft part-time flexible (PTF) employees to full-time status. In the three-month period provided, about 9,000 employees were converted.

So far, so good. The parties differed about what those changes would mean. The APWU thought that the converted employees would all be placed in traditional 40-hour, 5-day schedules. Instead, the Postal Service classified them as unassigned regulars and gave them NTFT schedules of less than 40 hours. The APWU naturally grieved. On July 29, 2012, Arbitrator Shyam Das denied the grievance, finding that "in the unique circumstances" of the case, management's action did not violate the agreement (NALC Exhibit 4, p. 12).

That left many of the 9,000 converted part-time APWU employees working NTFT schedules for fewer than 40 hours a week. That alone would not have affected the NALC. What happened next did. The Postal Service excessed many of those employees — an NALC witness testified without contradiction that the number was about 700-750 — into the carrier craft. At that point, of

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[1] The NALC's brief (pp.6-7) presents the clearest statement of the NTFT background to this case and does so in a relatively objective way. I therefore borrow from that statement in this subsection.

course, NALC employees were affected. As a result, the NALC filed about 70 grievances, including this one.

One other agreement is worth mentioning at this point. The NALC and the Postal Service entered into an MOU, known as the "Bridge Agreement," about cross-craft transfers. The critical portion of that MOU is this:

> 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.

The 1978 National Agreement (NALC Exhibit 7, Article 12, Sections 5.B.2., 5.C.5 and 8, and 5.D.), which is similar in relevant respects to the current NALC agreement, provided for the transfer of full-time employees of one craft to full-time positions in other crafts, and the transfer of part-time employees to part-time positions in other crafts.

B. The Leonetti Grievance

As stated concisely in the Step B Impasse decision (NALC Exhibit 2), the instant dispute began when the Postal Service wrote Anthony Leonetti, a Level 6 PTF Clerk, on September 22, 2010. The letter informed Leonetti that he would be reassigned outside the installation due a reduction in staffing needs. He was to be assigned to vacant PTF positions at the same or higher wage level but that never happened. Instead, he was promoted on August 27, 2011 to an NTFT clerk position. He was supposed to work five hours a day for six hours a week, but for some reason he only averaged about 26 hours a week and never worked more than 30 hours. Later, however, he was offered his choice of two vacant full-time jobs in the letter carrier craft in the Westerly facility. The employer confirmed his choice on October 18, 2011.

This grievance followed. The thrust of the grievance was that Leonetti was a part-time clerk employee who was assigned to a full-time carrier job. The Grievance asked that the assignment be rescinded and that he be offered a position as a PTF letter carrier instead.

The Step B team reached impasse. The management member of the team declared that the grievance involved an interpretive issue under the National Agreement, so the dispute advanced to this National Level arbitration.

C. Previous Awards

As is normal in the Postal Service, there are several previous arbitration awards that bear on the issue in this case. While I considered all of the awards cited by the parties, three of them are particularly important.

The first of these was by Arbitrator Carlton Snow in 1998 (Case 194N-4I-D 96027608). In typically thorough and convincing fashion, Arbitrator Snow addressed the question of whether the temporary cross-craft transfer of an employee was controlled by the "losing" or the "gaining" union's contract. In that case, unlike here, the NALC was the sending union; the APWU was the receiving union. Arbitrator Snow held that the transferring employee must enter the new craft in accordance with that craft's collective bargaining agreement, rather than in accordance with the former craft's agreement. His rationale was clear:

> A fundamental problem with the argument of the NALC is its failure to recognize that the American Postal Workers Union is not a party to the agreement between the NALC and the Employer and, likewise, that the NALC is not a party to the agreement between the APWU and the Employer. In such a circumstance, the National Association of Letter Carriers cannot determine what rights and obligations are required under the agreement between the APWU and the Employer. It is also true that the NALC cannot determine the meaning of language chosen by other parties in their agreements with the Employer. Nor is the NALC in a position to enforce the language of other agreements against the will of the parties involved in them. These are labor contracts with other parties, and rights and obligations under those agreements are unto themselves, unless there is proof of third party beneficiary rights. No such theory has been asserted in this dispute.

An alternative reading, Arbitrator Snow wrote, would allow one union to affect the rights of employees represented by another union during negotiations at which the second union was not present:

> No evidence submitted to the arbitrator established the basis for subordinating rights and obligations of the APWU won through contract negotiations to rights of the NALC in its agreement with the Employer. The APWU was not a party to the NALC negotiations with the Employer or any subsequent agreements, and rights of bargaining unit employees represented by the APWU should not be affected by a negotiation at which it had no opportunity to protect itself. Just as the National Association of Letter Carriers should not be faulted because the Employer promised more than it could deliver, the American Postal Workers Union should not be compelled to bear the burden of the Employer's lack of planning in negotiations. Accordingly, if a Letter Carrier is to be transferred to a craft represented by the American Postal Workers Union, such an individual must enter the craft in compliance with the collective bargaining agreement between the American Postal Workers Union and the Employer. Where this is not possible, a Letter Carrier is entitled to a different remedy.[2]

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[2]Another decision by Arbitrator Snow, Case HOC-3N-C 418 (1994), is similar in important respects.

The second award is a 2002 decision by Arbitrator Shyam Das, Case No. E90C-4E-C 95076238. The Postal Service transferred a letter carrier injured on the job to a clerk craft position created specifically for him. The APWU grieved on the basis that any new clerk craft position should be subject to bidding. Relying on the Postal Service's obligations under the Federal Employees' Compensation Act (FECA), which were incorporated in the APWU Agreement, Arbitrator Das rejected the grievance. He held that the job in question was not created for the Postal Service's operational needs but to fit the employee's medical restrictions. "By definition, it would make no sense to create such a uniquely created assignment as a duty assignment that must be posted for bid" (APWU Exhibit 1, p. 20).

The third award is also by Arbitrator Das. In cases Q11C-4Q-C 11322481 and 11322494 (2012), he dealt with an APWU grievance over the Postal Service's placement of the PTF employees who were converted in August 2011. The Postal Service placed the employees in unassigned regular positions with NTFT schedules. The APWU argued that the Employer had to put all those employees in traditional 40-hour positions. Although Article 7.1.A.1. stated that full-time employees were to work five 8-hour days a week, the NTFT MOU modified article 7. NALC contract, in contrast, retains the traditional definition of full-time employee with no such modification. Arbitrator therefore denied the grievance.

III. The Issue

The issue in dispute was originally described broadly: Whether the Postal Service may reassign clerk craft employees in nontraditional full-time regular (NTFT) duty assignments to full-time regular city letter carrier positions. Despite that broad phrasing, the NALC focused during the first hearing day on the particular individual who prompted this grievance. Understandably, at the beginning of the second hearing day the APWU representative sought clarification about whether this decision was to be about the broad issue or about the sole grievant. The NALC's counsel clarified by narrowing the issue:

> MR. SECULAR: I'm prepared to respond. Okay. As far as we're concerned, this case is about this one individual and this one fact patter, and to the extent you have to interpret the contract to decide this case, that's the interpretation we're looking for. We are not looking for a categorical statement that all NTFT employees are ineligible for excessing at the full-time positions in the letter carrier craft.
>
> What we do say is that depends on whether those employees meet the definition of full-time employee in the NALC contract. I don't know how many NTFT employees nationwide do meet that definition or don't meet that definition. All I know for sure is that the individual in this case, Mr. Leonetti, did not.

(Tr. 10/3/13, p. 91)

Neither the Postal Service nor the intervenors objected to that phrasing of the issue, so that is the one that I will use.

IV. Pertinent Contractual Provisions

To make this opinion more readable, relevant contract provisions are printed in Appendix 1.

V. The Parties' Positions

A. The NALC Position

The core of the NALC's position is that the Postal Service violated the NALC contract by transferring a clerk craft employee who did not meet that contract's definition of a full-time employee into a full-time carrier position. Article 7 defines full-time as an employee who works five 8-hour shifts in a service week. Leonetti admittedly did not come close to that. Article 12, Section 5.B.2 clearly distinguishes between full-time and part-time positions and makes clear that full-time positions are withheld to accommodate only full-time employees. The following portions of Article 12 confirm this understanding.

The Postal Service's changes in the APWU Agreement do not justify violations of the NALC Agreement. NTFT employees are considered full-time under the APWU Agreement, but they would not be considered full-time under the NALC Agreement. The APWU Agreement itself does not provide for reassignment of a 30-hour a week employee to a full-time carrier position. Even if it did so, the two Agreements would be in conflict. In such a situation, the NALC Agreement must ben enforced. A cross-craft assignment is impermissible if it violates the gaining union's collective bargaining agreement. Bi-partite negotiations cannot alter the meaning of a different union's contract.

Arbitral authority, notably the 1994 and 1998 decisions by Arbitrator Snow and the 2012 decision by Arbitrator Das, support the NALC's position. The main case relied on by the APWU, Arbitrator Das's 2002 decision, is inapposite because it involved "unique circumstances" posed by the need to accommodate an injured employee in a temporary position created just for him.

B. The APWU Position

The APWU naturally relies on its own agreements with the Postal Service. The NTFT MOU clearly defines NTFT employees as full time even if they hold a 30-hour per week job. For that reason, they can be excessed into another craft's full-time positions just like any other full-time employee. As the Postal Service points out, if the NALC's agreement prohibits that excessing, the Postal Service might not be able in some cases like this one to excess employees from the clerk craft to the carrier craft. That might lead to layoffs.

The NALC's reliance on Articles 7 and 8 of its Agreement is unpersuasive. Arbitrator Das rejected that reasoning in his 2012 decision. He noted the "anomaly" and "inconsistency" between the right to work five 8-hour shifts and the Postal Service's agreement with the APWU for other arrangements, and commented that the full-time category "no longer is confined to employees

assigned to traditional schedules as defined in Article 7." For the same reason, the NALC's reliance on Article 12.5.B.11 is misplaced. Full-time cross-craft assignments must be made as they were when all six crafts bargained together. That means that full-time carrier positions may be withheld when necessary to accommodate excess full-time clerk craft employees, as happened here. Similarly, the NALC's reliance on inapposite cases like the three Snow awards it cites does not control the result here.

C. The NPMHU Position

The Mail Handlers agree with the NALC's main point that the Postal Service may not transfer an NTFT clerk craft employee working less than 40 hours a week to a full-time carrier craft position. The NPMHU makes one additional point, that interpreting "full time" under the NALC Agreement should not be based on the APWU Agreement's definition of "full time." Article 12.6.B.2. of the NPMHU's Agreement, like the corresponding provision (Sec. 12.5.B.2) of the NALC Agreement, means that withholdings, excessing, and reassignments are to be done by job category. The Postal Service is supposed to withhold full-time positions for those full-time employees involuntarily reassigned from other crafts, and part-time positions for part-time employees involuntarily reassigned from other crafts.

The critical question is therefore whether the NALC Agreement or the APWU Agreement controls the distinction between full-time and part-time employees. Citing a decision by Arbitrator Carlton Snow (NALC Exhibit 10), the NPMHU argues that one union cannot control the meaning of language used by another union in its collective bargaining agreement. To hold the contrary would mean that one union could affect the rights of employees represented by another union during the course of negotiations at which the second union would not even be present.

D. The USPS Position

The Postal Service's argument partially tracks that of the APWU but adds some additional points.

It first argues that the losing craft's contract should control in excessing situations. In this case, that means the APWU's NTFT MOU governs rather than the NALC National Agreement. The NTFT MOU provides that NTFT employees are full-time employees, and that means that they have the same rights as any other full-time employees to be excessed into another craft. Following the NALC's Bridge Memo, which provides that cross-craft assignments are to follow the 1978 agreement, would be "stilted and short-sighted." For example, if Congress directs the Postal Service to deliver mail only four days a week, the parties would have to renegotiate the definition of full-time.

Second, there will rarely be any effect on part-time or non-career employees when an NTFT employee is excessed into the carrier craft. In particular, the harm identified in some of the arbitration awards cited by the NALC would not apply in the NTFT excessing situation. If NTFT

employees could not be excessed into a full-time carrier position, some other employee such as the junior clerk, would be.

Third, the arbitrator should avoid a result that would prevent NTFT excessing into other crafts. The NALC's position would paint the Postal Service into a corner. As Arbitrator Stephen Goldberg recently wrote, an arbitrator should not readily assume that the Postal Service agreed to terms that would create entirely foreseeable problems.

VI. Discussion

I have described the parties' arguments in detail to make clear all the areas in dispute. Having done so, however, it is now apparent that the only real issue is extremely narrow: which of the two agreements, the NALC's National Agreement or the APWU's NTFT MOU, controls the definition of full-time employee for purposes of cross-craft excessing?

The APWU is indisputably correct that its agreements, and arbitral authority under them, treat NTFT clerks as full-time employees entitled to all the protections of that classification. The MOU effectively amended the APWU's Article 7, as Arbitrator Das held. If the APWU agreement controls, therefore, the Postal Service properly excessed Leonetti into a full-time carrier position. Just as indisputably, if the NALC's agreement controls, then Leonetti, who had a 30-hour position but actually worked fewer hours, was not a full-time employee because he did not work five 8-hour shifts.

As to that fundamental question, there is only one fair answer. The problem arises only because the Postal Service negotiates with different unions whose individual agreements contain different provisions and different definitions. So long as the negotiated terms in a particular contract affect only the employees in that bargaining unit, the parties can make whatever bargains they wish. Separate contracts may provide that the Postal Service will treat clerks in one fashion, carriers in another, and mail handlers in a third, even if the issues addressed are exactly the same in each case. But when provisions in one contract affect employees in a different bargaining unit, the representative of those employees has a legitimate objection.

The obvious way to avoid those difficulties is for the Postal Service not to bargain with one union any terms that would harm members of another union unless it first receives the second union's consent. That would, of course, limit the bargaining flexibility of the Postal Service and the first union, but that is one of the risks of having multiple bargaining units. An employer cannot reasonably promise contradictory things to different unions.

If the Postal Service does negotiate conflicting agreements, either intentionally or (more likely) by accident and oversight, it is stuck with the result. The problem is of its own making. The only alternative — the alternative argued here by the Postal Service and the APWU — would mean that the employer and one union could change the terms of another union's agreement in negotiations where the second union would not participate. No rationalization could make that just. Place the

shoes on the other union's feet, and each would take the opposite side. That is why one rule has to apply in all such cases: the Postal Service may not undercut one union's collective bargaining agreement by negotiating with a different union.

In short, when dealing with cross-craft assignments, the gaining bargaining unit's contract must apply. That was exactly the conclusion reached by Arbitrator Snow in his 1998 decision. Arbitrator Das's 2002 decision did not contradict Arbitrator Snow. Arbitrator Das simply found that FECA imposed an overriding legal obligation and that the Postal Service properly created a special temporary position for injured employees pursuant to FECA. No overriding legal obligation obliged the Postal Service to excess into a full-time carrier craft position an employee who did not meet the requirements for full-time status under the NALC Agreement.[3]

Apparently recognizing that its agreements with the APWU and NALC were likely inconsistent, the Postal Service offered two alternative arguments. One was that reading the contracts literally would be "stilted and short-sighted" because it might create a problem if Congress were to change the law. A hypothetical legislative possibility provides no basis for overriding a negotiated agreement. If Congress were to mandate four-day delivery, as the Postal Service speculates, Congress and the Postal Service would have to deal with the consequences. Fortunately that issue is beyond the scope of this case.

The Postal Service's other argument asserts that upholding the grievance would paint the Postal Service into a corner and limit its ability to engage in cross-craft excessing. The metaphor is inaccurate. The NALC did not paint the Postal Service into a corner, much less the arbitrator. If there was any corner-painting, it was by the Postal Service itself. Had it not negotiated the NTFT MOU with the APWU, or if it had not tried to apply it in this fashion, there would have been no grievance. If complying with the agreement it negotiated with the NALC creates a problem in its relations with the APWU, that is a problem for those two parties to resolve.

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[3]Arbitrator Das's 2012 award did not deal with conflicting bargaining units. It merely held that the APWU's National Agreement was amended by the APWU's NTFT MOU. That MOU did not and could not have anything to do with the NALC.

AWARD

For the reasons stated, I sustain the grievance and find that the Postal Service may not reassign into a full-time carrier craft position any clerk craft employee who does not meet the definition of full-time employee specified in the Postal Service's Agreement with the NALC. The reassignment of Anthony Leonetti must therefore be vacated.

The Postal Service's breach of the Agreement may or may not have harmed any identifiable carriers. The record does not contain evidence on that question, so I will remand that issue to the parties. If any identifiable carriers did suffer losses, the Postal Service must make them whole.

Dennis R. Nolan

Dennis R. Nolan, Arbitrator

February 16, 2014
Date

Appendix 1: Pertinent Contractual Provisions

USPS/NALC 2006-2011 National Agreement

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

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.[4]

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 (50) 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.

ARTICLE 8
HOURS OF WORK

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 consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

ARTICLE 12
PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

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

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[4]The NPMHU National Agreement has the same definition of "full-time." It does not contain any provision for modified work weeks.

the needs of the service. Reassignments will be made in accordance with this Section and the provisions of Section 5. . . .

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 n the affected craft and installation prior to excessing any regular employee in that craft out of the installation. The junior 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.

Section 5. Reassignments

B. Principles and Requirements

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. When positions are withheld, management will periodically review the continuing need for withholding such positions and discuss with the NBA the results of such review.

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

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. . . .

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. . . .

C. Special Provisions on Reassignments

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;

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

(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 employees 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. . . .

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.

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.

MEMORANDUM OF UNDERSTANDING ["Bridge Memo"]
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.

USPS/APWU 2010-2015 Collective Bargaining Agreement

MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Non-Traditional Full-Time (NTFT) Duty Assignments

The parties agree to the following rules concerning Non-Traditional Full-Time (NTFT) duty assignments: . . .

8. In Function 1, no more than 50% of all duty assignments in the facility may be NTFT duty assignments of 30-48 hours, unless otherwise agreed to by the parties at the local level.

9. In Function 4, Management may create as many clerk NTFT duty assignments of 30-48 hours in a facility as is operationally necessary.

MEMORANDUM OF UNDERSTANDING

Re: Modified Work Week

The parties at the local level may negotiate the establishment and implementation of a modified work week program for APWU bargaining unit employees in one or more Postal Service operations within local installations. . . .

5. Except as provided for in this MOU or the Modified Work Week Guidelines, no modified work week program can be inconsistent with the National Agreement.

Case No. NC-E-16340
(Altoona, Pa.)

In the Matter of the Arbitration between :

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO -and- :

UNITED STATES POSTAL SERVICE -and- : OPINION AND AWARD

AMERICAN POSTAL WORKERS UNION, AFL-CIO

BACKGROUND:

At the opening of the hearing, these Parties agreed that the matter in issue arose during the term of the 1975 National Collective Bargaining Agreement. These Parties also agreed that the grievance was properly processed through the steps of the grievance procedure provided in that Agreement, and that the American Postal Workers Union intervened and was afforded full party status in this proceeding.

A hearing before the Undersigned, duly designated Arbitrator, was held in Washington, DC on May 31, 1979. At that hearing, all the above-captioned Parties appeared and were represented by counsel. They were afforded full opportunity to present testimony, other evidence and argument in support of their respective contentions. By agreement, post-hearing briefs were filed.

THE ISSUE:

Although these Parties did not agree upon a definition of the matter in issue, from the contentions raised by the grieving Union and from the arguments submitted by the USPS and the APWU, it could be determined that the NALC was contending that the Postal Service

improperly interpreted the provisions of Article VII and Appendix A of the National Agreement by deciding to withhold various full-time duty assignments in the letter carrier craft at the Altoona, Pennsylvania Post Office, during the period from May of 1978 through until May of 1979, and by not filling those positions with part-time flexible letter carriers. The NALC was aware, at the time that it filed this grievance on approximately June 28, 1978, that the Postal Service was withholding these assignments in anticipation of the excessing of clerk craft employees, at the same installation, who the USPS intended to employ to fill in the vacancies created by the retirement of full-time carrier craft members of that postal installation's labor force. Whereas the NALC contended that the Postal Service could not withhold these vacancies and was required to fill them with part-time flexible carrier craft employees as they arose, the USPS and the APWU claimed that, in accordance with Appendix A of the Agreement, the Postal Service was obligated to act in this fashion under all the circumstances present during the period under consideration at the Altoona Post Office.

STATEMENT OF THE CASE:

As stated above, the grievance arose when the Postal Service failed to promote the part-time flexible carriers employed at the Altoona, Pennsylvania Post Office to fill vacant full-time duty assignments in the carrier craft.

Commencing in the Spring of 1978, there began a series of retirements by full-time carriers. Each of these retirements, except two which were stipulated to by the parties, created vacancies for unassigned reserve regular carriers who filled in for other regular full-time carriers who were on their scheduled vacations. Between the end of April

and mid-August of that year, at least six such full-time vacancies were created by these resignations.

When the Local Union officials inquired as to why part-time flexible carriers were not being promoted to fill the vacancies, pursuant to the provisions of Article VII, Section 3 of the Agreement, The Postal Service officials responded by indicating that the Altoona Post Office was scheduled to receive a multi-position letter sorting machine. When such a machine was in place and in operation, the Postal Service stated that it was expected that there would be a reduction in the number of clerks required at Altoona, and that these vacant positions would be utilized to provide full-time employment at Altoona for some of the clerks who would have to be excessed.

The NALC thereafter brought this grievance claiming that the withholding was improper and for too long a period of time. The NALC requested that, as an appropriate remedy, these part-time flexible carriers be promoted to full-time positions at once and be made whole for any losses suffered as a result of the alleged unwarranted withholding of their promotions to full-time positions.when these positions had orginally become available. During the course of the hearing, it was also suggested that, in the event that the Arbitrator should find that such withholding could be undertaken under the provisions of Appendix A, then the guidelines for implementing Appendix A in future disputes should be established in this determination.

PROVISIONS OF THE AGREEMENT REFERRED TO DURING THE HEARING:

Article VII, Section 3, states in pertinent part:

> 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. 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...

Appendix A of the 1975 National Agreement, later incorporated as part of Article XII of the 1978 Agreement, provides for both the letter carrier craft and the clerk craft in pertinent part as follows:

APPENDIX A

A. Basic Principles and Reassignments

When it is proposed to:

...

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

B. Principles and Requirements

...

2. The Regional Postmasters General 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.

OPINION:

Although, during the course of the arbitration hearing, the NALC argued that the quoted provision of Section 3 of Article VII imposed a duty or obligation upon the Postal Service to maximize the number of full-time employees and withholding the promotion of part-time flexibles to full-time duty assignments violated this provision of the Agreement, that provision does not provide much support for the ultimate position taken by the NALC. That Article in the Agreement, as was ac-

knowledged by one of the witnesses for the Letter Carriers Union, addresses the issue of how many full-time assignments are needed in a particular installation . The point at which the Union can require that the Postal Service convert certain part-time positions to full-time positions is detailed in this particular provision. In this proceeding, there was no dispute between the grieving Union and the Service that full-time positions were vacant because of stipulated retirements. They had no dispute about the "maximization" of regular full-time duty assignments. No evidence was required to establish the existence of conditions which required such "maximization".

What really was in dispute was whether the Postal Service could delay filling such vacant full-time positions for a period of time in anticipation of an obligation imposed under Appendix A to provide employment within the area for certain full-time and part-time flexibles, where appropriate, who may be involuntarily reassigned.

In issue was the length of time that the Postal Service could wait to fill such positions and keep them vacant for this purpose. The NALC claimed that at the time that each regular carrier retired, during the period under review at Altoona, no specific employees had been declared excess and the USPS had not specifically proposed a reduction of the work force at that installation. For these reasons, at the time of each resignation, a full-time vacancy was created which should have been filled with the most eligible part-time flexible in the carrier craft.

The Postal Service took the position that it did not violate the National Agreement by withholding these positions as they became vacant by virtue of the series of retirements which took place between May of 1978 and May of 1979 because such action was the reasonable course to follow under the circumstances then existing at Altoona. The APWU

apparently concurred with this position contending that the Service could withhold vacancies, to meet its obligation under Appendix A to absorb excessed employees, as long as it was necessary to make provision to take care of such excessed employees. The APWU stated that the length of time that the USPS could withhold such vacancies would depend upon such factors as the expected rate at which such positions would be created through retirements or otherwise and the expected number of excessed employees who the Service would have to absorb in the area.

In 1972, Arbitrator J. Fred Holly had before him the grievance brought by the NALC on behalf of a part-time letter carrier at the Stillwater, Oklahoma Post Office. In that grievance, the NALC contended that this part-time flexee should have been promoted to cover the full-time city route made vacant by the retirement of a full-time carrier. The Union argued that the failure of the Postal Service to promote this grievant between the date of the retirement, in October of 1971, and the date of the grievance, February 14, 1972, was a violation of that grievant's contractual right to fill that vacancy.

Although Arbitrator Holly had before him a case which was limited to the application of Article VII, Section 3 of the National Agreement then in effect, the Arbitrator gave full consideration to the inter-action of Article XII of that same agreement with the proper application of the Article VII provision. Article XII, in that National Agreement, imposed upon the Regional Postmaster General the same obligation to withhold sufficient full-time regular positions within the area to take care of full-time regulars who might be involuntarily reassigned as was required by Appendix A of the 1975 Agreement in effect when the instant grievance was filed, and which is also required of that official

under the present National Agreement.

The Union, in the earlier case, contended that each full-time vacancy which arose had to be filled immediately because the existence of such full-time vacancy created a situation in which the Postal Service could "maximize" its regular full-time work force. The Stillwater Post Office took the position that the vacancy created by the retirement was withheld because it came into being at a time when the Employer was instituting Area Mail Processing throughout Oklahoma and it was recognized that this would result in displacement of employees in the clerk craft who would have to be assigned to other locations.

Mr. Holly, in his Opinion, found that to follow the Union's contention with regard to the requirement that the Postal Service immediately fill each vacancy as it occurred would render the terms of the then Article XII provision meaningless. Applying the usual principles of contract construction, Arbitrator Holly concluded that the parties did desire to give full meaning and effect to the provision requiring the Regional Postmaster General to withhold positions under certain conditions. He also found that the institution of the Area Mail Processing System was the type of situation which the parties had in mind when they made provision for withholding positions to cushion the impact of dislocation wherever possible by such action.

At that point in his Opinion Arbitrator Holly addressed himself to the question of for what period of time could the Postal Service withhold positions without rendering its obligation to "maximize" full-time employment meaningless. As to this issue, Arbitrator Holly concluded as follows:

> The National Agreement does not contain specific guidelines for this determination. It is evident though that the parties intended to permit the

> withholding of positions for the previously indicated purpose. Hence, it is apparent that withholding positions for the purpose of minimizing the dislocations of the AMP program was in keeping with this intent and was reasonable. In other words, when Management knew that the AMP program would result in the displacement of clerks it had the right to withhold vacated positions until the displacement occurred...

In effect, Arbitrator Holly applied a rule of reason based upon the facts and circumstances then existing to sustain the Postal Service's right, in that case, to withhold the vacated full-time carrier position in anticipation of the need to absorb a displaced member of the full-time clerk craft rather than immediately award the vacancy to the grieving part-time flexee member of the carrier craft. Arbitrator Holly did not find that the USPS had absolute discretion to determine in each instance when or if it would promote a part-time employee to a vacant full-time position or withhold that position to meet some future contingency.

The findings and conclusions of Arbitrator Holly are basically sound and based upon long accepted principles of contract language construction and interpretation. There is no question that Appendix A of the 1975 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

member 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 these 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.

Having said that, it is necessary to determine whether, in the instant case, it was reasonable for the Postal Service to withhold such vacant full-time positions for the period from May of 1978 until May of 1979. Without reviewing in detail all the evidence found in this record, it can be found that the Eastern Regional Office in Philadelphia published its intention of providing Altoona with a MPLSM on March 23, 1978. That equipment was initially foreseen as being installed and operational by August of 1978. For that reason, the proposed training program was explained to the clerk craft representatives as early as May or June of 1978. The NALC was aware in March as well that this equipment was coming to Altoona. The Union was also aware in May that the Local Postmaster was going to withhold positions in the carrier craft because of the anticipated excessing.

The evidence in this record also clearly established that the installation and operation of a LSM would create a reduction in the need for members of the clerical craft at Altoona and even if positions on the machine were made available to every clerk, the number of members of the craft who would or could successfully complete the required training would be, at best, half of those who entered such a training program.

Resultant dislocation caused by the use of the MPSLM was not based upon speculation but rather upon the experience with the introduction of this machine at many other postal facilities. Calculations based upon the experience with manning this equipment elsewhere indicated that at Altoona, after all the MPLSM positions were eventually filled, some 16 or 17 clerks would still have to be excessed.

The actual experience of the Postal Service at Altoona, gained from the hindsight now available, established that it was definitely ascertained by February of 1979 some 22 clerks would be excessed from Altoona. By May of 1979, the Local Postmaster was able to revise that figure so only 20 clerks were to be declared excess. Of those 20, 11 were able to fill withheld carrier craft positions at Altoona rather than be forced to move to the Pittsburgh Bulk Mail Facility, approximately 120 miles from Altoona, or to some other installation even a greater distance from Altoona. In this way, in keeping with another provision of Appendix A, the Postal Service was able to comply with the following dictate:

> Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

While it was quite true, as the NALC argued, the specific individuals who were to be excessed or the number of such clerk craft positions which were to be excessed were not known as early as May of 1978, the evidence does support the Postal Service conclusion reached as early of May of 1978, that the introduction of this equipment would provide for a signifigant reduction in clerk craft positions and that withholding vacancies, as they occurred and in whatever craft these vacancies might occur, would be the prudent course to follow if the career status rights, in this instance of the clerk craft employees,

were to be protected as contemplated by the provisions of Appendix A of the National Agreement.

The automation of the operations involved in mail processing as well as mail delivery continues apace. The reassignment and dislocation of career employees appears to be an almost daily occurrence. Whereas in the case here under review the members of the carrier craft who were filling part-time flexible positions were deprived of the opportunity to bid for and fill permanent full-time positions in their craft, under some other circumstances it might very well be that members of the clerk craft, also occupying positions for a good number of years as part-time flexees, might be delayed in bidding for full-time positions because jobs of this nature were appropriately withheld to provide opportunities for dislocated or excessed full-time carriers to fill vacant full-time positions at their home installation. We are all aware of technological innovations which may impact upon the present methods of mail delivery.

Because, as stated above, it must be found that, under the circumstances existing in this case, with the impact of the introduction of the MPLSM definite and ascertainable and with the knowledge that this equipment would be installed and operated at Altoona within the foreseeable future, the Area Postmaster General acted in a reasonable fashion under the discretion afforded pursuant to the provisions of Appendix A of the 1975 Agreement.

A W A R D

The grievance filed in Case No. NC-E-16340 is hereby denied.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
December 7, 1979

UNITED STATES POSTAL SERVICE	:	ARBITRATION CASE NO.
and	:	AC-NAT-3052
AMERICAN POSTAL WORKERS UNION, AFL-CIO	:	ISSUED: April 25, 1977

BACKGROUND

This is a national level grievance initiated by APWU President Filbey in a March 4, 1976 letter to Senior Assistant Postmaster General Conway. The major issue involves interpretation and application of Appendix A, Section II-A and -B of the July 21, 1975 National Agreement, as hereinafter set forth. 1

The basic facts are not seriously in dispute. Under date of March 1, 1976, Logistics Division Director Koenigs, Central Regional Office, issued a directive to all Central Region SCF Managers and Postmasters including the following relevant paragraphs: 2

> Effective March 6, 1976, the distribution of contiguous state first-class mail at your office is revised as outlined herein.
>
> 1. MPLSM Distribution
>
> Outgoing mail will be separated on MPLSM's to SCF's of contiguous states where volume justifies or the make-up is necessary to maintain service standards. This will be accomplished on the initial sortation.
>
> 2. Manual and SPLSM Distribution
>
> The distribution of first-class mail for contiguous states will be discontinued at all Sectional Centers except as noted below.

(a) Origin SCF offices actually contiguous to another state will makeup overnight ODIS committed SCF's of that state on the primary case. Other SCF's of the contiguous state may be made up as warranted by volume and as space permits on the manual 77-hole primary case or on the SPLSM. All other mail for the state(s) involved will be dispatched to the appropriate SDC.

(b) Origin SCF offices not actually contiguous to another state will discontinue contiguous state distribution. Exceptions to this will be makeup of overnight ODIS committed areas on a primary sortation. All other mail for the states involved will be dispatched to the appropriate SDC.

3. The distribution of first-class flats will be accomplished to the same degree as that afforded manual letter sortation.

4. Each SCF office will continue to accomplish local state distribution of all classes of mail by General Scheme.

To conform to these guidelines, the authorized distribution of first-class mail at your office, destined to contiguous states, will be as follows:

	Contiguous State(s)/Type of Distribution							
Distribution Method								
MPLSM								
Manual & SPLSM								

Separations for SCF/City Zip Codes, if shown for manual distribution, must be provided for on the primary case. This is in your overnight ODIS committed area.

Corrections to the Postal Logistics Directory (PLD) and effected schemes and schedules should be initiated by your office. Additional Zip Code separations of contiguous states which are made on manual cases, as provided in paragraph 2A, should be identified on the corrected PLD page. It is expected that revised pages, as necessary, will be submitted promptly to insure publication of correct information.

Issuance of the above directive was prompted by a decision late in 1975 to eliminate a substantial number of air taxi routes used to transport mail in the Central Region. Since the existing mail distribution system was geared to use of such routes, appropriate revision of the distribution system was required. Prior to the cutback in air taxi use, under the ATP program, installations where mail originated performed primary and secondary sortation of contiguous state mail. With elimination of various air taxi routes, it seemed more efficient to transfer the secondary distribution from installations where distribution of contiguous state mail was being performed (either manually or on Single Position Letter Sorting Machines) to the appropriate SDC in the state where mail was destined. The cutback in the ATP program, however, was not intended to require any change in distribution methods where contiguous state mail was distributed on Multiple Position Letter Sorting Machines. 3

APWU Vice President Williams, who also is APWU Regional Coordinator for the Central Region, received a number of phone calls on or shortly after March 1, 1976, from various local APWU officials in Central Regional Post Offices who had learned informally of the above directive and were concerned about its impact upon the clerical work force in the offices affected. Shortly after March 1, indeed, Williams received a copy of the directive from a local Union official in Evansville, Indiana. He had not been provided a copy by the Service, but telephoned Contract Administration Branch Manager Powell (Labor Relations Division, Central Region) to inquire and learned that Powell also had been unaware of its issuance. Williams and Powell thereafter had several conversations, with Powell ultimately asserting that the directive did not affect bargaining unit personnel in such manner as to have required the giving of notice to the Union at the Regional level under Appendix A, Section II-B-4 of the July 21, 1975 National Agreement. In relevant part, Appendix A, Section II-A and -B reads: 4

"Section II: Clerk Craft

A. Basic Principles and Reassignments

When it is proposed to:

1. Discontinue an independent installation;

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

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

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

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

6. Reduce RPO, HPO employment, including employment in mobile stations;

7. Centralized mail processing and/or delivery installation (New and Old);

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

"B. Principles and Requirements

1. Dislocation and inconvenience to full-time or part-time flexible employees affected shall be kept to the minimum consistent with the needs of the service.

"2. The Regional Postmasters General 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.

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

4. Unions affected shall be notified in advance (as much as six months whenever possible), such notification to be at the regional level, except under A4 above, which shall be at the local level.

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, and shall receive moving, mileage, per diem and reimbursement for movement of household goods; as appropriate, if legally payable, will be governed by the standardized Government travel regulations as set forth in Methods Handbook M-9, 'Travel'.

"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."

. . . . . .

(Underscoring added.)

On March 3, 1976, Vice President Williams wrote APWU Industrial Relations Director Andrews stating in part:

"We have been deluged with calls since this bulletin hit the field, since the impact on Outgoing Distribution jobs at various offices will be severe.

"Minneapolis indicates that between 40 and 50 jobs, including a number of level 6 Distribution and Dispatch Expediter positions will be affected.

"Cleveland indicates that 30 to 50 jobs will be impacted; Indianapolis 20 positions; Rockford, IL 9 positions, Evansville, Indiana 15 positions, etc.

"There was no consultation, nor was Labor Relations at the Central Region given any advance notice."

On March 4, 1976 President Filbey initiated this grievance by letter, enclosing a copy of the Central Region March 1 directive and noting that it was to become effective on March 6. Filbey's letter concluded: 6

"It would appear that the Postal Service is completely ignoring the consultation provisions of the National Agreement, specifically those contained in Appendix A, Section II, B, 4. For that reason I am hereby instituting a grievance at the National level. We shall be prepared to meet for discussion at Step 4 at the earliest possible date."

Fourth Step discussion took place April 8, 1976 between Acting Director Merrill of the Office of Grievance Procedures (Labor Relations Department) and APWU Industrial Relations Director Andrews. On April 19, 1976 Merrill replied to the grievance as follows, in relevant part: 7

"The issue in dispute is whether or not the United States Postal Service has violated Appendix A, Section 2, B, 4, of the National Agreement, when the Central Region issued changes in mail processing regarding the processing of contiguous state first class mail without notifying the Union in advance?

"At the Step 4 meeting, I stated that Regional Labor Relations officials were not aware of the change in advance, which was of concern to us particularly in view of Mr. Williams' assessment of the impact on employees. I stated that if Mr. Williams' assessment was accurate and clerk craft employees were to be excessed from their installation, management was in violation of Appendix A, Section 2, B, 4, of the National Agreement by not providing advance notification to the Union.

"However, the information we have received subsequent to our meeting discloses that no employees have been excessed out of the installations nor has there been significant excessing of employees out of their sections within the installations, as a result of the changes involved. In addition, local management has advised the local union officials when jobs were reverted due to scheme changes which occurred.

"For example, in Minneapolis, no plans are contemplated to excess employees from the section or installation as a result of the changes in question. In Cleveland, Rockford, Evansville, and Indianapolis, no plans are contemplated to excess employees from those installations due to these changes.

"Therefore, the provision of Appendix A, Section 2, B, 4, regarding regional notification to the Union has not been violated since it is not applicable. However, the region should have advised the Union in advance of these changes as a matter of sound labor-management relations.

"I recognize that the Regional Labor Relations officials were not aware of the change in question beforehand in order to determine if Appendix A, Section 2, B, 4, would be applicable. By copy of this letter to all regions, we are advising them to insure that matters as described above are acted upon as appropriate to avoid unnecessary grievances and to insure compliance with the National Agreement."

(All underscoring added, except in second paragraph.)

The Fourth Step answer was not satisfactory to the APWU and after subsequent discussions failed to resolve the parties' differences, the grievance was certified to arbitration on May 19, 1976. 8

THE ARGUMENTS

1. APWU

During an opening exchange between Counsel at the hearing, the Postal Service stressed that Appendix A, Section II-A starts with the phrase "When it is proposed to:". According to the Postal Service, the operational changes flowing from the March 1, 1976 directive did not result in a "proposal" to reduce the number of regular work force employees at any installation. Thus, said Counsel, there was no obligation to notify the APWU under Appendix A, Section II-B-4. 9

The APWU elected not to file a post-hearing brief and summarized its arguments at the end of the hearing. The APWU then emphasized not only a contention that there was violation of the notification requirements of Appendix A, Section II-B-4 but also that the USPS had failed to bargain collectively over a fundamental change in conditions of employment. This, said the APWU, not only violated Article V of the National Agreement, but also ignored the continuing duty of the Postal Service to engage in collective bargaining on such matters pursuant to the National Labor Relations Act. 10

The APWU notes that Appendix A originally was developed in March of 1968, before the Postal reorganization took place, and its language obviously was addressed to the situation as it then existed. This specifically did not include any obligation of the Post Office Department to engage in collective bargaining under the National Labor 11

Relations Act. Given this critical fact, it would be entirely unrealistic to interpret the phrase "When it is proposed to" as if it contemplated a formal proposal to initiate collective bargaining. Instead, the intent of this phrase is to require the giving of notice whenever Management action is contemplated which reasonably may be expected to have consequences of the types delineated in Appendix A, Section II-A.

Article XII, Section 4--Principles of Reassignments--first was embodied in the National Agreement in 1973. Section 4-A states: 12

> "A primary principle in effecting reassignments will be that dislocation and inconvenience to employees will be kept to a minimum, consistent with the needs of the Service. Reassignments will be made in accordance with this Article and the provisions of Appendix A."

Given this contractual commitment and the provisions of Appendix A, the APWU deems it entirely clear that the parties should bargain concerning any situation which falls within the scope of Appendix A, Section II-A. Since Article V of the National Agreement is intended to prohibit unilateral action by the Service, it seems obvious to the APWU that collective bargaining should take place once notification is given pursuant to Appendix A, Section II-B-4.

In the present case, the Regional directive embodied a region-wide program, not a local program. Hence, the APWU holds that the responsibility for giving notice to the Union could not be passed down from the Region to the various local installations where reassignments would be required. 13

Since there was no notice given and no opportunity for collective bargaining, the APWU urges that the only meaningful remedy now would be an order that the Postal Service withdraw the March 1, 1976 Regional directive completely, and cancel all actions taken as a result of the directive. After the status quo thus was restored, the parties then could proceed to bargain in accordance with the requirements of the Agreement. If good faith bargaining did not produce agreement, the APWU agrees that the Service then could implement the program subject to protest through the grievance procedure. 14

2. USPS

Initially the Service asserts that an obligation to give notice to the Union can arise under Appendix A, Section II-B-4 only "when Management has formulated a proposal" to engage in any of the personnel actions specified in Appendix A, Section II-A. This is the only proper meaning which can be attributed to the word "proposed," it says, since the terms of a collective bargaining agreement must be given "their ordinary and popularly accepted meaning." Thus it cites Webster's International Dictionary--Unabridged (2nd Ed.) as defining "propose" as "to offer for consideration, discussion, acceptance, or adoption." 15

Even if the term "proposed" is not to be given such literal meaning here, says the Service, there is no solid evidence at all that the March 1, 1976 Regional directive either contemplated, or resulted in, the reassignment of Clerks from one installation to another. Thus the only notices which might have been required as a result of the directive would have been at the local level where reassignments within an installation may have been required as contemplated under Appendix A, Section II-A-4. 16

While there is no clear evidence as to whether or how actual notice was given locally, the Service emphasizes that local APWU officials in at least 9 cities had become aware of the directive locally and were concerned about its impact. The Service thus reasons that local notices must have been given in these instances by no later than March 3. Its brief suggests further that June 19, 1976 was the earliest date upon which any reassignment within an installation was required under the directive. Thus, the brief concludes, there was adequate notice given at the local level pursuant to Appendix A, Section II-B-4. 17

The Service fundamentally disagrees with the APWU claims that the notice requirements in Appendix A, Section II, contemplate any "consultation" with the Union, or any "bargaining" as to the propriety of a proposed new program. Nothing in the Agreement uses the terms "consult" or "consultation," and the actions detailed in the directive were fully consistent with all substantive provisions of the National Agreement. 18

In addition, the Service suggests that it is improper to consider here any claim of violation of Article V since this particular argument was not raised specifically in the grievance procedure or in Fourth Step discussions. As noted in its brief-- "It is an axiom of industrial relations that matters not raised in the contractual grievance procedure may not be raised for the first time at arbitration..." 19

The absence of any duty to bargain about the substance of the March 1, 1976 Regional directive, in any event, is clear under the National Agreement, in the view of the Service. The use of the phrase "notified in advance" in Appendix A, Section II-B-4 implies no duty to bargain, as is apparent from the manner in which the parties dealt with "major" relocations of employees under Article XII, Section 4-B. This reads: 20

> "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 Article XII, 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 number 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."

(Underscoring added.)

FINDINGS

The March 1, 1976 Regional directive was issued without the knowledge of the Labor Relations Division of the Central Region. It is clear that no consideration was given by USPS Management to the need to comply with the notification requirement under Appendix A, Section II-B-4. 21

Subsequent events establish that the directive actually did not result in reassignment of any Clerks to other installations. It also now is clear that implementation of the directive did require reassignment of Clerks who were "excess to the needs of a section," within the meaning of Appendix A, Section II-A-4, in at least four cities. 22

1. The Claimed Necessity for a Formal Proposal Under Appendix A, Section II-A

Given these basic facts it is appropriate to consider first the principal USPS contention that the notice requirement under Appendix A, Section II-B-4 cannot apply because the Service never "proposed," to the Union, that any action be taken which would fall under 1 of the 8 categories of actions delineated under Appendix A, Section II-A. This argument rests on the assertion that the word "proposed" in the first sentence of Section II-A must be given its "ordinary and popularly accepted meaning" as found in a dictionary. 23

This argument is unpersuasive. Words which appear in a collective agreement must be interpreted in the context in which they were written: their "popularly accepted" meaning may not in fact reflect the true intent of the parties, who hardly can be expected to negotiate with a dictionary in hand to be sure that the "accepted" meaning of each important word they put in their agreement actually comports with their true intent. In the present instance the relevant interpretive context includes the entire collective bargaining agreement, and more particularly the framework of Appendix A, Section II. Other provisions in Article XII (and particularly Section 4-B thereof) also are pertinent. Finally, it is significant that the phrase "When it is proposed to" first was used for this purpose in 1968 when the Post Office Department obviously was not required to make any formal proposals to a Union, for negotiation, on a matter of this sort. 24

The Impartial Chairman thus has no doubt that the requirement to notify under Appendix A, Section II-B-4 arises whenever USPS Management decides to effectuate any program which reasonably may have consequences which fall within any of the 8 categories listed in Section II-A of Appendix A. To adopt a narrower interpretation would be to defeat the stated purpose of Appendix A, Section II-B to minimize "dislocation and inconvenience" to affected employees. 25

While the Service stresses that there is no hard evidence here that the March 1, 1976 directive actually resulted (or will ultimately result) in reassignments of Clerks except within an installation (under Section II-A-4), it is unrealistic and impractical to determine whether notice is required by later events. "Notice" is meaningless unless given prior to the event. One obvious purpose of giving notice is to provide opportunity for an involved Union to investigate the facts and make suggestions calculated to minimize "dislocation and inconvenience to full-time or part-time flexible employees affected." Thus, in any given instance it is possible that some (or all) of such potential consequences of a proposed Management action under Section II-A may be avoided in the end after proper notice has been given. 26

The present facts, in any event, leave no room for doubt that a violation of Appendix A, Section II-B-4 occurred, even if it could be assumed that Regional USPS officials were absolutely certain, in advance, that no reassignments of Clerks excess to the needs of an installation would be required. The directive was issued March 1, 1976, to be effective exactly 5 days later and 27

there is no way that it could be claimed that the officials who prepared the directive could not anticipate that it would be necessary to reassign Clerks, in a number of localities, who were excess to the needs of a section. This precipitate action thus left no time for local management representatives to comply with Section II-B-4 which requires that the notice be given "as much as six months" in advance "whenever possible." Even a cursory reading of Appendix A, Section II, leaves no doubt that proper notice is not given, for purposes of Section II-B-4, unless it provides an affected Union with a reasonable time period to investigate relevant facts and to discuss the matter with appropriate Management representatives before the proposed action becomes effective.

2. The Claimed Duty to Bargain Concerning Matters Covered by Appendix A, Section II-A

The APWU urges that a duty to bargain collectively also arises in any situation where notice is required under Appendix A, Section II-B-4. Here the Union stresses Article V of the National Agreement, which states: 28

"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 Service objects to any consideration of this argument, on the ground that it constitutes a "matter" not raised in the grievance. The Impartial Chairman does not so regard it. It simply constitutes an additional contractual argument to support a basic position advanced by the APWU in President Filbey's letter of March 4, 1976, complaining that the USPS was "completely ignoring the consultation provisions of the National Agreement." The Service has had full opportunity to deal with this contractual argument in its post-hearing brief. Thus the APWU argument under Article V is not deemed by the Impartial Chairman to constitute a "matter" not fairly raised during the course of this case. 29

On the merits of this issue, however, the Service position is correct. The applicable provisions of the National Agreement, and specifically Appendix A, Section II, fully deal with both the notice requirement and the substantive policies which apply in the present situation. Given Management's authority under Article III and the provisions of Article XII and Appendix A, Section 2, the parties already have bargained on this subject and have recognized that Management may proceed, under Appendix A, Section II, without any further collective bargaining. Although it is a plain implication of these provisions that once the Union is notified, it will have reasonable opportunity to present facts and suggestions to the Service, there can be no obligation by the Service to engage in "collective bargaining" as to whether or how it should exercise its authority under Article III of the National Agreement. 30

3. Remedial Action

It seems apparent that responsible officials in Central Region Operations were unaware of the applicability of Appendix A, Section II-B-4 of the National Agreement because they failed to consult with representatives of the Labor Relations Division. This was a serious oversight and demonstrates need for clear instructions to the Regions for future guidance in such instances. Since the present case represents a national level dispute, therefore, the Award herein will direct the Postal Service to send appropriate notification to all concerned Regional officials, if such action has not already been taken. 31

The APWU further requests, however, that the March 1, 1976 directive be withdrawn in its entirety, and that all actions taken thereunder be rescinded. There is no evidence in this record to demonstrate need for such a drastic step at this time. No Clerk actually was reassigned outside his or her installation. Nor is there evidence that any Clerk actually lost earnings, or otherwise was deprived of contractual rights, by virtue of reassignment within an installation. Absent a showing that significant instances of this sort actually occurred, it would seem unrealistic and punitive to undo all that was done pursuant to the March 1, 1976 directive. 32

This ruling, of course, rests on the unique facts here. Different remedial action easily may be required should similar violations of Appendix A, Section II-B-4 occur in the future. Nothing in this Opinion, moreover, bars any individual Clerk from pressing a grievance claiming violation of the Agreement because of any reassignment, adversely affecting such Clerk, as a result of the March 1, 1976 directive. 33

AWARD

1. The grievance is sustained to the extent that the effectuation of the March 1, 1976 Regional directive without reasonable prior notice to the APWU, violated Appendix A, Section II-B-4 of the National Agreement.

2. To avoid recurrence of such a problem, the USPS shall issue appropriate instructions to all Regional offices, unless such action already has been taken.

3. Under the particular facts here, and in the absence of any showing that individual employees suffered loss or otherwise were deprived of contractual rights, no further remedial action now is warranted.

4. This ruling does not affect the rights of individual employees to file grievances seeking to be made whole for claimed violations of the National Agreement, or any applicable local agreement, as a result of local implementation of the March 1, 1976 Regional directive.

5. No violation of Article V of the National Agreement has been established.

Sylvester Garrett
Impartial Chairman

UNITED STATES POSTAL SERVICE and NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	OPINION AND AWARD: Grievance: MC-C-325 Omaha, Nebraska Issued: DEC 8 1978

The Grievance

This grievance arose when the Postal Service involuntarily reassigned 33 Mail Handlers from the Omaha, Nebraska Post Office to the Des Moines, Iowa Bulk Mail Center (BMC). The Union claims that the Postal Service violated the protective provisions of the National Agreement when it ordered the reassignments.

Background

In the early 70's the Postal Service devised a highly automatic centralized system for handling bulk mail, i.e., second, third and fourth class mail. The new system contemplated the construction of 21 major Bulk Mail Centers located strategically on a geographical basis. The purpose of the Bulk Mail System is stated to be to remove bulk mail processing from the individual post offices and process it in these highly mechanized centers. The centers are designed to be serviced by a truck and rail system used exclusively for moving bulk mail. The Bulk Mail System is designed to effectuate economics of scale based on its single purpose and concentration of effort. The System was not to be encumbered by first class and specially handled mail. And, conversely, the post offices were to be relieved of the necessity of accommodating large volumes of advertising mail, publications and parcel post.

The first BMC, New York, was scheduled to become operational in 1973 with the remaining centers to phase-in over the next two years. At that time it was contemplated that the majority of the centers would come on line in calendar 1975. In the early planning, the Des Moines Center was among the last scheduled to become operational. Detroit, San Francisco, Philadelphia and Des Moines were scheduled to begin operations in the summer of 1975.

Apparently, the original start-up schedule could not be met because on May 22, 1974 the Postal Service advised the Unions that the second Center, Chicago, would not open until January 1, 1975. Two other centers, Greensboro, North Carolina and Washington, D. C. were now scheduled to open on the same date. A group of seven more centers were slated to open on March 15, 1975. And an additional seven centers to start-up on April 30, 1975. The Des Moines BMC was included in the April 30 group.

The Des Moines BMC opened in January 1976 shortly after the Denver BMC became operational. The Director of Processing at the Omaha Post Office testified that 20 per cent of the pre-January 1 total transit parcel post volume of the Omaha Post Office was lost to the Denver BMC on January 1, 1976 and an additional 40 per cent was lost to the Des Moines BMC on January 31, 1975. According to the Postal Service's witness this amounted to 20 million pieces of mail.

On March 9, 1976, 33 Mailhandlers were notified that they were to be excessed and involuntarily reassigned to Des Moines effective April 10, 1976. The Administrative Vice President of the Mailhandlers initiated a grievance in the first step on March 20. The grievance was denied and it was appealed to Step 2a on March 25. On April 8 the Union petitioned the District Court for a temporary restraining order and a preliminary injunction to stay the proposed involuntary reassignments to Des Moines. The District Judge granted the temporary restraining order on April 9. Of the 33 excessed Mailhandlers, 23 took various options offered them leaving 10 who were more directly impacted by the temporary restraining order. Five went to Des Moines and five chose to stay in Omaha.

On April 20 the parties entered into a stipulation that caused the Union's complaint and motion for a preliminary injunction to be withdrawn. The temporary restraining order was also dismissed. In brief, the stipulation provided that the five Mailhandlers remaining in Omaha would be guaranteed 40 hours, that the Postal Service would undertake to maximize the hours of the other Mail-handlers who opted for part-time flexible jobs in Omaha and that the original grievance as appealed to Step 2a on March 25, 1976 would be arbitrated. It is this series of events that led up to this arbitration.

The parties have been involved with the excessing of employees and the resultant necessity for involuntary transfers

over the course of their bargaining history. Situations such as this one are an inescapable corallary of the Postal Service's move toward centralization of facilities. Bulk mail handling in depots built solely for that purpose is one of the components of that centralized effort.

In order to meet the problems faced by the employees who find that their jobs have been moved to another location, the parties have devised a system of steps to be followed whenever the Postal Service embarks on a program that impacts on its bargaining unit employees.

This case arises mainly because the Union claims that the Postal Service did not follow the contractual procedures that had been developed by the parties to cover situations such as the excessing of Mailhandlers in Omaha and their involuntary reassignment to Des Moines. There were other questions raised at the opening of the Arbitration Hearing. These questions will be dealt with later in this Opinion.

Essentially, the language of the Labor Agreement that sets out a procedure for the conduct of the parties involves notice to the Union Officers at all levels—National, Regional and Local and ultimately to the individual employees who are excessed. At each of these levels there is provision for advance notice in order that the Union or the individual employee can seek ways under the Agreement to minimize the adverse impact of the move.

The utility of a system of notification is related to the

parties' agreement that "no employees employed in the regular work force will be laid off on an involuntary basis during this Agreement." The parties sought to spell out their rights and obligations under these circumstances. The Union looked to alleviating the possible hardships caused by the relocation of its members and the Postal Service looked to maintaining a productive work force.

The rights and obligations of the parties are, of course, distributed throughout the Labor Agreement. However, the principal provisions dealing with the excessing of Mailhandlers at Omaha and the concomitant involuntary reassignments to the Des Moines BMC are contained in Article XII and Appendix A of the 1973 and 1975 National Agreements.

These pertinent provisions read as follows:

"ARTICLE XII
PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

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 Article and the provisions of Appendix A.

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 Article XII 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.

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.

D. In order to minimize the impact on employees in the regular work force, the Employer agrees to separate public policy program employees, and 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 craft, or of being reassigned to the gaining installation.

APPENDIX A

Appendix A is an incorporation of the principles of Reassignments as contained in Article XII of

the March 9, 1968, National Agreement. The old Article XII has been edited to conform with the new employee classifications. In addition, other word changes have been incorporated to bring Article XII up to date with present terminology;however, there have been no substantive changes.

x x x x x x x x x x

A. Basic Principles and Reassignments

When it is proposed to:-

x x x x x x x x x x

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

B. Principles and Requirements

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

x x x x x x x x x x

4. Unions affected shall be notified in advance (as much as six months whenever possible), such notification to be at the regional level, except under A4 above, which shall be at the local level.

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, and shall receive moving, mileage, per diem and reimbursement for movement of household goods, as appropriate, if legally payable, will be governed by the standardized Government travel regulations as set forth in Methods Handbook M-9, "Travel".

x x x x x x x x x x

C. Special Provisions on Reassignments

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

x x x x x x x x x x

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

x x x x x x x x x x

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. . .

x x x x x x x x x x

(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 he does not withdraw it or decline to accept an opportunity to return in accordance with such request."

Discussion and Contentions

At the hearing the Union raised three issues involved with the excessing of the 33 employees from Omaha to Des Moines. It raised the issues of jurisdiction, sub-contracting and notice. The Postal Service questioned the propriety of presenting issues of jurisdiction and sub-contracting since it maintains that these items were not raised in the Grievance Procedure. Management stated that the sub-contracting issue was never mentioned and the jurisdictional issue was raised only five days before on May 17, 1976. The Union Counsel had communicated with Francis J. Filbey, President of the American Postal Workers' Union advising him that the Union expected to make a jurisdictional argument at the Arbitration Hearing. President Filbey dispatched APWU Union Counsel to attend the hearing.

The Arbitrator reserved judgment on the two issues newly raised and advised the parties that, in that day's hearing, he would hear arguments that went solely to the issue of notice.

From the appropriate clauses of the National Agreement cited earlier it will be seen that there are essentially five instances of notice required of the Postal Service "when a major relocation of employees is planned in major metropolitan areas or due to the implementation of national postal mail networks."

These notice requirements are as follows:

National: ". . . At least 90 days in advance of implementation of such (relocation and reassignment) plant, the Employer will meet with the Unions at the national level . . ." (Article XII, Section 4B)

Regional: ". . . Such plan shall include a meeting at the regional level in advance (as much as six months whenever possible) of the reassignments anticipated. . ." (Article XII, Section 4B)

Regional: ". . . The Unions will be periodically updated by the Region should any of the information change due to more current data being available." (Article XII, Section 4B)

National, Regional or Local: "Involuntarily reassign such excess full-time employees . . . for duty assignments to vacancies in installations within 100 miles of the installation, or in more distant installations if after consultation with the effected Union it is determined that it is necessary . . ." (Appendix A, Section 1, C5, b(1))

Individual Employee: "Full-time . . . employees involuntarily detailed or reassigned shall be given not less than 60 days advance notice, if possible . . ." (Appendix A, Section 1, B5)

It is important at this point to cite the grievance dated March 25, 1976 and filed at Step 2a.

SOURCE(S) OF RIGHT(S) VIOLATED: Including but not limited to Article VII Appendix A of the National Working Agreement.

CAUSE AND SPECIFICS OF GRIEVANCE: Management has reassigned 33 employees to the Des Moines BMC without notifying the National or the Region. There was not any notice at all. The National Agreement said there will be a 90 day notice when there are a reassignment or a relocation.

CORRECTIVE ACTION REQUESTED: That these men will not be relocated until all of the provisions of the National Agreement has been completed."

For purposes of developing the ensuing opinion it is useful here to test each of the notice requirements as if all of the provisions of the National Agreement dealing with notice under these circumstances were meticulously spelled out in the Step 2a Appeal.

(A) Notice to the National Union -

There was introduced into evidence a plan submitted to the National Union on May 22, 1974. This plan elaborately dealt with details of the nationwide implementation of the Bulk Mail Network. The Labor Agreement provided that the Union could file a grievance if it felt that the National Labor Agreement was violated. No such grievance was filed.

(B) Notice to the Regional Union -

On June 30, 1975 a joint meeting was held in Des Moines, Iowa. The purpose of the meeting was to discuss a package presented by the Postal Service

to the Regional Union Officers covering the manning of the Des Moines Bulk Mail Center.

On July 2 Mr. Frank Sias, Regional Vice President of the Union, was supplied with estimated impact figures in connection with the opening of the Des Moines BMC. This information indicated that it was expected that no Mailhandlers would be excessed at the Omaha Post Office.

(C) Regional Update

On January 15, 1976 the Omaha Post Office Officials met with Local Union Officials to advise them that Mailhandlers would be excessed from the Omaha Post Office to the Des Moines BMC and to discuss possible alternatives including moving excessed Mailhandlers into the Clerk Craft.* Sometime after this meeting had failed to produce an alternative to excessing and at the point of its final decision to excess Mailhandlers to Des Moines, the Omaha Postal Service advised the Union's Regional Vice President.

(D) Notice to National, Regional or Local Unions -

There seemed to be no question that the Union was advised at all levels that any excessing would be to Des Moines which was approximately 145 miles from Omaha.

*Such a plan was devised and proposed to the Union. This plan would move a certain number of Mailhandlers into the Clerk Craft and obviate excessing. The APWU did not agree and the plan was abandoned.

(E) Notice to Individual Employees -

On March 9, 1976 the Omaha Postmaster sent notices to the affected employees advising them that they would be excessed from the Omaha Post Office and involuntarily assigned to the Des Moines BMC effective April 10, 1976.

Regarding notice, the Union contends that the notices all through the planning and into the implementation of the excessing were deficient and the Postal Service violated the Labor Agreement throughout the entire process. The Union particularly stresses the hardship created for the excessed Mailhandlers caused by the lack of notice particularly the short notice to individual employees.

The Union argues further that adequate notice would (a) allow the affected employees to prepare for the inconveniences caused by the involuntary transfer; (b) permit the Union to explore alternatives and (c) allow time for the Union to challenge any plan for a major relocation through the Grievance and Arbitration Procedure.

Management says that the Union was adequately informed at every step of the implementation, particularly at the Local level where a number of meetings were held to inform the Union of the excessing. It states further that any involuntary transfer causes problems and inconvenience for the employees involved. It maintains that it did everything possible to alleviate the hardship and inconvenience to the excessed employees even to the extent of offering extensions of time for those employees requesting them.

Two excessed Mailhandlers, Kojdecki and Kelly, submitted written requests for extensions. The requests were received by the Omaha Postmaster on April 6, 1976. The Postal Service maintains that the extensions would have been granted but before it could act, the requests were withdrawn on April 8, 1976. Kojdecki stated that he withdrew his request because:

> "I was never given any answer from any of these people and I was getting very mad. I was talking to these people all the time and I was not getting anywhere."
>
> and
>
> "I was advised by my counsel, if they didn't want to respond to it."

Kelly's reason for withdrawal was:

> Q. "Why . . . did you withdrew . . . your request?"
>
> A. "Well, because I was told."
>
> Q. "By whom?"
>
> A. "By the same person he was."
>
> Q. "Who is that?"
>
> A. "The Counselor."

On April 8, 1976, the Union petitioned the United States District Court for temporary, preliminary and permanent injunctive relief. The Union moved out of the grievance procedure and into the Court for the purpose of enjoining the involuntary transfer

of Mailhandlers to Des Moines. In its petition to the Court, the Union cited only the alleged notice violations and described to the Court the hardships confronting the transferred employees.

It pleaded, "Failure to enjoin the involuntary transfer will, as a practical matter, defeat these employee and Union contract rights even if a later arbitration decision rules in plaintiff's favor. In that time employees reassigned to Des Moines will be required to secure new housing, to undergo inherent difficulties of relocating, to remove children from school in mid-term, and to disrupt their family and community ties. A later arbitration award cannot repair these injuries."

In seeking a remedy the Union stated:

> "Plaintiff has no plain or adequate remedy at law to maintain the status quo pending arbitration, which as a practical matter, will irreparably prejudice the 33 employees plaintiff represents, even if they prevail in the arbitration process."

The Union then asked the Court to:

> ". . . specifically enforce the 1975 Agreement by directing the Employer to arbitrate the validity of its April 10, 1976 involuntary transfer order and by enjoining defendent . . . from requiring . . . transfer . . . in order to maintain the status quo pending arbitration.

On April 9, 1976 the District Judge granted the Union's motion for a Temporary Restraining Order pending a processing of this matter through the Grievance and Arbitration Procedure. In

addition the Postal Service was ordered to appear in Court on April 19, 1975 to show cause why a Preliminary Injunction should not be issued.

The parties entered into a stipulation on April 20, 1976 providing for arbitration of the grievance as filed in Step 2a. The stipulation characterized ten Mailhandlers as being those "who were the subject of the restraining order issued on April 9, 1976." Five remained in Des Moines and five remained in Omaha. The Postal Service agreed that the five who remained in Omaha would be guaranteed 40 hours of work and would be treated as unassigned regular Mailhandlers. The five remaining in Omaha were: Kelly, Kojdecki, Grap, Hickman and Ramos. The Postal Service agreed to make all reasonable efforts to maximize the hours for the other mail handlers remaining in Omaha who were affected by the excessing. Both parties agreed that the Arbitration would involve all 33 excessed employees.

One further point requires discussion. This Arbitration involves 33 excessed employees only to the extent that the original grievance was filed because the March 9, 1976 notices of involuntary reassignment to Des Moines were sent to 33 Omaha Mailhandlers. On March 22, 1976 four of the Mailhandlers who had received the excessing notice were notified that such notices were cancelled. Two more Mailhandlers had their notices cancelled on March 29, 1976. Obviously, this was known to the Union as it pursued its claim in Court. It was also known to the parties when they entered into the

stipulation to arbitrate on behalf of 33 excessed Mailhandlers.

The parties submitted joint exhibits listing each of the 33 excessed Mailhandlers and 31 letters detailing the status of each grievant. Each letter included the option selected by the grievant. A breakout of the options and the number of excessed employees selecting each is as follows:

OPTIONS		Excessed Employees
a.	Transfer to Des Moines	10
b.	Part-time Flexible Mailhandlers	2
c.	Part-time Flexible Clerk	8
d.	Part-time Flexible Carrier	1
e.	Full-time Custodian-Maintenance	3
f.	Full-time Mailhandler-Kansas City	1
g.	Resigned Prior to Effective Date of Notice	2
h.	Excess Notice Rescinded	6
	TOTAL	33

The length of service of the employees who received the excess notices on March 9, 1976 ranged from two years and four months to less than one year and five months.

Eliminating the six employees who had their excessing notices rescinded and the two short service employees who resigned prior to the effective date of the notice, there remained 25 who

could select the available options. Of these 25, 16 made selections. One of the 16 was not given his option because he opted only for Custodian and senior Mailhandlers had already filled the available Custodian jobs. He was one of the 10 slated for involuntary transfer to Des Moines.

It is interesting to note that the 16 Mailhandlers selecting options did so between one and eight days after the posting of the notice. All prior to the Court action and all prior to the discussion of the grievance in the first step.

Findings

The Union was in error when it claimed lack of proper notice to the National Union and the Region. There is adequate evidence to demonstrate that the Postal Service properly provided notice to the National Union and the Region as required by the National Agreement.

The Union was correct when it claimed that the individual employees did not receive a 60 day notice of excessing. It also correctly claims that it was possible to notify the individual employees 60 days prior to the effective date of the involuntary reassignment. The Postal Service erred when it gave notice on March 9, 1976 advising 33 Mailhandlers that they would be excessed to the Des Moines Bulk Mail Center on April 10, 1976. The parcel post transit mail lost to the Denver and Des Moines Bulk Mail Centers occurred on January 1, 1976 and January 31, 1976, respectively.

The date of the workload loss does not necessarily establish the beginning date of any particular notice period. However, in the face of inaction by the Postal Service when the loss occurred, it is not appropriate for it to argue later that the insufficient notice was necessary for sound business reasons.

In January 1976 the Omaha Postal Service and the Local Union Officials were actively engaged in an attempt to work out an arrangement that would make the inevitable excessing of Mailhandlers unnecessary. This activity proved futile because it involved jurisdictional difficulties with the American Postal Workers Union who refused to go along with the plan. While I can find no specific violation of Article XII, Section 4B, the manner of notification to the Regional Vice President of the Union could have been improved so that the express purpose of notification would be fulfilled. Had the Regional Postal Service and the Regional Office of the Union dealt in this area, as they properly could have under the update language, it is possible that a solution could have been found. Even if the excessing problem was not resolved, other issues now lying on the periphery of this Arbitration would have been sufficiently articulated so as to be dealt with here.

The Union was forestalled from raising other issues at the Arbitration Hearing primarily because the Arbitration was held pursuant to a stipulation of the Parties that dealt essentially with notice problems.

In this connection a few words of clarification concerning the scope of the decision in this case seem to be in order. The original grievance form in this case claimed violation of the National Agreement "including but not limited to Article VII, Appendix A. . ." In appealing the case to arbitration the Union cited both Article VII and Article XII. The parties stipulated on April 20, 1976 that the grievance as filed in Step 2a should be submitted to arbitration. Since the basic issues actually considered by the parties up to that time had related to the adequacy of the various notices provided by the USPS, the Service objected at the hearing in this case to any consideration of issues of compliance with Article VII or claimed improper sub-contracting. As noted, the Arbitrator deemed neither such issue to be properly before him for hearing at that time. The issue of sub-contracting, for example, seemed entirely outside the scope of the original grievance. The situation was different as to Article VII, however. It cannot be said that no such issue was implicit in this case from the beginning and, indeed, the original grievance in fact did refer to Article VII. The fact was, however, that there had been no substantive discussion between the parties as problems under Article VII prior to the arbitration hearing. Absent any such discussion, any presentation of evidence as to such an issue would have substituted the hearing for the grievance procedure. Since there were real issues in the case as to adequacy of notice,

properly developed in the grievance procedure. It would have been impractical, and unfair to other interested parties, to permit the Mailhandlers to develop its evidence and argument as to Article VII for the first time at the hearing.

On the other hand, the ruling to exclude such matters from the hearing herein cannot fairly be construed as barring the Union from proceeding now to develop its evidence and argument under Article VII, commencing at the 2a level of the grievance proceeding.

Returning then, to the issue of adequate notice, I reject the Management's contention that these employees have had sufficient notice and that subsequent events here made the question of notice moot. There are Mailhandlers who are awaiting the outcome of this Arbitration and until such is available they are not able to take advantage of the lapse of time and consider that time as notice.

The notices required throughout the Agreement and especially those contained in Article XII and Appendix A are substantive conditions. The underlying purpose of the notice requirements is to keep the Union informed about changes that affect the day-to-day relationship of the parties. It is imperative that the notice requirements that are so carefully worked out at the bargaining table command the respect due them. This is especially true in situations such as the excessing under consideration here. The traumatic impact of the involuntary reassignment

on the individual and his family embraces countless variations and ramifications. The purpose of notice is to minimize to the extent possible, that traumatic impact.

The Postal Service failed to respect the need for the 60 day notice to the individual employees in this instance and must be found in violation of Appendix A, Section 1, B, 5.

THE AWARD

I. As soon as practicable after the date of this Award, the Postal Service will offer to each excessed Mailhandler in the original group of 33 the same options that were made available to him at the time of the March 9, 1976 notice.

II. Each of the 33 excessed Mailhandlers will be given the opportunity to review the option he chose as a result of the March 9, 1976 notice and, if he so desires, to make an alternative selection.

III. Any public policy or casual employees being utilized in the Mailhandlers craft at the Omaha Post Office or any of its Branches will be separated to the extent necessary to minimize the impact.

IV. The offer date of (I) above shall constitute the beginning date of a new 45 day period of notice.

V. The date at the end of the 45 day period set out in (IV) above shall constitute the new excessing date.

VI. The beginning date of the 60 day period set out in Article XII, Section 4, C shall be the same as (V) above.

VII. Mailhandlers from among the group of 33 who are involuntarily reassigned shall be entitled to take advantage of the provisions of Appendix A, Section 1, C, 5, b(6).

VIII. The Management at the Omaha Post Office will provide the Union with such information as is necessary to keep the Union informed concerning compliance with this Award.

IX. The issues raised by the Union which involve the interpretation of Article VII are reinstated in that Step of the Grievance Procedure which will provide full discussion.

Paul J. Fasser, Jr.
Associate Impartial Chairman

Approved by:

Sylvester Garrett
Impartial Chairman

23 Eligibility for Relocation Benefits

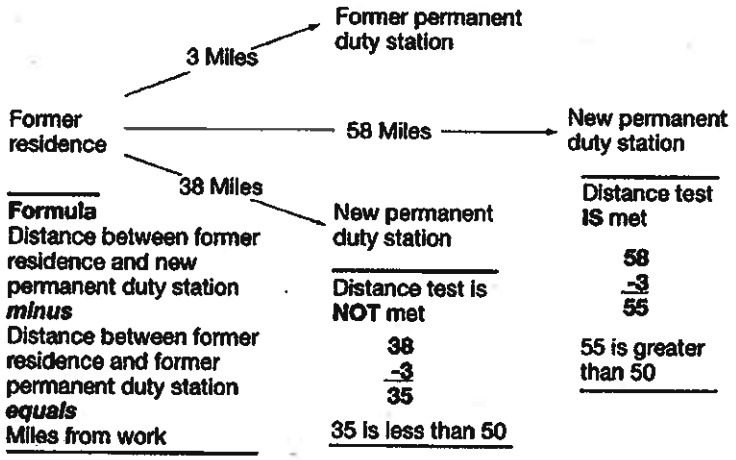
231 Distance Requirements

To qualify for relocation benefits, employees must meet the following distance requirement:

a. The distance between the old residence and the new duty station must be at least 50 miles more than the distance between the old residence and the old duty station. This is known as the IRS 50-mile rule. If the distance is less than 100 miles, you must move at least half the distance closer to the new duty station.

b. The Postal Service also requires you to physically move your household to the new duty station. Postal Service personnel verify distance moved by using Internet mapping tools, and the determination they make is final. The illustration and formula below explain how the rule works.

The 50-Mile Rule



232 Requirement for Spouse Employed by the Postal Service

If you and your spouse are employed by the Postal Service and are both relocating to the same area, only one of you will receive full relocation benefits. Your spouse is eligible as a family member only if he or she is moving to the new job location. Your spouse is eligible for advance round-trip travel time while searching for a permanent residence and en route travel time when leaving the former residence and traveling to the new duty station. Time spent for these trips are to be charged as work hours.

233 Liabilities

If you do not meet the distance rule as required by policy, do not stay for one year in the new location, or do not physically move your household to the

In the Matter of the Arbitration between NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO -and- UNITED STATES POSTAL SERVICE	Case No. MC-N-1386 Local 301, Springfield,MA OPINION AND AWARD

APPEARANCES:

For the Union - James S. Ray, Esq.

For the USPS - Richard A. Levin, Esq.

BACKGROUND:

This case concerns the entitlement of certain employees to relocation allowance upon exercise of contractual retreat rights following an involuntary reassignment in an excessing situation. The parties framed the issue as follows:

> Did the Postal Service violate the provisions of the 1975-1978 collective bargaining agreement in not paying a relocation reimbursement to the grievants upon exercise of their retreat rights to the Boston Post Office.

The parties also agreed that the case was properly processed through the steps of the grievance procedure and was before the Arbitrator for a final and binding decision.

STATEMENT OF THE CASE:

There is little dispute concerning the relevant facts in this case, The Grievants, Mail Handlers at the Boston Post Office, were advised by a letter dated March 22, 1976, that they were excess to the needs of the Boston Post Office, and were, therefore, subject to involuntary reassignment to another duty station pursuant to Appendix A, Section 1.C.5 of the National Agreement. The Grievants were given the right to complete a preference form on which they indicated their respective choices from among alternative duty stations which were available. They were also given the right to chose to revert to part-time flexible status. On April 24, 1976, the Grievants, having chosen not to become part-time flexibles, were involuntary reassigned to the Bulk Mail Center in Springfield, Massachusetts. They were reimbursed for expenses incurred in connection with this transfer in accordance with the provisions of the M-9 Handbook, which covered allowances for relocation expenses.

The Grievants all requested that they be granted retreat rights to the Boston Post Office pursuant to the provisions of Appendix A, Section 1.C.5.b(6) of the National Agreement. On June 24, 1977, they were advised that they were being transferred back to Boston as Unassigned Regular Mail Handlers. In the letter so advising them, they were also informed that they were not eligible for relocation allowance payments to cover the expenses involved in

returning to the Boston Post Office from the Springfield Bulk Nail Center. When they did return to Boston, they were not paid any allowance to cover the expenses which they incurred in making this change in duty station. Thereafter, the Union filed a grievance on their behalf in which reimbursement for such expenses was requested.

CONTENTIONS OF THE PARTIES:

On behalf of these Grievants, the Mail Handlers Union argued that Appendix A, Section 1.B.5. entitles involuntarily reassigned employees to reimbursement for relocation expenses without regard to, and independent of, the eligibility standards set forth in the M-9 Handbook.

The Union further contended that the exercise of retreat rights by involuntarily assigned employees, to return to their original duty station, is subsumed in the term "involuntarily reassigned" as used in Appendix A, Section 1.B.5. For that reason, such employees are entitled to relocation expenses in connection with their return under that contractual provision.

Finally, the Union also asserted that the postmaster in Boston represented to the Grievants, at the time of their involuntary reassignment, that they would be reimbursed for expenses incurred in exercising their retreat rights. For that reason, the Postal Service was estopped from denying such reimbursement to these employees.

The USPS argued that, in order to receive reimbursement for expenses incurred in relocation, an employee would have to relocate pursuant to an involuntray reassignment and such reimbursement must be consistent with the provisions of the M-9 Handbook. Neither of these conditions were met when these Grievants exercised their retreat rights in order to return to the Boston Post Office.

The Postal Service also pointed to the provisions of a Comptroller General decision in which it was held that reimbursement for expenses incurred in retransferring to an original duty station could only be allowed when such transferwas primarily for the benefit of the Post Office. In this case, according to the USPS, the return to Boston was strictly for the benefit of and at the request of the employees involved.

The Postal Service claimed that, although employees exercising retreat rights are treated somewhat differently from other voluntary transferees in terms of seniority does nothing to rectify the complete lack of contractual support for the claim for reimbursement.

Finally, the Postal Service alleged that there was no promise by the Postmaster tothese Grievants that they would be reimbursed for expenses incurred in exercising their retreat rights. The Employer contended that the Union just failed to sustain the burden of proving such an assertion.

OPINION OF THE ARBITRATOR:

Section 1. C.5. b(6) of Appendix A provides:

> 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 he does not withdraw it or decline to accept an opportunity to return in accordance with such request.

Thus, it is clear that these Grievants, having filed a written request to be reassigned had a contractual right to return to Boston. The Union argued that since such right arises because of the involuntary nature of the initial move, in this case to Springfield, it must be accompanied with the companion right to be reimbursed for expenses incurred in returning to Boston.

If there were any such right to reimbursement under such circumstances, that right must arise initially from the provisions of Section 1.B.5 of Appendix A, which states:

> 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, and reimbursement for moving household goods, as appropriate, if legally payable, will be governed by the standardized Government travel regulation as set forth in Methods Handbook M-9 "Travel".

It is the provision quoted above which is the basis for the Union's claim in this case. This is where the right to reimbursement, in the event of an involuntary detail or reassignment, is specifically set out. As the provision states, the move must be an involuntary one, and it must also meet the requirements of the M-9 Handbook in order to qualify for reimbursement.

These Grievants were certainly involuntarily reassigned from Boston to Springfield. They went very reluctantly and they exercised their right under Section 1.C.5.b(6) of Appendix A to request reassignment to Boston at the first available opportunity. Once relocated in Springfield, these Grievants had a right to remain there, if they so desired, or to exercise the option of returning to Boston when that choice was offered to them. They certainly were not required to either return to Boston or face some adverse consequence if they elected to stay in Springfield. The choice of returning cannot be characterized as an involuntary one. It cannot be tainted with any degree of compulsion because these Grievants found themselves in Springfield through an involuntary reassignment.

The provisions of the M-9 Handbook, which are mentioned in Section 1.B.5 of Appendix A, quoted above, and which are also incorporated into the National Agreement pursuant to Article XIX, require payment under certain circumstances and not under others.

Th. Handbook provides for reimbursement when:

> Transfer of an employee from one official station to another for permanent duty, provided the transfer is in the interest of the Postal Service and not primarily for the. convenience or benefit "of the employee or at his request. . . (Section 414,1) (emphasis in original)

That is the nub of the matter insofar as the Travel Regulations are concerned. The movement of the employee must provide a benefit primarily to the Service and not to the individual employee . It must be initiated by the Service and not by the individual. In this case, the Grievants were reassigned to Boston not to benefit the Service. In fact, there was some unrebutted testimony that indicated the return to Boston was in a sense prematurely facilitated to meet the desires Of these employees rather than to meet existing staffing requirements -in Boston, If these Grievants had not exercised their retreat rights at the time the Postmaster would not have had to hire any new employees in the Boston Post Office to meet the workload or would he have had to convert part-time flexibles to regulars for this purpose.

The Union introduced a decision of the Comptroller General, 45 Comp. Gen . 674 (1966), which was issued to interpret rights arising under the 1966 collective bargaining agreement. Section B5(5) of Article XII of that Agreement provides for the same retreat rights found in Appendix A of the Agreement with which we are concerned and which is quoted in part above,

As to the retreat rights of employees, regarding reimbursement for relocation expenses, the Comptroller General held:

> The entitlement of an employee retransferring to his original installation to a payment of travel and relocation expenses would therefore arise only from an administrative determination that such transfer or relocation is in the interest of the Government and not by virtue of his request made pursuant to Section B5 e(5) of the National Agreement. . .
>
> Therefore, we will interpose no objection to the allowance of travel and relocation expenses in such circumstances when it is expressly administratively determined that such retransfers are solely or predominantly in the interest of the Government.

Here again, the benefit to the Government or the Postal Service is paramount in considering entitlement to the relocation allowance. Nothing in the testimony in this proceeding established any such benefit was provided by the exercise of such retreat rights under all the circumstances present when these Grievants did return to Boston after some fourteen months or so in Springfield.

Recognizing that the provisions of the Agreement, the M-9 Handbook and the Comptroller General Decision might not conclusively establish such a right to the relocation allowances they were requesting for these Grievants, the Union also argued that the Postmaster in Boston had promised these employees that such allowances would be paid when they exercised such retreat rights. Such a contention was supported by the testimony of one Grievant who was not sure when such assurance had been given to the employees required

to relocate and he only believed that it was the Postmaster who had so stated, The postmaster denied that he had made any such promise to pay expenses to Springfield and then back to Boston, The Postal Service produced a letter which was sent to all the Grievants prior to their departure from Boston to Springfield. In that letter, contrary to the testimony offered by the Union, the Grievants were informed:

> As you are voluntarily requesting reassignment back to the Boston Post Office, you will not be eligible for any travel or transportation expenses and applicable allowances as provided for in Chapter IV, Series M-9, Methods Handbook.

The Union offered no evidence that the receipt of this statement, directly contradictory to the promise allegedly made to the Grievants by the Postmaster prompted any response or protest from any of the Grievants or their Union representative when the letter was received or thereafter if the meeting at which the Postmaster ostensibly made such a promise occurred after the letter was received.

For the reasons set forth above, it cannot be found that the Union was able to furnish sufficient evidence to credit the argument that the Postal Service should be estopped from opposing payments as requested in this grievance.

Since for the reasons also set forth above, I cannot conclude that the exercise of retreat rights under the provisions of Section 1.C.5.b(6) of the National Agreement then in effect

can be considered part and parcel of an involuntary reassignment which originally gave rise to the right to a relocation allowance, under Section 1.B.5 of Appendix A, the grievance filed in this case must be dismissed.

AWARD

The grievance filed in Case No. MC-N-1386, by letter dated June 23, 1977, is hereby denied.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
August 25, 1979

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S. DAS: JANUARY 16, 2019
DENIED: NPMHU
14375279/14310985: NATIONAL

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
between	)	
UNITED STATES POSTAL SERVICE	)	Case Nos. E11M-1E-C 14375279
	)	J11M-1J-C 14310985
and	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Brian M. Reimer, Esq. Mark Lippelmann, Esq.
For the NPMHU:	Bruce R. Lerner, Esq.

Place of Hearing:	Washington, D.C.
Dates of Hearing:	July 11, 2018
Date of Award:	January 16, 2019
Relevant Contract Provisions:	Articles 12 and 19, and ELM, Section 435
Contract Year:	2011 - 2016
Type of Grievance:	Contract Interpretation

Award Summary:

A mail handler bargaining unit employee is not eligible for severance pay when he/she is involuntarily reassigned, per Article 12, outside his/her commuting area and chooses not to accept reassignment.

Shyam Das, Arbitrator

BACKGROUND

E11M-1E-C 14375279
J11M-1J-C 14310985

The United States Postal Service (Postal Service) and the National Postal Mail Handlers Union (Union) consolidated two Step 4 appeals in cases in which the Postal Service reassigned mail handlers more than sixty miles away from their prior work locations pursuant to Article 12 of the parties' 2011 National Agreement. The stipulated issue is whether a bargaining unit employee is eligible for severance pay when he/she is involuntarily reassigned, per Article 12, outside his/her commuting area and chooses not to accept reassignment.

The reassignments at issue were processed under Article 12.6 of the National Agreement. Article 12 contains no reference to severance pay. Article 6 which applies to layoff and reduction in force (RIF) provides in Section 6.6.A:

> 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.

Article 6.3.D also provides that before implementation of reassignment under Article 6 or layoff and RIF:

> ...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.

ELM Section 435, as in effect at the time the two mail handlers at issue were reassigned under Article 12, provides as follows:

435 Severance Pay

435.1 Eligibility and Qualifying Job Offer

435.11 Eligibility

A career Postal Service employee is eligible for severance pay if the following applies:

a. The employee is involuntarily separated.

b. Immediately before the separation, the Postal Service, another federal agency, or both continuously employed the employee for at least 12 consecutive months without a break in service of three or more consecutive days.

A career Postal Service employee is not eligible for severance pay in the following circumstances:

a. The employee is entitled to an immediate retirement annuity from a federal civilian retirement system or from the uniformed services.

Note: If the employee becomes eligible for a retirement annuity after being involuntarily separated, his or her eligibility for severance pay ends on the date he or she becomes eligible for the annuity and the employee will not receive any additional severance pay after that date. The employee does not reimburse the Postal Service for any severance pay received before that date.

b. Within the 60-day period before the employee's separation, the employee receives and declines to accept a written qualifying job offer, as defined in 435.12.

c. The employee is administratively separated because, following entry into military service, he or she has become ineligible for reemployment under USERRA (see 365.37).

d. The employee is separated for cause on charges of misconduct, delinquency, or inefficiency.

e. At the time of separation, the employee is receiving compensation as a beneficiary of the Federal Employees Compensation Act, except when the employee is receiving this compensation:

(1) Concurrently with Postal Service pay, or

(2) Because of someone else's death.

435.12 Qualifying Job Offer

For the purposes of 435.1, a job offer is considered qualifying if the following conditions are met:

a. The offer is made in writing;

b. The employee is qualified for the position offered; and

c. The position offered is:

(1) In the Postal Service or another federal agency;

(2) Within the employee's local commuting area, unless geographic mobility is a condition of employment;

(3) In the same work schedule (i.e., either a full-time or part-time schedule) regardless of whether the employee is scheduled to work fewer hours in the position offered than he or she works in his or her current position;

(4) Of like tenure (i.e., the expected duration of the employee's appointment);

(5) Of like seniority, for bargaining positions only; and

(6) Of comparable pay, as defined below:

(a) The position offered is "of comparable pay" if it is in the same grade or pay level as the employee's current position.

(b) For positions in different pay schedules, the position offered is "of comparable pay" if the maximum salary range for the position offered is the same as or exceeds the maximum salary range for the employee's current position.

(c) Whether a position is "of comparable pay" is determined without regard to the employee's eligibility for saved grade or pay in either the position offered or the employee's current position.

In the first case, the Postal Service reassigned mail handler Chris Maurer from Rockford, Illinois, to Palatine, Illinois, a distance of over 60 miles. This reassignment under

Article 12 took place because the Postal Service was centralizing mail processing from one location to another. After Mr. Maurer did not report for work in Palatine, the Postal Service proposed his removal on November 7, 2014, and issued a letter of decision on March 10, 2015, sustaining his removal for failure to report as scheduled, failure to follow instructions, and absence without leave ("AWOL"). Maurer, who was listed as preference eligible on his PS Form 50, remained on the Postal Service's rolls (in an unpaid status) while he grieved the matter until he took a voluntary early retirement, effective January 31, 2018. It is the position of the Postal Service that this retirement was not an involuntary separation.

In the second case, the Postal Service reassigned mail handler Joan Spiering from Norfolk, Nebraska, to Omaha, Nebraska, a distance of over 100 miles. This reassignment also occurred because the Postal Service was centralizing mail processing work. Spiering also did not report for work in her new duty assignment, and the Postal Service removed her, effective December 4, 2016, for AWOL. It is the position of the Postal Service that this was a separation for cause.

UNION POSITION

The Union argues the history and consistent interpretation of the Postal Service's policies and the National Agreement show that mail handlers who cannot or choose not to move with an involuntary reassignment outside their commuting area are eligible for severance pay. The Union explains that the Postal Service's modern history of severance pay began in the 1960s when Congress adopted a new federal statute to govern federal and postal compensation prior to collective bargaining. The initial law was enacted in the Federal Employees Salary Act of 1965, Pub. Law 89-301 (codified at 5 U.S.C. § 5595), which provided that "[a]n officer or employee to whom this section applies who is involuntary separated from the service, ... not by removal for cause on charges of misconduct, delinquency, or inefficiency, shall ... be paid severance pay" unless the employee is receiving workers' compensation or is eligible for an immediate retirement annuity. These provisions were re-codified in 1967, by Public Law 90-83, which stated in Section 5595(b):

> Under regulations prescribed by the President or such officer or agency as he may designate, an employee who-
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> (1) has been employed currently for a continuous period of at least 12 months; and
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> (2) is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency;
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> is entitled to be paid severance pay in regular pay periods by the agency from which separated.

The meaning of the somewhat complex statutory provisions, the Union maintains, was made clear when regulations were adopted by the Civil Service Commission (CSC) in 1968 in 5 CFR, Section 550.705, entitled "Failure to accompany activity":

> The separation of an employee by an agency when the employee declines to accompany his position when it is moved to another commuting area because of a transfer function is deemed to be involuntary separation not by removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of entitlement to severance pay.

The Union asserts that when the Postal Service was a federal executive agency and a regular component of the Federal Government it was obligated to provide severance pay to employees who were involuntarily separated because their jobs were moved outside their commuting area and they declined to accompany the position. The Union states that this common understanding was confirmed by administrative decisions issued in the years following adoption of these statutory and regulatory directives from 1965 through 1968. The Union cites three Comptroller General decisions which indicate that employees who do not follow reassignments outside the relevant commuting area are entitled to severance pay.[1] The Union points out that publications by the Post Office Department prior to creation of the Postal Service in the Postal Reorganization Act of 1970 echoed the Federal Government's policy on severance pay. In particular, this was spelled out in the 1970 Postal Operations Manual which preceded creation of the Postal Service.

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[1] See, B-182300, JAN 16, 1975; B-184838, OCT 29, 1975; and B-210524, JUN 6, 1983.

In 1978, the Postal Service published its first version of the ELM, in which entitlement to severance pay was included in Section 435, wherein the Postal Service added references to other federal employment, as follows:

> Any career USPS employee who is involuntarily separated and who has been employed continuously by the USPS and/or other federal agency for at least 12 consecutive months (without a break in service of three or more consecutive days) immediately prior to the separation is eligible for severance pay, except in the following circumstances:
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> * * *
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> b. At the time of separation the employee is offered and declines to accept a position in the USPS or in any other federal agency of like seniority, tenure, and pay within the same commuting area.

In May 1999, the Union notes, the Postal Service issued an edition of Publication 164 -- Qs and As on Compensation, Relocation Benefits, and Reinstatement Policies for Career Employees,[2] which states, in addressing severance pay, "if you are involuntarily separated from the Postal Service because you do not accept a directed reassignment outside your commuting area or due to a reduction in force, you may be entitled to severance pay *or* a discontinued service annuity." In the May 2001 Pub. 164, the Postal Service included the following paragraph:

> Bargaining Employees. If you are a bargaining employee, you may be entitled to severance pay or a discontinued service annuity, if you receive an involuntary reassignment under the terms of your collective bargaining agreement to a position outside your commuting area and you elect to do either of the following:
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> (1) Voluntarily resign prior to the effective date of your involuntary reassignment.

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[2] The Union acknowledges as stated in Pub. 164: "This Brochure is NOT an official U.S. Postal Service directive....It should not be used or cited as an official source document."

(2) Decline the involuntary assignment and you receive an involuntary separation notice from the Postal Service.

The Union stresses that an "involuntary reassignment" occurs under the NPMHU National Agreement only under Article 12. Similar statements appear in versions of Pub. 164 issued in 2003.

The Union also highlights a memorandum dated March 1, 2000, that was sent from Susan M. LaChance, then Manager for Selection, Evaluation, and Recognition, to Area Human Resource Managers, and copied to -- among others -- Area Managers of Labor Relations and Peter Sgro, who in 2000 was serving as the USPS Manager for Contract Administration with the NPMHU. The LaChance Memorandum directly dealt with closing of remote encoding centers whose employees were represented by the APWU, but the contractual references are identical in the NPMHU National Agreement. The LaChance Memorandum stated that, "[i]n accordance with the current labor agreement," the Postal Service has "a contractual obligation under the provisions of Article 12 to reassign career bargaining unit employees impacted by...closings to other postal positions. While our goal is to minimize the disruptive impact that such reassignments may have on our employees by reassigning them to positions within their commuting area and with the same tenure (i.e., full-time to full-time), in some cases, such assignments may not be available." The LaChance Memorandum then states:

> Therefore, when a career bargaining unit employee declines, in writing, an involuntary reassignment that...is outside the employee's commuting area, he/she shall be afforded the option of being involuntarily separated from the Postal Service and, if otherwise eligible, receive severance pay or a discontinued service annuity. In addition, the employee also has the option of voluntarily resigning, in writing, prior to the effective date of their involuntary separation and, once again, if otherwise eligible, receiving severance pay or a discontinued service annuity.

The LaChance Memorandum was accompanied by an attachment to be sent to employees, which stated:

> You have received a letter involuntarily reassigning you to a new position outside your commuting area.... If you do not report as scheduled you may be subject to disciplinary action, including removal from the U.S. Postal Service. You should advise the manager who signed your involuntary reassignment letter whether you intend to accept the involuntary reassignment or wish to decline the assignment and discuss the other alternatives that may be available to you....
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> An involuntary reassignment to a position *outside your commuting area*...is not considered a reasonable offer for severance pay and discontinued service retirement purposes. Since your involuntary reassignment meets one of these conditions, you may be eligible for one or more of the following alternatives:
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> SEVERANCE PAY:
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> A career employee who is involuntarily separated or resigns prior to the effective date of the involuntary separation for reasons other than cause, charges of misconduct, delinquency, or inefficiency may be entitled to severance pay....

According to the Union, the LaChance Memorandum and its attachments confirmed the longstanding meaning of the federal statute and regulations from the 1960s, the Postal Operations Manual from 1970, and Section 435 of the ELM since its initial dissemination in April 1978, and was consistent with the language that the Postal Service used to describe an employee's right to severance pay upon involuntary reassignments under Article 12 in various versions of its Pub. 164 until at least 2008. The Union further notes that when Congress enacted the Postal Accountability and Enhancement Act (PAEA) of 2006, the Postal Service submitted a required "Network Plan" which confirmed the applicability of its "Severance Pay Provisions."

The Union argues that the Postal Service's attempt to reinterpret ELM Section 435 beginning in 2008 may not be unilaterally imposed on mail handlers or other bargaining unit employees. In its June 2008 version of Pub. 164, the Postal Service changed the language on eligibility for severance pay for bargaining employees to state that severance pay was available "If you receive an involuntarily [sic] separation due to a layoff or reduction-in-force under the

terms of Article 6 of your collective bargaining agreement," but that "[b]argaining employees impacted by involuntary reassignments outside of their local commuting area under Article 12 of their collective bargaining agreement... are not entitled to severance pay." The Union did not see this revised Pub. 164 before it was issued, but points out that the Postal Service acknowledges this publication is not a contractually binding provision.

In a February 9, 2010 letter to the Union, the Postal Service clarified its position on severance pay and said that mail handlers who are "involuntarily reassigned or excessed" are not entitled to severance pay. The Postal Service supported its position with two arguments based on ELM 435 in effect at that time: (1) that a mail handler who "voluntarily resigns his/her employment or fails to report as scheduled to his/her new duty station" after reassignment resulting from an Article 12 excessing action "has been offered and has declined a position in the Postal Service"; and (2) that a mail handler who does not report for duty as scheduled will be charged with AWOL and removed for cause. The Union asserts that both arguments were based on alternative readings of the "exceptions" language in ELM 435.[3] Notably, there was no claim that severance pay was not available for Article 12 reassignments.

On March 8, 2010, the Union filed a National-level grievance at Step 4, arguing that mail handlers involuntarily reassigned outside their commuting area under Article 12 are entitled to severance pay. The parties engaged in discussions but ultimately the Postal Service denied the grievance on August 4, 2011. The Union did not appeal, but instead waited for one or more denials of severance pay to work their way up through the grievance procedure. Subsequently, in June 2015, the Postal Service issued a revised Issue 45 of the ELM, notifying

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[3] ELM 435 at that time included the following "exceptions":

> b. At the time of separation, the employee is offered and declines to accept a position in the Postal Service or in any other federal agency of like seniority, tenure, and pay within the same commuting area.
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> * * *
>
> d. The employee is separated for cause on charges of misconduct, delinquency, or inefficiency.

the Unions that is was making changes in ELM 435 to provide "clarification of severance pay eligibility" and "clarification of qualifying job offer." The current Section 435 indicates that a career mail handler is eligible for severance pay if the employee is "involuntarily separated" unless the employee "receives and declines to accept a written qualifying job offer," which is specifically defined to include a position in the Postal Service that is "[w]ithin the employee's local commuting area." The Union asserts that it did not challenge the new ELM language because it believed that the language supported the Union's position on severance pay eligibility.

The Union asserts that the current version of ELM 435 initially refers to "involuntary separation," and this term relates back directly to the federal regulation issued by the CSC in 1968 and Post Office directives predating the Postal Reorganization Act of 1970 which provided that an employee is involuntarily separated when he or she is moved outside the current commuting area. The Union stresses that the current definition of a "qualifying job offer" includes the requirement that the qualifying job must be "within the commuting area" and makes clear that an employee with a distant job offer from the Postal Service is eligible for severance pay.[4]

The Union asserts that none of the Postal Service's arguments attempting to explain why employees reassigned under Article 12 are ineligible for severance pay can withstand scrutiny. The Postal Service incorrectly argues that severance pay is only available under Article 6 of the National Agreement. Although severance pay is specifically mentioned in two subparagraphs of Article 6 and is not mentioned in Article 12, the Union contends that the absence of language about severance pay in Article 12 does not speak, one way or the other, to whether severance pay must be paid for involuntary reassignments. Moreover, the Union

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[4] The Union notes that by placing "within the employee's local commuting area" into a new subsection of the regulation, ELM 435.12(c)(2), separate from the reference to "the Postal Service or another federal agency" which appears in the prior subsection, ELM 435.12(c)(1), the Postal Service has confirmed once again that the commuting area requirement applies to all USPS positions, as well as other federal positions, defeating the argument the Postal Service once presented about the commuting area language in ELM Section 435 only being applicable to federal agencies, and not to the Postal Service.

stresses that the language in ELM 435 refers to "involuntary separations" and "qualifying job offers," two terms that principally relate to reassignments under Article 12, not to layoffs or reductions in force under Article 6. The Union also insists that the Postal Service's payment of relocation expenses under Article 12 for the vast majority of employees who agree to relocate large distances does not foreclose payment of severance pay to the small number of employees who are forced to resign or be removed because their personal circumstances do not allow them to relocate.

The Union disagrees with the Postal Service's reliance on this Arbitrator's 2017 decision in an APWU national arbitration decision, Case No. Q06C-4Q-C 08268987, (APWU VER Decision) which held that APWU-represented employees who choose to retire under a Voluntary Early Retirement (VER) program administered in conjunction with an Article 12 reassignment are not eligible for severance pay. The NPMHU does not disagree with the ruling in that decision, although it points out it did not intervene, and, therefore, is not bound by that ruling. While the decision in that case stressed that Article 12, unlike Article 6, does not include any reference to either early retirement or severance pay, the question presented here does not turn on Article 12; rather, this case asks whether the severance pay provision in ELM 435, based on its long and undisputed history from the 1960s through at least 2008, requires the Postal Service to provide severance pay to certain employees who are involuntarily reassigned outside their commuting area under Article 12.

Finally, the Union disagrees with the Postal Service's testimony that there have not been any bargaining unit employees that have received severance pay. It points out that USPS Manager Debra Mills who testified about this history of severance pay only has been in her managerial role since 2016, and only at USPS Headquarters since 2007. The Union argues that the supplemental exhibits it provided following the arbitration hearing in this case show that bargaining unit employees have been offered severance pay under ELM 435 on various occasions in connection with reassignments under Article 12 or comparable reassignment provisions found in other Postal agreements.

The Union requests that its grievance be sustained, and that the Arbitrator enter an award finding that, under Articles 12 and 19 of the National Agreement and ELM Section 435, which is incorporated in the National Agreement under Article 19, mail handlers who choose not to accept involuntary reassignments under Article 12 to a position outside their commuting area are involuntarily separated and eligible for severance pay.

POSTAL SERVICE POSITION

The Postal Service contends that severance pay is a benefit available when it is conducting a layoff or reduction in force under Article 6, but not when it makes reassignments under Article 12. It stresses that there is no dispute that it complied with Article 12 when it reassigned mail handlers Maurer and Spiering under Article 12, and that it did not conduct a layoff or reduction in force under Article 6.

The Postal Service argues that the ELM does not provide for severance pay to either grievant in this case. The two requirements in ELM Section 435 that are relevant in this case are: (1) there must be an involuntary separation for an employee to be eligible for severance pay; and (2) that separation cannot be for cause. The Postal Service asserts that Spiering was ineligible because she was removed for cause, and Maurer was ineligible because he either voluntarily retired, and thus was not involuntarily separated, or was removed for cause.

The Postal Service insists that the Union is attempting to conflate provisions of two distinct contractual articles and receive an Article 6 benefit (severance pay) for an Article 12 action (reassignment). The Postal Service points to the 2017 AWPU VER Decision, which interprets identical language. In that case, this Arbitrator concluded that he had "no authority to extend the entitlement to severance pay under Article 6.B.4 to employees who take VER offered in connection with a reassignment effected under Article 12" and "no authority to read into Article 12 a right to severance pay if an employee takes a VER offered in conjunction with implementation of the reassignment procedure in Article 12" as "under the controlling terms of the National Agreement, the two procedures are separate and distinct."

The Postal Service contends that the Union's proffered interpretation of ELM Section 435 would eliminate a major disincentive for management to conduct a layoff or RIF. The Postal Service never has utilized Article 6 which, it asserts, is a benefit for both parties. By utilizing Article 12, the Postal Service avoids having to pay severance pay, which can cost up to one year of salary per employee, while bargaining unit employees are not laid off or separated because of a layoff/RIF.

The Postal Service also insists that the few instances documented by the Union after the hearing in which the Postal Service made severance payments to postal bargaining unit employees in conjunction with an Article 12 reassignment do not detract from the clear meaning of the National Agreement and ELM 435.[5] The Postal Service stresses that most of these payments were the result of distinct settlement agreements, and none of them detract from the clear language of the NPMHU National Agreement or ELM 435. Many involve a Postal Data Center bargaining unit that is represented by the APWU, but is not part of the National Agreement. The parties reached an agreement related to these employees when the Postal Data Center in New York, New York was closed which gave the employees three options, one of which involved severance pay. Those employees were entitled to severance pay by virtue of a one-time negotiated agreement wholly apart from the language of Articles 6 or 12 or the ELM. The Union also provided two arbitration awards related to reassignments following the closure of Remote Encoding Centers. Consistent with the 2000 LaChance Memorandum, local postal officials agreed severance pay could be available -- the dispute centered on how to define commuting area. Some bargaining members did receive severance pay, but the Postal Service stresses that those cases, while final and binding resolutions of grievances, were not national interpretive decisions. It respectfully submits that the results in those cases were incorrect.[6]

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[5] Those instances involved APWU employees, and the Postal Service points out that the APWU did not include these documents in its own 2017 case (APWU VER Decision) on eligibility for severance pay.

[6] The Postal Service makes a similar argument with respect to another Union exhibit which indicates severance pay was awarded in a reassignment case in an (unidentified) regional arbitration award which the Postal Service has been unable to locate.

The Postal Service points out that when the NPMHU previously raised the issue in this case in a national grievance it submitted in 2010 – that was not appealed to arbitration -- the Postal Service made clear its position that the 2000 LaChance Memorandum was mistaken in stating that clerks would be eligible for severance pay if they were reassigned outside their commuting area and declined to report to their new assignments. That advice might have been true if the Postal Service had been running an RIF under Article 6, but it was wrong as to bargaining unit employees because the Postal Service was only making Article 12 reassignments.[7]

FINDINGS

The issue in the 2017 APWU VER Decision, as stated therein, was:

> Whether the National Agreement requires the payment of severance pay when an employee accepts an offer of voluntary early retirement (VER) in conjunction with the Postal Service effecting a reassignment under Article 12, as it would if the offer was made in conjunction with a reassignment or, if necessary, layoff and reduction in force under Article 6.B.4.

There was no claim in that case that the employees the APWU asserted were entitled to severance pay were "involuntarily separated" from the Postal Service and no reliance on ELM 435 as such. The APWU in that case was seeking to have the provision in Article 6 which provided that employees who accept VER offered in connection with a layoff/RIF also receive severance pay apply to employees who accept VER in connection with a reassignment action under Article 12. Any comments in that Decision about Article 12 and eligibility for severance pay are limited to that context. The arguments made by NPMHU in this case were not raised by the APWU in that earlier case and were not relevant to the APWU's position.

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[7] Postal Service witness Mills, who has been Manager of Strategic Complement Reassignment since 2016, noted that Manager LaChance was in a Human Resources, not Labor Relations, role, and that higher management took subsequent action to have that position report to Labor Relations to ensure contractual provisions were applied correctly to bargaining unit employees.

ELM 435 applies to all Postal employees, only some of whom are covered by a collective bargaining agreement.[8] The critical issue in this case is whether a mail handler who is reassigned under Article 12 of the NPMHU National Agreement to a location beyond his/her local commuting area – however defined -- and declines that reassignment is to be treated as "involuntarily separated" and not as having been "separated for cause" for purposes of ELM 435.

At the outset, it can be acknowledged that over the years the Postal Service has not been totally consistent and straightforward in setting forth its position regarding entitlement to severance pay in cases where bargaining unit employees are subject to reassignment under Article 12 or corresponding provisions. Nonetheless, the issue that has to be decided here is whether a mail handler bargaining unit employee contractually is eligible for severance pay under the controlling terms of the parties' National Agreement, including Article 19.

Editions of Pub. 164 issued between 1999 and 2008 and the 2000 LaChance Memorandum (which evidently was applied in some instances), while admissible as evidence of previous expressions/actions by the Postal Service on severance pay eligibility, are not contractually binding on the Postal Service in this case. The same is true regarding the two cited regional arbitration decisions – both of which relied on Pub. 164.[9] Moreover, whatever the particular arguments expressed by the Postal Service in response to the NPMHU's 2010 Step 4 grievance, its position that mail handlers who are "involuntarily reassigned or excessed" are not entitled to severance pay under ELM 435 -- which was not appealed to arbitration -- is consistent with its present position that severance pay is not available for Article 12 reassignments.

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[8] Pub. 164 also addresses various groups of Postal employees, including those not covered by a collective bargaining agreement.

[9] The Union also cited two federal court cases which refer to options that included severance pay that were specially negotiated between the Postal Service and the APWU in specific Postal Data Center consolidations.

Provisions of the National Agreement, of course, are binding on the Postal Service. Under Article 19, this incorporates provisions of the ELM directly relating to wages, hours or working conditions of bargaining unit employees that are not in conflict with the National Agreement. This would include, to the extent otherwise applicable, the provisions of ELM 435.

Article 12 sets forth detailed provisions governing reassignment of mail handlers in a variety of contexts. Here, both employees at issue were reassigned due to centralized mail processing covered by Article 12.6.C6. Article 12, unlike Article 6, makes no provision for severance pay. It does not provide employees an option to decline a directed reassignment and to receive severance pay instead.

ELM 435 provides that employees who are "involuntarily separated" are eligible for severance pay, subject to specified exceptions. Those exceptions include employees who receive a written qualifying job offer as defined in 435.12 and employees who are separated for cause. Here, both employees were directed, pursuant to Article 12, to report to a new installation following centralization of mail processing affecting their existing positions. These directions were not job offers as such; they were involuntary reassignments. When the employees failed to report to their new assignments, they were terminated for cause.[10] Under ELM 435.11 an employee separated for cause is not eligible for severance pay. Thus, the question is whether under the National Agreement, including ELM 435 as incorporated under Article 19, the two employees had the right to decline their reassignment and be treated as having been involuntarily separated for reasons other than cause and to receive severance pay. Neither ELM 435 nor Article 12 includes such a provision. Given the detailed provisions of Article 12 that extensively deal with involuntary reassignment, including to locations beyond 50 miles and even beyond 100 miles without reference to local commuting area, and provide for relocation benefits, I am not persuaded that these employees contractually were entitled to

[10] Mauer remained on the rolls in unpaid status after filing his grievance asserting a right to severance pay until he later took a voluntary early retirement. But for present purposes the issue is whether he had the option of declining his reassignment and receiving severance pay at that time.

severance pay under ELM 435, as is explicitly provided for in case of layoff/RIF governed by Article 6. In particular, on the present record, it has not been convincingly established that the substance of the regulation in 5 CFR, Section 550.705, entitled "Failure to accompany activity" -- adopted by the CSC in 1968, prior to creation of the Postal Service and negotiation of Article 12 -- applies to implementation of ELM 435 in the context of a directed reassignment of a mail handler in accordance with the procedures in Article 12.

The two employees at issue were reassigned pursuant to detailed negotiated provisions of Article 12 -- not given a job offer of the sort contemplated in ELM 435.12. They were involuntarily separated for cause for failure to report to their new assignment. It has not been established that those employees had a contractual right to decline their reassignment under Article 12 and receive severance pay instead.

AWARD

A mail handler bargaining unit employee is not eligible for severance pay when he/she is involuntarily reassigned, per Article 12, outside his/her commuting area and chooses not to accept reassignment.

Shyam Das, Arbitrator

IN THE MATTER OF THE ARBITRATION BETWEEN:

AMERICAN POSTAL WORKERS UNION, AFL-CIO

-and-

UNITED STATES POSTAL SERVICE

USPS CASE NO. A-NAT-2341

OPINION AND AWARD

Appearances:

For the APWU, AFL-CIO - Thomas P. Powers, Esq.

For the USPS - Stephen E. Alpern, Esq.

Background:

Pursuant to the provisions of the 1971 National Agreement, the matter in dispute was jointly submitted to the undersigned for final and binding arbitration by letter dated March 16, 1973. Also by mutual agreement, a hearing was held on this matter on April 26, 1973, at which both parties were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. This hearing was held at the Headquarters of the USPS in Washington, DC. After the close of the hearing, the parties submitted briefs. These were filed in timely fashion and the contents of same were also considered in arriving at the determination made below.

The Issue:

Most of the material facts in this case are not in dispute. On August 12, 1972, the Postal Service reassigned eight employees in the clerk craft to the Pottsville, Pennsylvania Post Office from various post offices in the area due to centralization of mail processing. On November 7, 1972, the Postal Service advised an officer of the APWU that six clerks would be excessed from Pottsville and reassigned to Harrisburg, Pennsylvania. On November 8, 1972, the local union in Pottsville was notified of the specific

employees to be reassigned. On November 9, 1972, four of these employees filed grievances. These were not employees who had been transferred to Pottsville in August. They had already been employed at that Post Office when the employees were assigned there in August. These grievants claimed that the employees excessed into Pottsville in August should have been the first to be excessed out of Pottsville because they did not have seniority rights to remain in Pottsville for 180 days from August 12, 1972.

The issue is whether under Article XII, Section 2 of the Agreement the individuals reassigned to Pottsville in August were on the seniority list of that installation during the 180-day period for purposes of determining which employees were to be excessed and reassigned to Harrisburg.

Contentions:

The Union contended that the individuals excessed into Pottsville had no seniority rights in a reassignment situation vis-a-vis the other Pottsville employees and therefore they should have been excessed out to Harrisburg rather than the grievants.

The Postal Service maintained that the individuals reassigned to Pottsville could exercise their seniority rights for all purposes except bidding on preferred duty assignments within that installation for 180 days after such assignments were first made.

Contractual Provisions:

Article XII, Section 2 of the 1971 National Agreement reads, in pertinent part, as follows:

> "The parties agree to abide by the terms and conditions of Article XII (Reassignments)... as stated in the Agreement between the United States Post Office Department and the seven (7) national exclusive unions, contained in POD Publication 53...dated March 9, 1968..."

Article XII, of POD Publication 53, contains two provisions which the parties emphasized in their presentation:

Article XII-B-7:

> "Whenever changes in mail handling patterns are undertaken in an area including one or more postal installations with resultant successive reassignments of personnel from those installations to one or more central installations, such reassignments 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 an employee to the central consolidated or new installation in that specific planning program."

Article XII-C-7a:

> "When the operations at a centralized installation or other mail processing and/or delivery installation result in an excess of regular employees at another installation(s), regular employees who are excessed in a losing installation(s) by reason of the change, shall be reassigned as provided in section 5b, such reassignments shall be treated as details for the first 180 days to avoid inequities in the selection of preferred duty assignments by regular employees in the gaining installation."

Opinion:

The spokesman for the USPS contended that employees involuntarily reassigned as a result of Centralized Mail Processing, such as the eight employees reassigned to Pottsville in August, do not lose their seniority rights by virtue of the language in the above-cited provisions, they merely are prohibited for 180 days from exercising those seniority rights for bidding purposes. The spokesman for the Postal Service argued that the employees excessed into the gaining installation are reassigned as regular employees and the assignment is only treated as a detail for certain specific purposes. It was also argued that the 180 day period was placed in this provision to protect the employees coming into the installation and not the ones already there.

The spokesman for the APWU claimed that the provisions cited made clear that the employees sent into the gaining installation were treated as if on detail for 180 days. During that period of time, according to the APWU, the employees coming into the installation could not dislocate any of the regular employees already there. If another reassignment were necessary during the 180 day period, the newly arrived employees would have to be considered as if they were on detail and without seniority in the gaining installation. Being in that position, they would be the first to be reassigned out.

The operative language of Article XII-B-7 seems to lend support to the APWU contention. It states,"....such reassignments shall be treated as details for the first 180 days in order to prevent inequities in the seniority lists at the gaining installations." The only inequity that could be created in the seniority list at the gaining installation would be accomplished by dovetailing into that seniority list the newly gained employees. If they arrived with greater seniority than regulars already at the installa- any new bidding that occurred thereafter would disadvantage the employees who had been at the installation for a longer period of time.

Article XII-C-7a , which gives greater detail on special provisions governing reassignment, makes this even clearer. It provides,"...such reassignments shall be treated as details for the first 180 days to avoid inequities in the selection of preferred duty assignments by regular employees in the gaining installation." The 180-day period, from the date of the first reassignment into a gaining installation, is provided as protection from dislocation or loss of rights in bidding for the employees who were there before the 180 days began.

These provisions of the Agreement provide that,no matter how much seniority an employee may have had in the clerk craft,when that employee is reassigned into an installation as a result of his being excessed for stated reasons at his regular installation, he does not have any seniority rights for bidding at the gaining installation during that 180-day period. During that same period, the employees already at the gaining installation,before the 180-days began,are protected against inequities in the selection of preferred duty assignments against those who came later with greater seniority. The regular employees at the gaining installation are to have their seniority rights respected during that limited protection period. If he can bid for preferred duty assignments and has the right to such assignments over more senior employees who arrived later, the regular employee at the gaining installation also must have the right to remain at that installation when, during the 180-days, assignments to another installation are to be made.

In sum, if the employees reassigned to the gaining installation were to be treated as if they were on detail,they were to be treated as if they had no viable seniority rights at the gaining installation for the 180-day period. Without seniority rights to remain at that gaining installation, when the need for a further reassignment came about,these "detailed" employees should have been so reassigned. Article XII, Section II-B-3, also appears to most clearly reenforce that right of the incumbent. It provides,"No employee shall be allowed to displace or 'bump' another employee properly holding a position or duty assignment." The four clerks at the Pottsville Post Office who grieved on November 9, 1972 and who subsequently wrote those grievances up on November 12, 1972, were holding a position or duty assignment (emphasis added above in the quote from the Agreement by the writer) when they were displaced or "bumped" by the dovetailing of eight employees onto the seniority list at Pottsville during the 180-day period.

The witness from the Postal Service who testified concerning the force and effect of this provision argued that it did not apply in the case of a reduction in force. No place in the writing is that limitation on its applicability spelled out. For this reason that limitation cannot be applied to the clear language of this provision of the Agreement.

Award:

For the reasons stated above, the grievance must be sustained. The right of the four grievants to duty assignments at the Pottsville Post Office at the time they were reassigned to Harrisburg must be restored by reassigning them to their duty assignments at Pottsville with their seniority unimpaired at that installation, due to their incorrect reassignment.

Howard G. Gamser, Arbitrator

Washington, DC
August 6, 1973

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

July 14, 2000

TO: AREA MANAGERS, LABOR RELATIONS

SUBJECT: Article 12 – Reassignment

We are in an environment where it is becoming more and more necessary to reassign employees in accordance with Article 12 due to various initiatives e.g., automation and BPI. This memorandum serves as a reminder of the USPS' position with respect to when light and/or limited duty employees are part of the complement mix subject to Article 12 reassignment.

As stated in a June 11, 1990, correspondence from Joe Mahon to the APWU, management's interpretation of Article 12 of the contract is that when excessing occurs in a craft, either within the installation or to another installation, the sole criteria for selecting the employees to be excessed is seniority. Whether or not a member of the affected craft is recovering from either an on- or off-the-job injury would have no bearing on his/her being excessed

In the case of other craft employees who are temporarily assigned to the craft undergoing the excessing, they would have to be returned to their respective crafts. This is in accordance with the provisions of Article 13, Section 4.C., which reads:

> "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."

Also, remember that Section 546.221 of the ELM states:

> "Collective bargaining agreement provisions for filling job vacancies and giving promotions and provisions relating to retreat rights due to reassignment must be complied with before an offer of reemployment or reassignment is made to a current or former postal employee on the OWCP rolls for more than 1 year."

Please ensure that we are in compliance with the above interpretation when applying Article 12 in the above circumstance.

If there are any questions concerning this matter, please feel free to contact me at (202) 268-3811.

Peter A. Sgro
Manager
Contract Administration

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

United States Postal Service
475 L'Enfant Plaza SW
Washington DC 20260

Mr. Thomas Thompson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-4K-C 28684
CLASS ACTION
CEDAR RAPIDS IA 52401

Dear Mr. Thompson:

Recently, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance concerns the meaning of the "within 100 mile" limit in Article 12.

After discussion, we agreed to settle this grievance as follows:

> The 100 mile criteria identified in Article 12, (e.g. 12.5.C.1.b, 12.5.C.1.d, 12.5.C.1.f, 12.5.C.5.b.(1), and 12.5.C.5.b.(1)(b) is measured as the shortest actual driving distance between installations.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Kathleen Sheehan
Grievance and Arbitration
Labor Relations

Thomas Thompson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date: 2-23-95

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Case No. Q16N-4Q-C 18427350
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO - INTERVENOR	)	
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO - INTERVENOR	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Kevin B. Rachel, Esq. Tiffany McClease, Esq.
For the NALC:	Keith E. Secular, Esq.
For the APWU:	Melinda K. Holmes, Esq. Jason Veny, Esq.
For the NPMHU:	Matthew Clash-Drexler, Esq.
Place of Hearing:	Washington, D.C.
Dates of Hearing:	December 18, 2018 May 20, 2019
Date of Award:	November 5, 2019

Relevant Contract Provisions:	MOU Re: Pay Schedule Consolidation and Article 12
Contract Year:	2016-2019
Type of Grievance:	Contract Interpretation

Award Summary:

The Postal Service's position in this case is affirmed as set forth in the above Findings.

Shyam Das, Arbitrator

BACKGROUND Q16N-4Q-C 18427350

The NALC initiated this national level grievance on September 20, 2018. The parties basically agree on the issue in dispute. The NALC states the issue as: Whether employees from other crafts in pay grades equivalent to the former City Carrier Grade 1 (CC-1) may be reassigned under Article 12 of the National Agreement to the Letter Carrier craft? The NALC contends the answer to this question is "No." The Postal Service states the issue as: Whether the MOU Re: Pay Schedule Consolidation from the parties' 2016-2019 National Agreement impacts cross-craft assignments under Article 12? The Postal Service contends the answer to this question is "No." The APWU and the NPMHU each intervened in this case in support of the Postal Service's position.

The procedures of Article 12 -- included in each of the three Unions' National Agreement -- are the principal means by which bargaining unit employees excess to the needs of their section, craft or installation are reassigned within the Postal Service. Although the provisions of Article 12 generally favor reassigning employees within the same craft, the Postal Service may reassign employees to a different craft in order to enable employees to stay within their local areas. Under Article 12, cross-craft assignments must be to a position "at the same or lower level." [1]

The Employee and Labor Relations Manual (ELM) includes an Equivalent Grades Chart (ELM Chart) which identifies pay systems and grades that are considered to be on the same level for a variety of pay purposes.

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[1] Through 1978, the APWU, NALC and NPMHU bargained jointly with the Postal Service and their members were covered by a single National Agreement. Thereafter, the Mail Handlers split off and bargained separately. Later the APWU and the NALC also ceased to bargain jointly. Cross-craft assignments were provided for in Article 12 of the 1978 Agreement. The National Agreements of the three Unions each contain a similar MOU -- the "Bridge Memo" -- which (as included in the NALC's National Agreement) states in relevant part:

> 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 [four covered by the APWU Agreement] under the 1978 National Agreement.

Historically, since at least 1907, Clerks and Carriers were ranked at the same level and received the same pay. The NALC, alleging a substantial change in Carrier work, sought an upgrade in 1994 negotiations, the first where it negotiated separately from the APWU, but an upgrade was not granted by the interest arbitration panel chaired by Arthur Stark.

The NALC renewed its upgrade proposal in 1998 national negotiations. By the time those negotiations reached interest arbitration before a panel chaired by George Fleischli, collective bargaining agreements with the APWU and Mail Handlers Union already had been reached. The NALC again justified its upgrade proposal based on various changes to job duties brought about by increased automation of the mail prior to its being presented to the carrier. The Postal Service countered that the changes did not have the significance to warrant an upgrade, but also stressed the importance of adhering to the history between the parties and the wage pattern that had been set in the voluntary agreements with the other unions. The Postal Service expressed great concern that granting the NALC an upgrade would have "a potentially disruptive effect" on collective bargaining and "discourage voluntary agreements," while encouraging competitive union negotiations rather than pattern agreements. Arbitrator Fleischli, while not disregarding those concerns, nevertheless concluded that the upgrade was justified based on the impact of automation and other changes on the job duties of the City Carriers. This upgrade was granted in addition to, and not in lieu of, the general wage increase awarded for that year.

The NALC and the Postal Service agreed to the following contractual language regarding this 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 [Fleischli] Arbitration Award issued September 19, 1999.

The parties further agreed to establish new City Carrier Grades 1 and 2. The previously Postal Service (PS) Grade 5 Carriers were placed in the new CC-1 Grade in the same step they previously held in Grade 5. The Carrier Technicians were placed in the new CC-2 Grade. After

implementation of the upgrade provided for in the Fleischli Award, the ELM Chart was revised in 2003 to reflect an equivalency between CC-1 and PS-6 and CC-2 and PS-7.[2]

Following implementation of the upgrade provided for in the Fleishli Award, PS-5 Clerks (the bulk of the craft) no longer were eligible for reassignment to Carrier positions. The APWU sought an upgrade for its employees to restore the parity in 2000 negotiations with the Postal Service. Those negotiations concluded in interest arbitration before a panel chaired by Stephen Goldberg. While the APWU did not achieve a general upgrade for its employees, it was awarded upgrades to certain selected positions. The National Agreement resulting from the Goldberg Award was extended by the parties for two years in 2003 and for an additional year in 2005. Both extensions included an MOU for a limited number of additional positions to be upgraded.

In 2006 national negotiations, the APWU again sought and successfully bargained a general upgrade for all positions. As a result, PS-5 Clerks were upgraded to PS-6 Clerks and, as such, became eligible for reassignment to CC-1 Carrier positions.

In negotiations for the 2016-2019 National Agreement, the NALC and the Postal Service agreed to an MOU (the MOU) which, in relevant part, provides:

> Re: Pay Schedule Consolidation
>
> The parties hereby agree that effective November 24, 2018, all city carrier pay schedules will consolidate existing grade levels into a single grade, as follows:
>
> Grade 1 career city carriers in RSC Q and RSC Q7 will slot to the equivalent step in Grade 2 of their respective pay schedule, and retain time-in-step credit. The remaining grade level will be classified as "City Carrier."
>
> Grade 1 CCAs in RSC Q4 and RSC Q5 will slot to the equivalent step in Grade 2 of their respective pay schedule, and retain time-in-step credit. The remaining grade level will be classified as "City Carrier Assistant."

[2] The ELM Chart has remained unchanged since 2003.

Carrier Technician Pay

Carrier Technicians (Occupation Code 2310-2010) and CCA Carrier Technicians (Occupation Codes 2310-0047 and 2310-0048) will receive additional compensation equivalent to 2.1% of the employee's applicable hourly rate for all paid hours. This additional compensation will be considered basic pay for all purposes of determining benefits or additional compensation....

The 2.1% additional compensation received by Carrier Technicians was based on the average differential between the former CC-1 pay and the City Carrier (former CC-2) pay to be received by the former CC-1 Carriers under the MOU.

Although both parties rely on the wording of the MOU as clearly supporting their respective positions in this case, each also presented testimony related to the bargaining that resulted in this MOU in further support of their positions.

Doug Tulino has been Vice President of Labor Relations for the Postal Service since 2005. He was the Postal Service's chief negotiator in the 2016 NALC negotiations. He testified that he had ongoing discussions during the negotiations with his NALC counterpart, President Fred Rolando. Tulino stated that at the outset of negotiations the NALC made clear that one of its important objectives was to achieve an upgrade for Carriers. Tulino stated that they had many discussions and he was clear that the Postal Service was not going to agree to an upgrade. This was because, as he said he told Rolando: "...we have a long sordid history with the upgrade in our collective bargaining process, and it wasn't something that I wanted to set as a pattern for the rest of the negotiations process with the other unions."

Tulino continued that, in an effort to find a way to meet the Union's demand for an upgrade, the conversation shifted to the compensation portion of what an upgrade would provide. Tulino explained that he was willing to consider that, provided the Postal Service got the necessary *quid pro quo* from the Union. Tulino said that is what happened and resulted in the MOU. The consolidation of pay scales provided for in the MOU was the mechanism used to provide the Union with the objective they had to get the money to their employees.

Tulino stressed that there never was any discussion about an upgrade being justified because of any change in job duties, skill levels, or other factors that might merit a higher level. There also never was any discussion between him and Rolando or other Union representatives regarding the MOU having any impact on cross-craft excessing.

Joe Alexandrovich served as Manager of Collective Bargaining and Arbitration for five years prior to his retirement from the Postal Service in March 2018. At Tulino's request, he drafted the key relevant provisions in the first three paragraphs of the MOU. He pointed out that the MOU does not use the term "upgrade" because this was not an upgrade. He added that if they had done an upgrade they would have called it that and the CC-1 Carriers would have become CC-2, and the CC-2 Technician Carriers would have become CC-3.

Fred Rolando has been President of the NALC for some ten years and was the Union's chief negotiator in the 2016 negotiations. He noted that bargaining occurred over a 15-month period. He said he made it clear from the beginning that "due to the nature of our work and some of the other give and take that was going on in the negotiations" the Union felt the Carriers deserved an upgrade. According to Rolando, Tulino made it clear he was "fine with the upgrade," but had two conditions. The first was that he did not want to call it an "upgrade" because he did not want to be in a position to give all the other unions upgrades. Tulino also for some reason did not want to create a CC Grade 3 for Technician Carriers. Rolando said he was agreeable as long as the CC Grade 1s became CC Grade 2 Carriers. Rolando stated that the Postal Service came up with the term "Pay Schedule Consolidation" and giving the Technician Carriers a pay differential.

Rolando agreed that he and Tulino did not discuss the effects of an upgrade on Article 12. Rolando added: "I think we were both aware of the past and the history." Rolando stated that the NALC's understanding after the negotiations were completed was that the impact on Article 12 would be the same as when the Carriers received a previous upgrade in the 1999 Fleischli Award. Rolando noted that the NALC did not learn that the Postal Service had a

different understanding until it received a letter dated September 6, 2018 from the Postal Service, stating:

> This letter is in reference to the implementation of the Memorandum of Understanding (MOU) Re: *Pay Schedule Consolidation* found in the 2016-2019 National Agreement.
>
> Pursuant to the terms of the MOU, Rate Schedule Codes (RSC) Q, Q4, and Q7 will consolidate into one grade. The pay rates in this grade will be equivalent to the Grade 2 pay rates in effect as of November 24, 2018.
>
> City Carriers (Occupation Code 2310-2009) and City Carrier Assistants (CCA) (Occupation Codes 2310-0045 and 2310-0046) wil be placed into the equivalent step in the consolidated grade and will retain time-in-step credit.
>
> Carrier Technicians (Occupation Code 2310-2010) and City Carrier Assistant Technicians (Occupation Codes 2310-0047 and 2310-0048) will be placed into the equivalent step in the consolidated grade and will retain time-in-step credit. For all paid hours, these employees will receive additional compensation equivalent to 2.1% of their hourly rate.
>
> To accommodate these changes in our internal systems, the personnel records of City Carriers and CCAs will continue to reflect they are a "Grade 01" employee, and the personnel records of Carrier Technicians and CCA Technicians will continue to reflect they are a "Grade 02" employee.
>
> Upon the effective date of the MOU, all employees in the city letter carrier craft will receive a new PS Form 50, *Notice of Personnel Action*, with Nature of Action (NOA) Code 997, "Contractual Increase," which will indicate the employee's new salary.
>
> * * *
>
> Implementation of the MOU Re: *Pay Schedule Consolidation* will not impact any provisions of the National Agreement, including, but not limited to, Articles 6, 12, and 41 and handbooks/manuals that are incorporated into the National Agreement through Article 19, except as described above.

NALC POSITION

The NALC insists that employees in PS Grade 6 positions no longer are eligible to be excessed into the Letter Carrier craft. Article 12 prohibits excessing employees across craft lines to higher level positions. It is undisputed that prior to implementation of the MOU on November 24, 2018, determination of pay level equivalencies for purposes of cross-craft reassignments had been determined by reference to the ELM Equivalent Grades Chart. That chart provides that Grade 1 in the City Carriers pay schedule is equivalent to PS Grade 6, and Grade 2 in the City Carriers pay schedule is equivalent to PS Grade 7. The consolidation of City Carrier pay schedule that was implemented on November 24, 2018 eliminated City Carrier Grade 1. The MOU provides that "Grade 1 career city carriers in RSC Q and RSC Q7 will slot to the equivalent step in Grade 2 of their respective pay schedule." Grade 1 carriers were upgraded to Grade 2. Grade 2 Technicians remained in Grade 2. The consequences of this change for Article 12, the NALC asserts, are unambiguous. PS Grade 7 employees remain eligible for reassignment to any position in the Letter Carrier craft, but for employees in PS Grade 6 any reassignment to the Letter Carrier craft would constitute excessing to a higher level, which is prohibited by Article 12. This result is the only outcome that harmonizes the plain language of Article 12, the ELM Chart and the MOU.

The NALC contends that relevant precedent also supports the NALC's position. The basic premise of the Postal Service's position is that the pay schedule consolidation was fundamentally different from previous upgrades. In fact, the NALC asserts, it was exactly the same. When the NALC pay upgrade granted in the 1999 Fleischli Award was implemented on November 18, 2000, all PS Grade 5 Letter Carriers were upgraded to a new NALC Grade 1, which was the same as PS Grade 6. The parties used a step-to-step upgrade procedure by which employees were placed in the new CC Grade 1 in the same step they previously held in PS Grade 5. For Grade 1 Letter Carriers, the implementation of the pay schedule consolidation in 2019 was identical to the implementation of the Fleischli upgrade. The only difference was that the pay schedule consolidation did not result in a new higher grade for the Carrier Technicians. That difference is not an issue in this case.

The NALC also argues that the 2018 consolidation cannot be dismissed as "merely a pay rate increase" without any other repercussions. Bargaining history undercuts this argument. The 2008 APWU upgrade clearly was a substitute for a pattern general increase. The 2006-2010 APWU National Agreement provided for only two general increases over the four-year agreement, effective November 25, 2006 and November 21, 2009. There was no general increase in the three years between. Instead, the parties provided for a one-pay-level upgrade, effective February 16, 2008. Following this APWU upgrade, the Postal Service once again was entitled under Article 12 to reassign former Grade 5 Clerks into the Letter Carrier craft. Those clerks were now in Grade 6 which was the equivalent of City Carrier Grade 1 on the ELM Chart. Although it could have done so, the NALC did not argue that there had been no recognized changes in the Clerk position so that the upgrade was simply a disguised pattern pay increase.

Similarly, the NALC asserts, the drafting precedent shows there is no significance to the MOU's changing the name "City Grade Carrier 2" to "City Carrier." After the Fleischli Award, which upgraded PS 5 and 6 Letter Carriers to Grades 6 and 7, the parties agreed to rename the Letter Carrier grades "CC-1" and "CC-2." Notwithstanding the name change, these grades were understood to be equivalent to PS Grades 6 and 7 for purposes of Article 12. In sum, the NALC argues, in 2000 and 2008 all that mattered for Article 12 purposes was that employees were moved to the higher pay grade. That is all that should matter here.

The NALC further rejects the Postal Service's contention that the bargaining history of the MOU supports management's position. On the contrary, such history supports the NALC's position. There is no dispute that in negotiating the MOU the parties never discussed Article 12 or excessing. The MOU, which notably was drafted by the Postal Service, contained no language allowing PS Grade 6 employees to be excessed into the Letter Carrier positions following the pay schedule consolidation. Insofar as Article 12 prohibits the cross-craft excessing of employees to higher level positions, it was the Postal Service's responsibility to incorporate appropriate language allowing such excessing, if that is what it wanted to do. The NALC's position is based on the plain meaning of the contract language.

The NALC maintains that the record also does not support the assertion of the Postal Service and APWU that eliminating Letter Carrier vacancies as "landing spots" for excess Clerks would have "profound implications" for postal operations and would be "devastating to the clerk craft." The record shows that 11,589 Level 6 Clerk positions were eliminated over the five-year period from 2014 to 2018. Yet, only 98 Clerks were excessed into the Carrier craft during those five years -- 0.8 percent of the positions eliminated.

Finally, the NALC notes, a long line of national arbitration precedent clearly establishes that the present interpretive dispute must be resolved within the four corners of the NALC National Agreement.

POSTAL SERVICE POSITION

The Postal Service contends that the language of the MOU demonstrates that the parties did not agree to an upgrade or otherwise intend to impact cross-craft assignments under Article 12. Initially, the Postal Service notes, the title of the MOU is "Pay Schedule Consolidation." The term "upgrade" is not used in the title or anywhere else in the MOU. This is in stark contrast to other MOUs or contract language providing for an upgrade, all of which use the term "upgrade" or "upgrades" in the title or section heading. The use of another term in this MOU is a clear indication the parties agreed to something different from an upgrade. The plain meaning of "pay schedule consolidation" is not upgrade.

The Postal Service asserts that the first paragraph of the MOU reinforces the point that its purpose is to "consolidate existing grade levels into a single grade, as follows." Therefore, what "follows" in the MOU has to be understood in the context of the MOU's purpose to consolidate existing grade levels. By its terms, the language in the second paragraph, relied on by the NALC, merely describes how the new consolidated pay schedule is to be established. The intent of the MOU was to consolidate the schedules in a way that provided for an increase equivalent to what an upgrade would provide. There is nothing in the MOU that would remotely suggest it was intended to have any consequences outside the issue of pay.

The Postal Service points out that it never had agreed to a "pay schedule consolidation" before; nor is there any other example of a bargaining unit pay system where two positions are in the same grade, but are making different salaries.

The MOU, the Postal Service stresses, literally says nothing about an upgrade. The Postal Service insists this was purposeful and demonstrates that the parties' agreement did not include an upgrade. The NALC expressly sought a general upgrade, but failed to achieve that and settled instead for a pay schedule consolidation.

The Postal Service argues that the bargaining history of the MOU also demonstrates that the parties did not agree to an upgrade or otherwise intend to impact cross-craft assignments under Article 12. Postal Service Vice President Tulino explicitly and unequivocally testified that when NALC President Rolando brought up the issue of an upgrade, Tulino told him that an upgrade was not something he could consider, explaining that it would complicate negotiations with other unions and set a pattern that he was unwilling to set. The discussion then turned to whether the NALC, even if it could not be granted an upgrade, could receive a comparable pay increase. That was a possibility Tulino could consider, assuming other concessions and trade-offs rendered an overall deal satisfactory. Not only is Tulino's account of his response to the NALC's upgrade request plausible, the Postal Service insists, it is precisely what one would expect based on the Postal Service's collective bargaining history. The upgrading of carriers in the Fleischli Award sparked a subsequent interest arbitration and series of negotiations focused in large measure on the upgrade issue. This era ended with the 2006 APWU National Agreement which granted the APWU a general upgrade. Since that time, all has been quiet on the upgrade front. It is inconceivable that Tulino would have agreed to restart a new era of one-upmanship, leapfrogging and competitive, rather than pattern bargaining. President Rolando must have, or at least should have, understood that the concern of avoiding complications with the other unions could only be satisfied by not agreeing to an upgrade.

Understanding the MOU as a pay raise rather than as an upgrade, the Postal Service contends, also is consistent with how both parties treated the MOU as part of the overall

economic provisions of the new NALC National Agreement. Unlike the upgrade in the Fleischli Award, the pay raise provided in the MOU was in lieu of, not in addition to, a general increase for that year. Because of other concessions in the overall agreement, this increase was within the established pattern with the other unions. Moreover, there is no suggestion whatsoever that the MOU was based on any understanding of changed job duties or responsibilities, as was the upgrade in the Fleischli Award.

The Postal Service emphasizes there is no dispute that the parties did not discuss any issues concerning the MOU having an impact on cross-craft assignments or any other collateral impact that a general upgrade might have. As such, there clearly was no agreement or meeting of the minds to affect that issue. While the Postal Service submits that the evidence supports the conclusion that both parties knew that the MOU was a pay raise and not an upgrade, the evidence is virtually undisputed that at least the Postal Service had no thought that the MOU would impact cross-craft assignments. In such circumstances, the plain meaning of the language must control, and the plain meaning of "pay schedule consolidation" is far from "upgrade."

The Postal Service further points out that technological changes, mail volume declines, and changes in the mix of mail all have contributed to major reorganizations, consolidations, and complement reductions throughout the Postal Service. The impact of these factors has fallen disproportionately on the APWU, and especially the Clerk craft. The ability to make cross-craft reassignments is one of the most important tools within Article 12's reassignment process to find jobs for excessed employees and to do so in keeping with the fundamental goal and obligation of keeping dislocation and disruption to a minimum. It is not reasonable or even plausible that the Postal Service and the NALC came to an agreement to severely limit cross-craft reassignments into the Carrier craft when there is no mention of such in the text of the agreement. Such a conclusion would be all the more astonishing when both parties concur that there was no discussion of the topic at any point in bargaining. This issue, the Postal Service stresses, has far too much significance, implicates the rights of too many other unions, adversely affects too many employees, and has had too complicated a history to suggest that this is what the parties meant to do with no word of discussion.

INTERVENOR APWU POSITION

The APWU, which intervened in this case in support of the Postal Service's position, maintains that the MOU does not change the right of PS 6 Clerks to reassignment into formerly Grade 1 City Carrier positions under the APWU National Agreement. Both the NALC and the Postal Service agree they never discussed, negotiated or settled on an understanding, implied or explicit, that the MOU and pay raise for Grade 1 Carriers to the Grade 2 pay rate would bar PS 6 Clerks from reassignment to the former Grade 1 positions. Changing the long standing rule about the Carrier positions available for cross-craft reassignment of PS 6 Clerks has to be consciously made and explicitly stated and has to include the APWU. The record is bare of any evidence that the MOU explicitly, implicitly or in its application, was expected or intended by both parties to change the right of PS 6 Clerks to be reassigned to Grade 1 City Carrier positions.

The APWU stresses that the NALC did not achieve an actual upgrade like the APWU accomplished in 2006. The NALC negotiated a pay raise, not an upgrade, and the word upgrade is nowhere to be found in the MOU. It is evident the parties did not use the term upgrade because it does have meaning -- a meaning the Postal Service did not intend. Moreover, nothing changed about the work or circumstances of the Grade 1 Carrier position that would seem to justify making them Grade 2.

The APWU insists the ELM Equivalent Grades Chart which predates the new consolidated Carrier pay scale does not show that comparable pay grades for pay rate purposes change with changes to the pay rates within those grades. Pay rates of the comparable Carrier and Clerk grades for more than a decade have not been equal despite the pay grades being identified as equivalent on the ELM Chart. Even if the arbitrator accepts the NALC's interpretation of the ELM Chart, that chart does not override the APWU National Agreement or the practice of equating PS 6 with the former CC 1 Grade, regardless of their specific pay rates and regardless of raises that change those rates.

The APWU believes that preventing the reassignment of its bargaining unit employees to the Carrier positions that have for years been available to them requires intent and agreement on the part of at least three parties (the Postal Service, the APWU and the NALC), if not four (the Mail Handlers). Otherwise, the APWU argues, there is a conflict with the fundamental principle that one union's entitlements and obligations cannot be changed through the bilateral agreements of other unions with the Postal Service.

Finally, the APWU stresses, the issues and disputes the NALC's position have and will give rise to are sobering. As the APWU identified, future arbitrations will have to grapple with a host of substantive challenges about reassignments. The APWU poses these questions:

> Does Article 12 protect only a bargaining unit employee's opportunity to be reassigned to a position in another craft at the same or lower level or is it also a limit on which employees can come into a craft? What does "same or lower level" mean in the collective bargaining agreement, does it mean the same thing in all of the unions' contracts, and which contract is operative? As noted earlier, what does "equivalent" mean in the ELM Equivalent Grades Chart and how does the Postal Service properly interpret or change the chart in accordance with Article 19 in the APWU National Agreement? And...does the Bridge Memo prohibit the Postal Service from unilaterally or bilaterally changing reassignment rules (either losing or gaining) that impact another union's Article 12?

These questions and the overall impact of the NALC's position, the APWU argues, favor prudence against changing cross-craft reassignments, especially in the absence of language and intent to do so.

INTERVENOR NPMHU POSITION

The NPMHU, which intervened in this case in support of the Postal Service's position, sees the question posed by this arbitration -- whether the MOU between the Postal Service and the NALC changed the manner in which employees from other crafts are eligible for cross-craft reassignments -- as being of the utmost importance to the unions, their respective

members and to the Postal Service. The importance of this issue is best exemplified by the Bridge Memo which continues to be part of each union's separate national agreement. The Bridge Memo prohibits any one union and the Postal Service from bilaterally agreeing to change the application and meaning of Article 12 from how it existed under the 1978 National Agreement when the three national postal unions were covered by the same collective bargaining agreement. The Mail Handlers also point to the 1999 Fleischli Award -- which granted an upgrade to the City Letter Carriers -- in which Fleischli explained that such changes should occur only "when necessary to address proven inequity."

In this case, the NPMHU insists, there is no evidence of "proven inequity" to justify an upgrade. Consistent with Vice President Tulino's testimony that the NALC did not justify the request for an upgrade on any change in job duties, Tulino testified not only that he expressly told NALC President Rolando that the Postal Service would not "entertain an upgrade," but also that, in drafting the MOU, the Postal Service "crafted" the language so that it could not be an upgrade because of the implications that had for the Postal Service on bargaining with other postal unions.

In sum, the Mail Handlers argue, given what Fleischli described as the "destructive effect" of upgrades, particularly the impact on what positions would be eligible for cross-craft reassignments, a party desiring to alter the historic relationships between the parties has a heavy standard to meet and a high bar to overcome. Where, as in this case, there is a complete absence of any justification for the upgrade; the drafted language in the MOU does not even reference a change in the relative comparison of positions between bargaining units; and there is clear testimony from Tulino regarding the specific discussions he had with Rolando on this very topic, it must be concluded that the NALC has failed to meet its burden or the heavy standard that properly must be applied in this case.

FINDINGS

This grievance was filed by the NALC seeking an interpretation of the NALC's National Agreement with the Postal Service. The Postal Service and the intervenor Unions agree that only the NALC National Agreement is at issue in this case, although cross-craft assignments occur under provisions of Article 12 that are found in all three National Agreements and that are subject to the Bridge Memo.

The MOU at issue is part of the 2016-2019 NALC National Agreement. There is no question that the MOU provided for an increase in compensation for NALC members, who evidently did not otherwise receive pay raises in that contract. Pay rates for employees in different crafts whose grades have been designated as equivalent have and do vary depending on negotiations or interest arbitration awards.

In contrast to prior agreements or awards providing for an upgrade, the MOU does not include any use of the term "upgrade." It is titled "Pay Schedule Consolidation," and states at the outset the parties' agreement that "all city carrier pay schedules will consolidate existing grade levels into a single grade" and then provides how that is to be accomplished, including:

> Grade 1 career city carriers in RSC Q and RSC Q7 will slot to the equivalent step in Grade 2 of their respective pay schedule, and retain time-in-step credit. The remaining grade level will be classified as "City Carrier."

The record in this case indicates this is the first occasion on which the Postal Service has agreed to or utilized a pay schedule consolidation. The language of the MOU is not so clear as to preclude consideration of its bargaining history, particularly in the context of past upgrades, in an effort to determine the meaning of the parties' agreement as it relates to the issue in this case.

The testimony of Postal Service Vice President Tulino and NALC President Rolando, the principal negotiators, is fairly close. The NALC sought an upgrade for Carriers.

That was an important bargaining goal for the Union. The Postal Service, however, made it clear it could not agree to an upgrade as such, explaining that would trigger demands from other unions to obtain an upgrade. There was no reference to or discussion of Article 12 excessing, withholding of positions or cross-craft assignments, but, as Rolando indicated, it is reasonable to conclude that both of them were "aware of the past and the history."

There is some difference in the testimony of the two principals. Tulino insisted he told Rolando that the Postal Service was not going to agree to an upgrade and explained why not. Rolando testified that Tulino was "fine with the upgrade," but did not want to call it an "upgrade" because Tulino did not want to be in position to give all the unions upgrades.

There is no question that the MOU provided Carriers with the increased compensation they would have received if granted an upgrade. This additional compensation was in lieu of the pay increases negotiated with other unions. Indeed, it was greater, but the Postal Service's assertion that the difference was "paid for" (*quid pro quo*) by other concessions agreed to by the NALC was uncontradicted.

In these circumstances, it would not have been reasonable for the NALC to assume that the Postal Service chose for the first time to structure and agree to the "pay schedule consolidation" set forth in the MOU, instead of agreeing to a traditional upgrade, simply to avoid using the word "upgrade," but with the intent, for Article 12 purposes, to elevate the relative level of CC-1 Carriers, whose grade level was consolidated in the new City Carrier grade level, above that of positions in other crafts that then were at the equivalent level. This is particularly so given that there is no evidence that the duties, responsibilities and/or working conditions of the CC-1 Carrier positions had changed significantly, or that the NALC alleged such changes in negotiations. Past experience, as both parties were aware, indicated that when one craft got an "upgrade" -- as the NALC did in the 1999 Fleischli Award -- that immediately triggered demands by other crafts to regain parity.[3]

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[3] Prior to the Fleischli Award, Carriers were PS Grade 5, as were the bulk of APWU Clerks. As the result of the Fleischli Award, Carriers were upgraded to PS Grade 6 (Technician Carriers continued to receive an additional differential payment). It followed that PS-5 Clerks no longer were at the same level as PS-6 Carriers and no longer could be excessed into Carrier positions.

The fact that the "pay schedule consolidation" ultimately agreed to in the MOU was a new concept proposed by the Postal Service in response to the NALC's demand for an upgrade and the absence of any use of the term "upgrade" in the MOU -- in the context of the discussions between Tulino and Rolando and the past history of Postal upgrades -- surely alerted, or should have alerted, the NALC that the Postal Service understood that by agreeing to the MOU it was not agreeing to change the relative level of Carriers in relation to positions in other crafts. Otherwise, there would have been no apparent reason not to just agree to upgrade CC-1 Carriers to CC-2 and CC-2 Technician Carriers to CC-3.

Given the NALC's knowledge of the Postal Service's concerns, and the NALC's agreement in the MOU to a pay schedule consolidation, which purposely was not delineated as an upgrade, without any discussion of the MOU having an impact on Article 12 excessing or cross-craft assignments, the evidence as a whole supports a finding that the parties' understanding memorialized in the MOU is that it does not have such an effect.

Accordingly, I conclude that (i) the NALC's stated issue should be answered in the affirmative with respect to newly designated City Carrier positions that formerly were CC-1 positions, and (ii) the Postal Service's stated issue should be answered in the negative.

(Thereafter the NALC and the Postal Service agreed to CC-1 and CC-2 positions that were slotted into the ELM Chart as equivalent to PS-6 and PS-7.) In the next round of negotiations, the APWU sought an upgrade for its crafts. It did not achieve an upgrade for PS-5 Clerks in the interest arbitration that concluded those negotiations, but in the next round of negotiations the APWU successfully bargained an upgrade that returned those Clerks to the same level (PS-6) as the CC-1 Carriers as part of an overall compensation package comparable to that achieved by the other Unions.

AWARD

The Postal Service's position in this case is affirmed as set forth in the above Findings.

Shyam Das, Arbitrator

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: B00M-1B-C03153176
Class Action
North Reading, MA 01889-7060

Dear John:

Our representatives met, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether bidding is restricted to sectional bidding as per article 12.6C4 after changing off days.

The parties agree that when it is necessary that fixed scheduled day(s) of work in the basic work week for a craft assignment be permanently changed, including during periods of excessing to the needs of a section, the affected assignment(s) shall be reposted for all employees eligible to bid within the installation.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. Accordingly, we agree to remand this case to Step 3 for discussion and possible resolution as to the appropriate remedy or regional level arbitration in keeping with the provisions of the Memorandum of Understanding, Step 4 Procedures.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this grievance to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Sincerely,

Allen Mohl
Labor Relations Specialist
Contract Administration (NPMHU)

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 1-7-10

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Grievance: Separating Casuals
	)	
and	)	Case No.: HOC-NA-C 12
	)	
AMERICAN POSTAL WORKERS UNION	)	
	)	
with	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS (as Intervenor)	)	

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Postal Service: Mr. David Karro

For the APWU: Mr. Darryl Anderson

For the NALC: Ms. Susan Panepento
Mr. Keith Secular

PLACE OF HEARINGS: Washington, D.C.

DATES OF HEARINGS: March 14, 2000
June 7, 2000

POST-HEARING BRIEFS: February 26, 2001

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the language of Article 12.5.C.5.a(2) allows the Employer discretion in separating casuals to the extent that the discretion is exercised in a manner consistent with this report and decision. Based on evidence presented to the arbitrator in this case, the Unions are not entitled to a nationwide remedy. It is ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: July 27, 2001

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION BETWEEN UNITED STATES POSTAL SERVICE AND AMERICAN POSTAL WORKERS UNION WITH NATIONAL ASSOCIATION OF LETTER CARRIERS (as Intervenor) (Grievance: Separating Casuals) (Case No.: HOC-NA-C 12)	)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from November 21, 1990 through November 20, 1994. Hearings took place on March 14 and June 7, 2000 in a conference room of the North Building of the United States Postal Service Headquarters located at L'Enfante Plaza in Washington, D.C.

The hearings proceeded in an orderly manner. The parties had a full opportunity to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. Ms. Lisa Sirard and Mr. Peter K. Shonerd of Diversified Reporting Services, Inc. tape-recorded the proceedings and submitted a transcript of 371 pages. The advocates fully and fairly represented their respective parties.

Prior to hearings on the merits, the Employer challenged the procedural and substantive arbitrability of the disputes; and the arbitrator on November 24, 1999 issued an award finding the matter to be procedurally and substantively arbitrable. Consequently, the matter proceeded to hearings on the merit. The parties elected to submit the matter on the basis of evidence presented at the hearings as well as post-hearing briefs, and the arbitrator officially closed the hearing on February 26, 2001 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Does Article 12.5.C.5.a(2) of the agreement between the American Postal Workers Union and the Employer grant the Employer discretion in separating casuals when doing so will minimize the impact on the regular workforce? If there has been a contractual violation, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 12 - PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENT

Section 5.C.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:

(2) Shall, to the extent possible, minimize the impact on regular workforce employees by separation of all casuals.

IV. STATEMENT OF FACTS

In this case, the Union argued that the Employer is permitting widespread violations of Article 12.5.C.5.a(2) to occur nationwide and that such continuing violations can be prevented by a national level arbitration decision. The dispute between the parties has deep roots. In 1991, Mr. William Burrus, APWU Executive Vice-president, discovered that the APWU's interpretation of language in Article 12.5.C.5.a(2) of the agreement between the APWU and the Employer was not in sync with management's interpretation and application of the labor contract. Consequently, he initiated discussions with Ms. Sherry Cagnoli, Assistant Postmaster General in the Labor Relations Department. On November 6, 1991, they began a correspondence about the matter in an effort to clarify the correct interpretation of the disputed provision.

The dispute went through years of discussions and negotiation. Ultimately, it became a formal grievance which the Employer rejected. When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Unions

The American Postal Workers Union (and the National Association of Letter Carriers as Intervenor) argue that, although the Employer now says it agrees with the Unions' interpretation of Article 12.5.C.5.a(2), widespread violations of the provision continue to occur throughout the nation. Accordingly, the Unions maintain that they are entitled to have the parties' stipulated understanding of the disputed contractual provision set forth in a national level arbitration award. Such a decision, then, can be used as a benchmark to adjudicate all pending grievances as well as continuing violations and future disputes. Hence, the Unions seek such a national award in this matter.

B. The Employer

The Employer argues that the Unions are not entitled to an interpretive award in this case because the parties do not disagree about the correct interpretation of the disputed contractual provision. The Employer argues that, when the APWU realized the Employer incorrectly understood

the nature of the problem at Step 4, the Union had an obligation to clarify its understanding of the labor contract. The APWU's failure to do so allegedly foreclosed its right to appeal to arbitration under Article 15.3.D of the labor contract.

The Employer also argues that the arbitrator is without authority to act in this matter because the Union is no longer seeking an interpretation of disputed contractual language. It is the belief of the Employer that the APWU, with the agreement of the NALC, is asking that the arbitrator rewrite negotiated language of the labor contract. Since such language allegedly is not the subject of dispute and does not constitute an interpretive issue, the parties' collective bargaining agreement does not authorize the arbitrator to act. Hence, the Employer urges that the grievance be denied.

VI. ANALYSIS

A. Context of the Dispute

The dispute before the arbitrator centers on Article 12.5.C.5.a(2). It states:

> When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:
>
> (2) Shall, to the extent possible, minimize the impact on regular workforce employees by separation of all casuals. (*See* Joint Exhibit No. 1, p. 52, emphasis added.)

The crux of the dispute revolves around the words "to the extent possible." The Unions argue that this language modifies the phrase "minimize the impact on regular workforce employees." According to the Unions' theory of the case, the Employer is left with no discretion when separating casual employees if such separation minimizes the impact on the regular workforce. On the other hand, the Employer believes that management retains discretion with regard to separating casuals if they are not separated due to operational requirements. Such reasoning led the Unions to conclude the Employer was arguing that the language "to the extent possible" modified the phrase "by separation of all casuals."

On the initial theory that the arbitrator was without jurisdictional authority, the Employer contested the procedural and

substantive arbitrability of the dispute; and hearings on this matter were held on July 13 and September 1, 1999. On November 24, 1999, the arbitrator concluded that there was a contractual basis for proceeding to the merits of the case.

At hearings on the merits, the Employer stated for the first time that it agreed with the Union's interpretation of Article 12.5.C.5.a(2) of the APWU's National Agreement. The parties agreed the language of Article 12.5.C.5.a(2) means:

> 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.

With the ambiguity of the disputed language clarified, the Employer reasoned that the grievance was moot and immediately should be dismissed on the merits by the arbitrator. The Unions, on the other hand, argued that the Employer could not avoid an adverse decision by merely conceding the Unions' interpretation of the issue on the merits. The Unions continued to see a need for a decision on the merits because of the fact that the Employer allegedly has not uniformly applied this new interpretation of the agreement for the last eight years. The Employer insisted, however, that management always has applied the stipulated interpretation in its reassignment of excess regular workforce employees

nationwide and that it merely was confused over the years about the Unions' position in the matter.

B. Revisiting Arbitrability

At the hearings on the merits of the case, the Employer, in effect, once again raised issues with regard to the procedural arbitrability of the dispute. The Employer argued once again that it had not been given proper notice with regard to the fundamental issue in dispute and that, therefore, the grievance should be dismissed. Additionally, the Employer argued at the hearings on the merits that the Union did not comply with its obligation under the APWU-USPS agreement to clarify the disputed issue and to attempt to resolve the conflict at the lowest possible level. Those arguments constituted renewed challenges to the procedural arbitrability of the dispute.

The parties devoted two hearings exclusively to the issue of jurisdictional challenges to the arbitrator's authority in this matter. During the earlier hearings, the Employer had every opportunity to present evidence and raise arguments, and in fact did so, in an effort to forestall an

examination of the dispute on the merits. After receiving considerable evidence with regard to jurisdictional challenges and issuing an extensive report on threshold issues, the arbitrator decided in 1999 that the matter was both procedurally and substantively arbitrable. The initial award authorized the parties to proceed to the merits of the case. Since the precise issue of procedural arbitrability has been fully addressed, arguments now raised by the Employer with regard to jurisdictional challenges are precluded by the doctrine of res judicata; and the earlier jurisdictional award must be followed both because it has precedential value and also assures continuity of interpretation. It is binding on this arbitrator and the parties in an absolute sense.

C. A Need for a Decision on the Merits?

Alternatively, the Employer asserted the concept of mootness. According to the Employer, the dispute before the arbitrator is now moot because there no longer exists any controversy between the parties about the appropriate interpretation of the disputed provision in the APWU agreement. In the Employer's view, all the parties now agree with regard to

the meaning of Article 12.5.C.5.a(2). The Employer reasoned that, because management stipulated to the Unions' interpretation of the contractual language under review, the controversy is now moot; and the arbitrator is without any authority to issue a decision on the merits. Such a theory of the case, however, failed to be persuasive.

Arbitral authority under a grievance procedure devolves from a contract between parties. All an arbitrator is empowered to do is read and interpret words of an agreement. As Professor Theodore St. Antoine, past-president of the National Academy of Arbitrators, observed, "The arbitrator is the parties' officially designated 'reader' of the contract." (*See* 30 NAA 30 (1977).) This proposition means that an arbitrator must be subservient to no party but servant of all.

Article 15.1 of the APWU-USPS agreement states that a "grievance" is a disagreement "which involves the interpretation, application of or compliance with the provisions of this agreement." (*See* Joint Exhibit No. 1, p. 75.) Article 15.3.D states 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. (*See* Joint Exhibit No. 1, p. 81.)

Article 15.4.D further limits national level arbitration proceedings to "only cases involving interpretive issues" of the parties' negotiated agreement. (*See* Joint Exhibit No. 1, p. 87.)

The Union has pursued this dispute since 1991. During the ensuing decade, there have been numerous attempts to reach a negotiated settlement; but such efforts never came to fruition. Whether their inability to reach agreement with regard to the disputed language was caused by a misunderstanding of the issue or was due to shifts in the Employer's position is unclear from the evidence. What is clear, however, is that representatives of the parties have authority to settle disputes in accordance with Article 15 guidelines.

The fact that the parties did not settle the dispute during the last ten years indicates the existence of some level of a continuing dispute, if only abstractly. It matters little whether the parties were unable to resolve the conflict because they do not entirely agree on the meaning of the language, its application, or the Unions' entitlement to a remedy for alleged violations of the agreement. The fact that the parties were unable to enter into a settlement agreement shows the existence of a substantial dispute. Article 15 of the APWU-USPS agreement as well as authority inherent in NALC's status as an intervenor empower the arbitrator to resolve

contractual disputes inherent in the issues submitted to him. The point is that the Employer's current lack of disagreement with the Unions' contractual interpretation does not trigger the concept of mootness because there remain disputes regarding whether the Employer has applied the disputed provision in accordance with the stipulated agreement.

D. A Nationwide Interpretation?

The parties agreed that Article 12.5.C.5.a(2) means:

> All casuals have to be removed if it will minimize the impact on regular workforce employees. The Employer must eliminate all the casuals to the extent that it will minimize the impact on the regular workforce.

Despite presently agreeing on the interpretation of the disputed provision, the parties continue to disagree with regard to whether the Employer consistently acted in accordance with this interpretation when applying the contractual provision. The Employer insisted that the provision has been and is being applied in accordance with the parties' negotiated intent.

Mr. Brian Gillespie, the Employer's Executive Program Director of the Pacific Area, testified about 1973 contract negotiations when the parties first discussed excessing issues. He recalled the APWU

proposed changes to the National Agreement that included language requiring all casuals to be completely separated from the employee complement before any regular workforce employee could be reassigned. But the Union was unsuccessful in getting such a commitment codified into the National Agreement. The parties, however, agreed to four principles that were drafted into Section 4 of Article 12 in the agreement. They intended for the four principles to overarch the rest of Article 12.

As someone present at the main negotiation table in 1973, Mr. Gillespie offered the following observation about his work on Article 12:

> I think the language commits the Postal Service to look at its workforce and separate a casual if by doing that it will eliminate the need to reassign the full-time employee, because by and large we're only talking reassignments of full-time people. If it doesn't do that, if it doesn't eliminate it, if it merely defers it or doesn't really mitigate it, the Postal Service is entitled to keep the casual. (*See* Tr., June 7, 2000, 68.)

Later in 1975 the Employer issued a Regional Instruction on the subject of reassigning excess craft employees. Although it went out under the signatures of several Postmasters General, Mr. Gillespie actually drafted the Instruction. It explained the Employer's understanding of its obligations under Article 12.5.C.5.a(2). The Employer further codified its understanding in a publication entitled "Reference and Training Guide for Article 12: Reassignment Principles and Requirements," (*See* Employer's

Exhibit No. 1.) Mr. Gillespie insisted that postal officials at Headquarters consistently required managers to follow the policy as described in his testimony.

Mr. Robert Brenker, Headquarters Field Labor Relations Specialist, concurred with Mr. Gillespie's description of the policy and its application. He testified as follows:

> It has been continuously the same policy [as described by Vice-president Burrus] that if we can reduce casuals and save someone from being excessed, we would do it. If we can reduce them [casuals] and create full-time assignments, eight within nine or eight within 10 five days a week, we would do it. (*See* Tr. March 14, 2000, pp. 78-79.)

According to Mr. Brenker, management enjoys administrative discretion if its decisions only defer a regular workforce separation; and, in such circumstances, the Employeer is not required to separate a casual employee. In other words, the Employer understands its obligation to be that of separating a casual worker if doing so will eliminate a need to reassign a regular workforce employee. But if separation of a casual employee will only defer the reassignment of a regular workforce employee, then the Employer maintains that it is not contractually obligated to separate the casual worker.

Ms. Eleanor Williams, Regional Labor Relations Specialist, also testified that managers have found no ambiguity in the meaning and

application of the policy. She testified that the policy requires separation of casual employees if doing so prevents a reassignment of a regular workforce employee. She also stated that, before reassignments are made, the Union is issued an Impact Statement and given an opportunity to object. She insisted that it would be impossible, in view of the Impact Statements, for the Employer to violate Article 12.5.C.5.a(2) without the Unions' immediate knowledge. The parties agreed that Mr. Paul Driscoll, Headquarters Labor Relations Specialist, and Ms. Linda Schumate, Regional Labor Relations Specialist, would have testified in accordance with testimony from Mr. Brenker and Ms. Williams had they been called to do so.

E. A Dissenting Viewpoint

The Union vigorously challenged the Employer's claim of across-the-board conformity with the agreed interpretation of Article 12.5.C.5.a(2) when excessing regular workforce employees. Mr. James Burke, APWU Eastern Region Coordinator, testified that, as recently as April of 2000, the Employer notified the Union it would excess 144 clerks at

a Philadelphia, Pennsylvania installation. While the Employer's Impact Statement demonstrated an intent to excess this large number of regular workforce clerks, the number of clerk casuals, 182, was not being reduced. Additionally, the Union received written notice that 38 clerk positions were to be excessed from the South Jersey Processing and Distribution Center, as well as 465 clerks in the Allegheny area. Management told Union officials that there were no plans to eliminate any casuals from those facilities.

Mr. Leo Persails, APWU Central Region Coordinator, testified that, in April of 2000, management informed him of 78 clerk positions to be excessed from the Cincinnati Processing and Distribution Center. Yet, the Impact Statement indicated no change in the number of clerk casuals or any reduction in the number of clerk casual work hours. Although a March, 2000 Impact Statement covering the Columbus Processing and Distribution Center indicated that 54 clerks were to be excessed, there was no corresponding change in the number of clerk casuals or clerk casual work hours.

Mr. Terry Stapleton, APWU Southern Region Coordinator, testified about an Impact Statement concerning a reduction of regular workforce employees at the Houston Processing and Distribution Center.

This Impact Statement revealed that the number of casuals on the Employer's payroll remained the same as before management excessed regular workforce employees. Likewise, an Impact Statement from a Gulfport, Mississippi installation revealed that the number of casuals or casual hours were not being reduced, despite the fact that 19 regular workforce employees were scheduled to be excessed.

F. A Need for More Evidence

Testimony from the Union stood in stark contrast to the Employer's confident assertion of nationwide compliance with the agreed interpretation of Article 12.5.C.5.a(2). Yet, the Unions' evidence raised suspicions regarding how the Employer is applying the disputed contractual provision. But it did no more than raise suspicions. The Unions had the affirmative of the issue and needed to show by at least a preponderance of the evidence that there is a direct causal connection between the conflicting data and a violation of the parties' labor contract. Facts are stubborn things and must provide the basis for an interpretive decision. Speculation will not

suffice. While the evidence in this case was sufficient to raise suspicions, the Unions did not present evidence that demonstrated a specific contractual violation.

The arbitrator, for example, did not receive evidence that excessed regular workforce positions could have been retained had the Employer eliminated casuals. The parties agreed that the Employer was only obligated to separate casual workers if doing so would yield sufficient hours for a regular workforce clerk, that is, eight hours within nine or ten hours, five days a week. While the Union presented overwhelming evidence suggesting that regular workforce clerks are being separated without a corresponding reduction in casual clerks, the arbitrator received no clearcut evidence demonstrating that the retained casual hours could have resulted in the required configuration and, thus, would have required separation of the casuals in accordance with the parties' mutual interpretation of Article 12. Such evidence is needed not only to establish a contractual violation but also to ascertain damages, if a nationwide remedy were to be fashioned.

The totality of the record submitted to the arbitrator was not sufficient to establish that, while there now is uniformity in the parties' understanding of the disputed provisions, it was violated in this particular case. Nor was there sufficient evidence of harm to ascertain damages.

These are factual issues to be addressed on a case-by-case basis. It also must be established on a case-by-case basis whether or not the Unions should have been on notice of any previous contract violations.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the language of Article 12.5.C.5.a(2) allows the Employer discretion in separating casuals to the extent that the discretion is exercised in a manner consistent with this report and decision. Based on evidence presented to the arbitrator in this case, the Unions are not entitled to a nationwide remedy. It is ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: July 27, 2001

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National Arbitration Panel

In the Matter of Arbitration	)	
	)	
between	)	
	)	
United States Postal Service	)	
	)	
and	)	
	)	
National Association of Letter Carriers	)	**Case No. Q94N-4Q-C 99052344**
	)	
and	)	
	)	
American Postal Workers Union - Intervenor	)	
	)	
and	)	
	)	
National Postal Mail Handlers Union - Intervenor	)	

Before: Shyam Das

Appearances:

For the Postal Service:	**Lynn D. Poole, Esq.**
For the NALC:	**Keith E. Secular, Esq.**
For the APWU:	**Melinda K. Holmes, Esq.**
For the NPMHU:	**Bruce R. Lerner, Esq.**
Place of Hearing:	**Washington, D.C.**
Dates of Hearing:	**January 14, 2009** **February 6, 2009**

Date of Award:	**November 11, 2009**
Relevant Contract Provision:	**Articles 3 and 12**
Contract Year:	**1994-1998**
Type of Grievance:	**Contract Interpretation**

Award Summary

The provision in Article 12.5.C.5.a(2) for "separation of all casuals" applies to casuals in the affected or losing craft, and not to casuals in other crafts.

Shyam Das

Shyam Das, Arbitrator

At issue in this case is the meaning of the term "all casuals" in Article 12.5.C.5.a(2) of the 1994-1998 National Agreement between the Postal Service and the National Association of Letter Carriers. The National Agreements of the American Postal Workers Union and the National Postal Mail Handlers Union contain the same contractual provision, and both of those Unions have intervened in this national arbitration proceeding.[1]

Sections 4 and 5 of Article 12 contain extensive provisions relating to the involuntary reassignment of employees for operational reasons. Relevant to this dispute are the following provisions:

> 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.
>
> 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

[1] Unless otherwise stated, all further contractual references are to provisions of the 1994-1998 National Agreement between the Postal Service and the NALC, which was in effect when this grievance was initiated. Identical provisions are included in the APWU and NPMHU National Agreements.

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 believes 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 hour and craft. The Unions will be periodically updated by the Region should any of the information change due to more current data being available.

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.

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.

Section 5. Reassignments

A. Basic Principles and Reassignments

When it is proposed to:

1. Discontinue an independent installation;

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

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

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

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

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

7. Reassignment -- motor vehicles;

8. Reassignment -- part-time flexibles in excess of quota; such actions

shall be subject to the following principles and requirements.

B. Principles and Requirements

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

* * *

C. Special Provisions on Reassignments

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

* * *

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;

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

(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. The 5-year rule does not apply.

* * *

> 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....
>
> (Emphasis added.)

As provided above, when an installation must reduce the number of employees more rapidly than is possible by normal attrition, Article 12.5.C.5.a(2) requires that the installation:

> Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals.
>
> (Emphasis added.)

The present grievance originally included a dispute as to the meaning of the words "to the extent possible" in this provision. That dispute was resolved in a national arbitration case involving an APWU grievance, in which the NALC intervened -- Case No. HOC-NA-C 12 (Snow 2001). In that case, the parties agreed the language of Article 12.5.C.5.a(2) means:

> 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.[2]

The remaining dispute is whether the words "all casuals" means all casuals regardless of craft or Union, as the Unions maintain, or all casuals in the affected (or losing) craft, as the Postal Service contends.

The reassignment provisions in Section 5 of Article 12 originated in Article XII of the original collective bargaining agreements between the Post Office Department and the then existing postal Unions in the 1960s. The reassignment provisions in Article XII were set forth in two Sections. Section 1 covered all crafts except the clerk craft, which was covered by Section 2. Both Sections 1 and 2 included the same provision on separation of casuals in Paragraph C.5.a(2). This

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[2] In his decision, Arbitrator Snow also stated: "The parties agreed that the Employer was only obligated to separate casual workers if doing so would yield sufficient hours for a regular workforce clerk, that is, eight hours within nine or ten hours, five days a week."

provision, as set forth in Article XII of the 1968-1970 Agreement -- the fourth such agreement -- stated that the installation:

> Shall, to the extent possible, minimize the impact on career employees by separation of all temporaries; postal assistants, seasonal assistants, etc;

In 1971, following the Postal Reorganization Act, the Postal Service and the postal Unions agreed to a National Working Agreement. As part of this 1971-1973 Agreement, the parties agreed to adopt or carry forward a number of prior regulations and provisions of the 1968 Agreement without substantive change, including Article XII governing reassignments. The NALC and APWU each printed their own version of the 1971 Agreement, which included the language of Article XII of the 1968 Agreement, with some modifications. The applicable provision in the NALC and APWU printed versions read as follows:

> Shall, to the extent possible, minimize the impact on full-time regular or part-time flexible employees by separation of all casuals, postal assistants, employees doing bargaining unit work and not in one of the bargaining units, etc.[3]

There was no agreement by the Postal Service to this particular wording of this provision.

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[3] In the 1971 Agreement, casuals replaced temporaries.

In 1973, the Postal Service and the then four national Unions agreed to a collective bargaining agreement and jointly agreed to a printed version of that 1973-1975 Agreement. The 1973 Agreement contained an Appendix A whose preamble states:

> Appendix A is an incorporation of the principles of Reassignments as contained in Article XII of the March 9, 1968, National Agreement. The old Article XII has been edited to conform with the new employee classifications. In addition, other word changes have been incorporated to bring Article XII up to date with present terminology; however, there have been no substantive changes.

The applicable provision in Appendix A of the 1973 Agreement states that the installation:

> Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals, postal assistants, seasonal assistants, etc.;

Article XII of the 1973 Agreement also included an entirely new Section 4 entitled: "Principles of Reassignments." Appendix A and Section 4 of Article XII of the 1973 Agreement were carried forward -- with some modifications not relevant here -- in the 1975-1978 Agreement.

In the 1978-1981 Agreement, the parties eliminated Appendix A and incorporated its provisions as Section 5 of

Article XII.[4] The applicable provision in Section 5.C.5.a(2) eliminated the reference to "postal assistants, seasonal assistants, etc.," and reads exactly as it does in the 1994 Agreement at issue in this case.

The Postal Service presented as a witness Brian Gillespie, who retired from postal management in 2005. Gillespie testified that he was hired as a management intern in the Post Office Department in 1966. In 1969 he became a Labor Relations Specialist at headquarters, a position he continued in after Postal Reorganization in 1971. He developed expertise in seniority, posting and reassignment.

Gillespie testified that based on discussions with his superiors he understood that the reference to separation of "all temporaries..." in the applicable provision in Article XII of the 1968 Agreement was to all temporaries in the affected or losing craft. Gillespie stated that this was consistent with the manner in which the provisions relating to Reduction in the Number of Employees in an Installation Other Than by Attrition -- now in Article 12.5.C.5 -- were and are applied: management calculates the reduction in a particular craft in terms of work hours and applies 12.5.C.5.a(1) through (3) to determine the number of positions that are to be excessed from that craft, Article 12.5.C.5.a(4) then is applied to reassign the excess employees into vacant positions in other crafts, which typically

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[4] The 1978 Agreement also eliminated Sections 1 and 2, ending the separation of the clerk craft reassignment provisions from the provisions covering all other crafts.

have been withheld in anticipation of such excessing and temporarily filled by casual employees or expanded PTF hours.

Gillespie was the Postal Service's lead negotiator on reassignment issues in the 1973 negotiations. He explained that the Postal Service had embarked on a major initiative to create Bulk Mail Centers, which would result in significant reassignments within installations and to other installations, including the new BMCs. The Unions, he stated, raised concerns regarding their role in the planning process at the national level and as to whether some excessing might actually turn out to have been unnecessary. The Unions also proposed some changes to the existing reassignment provisions in Appendix A, including eliminating the phrase "to the extent possible" from the provision in issue relating to separation of casuals. Gillespie stated that the Postal Service would not agree to the Union's proposal, but he developed a concept paper to try to alleviate the Union's concerns. Gillespie said the substance of his concept paper ultimately was incorporated as the new Section 4 (Principles of Reassignment) in Article XII of the 1973 Agreement. Gillespie stated that the Postal Service told the Unions that these new provisions would overarch the existing reassignment provisions in Appendix A that had been carried over from the 1968 Agreement.

Included in Article XII, Section 4 of the 1973 Agreement was the provision now set forth in Article 12.4.D, which states:

> 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....
>
> (Emphasis added.)

Referring to the corresponding provision relating to separation of casuals in Paragraph C.5.a(2) of Sections 1 and 2 of Appendix A, which predated Postal Reorganization, Gillespie testified:

> ...that language had been interpreted and applied to be all of the temporaries or their successors, casuals, in the affected craft in that installation. That was the same language that we gave the Unions, the same concept in the concept paper, and it spoke to when we are excessing outside the facility to separate casuals in the affected craft, to the extent possible in the affected craft and installation.

Gillespie testified that most of the BMC reassignments occurred between 1973 and 1976. In accordance with Section 4 of Article XII, the Postal Service met with the Unions and provided its reassignment plans. Those plans, he said, specified only the separation of casuals in the affected craft. The Unions, he stated, did not object or claim that all casuals, not just those in the same craft, had to be separated pursuant to the provision in Appendix A now found in Article 12.5.C.5.a(2).

The APWU introduced as an exhibit a set of Regional Instructions on the reassignment of excess craft employees

issued by postal headquarters in November 1975. This document refers to the contractual requirement to separate casual employees and reduce PTF hours, to the extent possible. The APWU stresses that this document does not state any limitation on which casuals are to be separated. Gillespie testified that he drafted this document, and that the reference to reducing casuals was to casuals in the affected craft, based on the provisions then found in Appendix A.

The Postal Service introduced as exhibits two letters sent to the Mail Handlers Union at the national level. In the first, dated December 1976, Assistant Postmaster General Gildea in Labor Relations responded to an inquiry from that Union regarding the use of the term "casual" in, for example, Section 1, Paragraph C.5.a(2) of Appendix A. Gildea stated the Postal Service's opinion that the provisions in Paragraph C.5 of Appendix A and Article XII, Paragraph D (presumably a reference to Section 4.D)

> ...must be read, and applied, as a whole, in determining how the employee complement will be reduced. In our opinion, these provisions provide that the procedures for reducing the number of employees within an installation will be applied on a craft by craft basis....

The second letter, dated September 1977, is a fourth step grievance response by General Manager Merrill in Labor Relations, which states:

> It is our position that the term "all casuals" as the term is written in Section 1, Paragraph C.5.a(2) of Appendix A does not infer that casuals of all crafts "to the extent possible," must be separated prior to excessing employees from a particular craft.
>
> The procedures outlined in Section 1, Paragraph C.5.a must be read and applied as a whole in determining how the employee complement will be reduced. In our opinion, these provisions provide that the procedures for reducing the number of employees within an installation are to be applied on a craft-by-craft basis.

The Postal Service also presented testimony from two witnesses, Managers Robert Brenker and Michael Mlarker, in support of its contention that historically, in applying the reassignment provisions in Article 12.5.C.5.a, the Postal Service, in determining the number of employees who must be excessed, minimizes the impact on the regular workforce by separating casuals in the affected craft. Similarly, it reduces PTF hours in the affected craft, pursuant to subparagraph (3) of that provision. It also reduces overtime and transitional employees in the affected craft. These witnesses noted that impact statements provided to the affected Unions pursuant to Section 4 of Article 12 showed the planned reduction of casuals only in the affected crafts.

The APWU submitted into evidence several management documents to show that the parties understood the language of Article 12.5.C.5.a(2) to encompass all casuals regardless of craft. The earliest of these documents is a summary of the various requirements of Article 12 issued to the field by James

Holmes, Regional Director of Human Resources for the Central Region, in March 1988. This document includes the following statement:

> e. Prior to reassigning full time employees, it is necessary to minimize the impact on the regular work force employees by separating all casual employees, regardless of designation/ activity code, to the extent possible. (Ref: Article 12, Section 5.C.5.a.2.)[5]

The other documents, all of which appear to duplicate the text in the Holmes document, consist of: (i) a booklet, evidently distributed in 1989, consisting of guidelines for Article 12 which states that it was jointly developed by Central Region Labor Relations staff and Central Region APWU officials; (ii) an undated Central Region Computer Program on Article 12 which states that the APWU, NALC and NPMHU all participated in its formation; and (iii) an undated document, evidently prepared by Labor Relations in the Eastern Region, which APWU witness Greg Bell testified was in his possession while he was President of the Philadelphia Local from 1986 to 1995, although it never had to be applied.

Postal Service witness Mlarker testified that he reported directly to Central Region Director Holmes when Mlarker served as Regional Complement Coordinator for the Central Region

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[5] This document further states:

> f. Reduce part-time flexible hours to the extent possible regardless of craft designation. (Ref: Article 12, Section 5.C.5.a.3)

from 1990 to 1997. He insisted that during that period they did not apply Article 12.5.C.5.a(2) in the manner described in the 1988 Holmes document, but only separated casuals in the affected craft when applying that provision. He further stated that Holmes never told him to follow the 1988 Holmes document, nor did the Unions ever cite it.

In 1991, Labor Relations at headquarters issued an Article 12 Reference and Training Guide, which states, with respect to Article 12.5.C.5.a(2):

> a(2) This requires management to minimize the impact on the regular workforce by separating casuals to the maximum extent possible. This provision does not require the automatic separation of all casuals prior to reassigning an excess employee across craft lines. It does require us to minimize the impact as much as possible, but there may be occasions when we will not be able to do so.
>
> (Emphasis in original.)

Postal Service witness Brenker testified that he put this document together and that he was referring only to casuals in the affected craft, and that is how he has explained it in training sessions.

Phillip Hart, Director of City Delivery at the NALC, testified that he dealt with Article 12 issues when he served as an NALC representative in the Western Region and, later, the Pacific Area. He said he never got into disputes over Article 12.5.C.5.a(2), but that as a trainer of stewards and branch

officers, he taught that the reference to "all casuals" applied to casuals in all crafts at the installation.

UNION POSITION

The Unions contend that the language, purpose and structure of Article 12 compel the conclusion that Section 5.C.5.a(2) refers to all casuals. Indeed, the Unions argue, no other construction is compatible with the literal language at issue. This language was originally drafted, prior to Postal Reorganization, in the context of a single national collective bargaining agreement to which all Unions were parties. Article XII of that agreement covered all career employees regardless of craft, and all casuals, regardless of craft (then temporaries). The pertinent language states that the obligation to separate casuals is triggered when "for any reason an installation must reduce the number of employees" in the installation, without reference to craft. Paragraph 5.a(2), in turn, requires "that installation" to "minimize the impact on regular work force employees" without reference to craft. And the language requiring the "separation of all casuals" makes no reference to craft.

The Unions assert that separating a casual to allow an excess letter carrier to continue working in the same installation in the clerk craft reflects the precise language of Article 12.5.C.5.a(2). It ensures that the "impact on regular workforce employees" is "minimized" by reducing to the absolute minimum the reduction in total number of regular workforce employees at that installation that otherwise would be required.

The Unions reject the interpretation of the relevant language provided by Postal Service witness Gillespie. Essentially, Gillespie argued that the provision in issue should be read as one in a series of steps to be taken by management before any employees are reassigned within the installation across craft lines. This approach effectively interprets "minimizing the impact on regular workforce employees" as really meaning "minimizing the number of employees within each craft who must be reassigned outside the craft." But that is not what the contract says. In the Unions' view, Gillespie's argument is no mere interpretive gloss; it is a complete rewriting of the language.

The Unions cite a half dozen regional arbitration awards, mostly APWU cases, all of which support their interpretation of Article 12.5.C.5.a(2).

The Unions stress that the explicit primary principle of the reassignment principles and procedures in Sections 4 and 5 of Article 12 is "that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum." Consistent with this primary purpose, Section 5.C.5 establishes that the first priority is to keep an excessed employee within their installation, by providing a multi-step process to avoid reassigning a regular employee out of their installation. First, to minimize the impact on regular employees the Postal Service must separate all casuals. Then it must reduce PTF hours. Then, in order to keep the excessed employee in their installation, the Postal Service must reassign this employee to

vacant assignments in other crafts in the same installation. Only after all of these steps are exhausted, can the Postal Service reassign a regular employee out of their installation.

The contractual imperative to avoid dislocation to regular employees, the Unions assert, reflects the significant impact of reassigning a regular employee to a different installation. An employee may be reassigned to installations within 100 miles of the losing installation or to more distant installations. Such an employee would have to sell their house, purchase another house and relocate their family. Or, in the alternative, the employee would have to commute hundreds of miles a day, incurring large driving expenses. The Unions note that the Postal Service does not reimburse dislocated employees for many expenses associated with moving, including losses in buying or selling real estate.

The Unions point out that their interpretation would require the Postal Service to separate a casual regardless of the craft in those situations where the separation would create an opportunity for the career employee to remain in their home installation. The Postal Service's position, by contrast, would necessitate the transfer of the career employee for the sole purpose of retaining the casual. Such a result clearly is inconsistent with the fundamental purpose of Article 12.

The Unions maintain that management's reliance on Section 4.D of Article 12 is unavailing. There is no basis for the suggestion that 4.D narrows the application of Section 5.C.5.a(2). More likely, the Unions assert, is that this

provision was designed to cover various excessing situations for which there had been no contractual requirement that casuals first be separated, such as those covered by Section 5.C.2 and Section 5.C.6. The Unions emphasize that Section 4.D sets forth general principles for reassignment. Section 5.C presents special provisions on reassignments that are to be applied in addition to the general principles. The specific requirement in Article 12.5.C.5.a(2) takes precedence over the more general Article 12.4.D requirement. If anything, the language of Section 4.D establishes that the parties knew how to craft language limiting the separation of casuals by craft. Yet, no such language appears in Section 12.5.C.5.a(2).

The Unions argue that Postal Service witness Gillespie's testimony that there was an understanding in the 1960s that the relevant provision only required the separation of casuals in the craft of the affected regular employee should be given little weight. His testimony was based solely on hearsay conversations, and there is no evidence that the asserted internal management understanding was shared with, let alone accepted by, any Union officials. Indeed, the Unions' printed versions of the 1971 Agreement persuasively undercut any argument that they accepted Gillespie's interpretation. Those printed versions expressly called for separation of all casuals "not in one of the bargaining units."

The Unions also point out that the claim by management that the Unions historically have acquiesced in its view that only casuals in the same craft are to be separated is belied by the various regional arbitration awards sustaining grievances

filed by the NALC and APWU to the contrary. In addition, the record indicates that over the past 20 years there have been very few instances in which letter carriers have been excessed at all and rarely from offices where casuals were employed. Thus any occasions on which the interpretive issue raised here could have arisen would have been extremely rare.

Accordingly, the Unions maintain, there is no basis for any argument that there has been a mutually agreed practice of limiting the separation of casuals along craft lines in the letter carrier craft, and testimony by APWU witness Greg Bell established that the separation of casuals historically has been a matter of dispute between the Postal Service and the APWU. Furthermore, the record shows there has not been a consensus as to the meaning of Article 12.5.C.5.a(2) within postal management.

The Unions point out that reassigning an excessed regular carrier to a temporary position created by separation of a clerk casual can be part of a strategy to minimize dislocation to that carrier. For example, if the Postal Service plans to excess a regular carrier to an installation 100 miles away, but the carrier's installation employs a casual in the clerk craft for eight hours a day on a temporary basis and another letter carrier is scheduled to retire in 45 days, the installation can separate the casual and allow the carrier to remain in his or home installation until a regular position is available. Alternatively, allowing the carrier to work temporarily in the casual clerk assignment may allow time for a vacancy to open in another installation much closer to the carrier's home. In each

of these situations, separating the casual minimizes the impact of the assignment on the excessed carrier.

The Unions also note that at the time this grievance arose the Postal Service was employing casuals on an ongoing basis in lieu of regular employees. In that historical context, there have been numerous opportunities to provide employment to career employees who otherwise would be excessed by separating casuals.

The Unions disagree with the suggestion by the Postal Service that separating all casuals regardless of craft will create delays caused by the posting and bidding process. They point out that the fact that the reassigned employee is from another craft does not increase whatever difficulties may arise in the bidding process following the separation of a casual.

EMPLOYER POSITION

The Postal Service contends that its interpretation of Article 12.5.C.5.a(2) better comports with the language of the collective bargaining agreement. Subsection a(1), which introduces the remaining subsections under 12.C.5.C.a, requires the Postal Service to determine the number of excessed employees "by craft." It is more logical to assume that the purpose for the following subsections, a(2) relating to casuals, and a(3) relating to PTF employees, also are discussing issues involving the same craft. After all, the ultimate aim of sub-parts 12.5.C.5.a(1)-(4) is to determine how to place that craft's excessed employees. Therefore, the absence of any qualifying

language in a(2) stating that it applies only in the losing or affected craft carries no particular weight.

The Postal Service also rejects the Unions' effort to contrast the lack of reference to the losing or affected craft in 12.5.C.5.a(2) with the reference in what is now Article 12.4.D to separation of casuals in the affected craft. The language in 12.4.D, as testified to by Postal Service witness Gillespie, was borrowed from the way in which 12.5.C.5.a(2) always had been applied over the years. In response to the Unions' concern that assignments outside the installation would adversely affect their members as a result of the development of the bulk mail network, the Postal Service agreed to a new provision (Section 4) covering such reassignments and wrote in the protection already used in 12.5.C.5.a(2) for reassignments within the installation. The purpose, the Postal Service insists, was to treat the two situations the same.

The Postal Service also points out another anomaly in the Unions' position. Article 6.B.4 of the contract relating to layoff and reductions in force, provides that before layoff and reductions in force occur within an installation the Postal Service will to the fullest extent possible separate all casuals within the craft, but not casuals in every craft. The Postal Service contends that it is not likely that the parties in the same collective bargaining agreement intended to provide more protection for regular employees within the installation in reassignments under 12.5.C.5.a(2) than under layoff and reductions in force covered by Article 6.B.4.

The Postal Service stresses that its interpretation of Article 12.5.C.5.a(2) is consistent with how that subparagraph has been applied and viewed by the parties. In addition to the testimony of Postal Service witnesses Brenker and Mlarker, the Postal Service points to two documents jointly issued at the national level by top Postal Service and APWU representatives regarding the application of Article 12. The Postal Service argues these documents confirm that the separation of casuals under Article 12.5.C.5.a(2) applies only to casuals in the affected craft. The Postal Service maintains that the documents cited by the Unions, including the Holmes document, did not and do not reflect national postal policy and do not correspond to the manner in which the applicable provision has been applied over the years.

The Postal Service also argues that the Unions' interpretation of 12.5.C.5.a(2) leads to a variety of operational and contractual absurdities. It points to testimony of Postal Service witness Brenker regarding the untoward consequences that would follow from adopting the Unions' interpretation, including delays caused by the need to first bid any position created by separating casuals in another craft in that craft.

Finally, the Postal Service insists that the regional arbitration awards cited by the Unions fail to support their position in this case. Notably, the arbitrators in those cases did not have the factual evidence that has been presented by the Postal Service in this arbitration.

FINDINGS

This case poses a difficult interpretive issue. On its face, the wording of Article 12.5.C.5.a(2), read in isolation, seems to support the Unions' position. It refers to "all casuals" without limitation. This is in contrast to Article 12.4.D, which specifically refers to: "casual employees working in the affected craft." Moreover, the Unions have cited several management documents, albeit from regional or area managers, that appear to agree with their position. At least six regional arbitrators, based largely on these factors, have concluded that "all casuals" means just that, without regard to craft or Union. Yet, the Postal Service in this national arbitration proceeding has presented a much fuller and more nuanced position than it did in those cases, which, ultimately, is more compelling than that of the Unions.

Context is important. The parties have expressly stated in Article 12.4.A that: "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." That provision goes on to provide that: "Reassignments will be made in accordance with this Section and the provisions of Section 5 below." Section 4.D, as noted above, specifically provides for separation of casuals working in the affected craft and installation, to the extent possible, prior to excessing any regular employee in that craft out of the installation. Section 4 was added to the Agreement in 1973. Section 5 -- then Appendix A -- dates back at least to 1968 prior to Postal

Reorganization. Section 4 overlays the provisions of Section 5 which remain virtually unchanged from 1968.

Article 12.5.C.5.a(2), the provision in issue, is part of a process to be applied when it is necessary to reduce the number of employees in an installation other than by attrition. The initial part of this process, set forth in Section 5.C.5.a, covers reassignments within an installation. The first step is to determine by craft the number of excess employees. The second step -- the provision in issue -- is to minimize the impact on regular work force employees "by separation of all casuals." The third step is to minimize the impact on full-time positions by reducing PTF hours. The fourth step is to identify as excess the necessary number of junior full-time employees in the affected craft in the installation, and then seek to reassign them to vacant assignments in other crafts in that location. Section 5.C.5.b then goes on to provide for reassignments to other installations when necessary.

This procedure calls for separation of all casuals and reduction in PTF hours after determining the number of excess employees in a particular craft and prior to identifying those employees who must be excessed from that craft. In that context, as the Postal Service argues, it is more logical to read the reference to "all casuals" in Section 5.C.5.a(2) as covering all casuals in the affected craft because these initial steps are designed to identify who must be excessed from that craft to achieve the necessary reduction in that craft. Only after that occurs are employees reassigned to vacant positions in other crafts in the same installation, where possible. In

other words, the separation of "all casuals" provided for in Section 5.C.5.a(2) is a step to be taken to reduce the number of regular employees to be excessed from the affected craft, not to create a full-time position in some other craft which -- presumably after being bid in that craft -- could provide a vacant position to be filled under Section 5.C.5.a(4).

Postal Service witness Gillespie, who was the lead negotiator for reassignment issues in 1973 negotiations, testified that when Section 4 was added to the National Agreement in 1973, the provision in Section 4-D relating to the separation of casuals -- which he said was based on his position paper -- was designed to parallel the application of Section 5.C.5.a(2), set forth in Appendix A of the 1973 Agreement. In the context of alleviating the Unions' concerns at that time regarding significant excessing as a result of the creation of bulk mail centers, it seems unlikely that the Postal Service would have proposed, and the Unions agreed to, a more limited separation of casuals than that already provided for in Section 5.C.5.a(2), which remained intact in Appendix A.[6] There is no support in this record for the Unions' alternative suggestion that Section 4-D more likely was intended to provide some, but more limited, protection in other situations not covered by Section 5.C.5, such as those described in Sections 5.C.2 and 5.C.6.

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[6] Standing alone, the wording of Paragraph C.5.a(2) included in the NALC and APWU versions of the 1971 Agreement, which was not agreed to by the Postal Service, does not clearly indicate, as the Unions now argue, that in 1971 they read that provision of the 1968 Agreement as applying to casuals in other than the affected craft.

As for actual practice, this issue of separation of casuals in other crafts appears to have been essentially theoretical. There is no evidence of any situation in which Section 5.C.5.a(2) actually was applied to separate casuals in a different craft. There also is no evidence of any specific situation when such a separation actually would have made it possible to avoid excessing an employee in another craft, consistent with the 2001 Snow Award regarding the meaning of "to the extent possible."

Postal Service witnesses testified that in providing impact statements pursuant to Article 12.4.B, the Postal Service showed planned reductions of casuals only in the affected crafts, and that there was no objection by the Unions. The Unions, however, have cited a number of management documents, most notably the 1988 Holmes document, that appear to support their position. The Postal Service, in turn, presented testimony that the Holmes document was not even followed in the Central Region where it originated. Perhaps more significantly, the Postal Service rightly contends that, as a regional official, Holmes did not speak for the Postal Service at the national level, and it presented two national level communications to the Mail Handlers in the 1970s which clearly set forth the Postal Service's position that Section 5.C.5.a(2) applies only in the affected craft.

The Unions have introduced six regional arbitration cases, all postdating the 1988 Holmes document, in which the Unions successfully grieved the Postal Service's failure when

applying Article 12.5.C.5 to consider separating casuals in other crafts. Those cases, most of which involved excessed employees in the Special Delivery Messenger craft, upheld grievances alleging a violation of Section 5.C.5.a(2) -- and in some cases a(3) -- because management did not consider separating casuals (or reducing PTF hours) in other than the affected craft. As previously noted, those regional cases were decided on the basis of considerably more limited records than that in this national case. Notably, the remedy in most of those cases was to rescind the excessing and to reassign the grievant(s) to the affected or losing craft, where, of course, they were not needed. What happened after that is not specified in this record. None of the decisions actually found that excessing could have been avoided by separating casuals (and/or reducing PTF hours) in other crafts, consistent with the Snow Award regarding the meaning of "to the extent possible." Arbitrator James Odom, in the most recent of these cases -- USPS and APWU Case H00C-1H-C 03128563 (2004) -- ordered an additional hearing to receive evidence on that score. But the present record does not indicate whether such a hearing was held, and, if so, what decision was rendered.

As the Postal Service points out, it also seems unlikely that the parties would have intended to provide more protection with respect to separation of casuals for regular employees within the installation in reassignments under Article 12.5.C.5.a(2) than under the provisions in Article 6.B.4 relating to reassignment, layoff and reduction in force, which call for separation of all casuals within the craft to the fullest extent possible.

While obviously not binding on the NALC, the May 18, 2005 Article 12 Questions and Answers document jointly issued by top Postal Service and APWU officers seem to offer some support to the Postal Service's interpretation of Article 12.5.C.5.a(2). It states:

> Q6. Is the Postal Service required to minimize impact on regular work force employees prior to excessing?
>
> A6. Yes. In order to minimize the impact on employees, to the extent possible, all casuals working in the affected craft and installation will be separated prior to making involuntary reassignments. Also, to the extent possible, part-time flexible employee work hours will be reduced. There is an obligation to separate casual workers if doing so would yield sufficient hours to establish a regular full time duty assignment; that is eight hours within nine or ten hours, the same five days during a service week.

Greg Bell, the APWU's Director of Industrial Relations, testified that this Q&A #6 deals with Article 12.4.D and does not address Article 12.5.C.5.a(2), but, as the Postal Service points out, reducing PTF hours -- referred to in this Q&A -- is provided for only in Article 12.5.C.5.a and not in Article 12.4.D.

Bell also explained that Q&A #6 tracks language in the 2004 Joint Contract Interpretation Manual issued by the APWU and the Postal Service relating to Minimizing Impact, which then was

in effect. That 2004 JCIM provision is set forth under the heading "Article 12.5.B.5," which really does not fit, because that contractual provision addresses advance notice and relocation expenses relating to involuntary reassignments outside an installation. More recent APWU JCIM editions include this provision under the heading "Article 12.5.B," which provides "Principles and Requirements" for reassignments, and precedes Section 5.C which provides additional Special Provisions on Reassignments, including the provision in issue. The APWU is correct, however, in pointing out that the provisions in the JCIM under the heading "Article 12.5.C.5.a" make no reference to separation of casuals, which Bell stated was because of the present interpretive dispute.[7]

Under all these circumstances, I conclude that the Postal Service's position in this interpretive dispute is sounder and more compelling than that of the Unions.

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[7] I did not find an indication in the record as to when the APWU filed its pending grievance on the meaning of "all casuals" in Article 12.5.C.5.a(2). That issue is not addressed in Arbitrator Snow's 2001 Award, in an APWU case, on the meaning of "to the extent possible."

AWARD

The provision in Article 12.5.C.5.a(2) for "separation of all casuals" applies to casuals in the affected or losing craft, and not to casuals in other crafts.

Shyam Das, Arbitrator

UNITED STATES
POSTAL SERVICE

Mr. Paul V. Hogrogian
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: C11M-1C-C 13103916
CLASS ACTION
Wilmington DE 19850-9997

I met recently with your representative, Teresa Harmon, to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is whether the National Postal Mail Handlers Union (NPMHU) has the right to file a grievance to enforce returning an excessed clerk into a residual vacancy in the clerk craft.

After full discussion of this issue, the parties agree the NPMHU has the right to file a grievance to enforce the terms of Article 12.6.C5a5 of the NPMHU national agreement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case in accordance with the Memorandum of Understanding on Step 4 Procedures.

Time limits at this level were extended by mutual consent.

Michele Ditchey
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 10-06-2015

Paul V. Hogrogian,
National President
National Postal Mail Handlers Union
Union, AFL-CIO

Date: 10-5-2015

United States Postal Service
475 L'Enfant Plaza SW
Washington DC 20260

Mr. Thomas Thompson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-4K-C 28684
CLASS ACTION
CEDAR RAPIDS IA 52401

Dear Mr. Thompson:

Recently, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance concerns the meaning of the "within 100 mile" limit in Article 12.

After discussion, we agreed to settle this grievance as follows:

> The 100 mile criteria identified in Article 12, (e.g. 12.5.C.1.b, 12.5.C.1.d, 12.5.C.1.f, 12.5.C.5.b.(1), and 12.5.C.5.b.(1)(b) is measured as the shortest actual driving distance between installations.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Kathleen Sheehan
Grievance and Arbitration
Labor Relations

Thomas Thompson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date: 2-23-95

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

JUL 15 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: A. Madeiros
New Bedford, MA
NC-N-5462/V76-10675

Dear Mr. Riley:

This will serve to cancel and supersede the Step 4 decision letter issued in the above-captioned case under date of May 23, 1977.

On the basis of our further discussions on this case, the matter at issue has been reconsidered in conjunction with the applicable contractual provisions.

Under the provisions of Appendix A, Section I, paragraph C, 5, b, (6), employees involuntarily reassigned to other installations are entitled to file a written request to be returned to the first vacancy in the level and in the craft or occupational group in the installation from which assigned. Such request was executed by the grievant in this instance under date of August 1, 1972. The conditions set forth in the referenced section of Appendix A further provide that such a request from an employee shall be honored so long as he (employee) does not withdraw or decline to accept an opportunity to return in accordance with such request. In the circumstances presented, the grievant did not withdraw his request to have retreat rights to the New Bedford Post Office, nor is it shown that he declined to accept an opportunity to return in accordance with his request. To this extent, we find that grievance is sustained.

Accordingly, by copy of this letter, the postmaster is instructed to take the necessary measures to assure that the grievant's seniority date is properly reestablished in accordance with the retreat right provisions in Appendix A of the National Agreement.

Sincerely,

William E. Benson
Labor Relations Department

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration

between

AMERICAN POSTAL WORKERS UNION

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

and

UNITED STATES POSTAL SERVICE

Case Nos.:

H7N-4U-C 3766
H7N-2A-C 4340
H7N-2U-C 4618
H7N-5K-C 10423
H4N-5N-C 41526

BEFORE: Professor Carlton J. Snow

APPEARANCES: Mr. L. G. Handy

Mr. Thomas Neill

Mr. Keith Secular

PLACE OF HEARING: Washington, D.C.

DATES OF HEARING: August 11, 1989, November 28, 1989,

December 7, 1989, March 20, 1990

AWARD:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievances should be sustained in a manner consistent with this report, recognizing the need to remand Case No. H4N-5N-C 41526 for a factual determination and ultimate decision consistent with this award. It is so ordered and awarded.

Date: _____

_____
Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION BETWEEN AMERICAN POSTAL WORKERS UNION AND NATIONAL ASSOCIATION OF LETTER CARRIERS AND UNITED STATES POSTAL SERVICE. (Case Nos. H7N-4U-C 3766, H7N-2A-C 4340, H7N-2U-C 4618, H7N-5K-C 10423, and H4N-5N-C 41526)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from July 21, 1987 to November 21, 1990. Case No. H4N-5N-C 41526 arose under the 1984-87 National Agreement, but relevant portions of the agreement are the same in both labor contracts. This was a three party hearing, and the American Postal Workers Union intervened in a dispute involving the United States Postal Service and the National Association of Letter Carriers.

Arbitration hearings occurred on August 11, November 28, and December 7, 1989, as well as on March 20, 1990. All hearings took place in a conference room of the USPS headquarters at 475 L'Enfant Plaza located in Washington,

D.C. Mr. L. G. Handy, Manager of Labor Relations, represented the United States Postal Service. Mr. Keith Secular of the Cohen, Weiss and Simon law firm in New York City represented the National Association of Letter Carriers. Mr. Thomas Neill, Industrial Relations Director, initially represented the American Postal Workers Union, but Mr. Richard Wevodau, Director of the Maintenance Division, assumed Mr. Neill's position at the hearing when he had to leave in order to see a doctor. In subsequent hearings, Mr. Phillip Tabbita, Special Assistant to the President, represented the American Postal Workers Union.

The hearings proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. A representative of Diversified Reporting Services, Inc., recorded the proceedings and submitted a transcript of 572 pages.

There were no challenges to the jurisdiction of the arbitrator. The parties elected to submit post-hearing briefs, and the arbitrator officially closed the hearing on June 11, 1990 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUE

The parties stipulated that the issues before the arbitrator are as follows:

(1) In Case Nos. H7N-2A-C 4340 (St. George, Utah); No. H7N-2U-C 4618 (Clifton Heights, Pennsylvania); No. H7N-5K-C 10423 (Fairfax, Virginia); and No. H4N-5N-C 41526 (Santa Clara, California), the issue is whether the Employer violated the National Agreement by assigning a former supervisor to a full-time position in the Letter Carrier craft. If so, what should the remedy be?

(2) In Case No. H7N-4U-C 3766 (Laramie, Wyoming), the issue is whether the Employer violated the National Agreement by assigning a former supervisor to a part-time flexible position in the Letter Carrier craft. If so, what should the remedy be?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 12 - PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

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.

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

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.

ARTICLE 41 - LETTER CARRIER CRAFT

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, utility or T-6 swings,m 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.

   . . . .

2. Letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant Letter Carrier Craft duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b detail and returning to their craft position. Upon return to the craft position, such employees may exercise their right to bid on vacant Letter Carrier Craft duty assignments.

   The duty assignment of a full-time carrier detailed to a supervisory position, including a supervisory training program in excess of four months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return to the craft the carrier will become an

unassigned regular. A letter carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of Section 1.A.2.

. . . .

C. Successful Bidder

1. The senior bidder meeting the qualification standards established for that position shall be designated the "successful bidder."

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.

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 T-6 and utility assignments, unless the local agreement provides otherwise.

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.

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.

B. Definitions

6. (b) Part-time flexible letter carriers shallbe 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.

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.

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 Servixce entering the Letter Carrier Craft by reemployment or reinstatement shall begin a new period of seniority, except as provided in subsections D.1 and 0.4 above.

5. Any surplus employees from non-processing and non-mail delivery installations, regional offices or the United States Postal Service Headquarters, begin a new period of seniority effective the date of reassignment.

IV. STATEMENT OF FACTS

In this case, the Union has challenged management's reassignment of supervisors to the employment status of full-time, regular or part-time, flexible employes in the Letter Carrier craft. In four of the five grievances in this dispute, the Employer reassigned supervisors to the National Association of Letter Carriers bargaining unit as full-time regular employes; and the NALC has challenged those assignments. The fifth grievance involves a supervisor who was returned to the Letter Carrier craft as a part- time flexible employe, and

the Union has maintained that he should have been returned with full-time, regular status. Supervisors in all five grievances had their paygrade lowered when they returned to the bargaining unit.

One of the cases appealed to the national level arose in Laramie, Wyoming. The grievant left the Letter Carrier craft for less than two years while he worked as a full-time supervisor. He requested a return to the craft, and management reassigned him as a part-time, flexible employe. The grievant argued that the grievant should have been entitled to retain his seniority and that management should have reassigned him to a full-time, regular position. He seeks restoration of his seniority and reassignment to a full-time position as well as a make whole monetary remedy. (See, Joint Exhibit No. 2).

Another of the cases arose in St. George, Utah. Mr. Jerry Turnbeaugh left the Letter Carrier craft and worked as a supervisor for over two years before he requested a reassignment to the craft. The Employer created an unassigned full-time, regular craft position and assigned it to Mr. Turnbeaugh, giving him a new seniority date. The Union contended that the unassigned, regular position should have been made available for bid and that Mr. Turnbeaugh should have been placed on the part-time, flexible seniority list with a new seniority date. (See Joint Exhibit No. 3.

A third case arose in Clifton Heights, Pennsylvania. A former letter carrier became a supervisor, but the Employer

demoted him for disciplinary reasons pursuant to a Merit Systems Protection Board order. Management transferred him to a different postal facility and gave him a full-time, regular carrier position. The Union contended that the Employer should have promoted a part-time, flexible employe from the office of transfer to the regular position in that facility. The requested remedy is that the demoted supervisor be reassigned to the part-time, flexible list in order of seniority. (See, Joint Exhibit No. 4).

A fourth case arose in Fairfax, Virginia and involved a letter carrier in Fairfax who received a promotion to the rank of supervisor in July of 1987 and transferred to a different office. After three months he requested a return to the Letter Carrier craft in Fairfax, Virginia. The Employer reassigned him there as a full-time letter carrier, and his "letter carrier" seniority was restoreed. It is the contention of the Union that the former supervisor should not have received his previous seniority because he had left Fairfax, Virginia and transferred back to the facility from another office. It is the belief of the Union that the former supervisor should be reassigned as a junior, part-time, flexible employe. (See, Joint Exhibit No. 5).

The final case arose in Santa Clara, California. It involved a letter carrier who became a supervisor of another office in July of 1985. In November of 1986, he submitted his resignation to the Employer. There is a factual dispute between the parties with respect to whether or not management

ever accepted the resignation. In January of 1987, the Employer demoted the supervisor and reassigned him as a full-time letter carrier in a different office, giving him credit for his previous seniority in the craft. The Union contended that the former supervisor was not entitled to his prior seniority because he had transferred from another office where he had served as a supervisor and also because he had resigned from the U.S. Postal Service and, subsequently, had been rehired in Santa Clara, California. It is the belief of the Union that the former supervisor should be reassigned to the position of a part-time flexible employe and that any full-time assignment for which he had successfully bid should be reposted., (See, Joint Exhibit No. 6).

V. POSITION OF THE PARTIES

A. The National Association of Letter Carriers

The National Association of Letter Carriers takes the position that management must make assignments to full-time positions in the Letter Carrier craft strictly in compliance with seniority provisions in the National Agreement. A former letter carrier reassigned to that craft from a supervisory position, thus, would be eligible for reassignment as a full-time, regular employe only if the supervisor retains greater craft seniority than any other full-time or part-time flexible carrier who, otherwise, would be entitled to the assignment,

according to the NALC's theory of the case. The National Association of Letter Carriers argues that management fails to honor the seniority provisions in the parties' agreement when it asserts that it has complete discretion to reassign supervisors as either full-time, regular or part-time, flexible employes.

B. The American Postal Workers Union

The American Postal Workers Union intervened in this arbitration proceeding in order to dispute management's position that it has unilateral authority to return supervisory personnel to any craft at any installations in any status. It is the position of the American Postal Workers Union that the full-time or part-time flexible status of a returning supervisor is determined by numerous contractual and manual provisions, which vary from craft to craft. Accordingly, the APWU takes the position that the results of this arbitration proceeding may well determine how returning letter carriers are reassigned but that it does not necessarily decide how members of other crafts are to be reassigned.

C. The Employer

The Employer's first line of argument is that the issues in this case are governed by the concept of res judicata (the matter previously has been decided) because the parties to this proceeding allegedly settled the issue at Step 4 of several grievances in national pre-arbitration settlements. Those settlements, according to management's theory of the case, confirmed the right of management to place supervisors returning to the Letter Carrier craft in any status it sees fit.

Alternatively, it is the position of the Employer that there is no contractual provision restricting its right to determine the status of a supervisor reassigned to the Letter Carrier craft. Management maintains that Article 3 of the National Agreement gives it the exclusive right to determine the "craft" status of a reassigned employe, and the Employer contends that nothing in the agreement has restricted this managerial prerogative. Moreover, management maintains that past practice, supported by the parties' mutual agreement as manifested in negotiated settlements, establishes the Employer's right to determine the "craft" status of a reassigned employe, according to management's theory of the case.

The Employer contends that the Union has attempted to broaden the issue in the arbitration proceeding so that it includes seniority and not merely "status." According to the Employer, the only issue before the arbitrator is whether or not management has a right to determine whether a supervisor

returning to the craft will be returned as a part-time flexible or as a full-time regular employe. Seniority, in the view of the Employer, is a separate issue..

VI. ANALYSIS

A. Nature of the Issue

The parties disagreed strongly about whether or not the dispute is about employment status or seniority. There are three types of employes in the bargaining unit, namely, (1) full-time regular employes, who are assigned five eight-hour days a week; (2) full-time flexible employes, who work flexible hours while they wait for conversion to full-time regular status; and (3) part-time regular employes, who permanently work less than forty hours a week. Part-time regular employes are governed by different seniority and assignment provisions than the other two types of employes and are not part of this dispute. Of concern in this case is the status of part-time flexible employes (hired for future full-time regular work) and full-time regular employes. References to employment "status" in the case have been to part-time flexible employes and full-time regular employes, and not to part-time regular employes.

Seniority, on the other hand, is concerned with "the length of service an individual employee has in a unit." (See, Robert's Dictionary of Industrial Relations, 657 (1986)).

Seniority determines the relative priority of full-time regular employes and part-time flexible employes with respect to a variety of privileges, such as the right to bid on certain positions for full-time regular employes, the order of selection for qualified bidders, and the order of conversion of part-time flexible employes to full-time regular employes. For purposes of this arbitration proceeding, the most important seniority right is concerned with the conversion of part-time flexible employes to full-time regular status. The Employer has not argued that it has a right to disturb provisions on seniority in the parties' National Agreement. Management, however, has contended that its reassignment of supervisors to full-time regular or part-time flexible status has nothing to do with the concept of seniority. It is the belief of the Employer that it has a reserved right in Article 3 of the National Agreement to make such reassignments. The contractual provision states:

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
> (b) to hire, promote, transfer, assign and retain employes in positions within the Postal Service and to suspend, demote, discharge or take other disciplinary action against such employees.

B. Some General Guidelines

The parties have balanced their interests in the way they designed their collective bargaining agreement, and one manifestation of the balancing mechanism is to be found in the way the parties described their rights and obligations in the management's rights clause and the seniority provisions. The importance of disputes implicating such provisionscannot be underestimated. The role of an arbitrator in such cases is to review the language of the parties' agreement in order to construe the way they have ordered their relationship with regard to management rights and seniority.

The parties' agreement is an arbitrator's touchstone, and an arbitration award is "legitimate only so long as it draws its essence from the collective bargaining agreement." (See, United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960)). The point is that a source of seniority rights is to be found in the parties' collective bargaining agreement. As one arbitrator has observed:

> An employee's seniority as such does not by itself confer any right upon him. Seniority, without more, is merely the service status of a particular employee, in relation to the service status of other employees. (See, General Electric Co., 54 LA 351, 352 (1970)).

In other words, the meaning of seniority must find its explanation in the collective bargaining relationship between the parties. An arbitrator's assumption must be that the parties have decided seniority rights encourage loyalty and stability in the work force and have balanced those values against any lost flexibility as a result of using seniority as a basis

for making employment decisions. An arbitrator is obligated to interpret and, then, to apply such contractual terms in a given case, recognizing that an application of seniority is almost never neutral. As the eminent Ralph Seward observed almost four decades ago:

> In seniority matters, the advantage of one employe is the disadvantage of another. To "stretch" the agreement to be "fair" to Smith is to stretch it to be "unfair" to Jones. Fairness, then, exists when each employe has the relative seniority right he is entitled to under the Agreement--no more and no less. (See, Bethlehem Steel Co., 23 LA 538, 541-42 (1954)).

It is an arbitrator's obligation to understand and implement the bargain of the parties, no more and no less. This is accomplished by interpreting the language of the parties' agreement. If the language of the collective bargaining agreement fails to be clear and unambiguous, it becomes necessary for an arbitrator to seek other sources of the parties' negotiated intent. Settlement agreements between the parties provide one source of such information. Past practices of the parties also may make clear their contractual intent. If the parties have been silent throughout their relationship with regard to the issue in dispute, it is reasonable for an arbitrator to assume that they expected their agreement to be interpreted in light of established arbitral principles. As one scholar has observed, "there is a whole set of implicit relationships not spelled out in the agreement and not confined to any particular employer, which an arbitrator assumes to exist." (See, 2 Ind. Rel. L.J. 97, 104 (1977)). As Professor Archibald Cox has noted, 'these

arbitral principles are "drawn out of the institutions of labor relations and shaped by their needs." (See, 69 Harv. L. Rev. 601, 605 (1956)).

It is not uncommon for collective bargaining agreements to be specific about the effect of work outside a bargaining unit on an employe's accumulation of seniority. (See, e.g., Firestone Tire & Rubber Co., 61 LA 136 (1973); and National Cash Register Co., 48 LA 743 (1967)). In the absence of clear and unambiguous language, arbitrators often have scrutinized the practices of the parties to understand their mutual intent. (See, U.S. Steel Corp., 28 LA 740 (1957); and Mississippi Lime Co., 31 LA 869 (1969)). Numerous arbitration decisions have concluded that employes who return to a bargaining unit should be permitted to exercise their retained seniority. (See, e.g., Folger Coffee Co., 60 LA 353 (1953); Alpha Portland Cement Co., 40 LA 495 (1962); Pannier Corp., 41 LA 1228 (1964); and Leesona Corp., 56 LA 668 (1971)).

C. The Impact of Settlement Agreements

The Employer presented a number of negotiated settlement agreements and argued that they constituted binding precedents between the parties, precedents that already had resolved the disputed issue. (See, Exhibit Nos. 1, 2, 3, 5, and 8). The Employer argued that those "Step 4" decisions supported its position in the case and established that management's conduct is consistent with its rights under Article 3 of the parties'

agreement. In other words, the Union allegedly had agreed to settle grievances involving the same set of issues because it recognized the rights of management in Article 3. The Employer argued that those settlement agreements disposed of the issue in this case because they reflect uncoerced, consensual agreements by national representatives of the parties and show management's rights to determine the status of former supervisors who are placed in the crafts by a demotion. As binding precedent, the Employer argued that they must determine the parties' interpretation of their agreement and be dispositive in this dispute. Alternatively, the Employer argued that even if the Step 4 settlement agreements are not automatically dispositive, they at least show how the parties' view their agreement and how it should be interpreted. (See, Tr. I, pp. 20, 85, 100; and Tr. II, p. 62).

In one of the settlement agreements, a grievance had been filed by the National Association of Letter Carriers after management reassigned a former carrier who had served as a supervisor for eight years. (See, Employer's Exhibit No. 1). The employe received the lowest seniority in the postal authority, but management awarded him a position as a full-time regular letter carrier. The Union took the position in the dispute that the former supervisor should have been reassigned to the bargaining unit as the last part-time flexible employe and should have started a new period of seniority, in accordance with Articles 12.2 and 41.2 of the National Agreement. Although this settlement agreement

presented a similar issue as the grievance before the arbitrator in this case, the parties signed an actual agreement which stated:

> After reviewing this matter, we mutually agree that no national interpretive issue is fairly presented in this case. There is no dispute between the parties at Step 4 relative to the meaning and intent of Article 12.2 of the National Agreement. We find no agreement to return an employe to a part-time flexible position under the circumstances described. (See, Employer's Exhibit No. 1, emphasis added).

The parties remanded the grievance to Step 3 for further processing. By the parties' explicit intent not to provide an interpretation of the National Agreement, they made this negotiated settlement agreement nonbinding on the arbitrator in this case. While it is not necessary to decide the effect of the settlement agrement on postal managers and union representatives, it is clear that the parties did not make it binding on the arbitrator.

The same analysis must be applied in another one of the settlement agreements submitted by the Employer. (See, Employer's Exhibit No. 8). In that case, a supervisor had been demoted to the position of a full-time regular clerk and had been assigned to a different office. Management created a full-time regular position for the supervisor, and the Union grieved the fact that a part-time flexible clerk should have been converted prior to making such an assignment. The parties again "mutually agreed that no national interpretive issue is fairly presented in this case" and remanded it to the regional level. (See, Employer's Exhibit No. 8). Accordingly, that decision is not binding on the arbitrator

in this case. The settlement agreement is not binding for another reason as well. It involves the American Postal Workers union, and the National Association of Letter Carriers was not a party to it. Likewise, another of the settlement agreements did not involve the National Association of Letter Carriers. (See, Employer's Exhibit No.5). It would not be rational to impose a binding interpretation of a contractual provision on a party when it had no opportunity to represent itself at the negotiated settlement. Yet another settlement agreement involved the National Association of Letter Carriers, but again it was an agreement to remand the dispute to Step 3 because the parties "mutually agreed that no national interpretive issue was fairly presented in this case." (See, Employer's Exhibit No. 3).

Only one of the negotiated settlement agreements might have precedential value in this dispute. (See, Employer's Exhibit No. 2). In that case, the Union protested when a supervisor was transferred from another office and given a vacant, full-time position in the Letter Carrier craft, despite the availability of a part-time flexible letter carrier for conversion to a full-time regular position. The settlement agreement at Step 4 incorporated a memorandum on transfers prepared during Postmaster General Bolger's administration. (See, Tr. II, p. 39 re: The Bolger Memorandum of April 6, 1979). The arbitrator received evidence to the effect that the Bolger memorandum was devised to provide guidelines for voluntary reassignments and transfers. The

parties incorporated the following verbiage into the agreement:

> Full-time nonbargaining unit employees will be reassigned into full-time positions unless the reassignment is to a vacant bargaining unit position.
>
> All employes reassigned to positions in the bargaining unit will have their seniority established in accordance with the applicable collective bargaining agreement. (See, Employer's Exhibit No. 2).

The Bolger Memorandum gave support to the Union's contention that seniority for reassigned employes is to be determined in accordance with the National Agreement and that such reassignments are to respect the contractual seniority provisions. While the Bolger Memorandum purported only to furnish guidelines, its incorporation into the Settlement Agreement gave it the potential force of a binding precedent. The Settlement Agreement gave the grievant, a part-time flexible employe, the status of a full-time regular employe and placed him in the bid position that previously had been awarded to the reassigned supervisor. The supervisor was not reassigned as a part-time flexible employe, however, but as an "unassigned regular."

The remedial portion of the grievance in this settlement agreement has not been read as permitting reassignment of supervisory personnel in an "unassigned regular" status in all cases. In this grievance, the Union did not ask that the former supervisor be reclassified as a part-time flexible employe in its request for corrective action. More importantly, the record showed that, when the Step 4 negotiated settlement agreement was reached by the parties, the postal facility in question had no part-time flexible employes at

that particular work site. (See, Union's Exhibit No. 13 and Tr. IV, p. 61). In other words, no employe's seniority rights were implicated in the decision to classify the former supervisor as an unassigned regular. The point is that the only aspect of this settlement agreement binding in this case is the statement of principle from the Bolger Memorandum. The remedial section, because it failed adequately to address the same issues as those before the arbitrator in this case, is limited to its own facts and does not decide the issues of whether and under what circumstances a reassigned supervisor may be given full-time regular status when there are part-time flexible employes awaiting conversion. None of the settlement agreements submitted to the arbitrator proved to be instructive in this regard.

D. The Matter of Past Practice

The Employer argued that the precedential value of the negotiated settlement agreements it submitted to the arbitrator, should determine the outcome of this proceeding. There however, was nothing in the settlement agreements that indicated a mutual intent of the parties to supersede the language of their agreement or the Handbook with respect to seniority. (See, Case No. H4C-3W-C 28547, p. 32). Alternatively, the Employer argued that past practice between the parties modified or interpreted the language of the National Agreement to

permit the Employer to reassign former craft members to the craft in a status designated by management. Almost three decades ago, the parties' own Richard Mittenthal set forth the preeminent instruction on the topic of past practice, and nothing since has surpassed its insightfulness and wisdom, although others have borrowed heavily from it. (See, e.g., NYU Fifteenth Annual Conference on Labor, 311 (1962)). Arbitrator Mittenthal set forth the virtually universally accepted tests of a past practice when he asked if it has (1) clarity and consistency; (2) longevity and repetition; (3) acceptability; and (4) mutuality. (See, Mittenthal, "Past Practice and the Administration of Collective Bargaining Agreements," Proceedings of the Fourteenth Annual Meeting, National Academy of Arbitrators, 30, 32-3 **(1961)**. Evidence submitted by the Employer with respect to the past practice of the parties failed to establish that management's decisions to reassign supervisors to bargaining unit positions met these well-established criteria, and it is clear that the Employer has the burden of establishing the past practice whose existence it has asserted. (See, Case No. W1N-5C-C 23743, p. 11).

Evidence submitted to the arbitrator failed to establish a clear pattern of reassigning former supervisors to full-time regular status. Nor did the evidence clearly establish an enunciated policy to do so. Instead, the data showed that management has acted at its discretion, sometime assigning returning supervisors to full-time regular status and sometimes

to part-time flexible status. (See, Employer's Exhibit No. 9). Nationwide data on reassignment of supervisors from 1981 to 1989 showed that approximately thirty percent of supervisors returning to the craft in a different installation were reassigned as full-time regular employes. But eighty-seven percent of those returning to the same office were reassigned as full-time regular employes. Other data for fourteen selected cities showed that, except in Richmond, Virginia, returning supervisors were overwhelmingly reassigned as full-time regular employes. (See, Employer's Exhibit Nos. 10-20, 42, 43, 44, and 45(A)).

The problem with these data is that they fail consistently to show whether the returning supervisor was out of the craft for more or less than two years. A supervisor who returns to the same installation in the Letter Carrier craft after an absence of less than two years does not forfeit accumulated seniority under Article 41.2 of the parties' agreement. In other words, reassignment of a full-time regular employe would be consistent with the seniority provisions of the agreement. Nor have the data indicated the underpinning for decisions to reassign some supervisors as part-time flexible employes. Moreover, some of the personnel actions on data submitted to the arbitrator might later have been modified. (See, Tr. II, 17). Finally, not all supervisors involved were returned to the Letter Carrier craft. The Maintenance Craft does not have part-time flexible employes, so a return to full-time regular status in that craft would

not indicate a practice of reassigning supervisors as full-time regulars at the expense of eligible part-time bargaining unit employes.

In summary, the data are not clear, consistent evidence of management's past practice of reassigning supervisors to full-time regular status in the Letter Carrier craft. Some of the data are consistent with the National Agreement. Some appear to violate it. Some are irrelevant to this dispute. The point is that management failed to show a clear and consistent practice of reassignment contrary to seniority provisions in the parties' National Agreement. Nor has it shown that such a practice, even if it existed, enjoyed mutual agreement. The existence of a number of grievances from a variety of geographical areas argue against such a position. The evidence failed to establish that the parties modified their agreement by past practice.

E. The Teaching of the Agreement

It is the teaching of the parties' agreement which is paramount in guiding an arbitrator. Although other sources such as negotiated settlement agreements or past practices of the parties might be instructive in the absence of clear contractual guidance, it is the negotiated agreement which is always preeminent. Article 41.2(D)(6)(b) of the parties' agreement states:

> 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. (See, Joint Exhibit 1(B), p. 109).

Part-time flexible employes have been expressly covered in the seniority clause of the parties' agreement. One of their important seniority rights is the order of conversion to full-time regular status. To argue that status and seniority are separable issues overlooks the fact that reassignment of a supervisor into full-time regular status may cost a part-time flexible employe his or her advancement to full-time regular status. But for the reassigned supervisor, a part-time flexible employe could have converted to a more secure position. Accordingly, the reassignment of a supervisor who has not retained his or her seniority to full-time regular status violates the seniority right of part-time flexible employes waiting to convert. It should be noted that this contractual right is consistent with presumptions applied by arbitrators in the absence of contractual language about the seniority status of individuals returning to a bargaining unit. As one arbitrator has observed, "the great weight of arbitral authority" supports the proposition that an employe who leaves the bargaining unit and returns should not be preferred over an employe with the same or equal seniority who remains in the unit. (See, Folger Coffee Co., 60 LA 353, 355 (1973)).

At the arbitration hearing, Mr. William Henry, Special Assistant to the Assistant Postmaster General for Labor Relations, testified about his understanding of the difference

between status and seniority rights. He stated:

ANSWER: When [a former supervisor] would go back to the craft, he went back at full-time status, but-we're obligated by contract to maintain the seniority provisions, which put this individual at the one date junior to the junior part-time flexible employee or substitute employee at that time.

QUESTION: Was there and is there a difference between seniority and status?

ANSWER: Well, yes, there is a difference. If a person is returned to craft as a full-time individual, he has the right to bid. Whereas, a part-time flexible doesn't. Seniority places him in the appropriate order for bidding among full-time employees, if you will. Now, this individual who is placed one day junior to the junior part-time flexible, as each part-time flexible who is on the list above him becomes full-time, he goes ahead of him on the seniority register. So that any given point in time when they're converted to full-time status, they have bidding rights by virtue of their seniority which is senior to this individual. Until that happens, he has a right to bid. But his seniority, not just for bidding but for other purposes under the Agreement, is one day junior to the junior part-time flexible. (See, Tr. II, p. 28).

Management's explanation of the difference between status and seniority, however, did not take into account the impact of part-time flexible seniority for conversion to full-time regular status. Inevitably, reassigning a former supervisor to full-time regular status impedes the advancement a part-time flexible employe could, otherwise, have expected to occur.

The Employer's position, in effect, has been that conversion to full-time regular status is not an automatic right for part-time flexible employes. The National Agreement determines the order in which part-time flexible employes are

converted, but it does not guarantee that they will automatically be converted to the first full-time regular vacancy. Although this is a potentially valid construction of the agreement, Section 522 of the P-11 Handbook narrow this possible construction of the agreement. It states:

> Promotions to positions where full time employees and part-time flexible employees are authorized are usually to part-time flexible positions. A full-time regular position is not normally filled by promotion, reinstatement, reassignment, transfer or appointment if qualified part-time flexible employees of the same designation or occupational code are available for conversion to the position. Part-time flexible employees must be changed to full-time regular positions within the installation in the order specified by any applicable collective bargaining agreement. (See Employer's Exhibit No. 33, emphasis added.)

In other words, the parties' agreement, pursuant to Article 19, makes clear that the norm is to fill full-time regular vacancies from the ranks of part-time flexible employes. This provision does not preclude filling vacancies from other than the ranks of part-time flexible employes. It, however, does establish that the Employer does not have unfettered discretion to determine the status of a reassigned supervisor. The point is that this language in the P-11 Handbook, which has been incorporated into the agreement through Article 19, places the burden on management to establish why it is reassigning a supervisor to full-time regular status, if such reassignment impairs seniority rights of part-time flexible employes. This construction is consistent with the overall contractual framework of protecting important rights of seniority for bargaining unit members. As the

United States Supreme Court has recognized,"more than any other provision of the collection agreement ... seniority affects the economic security of the individual employee covered by its terms." (See, Franks v. Bowman Transportation Co., Inc., 424.U.S. 747, 766 (1976)).

In view of this interpretation of the parties' agreement and P-11 Handbook, the Employer has failed to justify its decisions to place former supervisors into full-time regular positions in Case Nos. H7N-2A-C 4340 (St. George, Utah); H7N-2U-C 4618 (Clifton Heights, Pennsylvania); H7N-5K-C 10423 (Fairfax, Virginia); and H4N-5N-C 41526 (Santa Clara, California). In the case from St. George, Utah, management reassigned a former carrier who had been a supervisor for more than two years as a full-time regular employe, even though he was placed at the bottom of the seniority list so that converted part-time flexible employes would have senior bidding rights to his after their conversion. In that case, the former supervisor should have been placed on part-time flexible status, and the unassigned regular position created for him should have been filled as a reserve position.

In the Clifton Heights, Pennsylvania case, the former carrier who was demoted to a junior carrier at a different installation was given full-time regular status. Under Article 41 of the National Agreement, transferring to a different installations obliterates accumulated seniority rights regardless of how long the supervisor has been out of the craft. The agreement states that:

> 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. (See, Joint Exhibit 1(D), p. 108, emphasis added).

In other words, the reassigned supervisor should have been reassigned to a different office, and the senior part-time flexible employe at the Clifton Heights facility should have been promoted to fill the vacancy.

In the Fairfax, Virginia case, Article 41.2(A)(2) also applied. The former carrier should have lost his seniority because he transferred to a different office as a supervisor. He should have been reassigned as a junior part-time flexible employe.

The case from Santa Clara, California presented an unresolved fact. Did the reassigned supervisor's Letter of Resignation ever go into effect, and, consequently, should he have been considered a "rehire?" That particular case needs to be remanded to the parties for consideration of this factual issue, and a determination consistent with this decision should be reached.

In the case from Laramie, Wyoming, the grievant served as a supervisor for less than two years. Then, he returned to the craft. All the time was spent at the same installation. The Employer reassigned him as a part-time flexible employe, but he had not lost his seniority rights and should have been reassigned as a full-time regular worker. He must be made whole for any losses.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievances should be sustained in a manner consistent with this report, recognizing the need to remand Case No. H4N-5N-C 41526 for a factual determination and ultimate decision consistent with this award. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: August 13, 1990

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
between	)	
UNITED STATES POSTAL SERVICE	)	
and	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Case No. Q06N-4Q-C 11111196
and	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO - INTERVENOR	)	

BEFORE: Shyam Das

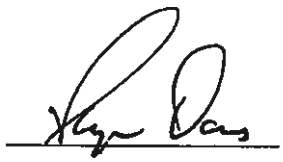
APPEARANCES:

For the Postal Service:	Syeda H. Maghrabi, Esq. Redding C. Cates, Esq.
For the NALC:	Keith E. Secular, Esq.
For the NPMHU:	Matthew Clash-Drexler, Esq.

Place of Hearing:	Washington, D.C.
Date of Hearing:	March 20, 2015
Date of Award:	September 21, 2015
Relevant Contract Provisions:	Article 12, Sections 4 and 5
Contract Year:	2006-2011
Type of Grievance:	Contract Interpretation

Award Summary:

The grievance is denied.



Shyam Das, Arbitrator

BACKGROUND Q06N-4Q-C 11111196

This grievance involves a carrier who was excessed and involuntarily reassigned on May 21, 2010 from the North Bergen, New Jersey installation to the Elizabeth, New Jersey installation. Ten days later a carrier in the North Bergen installation retired, thereby creating a vacancy in that installation. Grievant sought to exercise his contractual right to retreat to North Bergen when the carrier retired.

The NALC took the position that the excessed carrier in the Elizabeth installation must be retreated back to the North Bergen installation so he could bid on assignments posted at that installation. The Postal Service took the position that the excessed carrier may only be returned to a residual vacancy. In July 2010, the NALC filed a grievance, and it was appealed to arbitration at the regional level. In March 2011, while the case was pending at regional arbitration, the NALC elevated the grievance to the national interpretive step. At arbitration, the NPMHU intervened in support of the NALC's position.

The stipulated issue in this case is whether Article 12, Section 5.C.5.b.(6) of the 2006 National Agreement is violated when involuntarily reassigned city letter carriers are required to exercise their retreat rights specifically on residual vacancies in the level from which they were excessed in their original installation.

There are two levels in the city carrier craft: CC1 and CC2. Generally, the CC1 carrier delivers mail on the same route five days per week and the CC2 carrier covers a string of five routes per week. CC2 carriers earn higher pay than CC1 carriers. The term "unassigned regular" is used in those instances where a full-time letter carrier does not hold a duty assignment with set duties. Unassigned regular positions are level CC1 positions and have regularly scheduled hours and days off.

Article 41 of the parties' 2006 National Agreement outlines the way in which a vacancy is filled through the bidding process. When a CC1 or CC2 vacancy arises in an installation, it either must be posted for bid or reverted. Subject to certain limitations, the Postal Service determines whether a position should be posted as a vacancy for bid or should be reverted. If the Postal Service decides not to revert a position, the vacancy must be posted within 30 days of the date it becomes vacant. Vacant assignments not under consideration for

reversion must be posted for bid within 14 days of creation of the duty assignment or the vacancy, unless otherwise locally negotiated. Once a vacant duty assignment is posted for bid, a notice inviting bids will be posted for 10 days, unless otherwise locally negotiated. The senior qualified bidder shall be the successful bidder and once placed in the vacant position, his or her position becomes vacant. Then that vacant duty assignment goes through the same Article 41 process (reversion or posted for bid). This continuance of the Article 41 process is referred to as a "chain of bidding." If a vacancy is posted for bid, but no one successfully bids on it, then it becomes a residual vacancy. When a vacancy first occurs, there are three possibilities: reversion, a residual vacancy (if no one bids), or a chain of bidding followed by reversion or a residual vacancy.[1]

Cited provisions of Article 12 of the applicable 2006 NALC National Agreement are as follows:

ARTICLE 12
PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

* * *

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.

* * *

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

[1] In a small installation the process may be completed relatively quickly, but in a larger installation, it might take a year or longer.

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.

* * *

Section 5. Reassignments

* * *

C. Special Provisions on Reassignments

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

* * *

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

* * *

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. . . .

* * *

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

* * *

b. Reassignments to other installations after making reassignments within the installation:

* * *

(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.

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. . . . 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. . . .

* * *

8. Reassignment -- Part-Time Flexible Employees in Excess of Quota (Other than Motor Vehicle)

* * *

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.

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.

(Underlining added.)

NALC POSITION

The NALC argues that Article 12, Section 5.C.5.b.(6) makes no reference to "residual" vacancies; therefore, under the plain language of the provision the Postal Service obligation to honor the employee's request to retreat is triggered as soon as the "first vacancy" occurs in the employee's level and craft in the original installation. It explains that this does not necessarily mean that in all cases the employee must be returned to the original installation immediately. The precise timing of the reassignment is on a case-by-case basis and is governed by "the primary principle" set forth in Article 12, Section 4.A, that "in effecting reassignments...dislocation and inconvenience to employees...will be kept to a minimum, consistent with the needs of the service."

The NALC points out that Section 5.C.5.b.(6) permits excessed employees to request to return to "the first vacancy," not "the first residual vacancy." It argues that these terms are not synonymous. A first vacancy occurs immediately and a residual vacancy will not be established until a chain of bidding has been completed and no one bids on a posted assignment. Section 5.C.5.b.(6) does not require that an excessed employee be placed in a specific, permanent bid assignment. It simply requires the Postal Service to honor an employee's request to return to the first vacancy, which is a flexible formulation that allows an employee to be accommodated while the bidding process is underway.

The NALC contends that its interpretation of Section 5.C.5.b.(6) is reinforced by related provisions of Article 12. It asserts that there are recurring references to retreat rights throughout Article 12 which clearly show that retreat rights are not presumptively linked to the completion of the bid process and the establishment of a residual vacancy. One example is Article 12, Section 4.C, which requires the Postal Service to provide the Union, upon request, a comparative work hour report 60 days after an excessing event. Depending on the review of

the work hours report an employee may have his or her retreat rights activated. The NALC explains that these retreat rights are not contingent upon the existence of residual assignments, but on the continued existence of work hours which had been projected to decline. Another example cited by the NALC is the provision in Article 12, Section 5.C.5.a.(5), under which an employee reassigned to a different craft within the same installation is to be "returned at the first opportunity to the craft from which reassigned." The retreat right in this situation, the NALC notes, is made contingent on the existence of the first work opportunity, not the establishment of a residual vacancy.

The NALC also points to Article 12, Section 8, which covers the excessing of part-time flexible employees (PTFs) in the same installation or to other installations. The language in paragraphs e, f, and g, providing for the exercise of retreat rights by these employees is virtually identical to the wording of Section 5.C.5.b.(6). PTFs do not occupy specific duty assignments and do not bid on assignments. The only PTF vacancies that can exist are vacancies in the complement, not a residual vacant duty assignment. The NALC argues that the fact that the retreat rights of PTFs are defined in the same contractual language as that which appears in Section 5.C.5.b.(6) further illustrates that Section 5.C.5.b.(6) retreat rights likewise do not depend on the existence of a residual vacancy.

The NALC stresses that one section of Article 12 does expressly restrict the exercise of retreat rights to residual vacancies. Section 5.C.4 covers reassignments within an installation of employees excess to the needs of a section. Paragraph c of this section allows such reassigned full-time employees to retreat, but "only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding." The NALC argues that this is the exception which proves the rule. It shows that the drafters of Article 12 knew how to link retreat rights to residual vacancies when they intended to do so.

The NALC stresses that any ambiguity in the meaning of the specific reassignment rules set forth in Article 12, Section 5.C must be resolved in accordance with the "principles of reassignments" set forth in Section 4. The four basic "principles of reassignment" set forth in Section 4 were negotiated in 1973 and purposefully placed in a new section

preceding the specific reassignment rules in Section 5 to reflect the parties' specific intent that these principles would "overarch the rest of the provisions of Article 12," as testified to by Postal Service witness Brian Gillespie -- one of the negotiators -- in a 2000 national arbitration hearing in Case No. H0C-NA-C 12.

The most fundamental principle is the first, set forth in paragraph 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." According to the NALC, management's position in this case is in direct conflict with this primary principle, for the following reasons. First, involuntary excessing invariably causes inconvenience and dislocation because employees, as a minimum, will have to travel longer distances from home to get to work and will incur additional costs. Second, the deferral of an excessed employee's return to the original installation until a residual vacancy is available prolongs inconvenience and dislocation to the employee. Finally, the return of an excessed employee prior to the completion of the bidding process can be accomplished in a manner which is consistent with the needs of the Postal Service.

The NALC argues that in a typical situation, a vacancy leaves at least 40 hours of work to be assigned while the bidding process is underway. In these situations, the excessed employee would simply be treated as an "unassigned regular" and assigned whatever work was available until the bid process was completed, after which they would be permanently assigned either by bidding or by involuntary assignment. The NALC recognizes that there may be some situations where there is not sufficient work and advocates for a case by case approach, which it contends is consistent with the language of Article 12, Section 4.A.

The NALC argues that the Postal Service's past practice argument falls short of establishing a consistent, nationwide past practice accepted and followed by both parties. The Postal Service's single witness, Manager Robert Brenker, acknowledged on cross examination that he could recall only two instances involving the potential excessing and retreat of letter carriers under Article 12, both occurring during his tenure as an NALC officer in Portchester, New York in the early 1970s. The first instance, when letter carrier routes were motorized, was

in 1973 and no letter carriers were excessed in Portchester. Brenker also acknowledged that he did not know how many carriers may have been excessed, or subsequently exercised retreat rights, anywhere else in Westchester County, where Portchester is located. The second instance involved the automation of central forwarding in 1974 which took work from letter carriers that may have led to excessing. However, Brenker acknowledged that no letter carriers were excessed out of Portchester. The Postal Service's evidence corroborates the testimony of NALC Vice President Lew Drass that there has been very little excessing in the letter carrier craft. Moreover, the NALC points out that Brenker also admitted that successive NALC national officers consistently disagreed with management's approach to retreat rights during meetings of the national Article 12 work group about which he testified.

The NALC refutes the Postal Service's argument that the NALC's position is inconsistent with those provisions of Article 12 in the 2006 National Agreement requiring that employees be excessed and retreat within their pay levels.[2] The NALC argues that its interpretation of Section 5.C.5.b.(6) would not result in excessed carriers being returned to a different pay level. The grievant in this case was a CC1 carrier when he was excessed. The carrier who retired shortly thereafter was also a CC1. Thus, the first vacancy in North Bergen, which grievant sought to return to, was a CC1 position. Moreover, at the time the grievance arose there was a CC2 at North Bergen who was junior to the grievant. If the grievant had been returned in a timely manner, he would have had the right to exercise his seniority to outbid this CC2 employee for an available CC1 vacancy. It was the deferral of the grievant's return that created the possibility that the residual vacancy would be the CC2 position. Under the restrictive terms of the 2006 contract, the grievant could no longer be retreated once that had occurred. The NALC maintains that the Postal Service's arguments reflect a hypothetical scenario, not the facts of this case. Under the NALC's approach, a CC1 carrier could be retreated as a CC1 "unassigned regular." That carrier would remain a CC1 while the bidding process was underway. While there are scenarios where the employee ultimately would obtain a CC2 assignment which becomes vacant during a bid cycle -- either by successful bid or by

[2] As noted at the hearing, the NALC points out that this pay level issue is relevant only because the present grievance arose under the 2006 Agreement. The current Agreement was modified to eliminate pay levels as a restriction on excessing and retreat of letter carrier craft employees.

involuntary assignment as a junior employee -- those results would follow from the operation of other contractual provisions.[3] The NALC argues that a reassignment of a CC1 carrier to a CC2 position within the installation after his return as a CC1 does not present a conflict with Section 5.C.5.b.(6).

The NALC also stresses that under its position, Section 5.C.5.b.(6) may be applied on a case-by-case basis so as not to conflict with the Postal Service's right to revert carrier assignments or to lead to a "second excessing" of the same employee. For example, if the Postal Service is in the process of reverting an assignment, delaying the return of a previously excessed employee may be justified and the NALC's approach does not preclude this result. Moreover, the Postal Service does not have unfettered discretion to revert letter carrier route assignments. Reversions must be justified by current data establishing that the route consists of less than eight hours work. If the rules are properly applied, when the first vacancy occurs the Postal Service will have an objective basis for knowing whether the potential retreat of an excessed carrier will conflict with the needs of the service. Similarly, if the Postal Service reasonably predicts that returning an employee to an unassigned regular position would obligate the Postal Service to pay out-of-schedule premium pay to the employee on a recurring basis, management could cite the scheduling problem as a reason why honoring the employee's request to return would not be consistent with the needs of the Postal Service.

NPMHU POSITION

Intervenor NPMHU supports the NALC's position in its post-hearing brief and submitted a letter in lieu of its own post-hearing brief. The NPMHU argues that the plain language of Article 12, Section 5.C.5.b.(6) does not include language restricting retreat rights to when a position is not filled through the bidding process, nor does it include a "residual" vacancy limitation. The provision makes it clear that the Postal Service shall allow an excessed employee to retreat or return to his or her former installation once there exists the "first vacancy" in the excessed employee's level at the former installation. The NPMHU contends that the Postal Service's proposed interpretation requires the Arbitrator to read "residual" into a provision

[3] See, Article 41, Section 1.A.7 and Section 1.C.

in which it does not appear. This would fundamentally change the plain meaning of the contract and would exceed the Arbitrator's authority.

The NPMHU also disputes the Postal Service's contention that the NALC's position would require it to create an unassigned regular position. Because the returning employee will not hold a duty assignment at the time he or she returns to the installation, the employee temporarily will assume the status of an unassigned regular with a fixed schedule, the schedule of the first vacancy triggering retreat rights, a status that will end at the conclusion of the bidding process. Any potential costs to the Postal Service are minor compared to the adverse impact on the employee who has been excessed out of the installation and are part of the Postal Service's contractual commitment to minimize "dislocation and inconvenience to employees" in the reassignment process. Moreover, as explained by the NALC, its proposed interpretation is not inconsistent with the Postal Service's right to revert a position and would not lead to additional excessing.

POSTAL SERVICE POSITION

The Postal Service contends that the 2006 National Agreement requires excessed carriers to exercise their retreat rights on the first residual vacancy in their level in their original installation. The contract should be read as a whole, and, if possible, every word and every provision should be given effect. The NALC's interpretation ignores the fact that the level of the first vacancy will be unknown until the Article 41 bidding process is complete, and it results in a residual vacancy. When a duty assignment becomes vacant in an installation, making it a "first vacancy," three possibilities ensue: the vacancy can be reverted, it can become a residual vacancy, or it can be filled through the Article 41 bidding process. Only once there is a residual vacancy will the Postal Service know whether it will be "in the level" and if the employee is able to exercise his or her retreat rights to the position.

The Postal Service stresses that the term "returned to the first vacancy" in Section 5.C.5.b.(6) must be harmonized with the phrase "in the level...in the installation from which reassigned...," and this language must be read in the context of the entire National

Agreement, specifically Article 41. The only way the above phrase can be given meaning is to wait until the Article 41 process concludes with a CC1 or CC2 residual vacancy.

The Postal Service contends that its interpretation is consistent with the intent of Article 12.4.A, which provides: "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." (Emphasis added.) The NALC's interpretation would cause an increased rate of excessing and disruption. The excessed employee could only come back into a new unassigned regular position until the Article 41 bidding process is complete. The Postal Service stresses that not only is there no contractual obligation to create these new unassigned regular positions to accommodate retreat rights, but this course of action is operationally inefficient for at least two reasons. First, retreating an excessed employee prior to a residual vacancy can potentially lead to a second excessing if Management decides to revert a vacancy during the Article 41 bidding process. Second, unassigned regular positions do not have a set duty assignment and any change to their schedule to meet operational needs would require out-of-schedule premium pay. Since an unassigned regular carrier without a set duty assignment is more likely to be needed to work outside his or her regularly scheduled hours, premium pay is more likely to be paid. This adverse financial impact is inconsistent with the needs of the Postal Service.

The Postal Service maintains that it has a longstanding practice of retreating employees to residual vacancies. The relevant language in Article 12.5.C.5.b.(6) has appeared unchanged in the National Agreement since 1963. Since that time there were at least two earlier excessing events involving NALC members -- one in 1973 relating to motorizing city carrier routes in Westchester County, New York, and another in 1974 relating to the central forwarding system. Robert Brenker, Manager of Strategic Complement Reassignment at Postal Headquarters, testified that on those occasions -- when he was an NALC local official in Portchester, New York -- the Postal Service took the position it always has taken that excessed employees could only retreat back to a residual vacancy in their original installation. The Postal Service points out that while the NALC tries to argue that "there's not much excessing" in the bargaining unit, this does not preclude the establishment of a customary practice. Moreover, in

recent years, beginning in 2008, the Postal Service met with the NALC leadership as part of Article 12 work group meetings, and maintained its position that retreat rights can be exercised only on residual vacancies.

The Postal Service acknowledges that it has an obligation to honor an excessed employee's request to return to his or her original installation in a manner which minimizes disruption to the employee consistent with the needs of the Postal Service. The NALC's position, according to the Postal Service, could increase disruption because the operational and staffing needs of the Postal Service cannot be known with any certainty until a vacancy goes through the Article 41 process, and either a reversion or a residual vacancy results from the process. The outcome of the Article 41 process could be realized right away (in the case of a smaller installation) or up to a year later (for a larger installation).

The Postal Service argues that Article 12.4.C is irrelevant to the instant dispute because retreat rights under that section are automatic; there is no "first vacancy" and no "request by the employee," per se, to honor. If the Union requests a comparative work hour report under Article 12.4.C, and the report shows that there is sufficient work in the installation for the excessed employees to perform, then the excessed employee can be returned to his or her original installation automatically. Since the comparative work hour report is a before-and-after snapshot of the work in the installation, and is used to substantiate Management's excessing decision, it is assessing the "needs of the Postal Service."

The Postal Service also argues that the NALC's comparison pertaining to PTFs is not relevant to this interpretive matter. PTF positions are not duty assignments and are not required to be posted for bid under Article 41, and therefore, PTF residual vacancies do not, and have never, existed.

The Postal Service insists that the most reasonable interpretation of Section 5.C.5.b.(6) is to retreat employees into a residual vacancy. The ambiguity from the omitted term "residual" only can be resolved by adopting the most reasonable interpretation.

The Postal Service notes that none of the parties advocates a plain language reading of Section 5.C.5.b.(6). Such a reading would violate Article 41, which allows management the option to revert the vacancy or to post it for bidding. Retreating an employee to the "first" vacancy without posting it for bid also potentially could violate the seniority provisions of the contract if a more senior carrier than the excessed carrier wanted to bid for that vacancy.

The Postal Service asserts that the NALC does not take the literal, plain language reading of "first vacancy," but rather contends that the Postal Service is obligated to return the employee to the work available in the original installation -- not to a specific position. However, the National Agreement does not impose an obligation on the Postal Service to create a new unassigned regular position simply to effectuate retreat rights. Moreover, a newly created unassigned regular position is not a vacancy.

In contrast, the Postal Service takes a straightforward interpretation of requiring involuntarily assigned city letter carriers to exercise their retreat rights specifically on residual vacancies in the level from which they were excessed in their original installation. Even the NALC admits to the reasonableness of this interpretation in some circumstances, taking the position that whether or not the employee would get to return prior to the establishment of a residual vacancy would have to be determined on a case-by-case basis.

FINDINGS

The retreat right provided for in Section 5.C.5.b.(6) is "to be returned to the first vacancy in the level, in the craft. . .in the installation from which reassigned." Not only must there be a vacancy in the level, but the right provided for in this provision is to be returned "to the first vacancy." Section 5.C.5.b.(6) does not state that an excessed carrier has a right to be returned to the installation when there is a vacancy (or a vacancy occurs) -- which in effect is what the NALC argues for in this case -- but to be returned to the vacancy.[4] Moreover, it is

[4] The provision in Article 12, Section 4.C, cited by the NALC does not tie the activation of retreat rights to a vacancy. Basically, that provision serves to undo the excessing which resulted in the

undisputed that until returned to the installation from which the carrier was excessed, in this case North Bergen, a carrier has no right to bid on any vacancy that occurs at that installation.[5]

There is no dispute that Section 5.C.5.b.(6) does not apply so as to require that a reassigned employee be placed in the first vacancy in the level that arises at the former installation. For example, on the facts of this case, grievant had no right to be returned directly to the vacancy created by the retirement of the CC1 carrier at North Bergen. The parties agree that vacancy had to be posted -- if not reverted by the Postal Service -- and filled through the seniority and bidding process in Article 41. The parties further agree that if the Postal Service does not exercise its right to revert a position, all succeeding vacancies in the chain of bidding similarly are to be filled by posting. On the basis of the record in this case, the only vacancy at North Bergen that grievant could be returned to from Elizabeth, consistent with the National Agreement, would be a residual vacancy. If there was some other vacancy he could be returned to, his retreat rights under Section 5.C.5.b.(6) would be triggered by the existence of that vacancy. The reason he only can be returned to a residual vacancy is not because the wording of Section 5.C.5.b.(6) limits his right to return "to the first vacancy" to a residual vacancy, to the exclusion of other vacancies, but because there is no other vacancy that he can be returned to consistent with application of Article 41.

The NALC contends that when the first vacancy in the CC1 level arose at North Bergen, grievant should have been returned to North Bergen and treated as (given the status of) an unassigned regular. But that would not be returning grievant to a vacancy. The status of an unassigned regular does not constitute a vacancy.

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employee's involuntary reassignment. Article 12.4.C does not offer a useful analogy for purposes of resolving the issue in this case. Likewise, the provisions of Article 5.C.8 relating to retreat rights of excessed PTFs to PTF vacancies are not analogous due to the very different nature of PTF vacancies and how they are filled.

[5] The situation would be different in the case of an excessed clerk as separately provided for in the second paragraph of Section 5.C.5.b.(6).

Therefore, while Section 5.C.5.b.(6) does not use the term "residual vacancy," that is the only vacancy to which a carrier involuntarily reassigned to another location could be returned consistent with other provisions of the National Agreement.

The NALC points to the language in Article 12, Section 5.C.4.c which provides that an employee involuntarily reassigned to a different section in the same installation retains the right to retreat to the "first residual vacancy." Understandably, the NALC argues that if the parties had intended to limit the retreat rights in Section 5.C.5.b.(6) to the "first residual vacancy," they would have stated that as they did in Section 5.C.4.c. The language in issue in Section 5.C.5.b.(6) dates back at least to the 1963 Agreement. While the provision in that Agreement corresponding to the retreat rights now set forth in Section 5.C.4.c is not in evidence, the NPMHU did introduce an excerpt from the 1964 Agreement which includes that provision (Article 12.B.4.c) in its entirety as follows:

> Such reassigned regular employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first vacancy. Failure to bid for the first available vacancy will end such retreat right.

Thus, it appears that the term "first vacancy" was used in both provisions relating to retreat rights at the time the language in Section 5.C.5.b.(6) at issue here originated.[6] More importantly, the only way in which Section 5.C.5.b.(6) can be applied to provide for a carrier to return from another installation to a "vacancy," consistent with the seniority provisions that both parties agree apply, is a return to a residual vacancy.

The evidence relating to past practice adds no real support to either parties' position. On the apparently rare occasions when carriers may have been excessed to other

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[6] There is no evidence as to when or under what circumstances the word "residual" was added to the provision now found in Section 5.C.4.c, but that provision as it appears in the 2006 National Agreement shows considerable revision from how it appeared in 1964. Section 5.C.4.c also differs from Section 5.C.5.b.(6) in that it provides for the right to retreat "upon the occurrence of" the first vacancy (1964) or the first residual vacancy (2006), rather than "to the" first vacancy, and refers to the excessed employee bidding on a vacancy in the section from

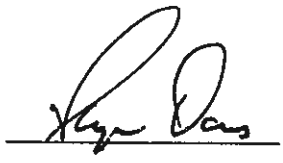
installations in the past, it appears that the Postal Service has taken the position it takes in this case regarding retreat rights. There is no evidence that the NALC agreed, and, at least in recent years, the NALC has asserted the position it does in this case. There is no evidence of the actual past application of Section 5.C.5.b.(6) that might be helpful in resolving the present dispute.

While the case-by-case approach advocated by the NALC attempts to recognize and harmonize the interests of both excessed employees and the Postal Service consistent with the general principle in Article 12.4.A, there is nothing in the language of Section 5.C.5.b.(6) -- including the words "such request shall be honored" -- that suggests such a case-by-case approach. There also is nothing in Section 5.C.5.b.(6) to suggest that when a vacancy in the level occurs at the carrier's former installation, the excessed carrier -- while not eligible to be placed in the vacancy or to bid on it -- is entitled to be returned to the former installation and to be given the status of an unassigned regular until either able to exercise seniority to bid into a vacancy or involuntarily assigned to a residual vacancy under Article 41. That might be a viable approach -- particularly with the case-by-case consideration proffered by the NALC -- but it is not what Section 5.C.5.b.(6) of the 2006 National Agreement provides for.

For all these reasons, this grievance must be denied.

AWARD

The grievance is denied.



Shyam Das, Arbitrator

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which the employee was reassigned. I hasten to add that Section 5.C.4.c is not at issue here, and that I am merely pointing out other differences in the wording of the two provisions.

United States Postal Service
475 L'Enfant Plaza SW
Washington DC 20260

Mr. Thomas Thompson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-4K-C 28684
CLASS ACTION
CEDAR RAPIDS IA 52401

Dear Mr. Thompson:

Recently, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance concerns the meaning of the "within 100 mile" limit in Article 12.

After discussion, we agreed to settle this grievance as follows:

> The 100 mile criteria identified in Article 12, (e.g. 12.5.C.1.b, 12.5.C.1.d, 12.5.C.1.f, 12.5.C.5.b.(1), and 12.5.C.5.b.(1)(b) is measured as the shortest actual driving distance between installations.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Kathleen Sheehan
Grievance and Arbitration
Labor Relations

Thomas Thompson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date: 2-23-95

e. Information is made available to employees, upon request, about:
   (1) Promotion program requirements and procedures and the promotion programs affecting them;
   (2) Promotion opportunities available to them;
   (3) Their eligibility in specific promotion actions; and
   (4) The identity of the person selected.

f. Restrictions on the promotion (or recommendation for promotion) of immediate relatives are explained in Handbook EL-312, 513.3, Relatives.

351.54 Exceptions to Competitive Promotion Procedures

Promotions excepted from competitive procedures are listed in Handbook EL-312, 717.32, Exceptions to Competitive Procedures.

351.55 Temporary Promotions

See Handbook EL-312, 716.2, Temporary Promotion, for conditions when temporary promotions are appropriate.

351.6 Mutual Exchanges

351.61 General Policy

Career employees may exchange positions (subject to the provisions of the appropriate collective bargaining agreement) if the officials in charge at the installations involved approve the exchange of positions. Mutual exchanges must be made between employees in positions at the same grade levels. The following employees are not permitted to exchange positions:

a. Part-time flexible employees with full-time employees.

b. Bargaining employees with nonbargaining employees.

c. Nonsupervisory employees with supervisory employees.

351.62 Rural Letter Carrier Employees

The mutual exchange of regular rural letter carrier employees of different Post Offices is permitted in accordance with the applicable provisions of the USPS-NRLCA National Agreement. The following mutual exchanges are not permitted:

a. Between regular rural letter carrier employees in the same Post Office.

b. Between rural letter carrier employees and members of other crafts.

352 Selection for Bargaining Positions

Procedures and requirements for filling bargaining positions are found in the following publications:

a. The appropriate collective bargaining agreement contains governing policies and procedures affecting bidding, assignments, reassignments, higher grade assignments, and promotions.

b. Handbook EL-312, 72, Bargaining Positions, contains detailed procedures and administrative requirements.

Labor Relations

UNITED STATES POSTAL SERVICE

June 7, 1995

MANAGERS, HUMAN RESOURCES (ALL AREAS)
MANAGERS, HUMAN RESOURCES (ALL DISTRICTS)

SUBJECT: Mutual Swap Seniority Rules

It has been brought to our attention that a number of facilities have erroneously been applying "mutual swap" seniority rules to members of the mail handler craft.

Unlike the crafts governed by the USPS-AFWU/NALC National Agreement, there are no provisions for the mutual swapping of positions in the USPS-NPMHU National Agreement. In fact, mail handler craft employees who voluntarily transfer to another installation must be assigned as part-time flexibles at the new installation regardless of their status at their previous installation. They must also begin a new period of seniority which is set at one day junior to the seniority of the junior part-time flexible at the new installation (Article 12.2.F1).

The misapplication of these seniority rules and providing misinformation to the affected employees can cause serious ramifications. Please ensure that members of your personnel staff are made aware of this distinction in seniority provisions.

If you have any questions regarding the foregoing, please contact Frank Jacquette (202-268-3843) at your convenience.

Anthony J. Vegliante
Manager
Contract Administration AFWU/NPMHU

	ACTION	INFO
Labor Rel.		✓
Pers. Svc		
EEO		
Injury Comp		
Safety		
Training		
EAP Coord.		
Health Unit		
File		

475 L'Enfant Plaza SW
Washington DC 20260-4100

TOTAL P.02

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Brian Farris
Director, City Delivery
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: A. Rettig
Walnut Creek, CA 94556
H4N-5C-C 14779

Dear Mr. Farris:

On May 27, 1988, we met to rediscuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether local management violated the National Agreement when the grievant's postmaster refused to forward the grievant's personnel folder to another office for evaluation in conjunction with the grievant's request for transfer.

During our discussion, we mutually agreed that no national interpretive issue is presented in this case. We also agreed that local management may not refuse to forward an employee's personnel folder to another installation in order to prevent or delay the consideration of the employee's request for transfer.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the attached copy of this decision as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Charles J. Dydek
Grievance & Arbitration
Division

Brian D. Farris
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

February 7, 1983

Mr. Francis J. Conners
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: National Level Grievance
Washington, D.C.
HSM-NA-C-53

NALC Branch 945
Long Beach, California
HSM-5B-C-15387

Dear Mr. Conners:

On January 12, 1983, we met to discuss the above-captioned grievance at the national level under the provisions in Article 15, Section 2, Step 4, and Section 3.(d), of the National Agreement.

The matters presented by you, as well as the applicable contractual provisions, have been reviewed and given careful consideration.

The union alleges that management discriminates against employees injured off duty in violation of Article 13 of the collective bargaining agreement when limited-duty assignments are granted preference over light-duty assignments.

While the Postal Service strives to accommodate all injured employees, its responsibilities toward employees injured on duty differ from its responsibilities toward employees whose

injuries or illnesses are not job related. As outlined in Part 546, Employee and Labor Relations Manual, the Postal Service has certain legal obligations to employees with job related disabilities pursuant to 5 U.S.C. §8151 and Office of Personnel Management regulations. Article 21, Section 4, of the National Agreement acknowledges these legal obligations toward employees injured on the job and Article 13 recognizes the importance of attempting to accommodate employees whose injuries or illnesses are not job related. However, the statutory and regulatory responsibilities toward on-the-job injuries are obligatory in nature and given priority consideration when assigning ill or injured employees.

The provisions promulgated in Part 546 of the Employee and Labor Relations Manual for reemploying employees partially recovered from a compensable injury on duty were not intended to disadvantage employees who occupy assignments properly secured under the terms and conditions of the collective bargaining agreement. This includes employees occupying permanent or temporary light-duty assignments acquired under the provisions set forth in Article 13 of the National Agreement.

It is our position that these interpretations are consistent with the terms and conditions of the National Agreement.

Sincerely,

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 5, 1983

Mr. Gerald Anderson
Assistant Director
Clerk Division
American Postal Workers
Union, AFL-CIO
917 - 14th Street, N.W.
Washington, D.C. 20005-3399

Re: W. Bogle
Wappingers Fall, NY 12590
B1C-1Q-C 14748

Dear Mr. Anderson:

On July 28, 1983, we met to discuss the above-captioned case at the fourth step of the contractual grievance procedure set forth in the National Agreement.

This grievance involves the alleged use of altered Forms CA-17 for light duty requests.

During our discussion, we agreed to close this case based on our understanding that use of the form is not mandatory; the information required can be submitted on physician's letterhead, and no action will be taken against an employee solely for failure to use the form.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to close this case.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Gerald Anderson
Assistant Director
Clerk Division
American Postal Workers
Union, AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: E98M-1E-C 02207779
Class Action
Denver CO 80266-9701

Dear John:

I recently met with your representative Tim Dwyer to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The first issue in this grievance is whether management violated the National Agreement when it sent a letter to an employee and/or the employee's physician requesting clarification and/or information on an employee's medical progress without sending a copy to The Office of Workers' Compensation Programs (OWCP). The second issue is whether management violated the National Agreement when it created locally generated letters.

The parties agree to settle both issues based on language from Handbook *EL-505, Injury Compensation* dated December 1995, Section 6.3, Contacting the Treating Physician which in part states:

> "When the USPS medical provider or OHNA is unable to do so, contact the treating physician if additional information is needed because of inconsistencies relative to the employee's duty status or if there are incomplete medical reports. (ELM 545.62) The designated control point may contact the treating physician if clarification is needed following the initial examination."
>
> "Send copies of such correspondence to the employee and to the OWCP district office, and forward copies of the physician's response to both, once it is received. "

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case at this level thereby removing it from the pending Step 4 case listing.

Time limits at this level were extended by mutual consent.

Michele Ditchey
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 6/28/2012

John F. Hegarty
National President
National Postal Mail Handlers Union, AFL-CIO

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

September 30, 1983

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: Byrd
Washington, DC 20013
H1N-2D-C 5870

Dear Mr. Overby:

On August 29, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether the local memorandum setting forth a policy regarding light duty assignments violates Article 13 of the National Agreement.

The facts in the case file indicate that the policy specifically includes a provision that "temporary light or limited duty assignments will be authorized . . . for a period not to exceed 6 months . . . [A]n extension for 1-3 months . . . may be permitted with medical certification."

During our discussion of this matter, we agreed to the following as a full settlement of this case:

> The specific restrictions contained in the local memo that essentially preclude the authorization of a light duty assignment beyond 9 months is improper. Thus, any absolute language that limits the amount of time a light or limited duty will be authorized, without qualification, shall be stricken from the memo.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Sincerley,

Leslie Bayliss
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

September 30, 1983

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: Class Action
Baltimore, MD 21233
H1N-2D-C 6298

Dear Mr. Overby:

On August 29, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether the local memorandum setting forth a policy regarding light duty assignments violates Article 13 of the National Agreement.

The facts in the case file indicate that the policy specifically includes a provision that "temporary light or limited duty assignments will be authorized . . . for a period not to exceed 6 months . . . [A]n extension for 1-3 months . . . may be permitted with medical certification."

During our discussion of this matter, we agreed to the following as a full settlement of this case:

- The specific restrictions contained in the local memo that essentially preclude the authorization of a light duty assignment beyond 9 months is improper. Thus, any absolute language that limits the amount of time a light or limited duty will be authorized, without qualification, shall be stricken from the memo.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Sincerley,

Leslie Bayliss
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, APL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza SW
Washington, DC 20260

April 29, 1982

Mr. Kenneth Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: S. Morse
Cincinnati, OH 45234
S8C-4F-C 20495
A8-C-2861

Dear Mr. Wilson:

On April 21, 1982, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed that there was no interpretive dispute between the parties at the national level as to the meaning and intent of Article XIII of the National Agreement as it relates to the establishment of light duty assignments.

Through local negotiations, light duty assignments may be established by adjusting normal assignments without seriously effecting the production of the assignment, as in Section C.1., or 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, as in Section C.2.

In any case, 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 the employee's previous duty assignment, as indicated by Section C.3.

Application should be a matter to be determined at the local level as required.

Accordingly, as further agreed, this case is hereby remanded back to Step 3 for further processing by the parties at that level.

Please sign the attached copy of this decision as your acknowledgment of agreement to remand this case.

Sincerely,

Robert LJ Eugene
Labor Relations Department

Kenneth Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO

APR 15 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: R. DuFour
Groves, TX
MC-S-5127/MS-01-0999

Dear Mr. Riley:

On March 10, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

During our discussion, we agreed that light duty assignments for full-time employees may be established from part-time hours to consist of eight (8) hours or less in a service day and forty hours or less in a service week. In addition, we agreed that the installation head may change an employee's regular schedule in order to afford light duty work to an employee without incurring an overtime obligation. Based upon the foregoing, this case is considered resolved and the grievance closed.

Sincerely,

(signed)

William J. Downes
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 24, 1981

Mr. Wallace Baldwin, Sr.
Administrative Vice President
Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

AB # 1539

Re: Union
Pittsburgh, PA 15219
S8C-2P-C-8635

Dear Mr. Baldwin:

On April 8, 1981, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed that there was no interpretive dispute between the parties at the National level as to the meaning and intent of Article XIII of the National Agreement as it relates to the issues in this case.

Determinative in this grievance is whether there is light duty on the employee's tour. If such light duty is feasible, it should be made available.

Accordingly, as further agreed, this case is hereby remanded back to Step 3 in the hope that it can be resolved on the above by the parties at that level. If not, it should be further processed at that level.

within a bargaining unit or while detailed to a nonbargaining position (see exceptions in 434.622).

Exhibit 434.621
Out-of-Schedule Premium Pay Eligibility Table

Rate Schedule	Employee Classification			
	Full-time Regular	Part-time Regular	Part-time Flexible	Casual,* Temporary and PM Relief
B — Rural Auxiliary	–	–	No	No
C — MESC	Yes	No	No	–
E — EAS	No[2]	No	–	No
F — Postmasters (A–E)	–	No	–	No
G — Nurses	Yes	–	No	No
K — HQ Op. Services Div.	Yes	–	–	–
L — Postmaster Replacement	–	–	–	No
M — Mail Handlers	Yes	No	No	–
N — Data Center	Yes[1]	–	No	–
P — PS	Yes[3]	No	No	–
Q — City Carriers	Yes[3]	No	No	–
R — Rural Carriers	No	–	No	–
S — PCES	No	–	–	–
T — Tool and Die	No	–	No	–
Y — Postal Police	Yes	–	No	–

* *Casual employees are covered in RS-E regardless of the bargaining unit they supplement.*

1. *Grades 18 and below when the change exceeds 1 hour and lasts for more than 1 week.*
2. *See 434.7 for coverage under the Nonbargaining Rescheduling Premium.*
3. *Employees in the clerk-craft are not eligible for out-of-schedule premium when detailed to a nonbargaining position.*

434.622 **Exceptions**

Eligible employees are not entitled to out-of-schedule premium under the following conditions:

a. When detailed to a postmaster position as officer in charge.

b. When detailed to a rural carrier position.

c. When detailed to an ad hoc position, for which the employee applies and is selected, when the core responsibilities of the position require work on an irregular schedule.

d. When detailed to either a bargaining unit or nonbargaining position in grade 19 and above.

e. When attending a recognized training session that is a planned, prepared, and coordinated program or course.

f. When assigned to light duty according to the provisions of the collective bargaining agreement or as required by the Federal Employee Compensation Act, as amended.

g. When allowed to make up time missed due to tardiness in reporting for duty.

h. When in accord with and permitted by the terms of a bid.

i. When a request for a schedule change is made by the employee for personal reasons and is agreed to by the employee's supervisor and shop steward or other collective bargaining representative.

j. When the collective bargaining agreement that covers the employee states that employees detailed to nonbargaining unit positions are not entitled to out-of-schedule premium.

k. When the assignment is made to accommodate a request for intermittent leave or a reduced work schedule for family care or serious health problem of the employee (see 515.6).

434.63 Pay Computation

Provisions concerning pay computation are as follows:

a. Out-of-schedule premium is paid to eligible personnel in addition to the employee's hourly rate and at 50 percent of the hourly rate for qualifying hours worked up to 8 hours in a service day or 40 hours in a service week.

b. For those eligible employees who receive TCOLA (439.1), this premium is paid at 50 percent of the employee's rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In workweeks when FLSA overtime is not earned, this premium is calculated in accordance with 434.63a.

c. All leave paid to an employee who is in an out-of-schedule status is paid at the employee's straight time rate.

434.7 Nonbargaining Rescheduling Premium

434.71 Policy

Nonbargaining rescheduling premium is paid to eligible nonbargaining unit employees for time actually worked outside of and instead of their regularly scheduled workweek when less than 4 calendar days notice of the schedule change is given. It is not paid beyond the 4th calendar day after the notice of schedule change is given. Neither is it paid when the assignment is made to accommodate an employee's request.

434.72 Eligibility

All nonexempt full-time nonbargaining unit employees grade 18 and below are eligible for nonbargaining rescheduling premium. Full-time nonexempt postmasters and officers in charge, however, are only eligible when their schedule is changed because their relief is not available to work the sixth day (see 432.34).

434.73 Pay Computation

Provisions concerning pay computation are as follows:

a. Nonbargaining rescheduling premium is paid to eligible personnel in addition to the employee's hourly rate and at 50 percent of the hourly rate for all actual workhours up to 8 hours in a service day or 32 hours in a service week.

b. For those employees who receive TCOLA (see 439.1), this premium is paid at 50 percent of the employee's rate, plus TCOLA, in those

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

NOV 14 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers,
AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: D. Heath
Norwalk, CA
NC-W-8182/W793-77N

Dear Mr. Riley:

On October 13, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Based on the evidence presented in this grievance, we find that an employee on light duty may be scheduled for duty at such time as the light duty work is available. The employee's "normal schedule does not apply when that employee requests light duty." Local management will make a reasonable effort to reassign the employee to available light duty in his own craft prior to scheduling light duty in another craft.

Therefore, it is our conclusion that no violation of the National Agreement occurred and the grievance is denied.

Sincerely,

Michael J. Harrison
Labor Relations Department

In the Matter of the Arbitration between	:	Arbitration Case No. N8-NA-0003 Washington, DC
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	:	
-and-	:	OPINION AND AWARD
UNITED STATES POSTAL SERVICE	:	

APPEARANCES:

For the NALC - Cohen, Weiss & Simon
by: Keith E. Secular, Esq.

For the APWU - Cafferky, Powers, Jordan & Lewis
by: Daniel B. Jordan, Esq.

For the Mail Handlers - James S. Ray, Esq.

For the USPS - Richard A. Levin, Esq.

BACKGROUND:

This case was properly processed through the steps in the grievance procedure found in the pertinent collective bargaining agreement. The Parties stipulated that it was in form before the Arbitrator for final and binding determination. The hearing was held at the offices of the USPS in Washington, DC, on October 9, 1979. At that time, the NALC, as the grieving Union, was represented as indicated above. Counsels for the APWU and the Mail Handlers appeared and requested leave to intervene pursuant to Article XV of the Agreement. The NALC and the USPS agreed that they should be afforded status as intervenors and they were represented as also indicated above.

During the course of the hearing, the Parties were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. By agreement, post-hearing briefs were filed. These were received from the NALC and the USPS on January 25, 1980, and their contents were duly considered.

THE ISSUE:

As stipulated:

> When the USPS involuntarily assigns an employee to a limited duty assignment outside of his or her regular work schedule, pursuant to the F-21 and F-22 Handbook and the 1978 National Agreement, must the employee receive out-of-schedule premium pay?

STATEMENT OF THE CASE:

February 2, 1979, in Case No. NC-S-10828, which arose in Tulsa, Oklahoma, the Undersigned was presented with the following issue:

> Is the USPS obligated to pay overtime compensation, under the provisions of Article VIII, Section 4-B of the 1975 National Agreement, to an employee who is assigned to work hours outside his regular schedule to perform a temporary limited duty assignment while partially incapacitated due to a work related injury or illness?

Obviously, the case presently under consideration and the previous one referred to above are closely related. In the Tulsa case, the NALC argued successfully that Article VIII-Section 4-B entitled the Grievant to premium pay for the out-of-schedule limited duty assignment. The Union contended that such a result had to follow in order to be consistent with a still earlier Award in Case No. AB-C-341, issued in a Fort Wayne, Indiana Case, which was decided on July 27, 1975.

The Union, in the Tulsa Case, argued that any provision to the contrary regarding liability for overtime payment in the F-21 and F-22 Handbooks, which were issued in 1978, could not have any impact upon the validity of the Union's claim which was advanced in a grievance filed on October 6, 1977. Pursuant to the terms of Article XIX of the National Agreement, concerning the applicability of of all handbooks, manuals and published regulations of the USPS, the specific requirements of these two Handbooks relating to out-of-schedule limited duty assignment pay calculations could not be given retroactive force and effect.

The Award in the Tulsa Case, as indicated above, sustained the Union's position that, pursuant to Article VIII, Section 4-B of the 1975 Agreement, the Grievant was entitled to be paid at the overtime rate for the hours which he worked outside his regular schedule. However, in the earlier Case it was noted that we were dealing with a provision filed prior to the issuance of the F-21 and F-22 Handbooks which took effect in April and early May of 1978, and which had been under consideration from December of 1977, in the case of the F-21, and from February of 1978, in the case of the F-22 Handbook. In this regard, the Undersigned stated:

> "In this proceeding, where we are dealing with a grievance filed prior to the issuance of either of these Handbooks, the question of whether the Union is bound by the terms of such Handbooks now possibly incorporated by reference into the National Agreement pursuant to the provisions of Article XIX is not presented. Nothing in Article XIX suggests that the terms of such Handbooks be given retroactive application. At the same time, it must also be noted that in this proceeding no finding will be made as to whether or not the Union has placed in contention subsequent to their

publication under the provisions of Article XIX, or properly challenged, the incorporation by reference of the above-quoted provision of these Handbooks thereafter."

The language in both Handbooks referred to above provides that overtime pay shall not be required for an out-of-schedule assignment under the following circumstances:

"Where the employee's schedule is temporarily changed because he was given a light duty assignment pursuant to Article XIII of the National Agreement or as required by the Federal Employee Compensation Act, as amended."

In this proceeding, the Unions have challenged the contention of the USPS that they failed to prevent the incorporation by reference of this provision in the 1978 Agreement, and for that reason the Service is no longer obligated to make such overtime payments. The Unions have also contended that, contrary to the assertion in that provision of the Handbooks, the Federal Employee Compensation Act does not now require that the Postal Service provide partially disabled employees, who were so disabled by an on-the-job injury or illness, with light or limited duty assignments when such assignments can be made available.

CONTENTIONS OF THE PARTIES:

As indicated above, the Unions claim that the provisions of Article XIX of the National Agreement are not applicable to this dispute since the Unions had already challenged the Service's right to deny overtime payments for limited duty assignments outside of an employee's regular scheduled hours in the Tulsa Case and even earlier. For that reason, a failure to process a challenge to this announced pay practice within 30 days after receipt of the notice of proposed change cannot be regarded as acquiescence.

With regard to this 30 day time limitation in the Agreement, the Unions contended that by practice the Parties had agreed that this requirement could be ignored and had been ignored without penalty. For this reason, discussions between the parties was an open ended process making this appeal to arbitration a timely challenge to the incorporation of this pay practice found in the Handbooks into the National Agreement.

The Unions also claimed that a failure to appeal a handbook revision to arbitration within 30 days does not permit the USPS to change the specific terms of the collective bargaining agreement. Since this failure to provide overtime payments would be contrary to the specific requirements of Article VIII-4-B, such provision could be grieved under the normal provisions of Article XV of the National Agreement. In addition, the Unions raised certain equitable considerations which they alleged warranted consideration in any determination of whether such overtime payments could be avoided.

Finally, the Union claimed that the Federal Employee Compensation Act does not require that the Employer put a partially disabled employee back to work, and implementing regulations issued by the Department of Labor and the Office of Personnel Management also do not impose such a requirement upon the Employer. For this reason, Section 233.23b of the Handbooks cannot be construed to permit the USPS to avoid its overtime obligation to such employees who are returned to duty in an out of schedule assignment.

The USPS made one principal argument with regard to the applicability of the provisions of Section 233.23b of the F21 Handbook. The Employer argued that by ratifying and signing the

1978 National Agreement, with knowledge of the provisions of the F21 and F22 Handbooks denying such overtime payments, the Unions accepted those provisions as being engrafted into the Agreement and not subject to further challenge as to their terms. According to the USPS, Article XIX of the Agreement clearly provides for such a result.

The Postal Service also contended that by operation of the terms of Article XIX the specific provisions of these Handbooks took precedence over the general provisions of Article VIII-4-B, which by their terms did not deal with the subject of out-of-schedule assignments for employees only capable of performing limited or light duty.

The Service also pointed out that the F21 and F22 Handbooks were published while the 1975 Agreement was in effect. Before that Agreement was superseded, the USPS served the notice that it intended to change the terms of the Handbooks upon the Union as required by Article XIX. The Union then had an additional 30 days in which to take those proposed changes to arbitration. Since the Union failed to do so, it must be concluded that it regarded the changes as not inconsistent with the requirements of Article VIII-4-B. There is no question, according to the Postal Service, that the Union knew of the change in pay practice which would result from the implementation of this provision in the Handbooks. It was discussed on numerous occasions, and the Union contended that the dispute over its implementation would be taken to arbitration. This did not happen in timely fashion.

The Postal Service also alleged that the fact it did discuss the implementation of Section 233.23b with certain attorneys

who represented various plaintiffs in a Fair Labor Standards Act proceeding more than 30 days after the time to file a request for arbitration under Article XIX could not be regarded as a waiver of the right to impose such a time limit on the Union which was the party with the right to request arbitration. From statements made by spokesmen for the NALC, it was apparent that the Union recognized it had to challenge the implementation of Section 233.23b in arbitration if the Service would not reconcile the terms of that provision with the language in Article VIII-4-B, and the subsequent discussions did not relieve the Union of this obligation.

In responding to the Union's claim that the question of the propriety of denying overtime payments to light duty assignees working out-of-schedule was being controverted at the time that the F-21 and F-22 changes were transmitted to the Union and a subsequent additional demand for arbitration was unnecessary, the Postal Service pointed out that even as late as February of 1978, when the F-22 revisions were sent to the Union, the fourth step decision in the Tulsa Case had not been issued. That was transmitted two months later. For that reason, at least at the National level, pursuant to Article XIX, the Union's objections to the changes in the Handbook should have been made known.

Finally, the USPS asserted that it believed it had an obligation imposed upon it to provide partially disabled employees with limited duty assignments in addition to other good reasons why it should do so. According to the Postal Service, based upon the authority under 5 U.S.C. Section 815(b), when read in conjunction with 5 C.F.R. 353.306, which imposed an obligation to "make every effort" to provide such employment, coupled with 5 C.F.R.353.401, an employee

could appeal to the Merit System Protection Board if the USPS did not offer such an employee a limited duty assignment. To prove that an employee waived his or her restoration rights, the USPS would be obliged to demonstrate a job offer was made and the employee did not avail himself or herself of that opportunity. For these and other reasons, which it advanced, the Employer claimed that the Federal Employee Compensation Act imposed a duty upon the Postal Service to "immediately and unequivocally" restore an employee who has recovered sufficiently within one year to perform work in his or her own pay grade.

OPINION OF THE ARBITRATOR:

As stated earlier, this Arbitrator has on previous occasions required the Postal Service, pursuant to the provisions of Article VIII-H-B, to pay overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer. In the Tulsa Case, that duty was imposed when the employees involved were given such out-of-schedule assignments temporarily while performing limited duty because of a partial physical incapacity due to a work related injury or illness.

In the Tulsa Case, the Arbitrator discussed the beneficial results which could be achieved from the rehabilitative effects of such assignments for the employee. Also considered were the considerable savings which might result from getting employees to work at jobs they were capable of handling rather than sitting at home and receiving compensation payments. Regardless of the obvious advantages to the employee and the Service, as well as adherence to the government policy stated in the Federal Employees Compensation Act and implementing regulations of

the Civil Service Commission, now Office of Personnel Management, and the Department of Labor, the Undesrigned was of the opinion that the clear language of Article VIII-Section 4-B precluded consideration of these other factors as then urged by the Postal Service. The Award had to take its "essence" from the terms of the Agreement.

The National Agreement provides in Article XIX as follows:

HANDBOOKS AND MANUALS

> Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.
>
> Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) 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 to the Unions upon issuance.

In the case at hand, there is no dispute that the Unions were furnished with a copy of the proposed F-21 Handbook as revised, pursuant to the requirements of Article XIX, on December 15, 1977. The Parties met on January 13, 1978 to discuss the proposed Handbook contents. On February 16, 1978, the Postal Service transmitted the proposed F-22 Handbook along with certain revisions now proposed to the

F-21 Handbook. The Parties met on March 17, 1978 to discuss the proposed contents of the two Handbooks . In the two Handbooks was the following language in Section 233.23b, excusing overtime payment:

> "Where an employee's schedule is temporarily changed because he was given a light duty assignment pursuant to Article XIII of the National Agreement or as required by the Federal Employee Compensation Act, as amended."

At that meeting, according to the testimony in this record, the spokesman for the NALC specifically brought up the Union's objections to making an exception out of involuntary out-of-schedule light duty assignments. He also argued that the Federal Employees Compensation Act did not require the USPS to make limited duty assignments. In the earlier Tulsa Case, this same witness indicated that he believed he told the Postal Service at the time he would arbitrate the issue and that arbitration was subsequently demanded. Before testifying in the present case, he learned that meetings had been requested but arbitration proceedings had not been invoked. Although this witness testified that he was of the opinion that the contentions made in the Tulsa Case covered the Union's position in this dispute, he obviously believed that the Postal Service was changing something because he indicated that an implementation of the Service's proposal to comply with Section 233.23b warranted processing a grievance on such an issue to arbitration. None of the Unions followed up their request for an Article XIX meeting with a request for arbitration when the Postal Service would not meet the objections to the inclusion of Section 233.23b in the Handbooks.

If the Unions believed that the changes in the payroll computation contemplated by this Section were in conflict with the terms of the then existing National Agreement, particularly Article VIII-4-B, than a grievance should have been raised and processed to a

resolution. If the contention of the Unions was that this change was neither fair, reasonable, nor equitable, a right to grieve also existed under the terms of Article XIX.

Parenthetically, it should be noted that the F-21 Handbook is singled out for specific mention in the provisions of Article XIX.

Examining the testimony offered at this hearing and the record of the Tulsa Case, which was incorporated by agreement of the Parties, the conclusion must be reached that the Postal Service did comply with the procedural requirements found in the second paragraph of Article XIX. The Unions were properly placed on notice, in a timely manner, that this limitation upon entitlement to overtime pay was going to be implemented under the terms of the Handbooks as it had under previous practice of the Service which the Union's had contested in the Tulsa Case.

While the discussions with a number of attorneys representing employees were underway concerning the USPS' financial obligation to a large number of employees under a decision issued applying Fair Labor Standards Act, the Unions were also questioning the Service's right to implement the payroll practice discussed in the Handbooks. At that very same time, in the Spring of 1978, negotiation of the new National Agreement began looking toward the renewal of the National Agreement due to expire on July 20, 1978. During the time that those negotiations were underway, there is no dispute about the fact that the Unions were aware of the contested provision contained in the Handbooks. The 30 day period provided for in Article XIX had long past before the new Agreement was consumated. That Agreement was made effective July 21, 1978. It contained the identical Article XIX language which was contained in the 1975 Agreement, including a specific reference to the

the F-21 Handbook provisions. No effort was made to modify that language at the time although the F-21 and F-22 were by then fully implemented nationwide and controlled time, attendance and payroll accounting procedures. The negotiators for the Unions, at the National level, thus agreed to continue in effect the terms of these Handbooks by their acceptance of the unaltered Article XIX requirements. It was not until April 19, 1979, more than a year after the transmission of these Handbooks, as revised, to the Unions, that the Union filed the grievance which led to this proceeding.

For reasons more fully explored in the Tulsa Case Award, the Undersigned is of the opinion that the language of the pertinent provisions of the Federal Employee Compensation Act as implemented by the regulations issued by the Office of Personnel Management and the Labor Department not only are designed to encourage employees to seek out and accept suitable work assignments for therapeutic reasons and to discourage malingering, but those same directives obligate the Postal Service to make every effort to find suitable employment, within a disabled employees physical capabilities, or be prepared to successfully explain why it was unable to do so. For that reason, the provision of Section 233.23b of the F-21 and F-22 Handbooks which indicates that such an obligation upon the Employer is a requirements of the FECA accurately reflects the intent of the draftsmen as well as those who were entrusted to administer the program and write the implementing regulations.

For the reasons set forth above, the Undersigned is of the opinion that this record supports the contention of the USPS that the current language of the F-21 and F-22 Handbooks governing eligibility for overtime payment for partially disabled employees has been engrafted into the National Agreement by virtue of the application of the provisions

of Article XIX.

Having reached this conclusion it must finally be determined that the grievance raised protesting the practice of not making overtime payments for out-of-schedule assignments to employees who are partially disabled because of an on-the-job injury or illness must be denied. Having so concluded, it is necessary to add that this determination does not give the USPS an unbridled right to make an out-of-schedule assignment when the disabled employee could be offered such a work opportunity during the hours of his or her regular tour.

A W A R D

The grievance filed in Case No. N8-NA-0003 must be and hereby is denied.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
March 12, 1980

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

NOV 26 1979

Mr. Ronald Hughes
Assistant Secretary Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: L. Collier
Pasadena, CA
N8-W-0096/WCNSGC4396

Dear Mr. Hughes:

On October 26, 1979, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we concluded that at issue in this grievance is whether the grievant was properly denied out-of-schedule premium pay while working in a light duty assignment.

After reviewing the information provided, it is our position that the Step 3 decision properly concluded that the grievant was inappropriately required to report for the light duty assignment in question, as he had not requested such an assignment. Accordingly, inasmuch as he was directed to work a schedule different from his normal schedule and in another craft, and such assignment was not for his own personal convenience and sanctioned by the Union, the grievant is entitled to receive out-of-schedule premium pay for the period he worked in other than his normal work schedule. Accordingly, by copy of this letter, the Postmaster is instructed to reimburse the grievant at the appropriate premium rate for the period in question.

Sincerely,

W. E. Henneberger

for Viki Maddox
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 30, 1982

Mr. Kenneth Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: Class Action
Cincinnati, OH 45234
B1C-4F-C-2041

Dear Mr. Wilson:

On March 3, 1982, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure as set forth in Article 15, Section 2 of the National Agreement.

The question in this grievance is whether management violated Article 11, Section 6 of the National Agreement, when light duty employees were precluded from the holiday schedule.

During our investigation, local management indicated that the only reason the three (3) light duty employees named in the grievance were precluded from the holiday schedule, was because they were not needed for Tour 3.

Furthermore, it is our position that all full-time and part-time regulars, including those who are on light duty, who possess needed skills and wish to work on the holiday be afforded an opportunity to do so. However, when local management is determining the number and categories of employees needed to work, a factor to be considered in scheduling a light duty employee, who wishes to work the holiday, is the medical restrictions imposed by the employees medical practitioner and whether that employee could in fact be utilized to do the work that would be available on the holiday.

Sincerely,

Harvey White

Harvey White
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

September 21, 1982

Mr. Leon W. Hopton
Administrative Vice President,
Motor Vehicle Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: Class Action
Cincinnati, OH 45234
H1C-4F-C-2430

Class Action
Cincinnati, OH 45234
H1C-4F-C-2437

Dear Mr. Hopton:

On September 9, 1982, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The question in these grievances is whether management violated Article 11 of the National Agreement by not scheduling light duty employees for holiday work.

During our discussion, we agreed to resolve the grievances based on our agreement to the following:

> All full-time and part-time regulars, including those who are on light duty, who possess needed skills and wish to work on the holiday may be afforded an opportunity to do so. However, when local management is determining the number and categories of employees needed to work, a factor to be considered in scheduling a light duty employee, who wishes to work the holiday, is the medical restrictions imposed by the employees medical practitioner and whether that employee could in fact be utilized to do the work that would be available on the holiday.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve these cases.

Sincerely,

Margaret H. Oliver
Labor Relation Department

Leon Hopton
Administrative Vice President
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

OFFICE OF THE
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

Mr. Glenn Berrien
President
National Postal Mail Handlers Union, AFL-CIO
1 Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: H7M-1A-C 31598
CLASS ACTION
NEW YORK, NY 10013

Dear Mr. Berrien:

On August 5, 1991, we met with your representative, Claudis Johnson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether employees on light duty should receive the same preference for work as those on limited duty.

After reviewing this matter, we mutually agreed that this case is to be remanded to the parties at Step 3 for application of the following:

> In accordance with Article 13, Section 4.A of the National Agreement, every effort shall be made to assign light duty employees within their present craft or occupational group. After all efforts are exhausted in that area, consideration will be given to reassignment to other crafts or ocupational groups within the same installation.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Melissa J Doniger
Grievance & Arbitration
Division

Glenn Berrien
President
National Postal Mail Handlers
Union, AFL-CIO

Date: 8-13-91

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Joseph N. Amma, Jr.
Director of Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
905 16th Street, NW
Washington, DC 20006-1765

Re: N7M-4K-C 13203
F. STEIMEL
WATERLOO, IA 50701

Dear Mr. Amma:

On October 23, 1989, we met with your representative, Claudis Johnson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management properly denied the grievant's light duty request.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that this case is a fact circumstance best suited for regional determination. The parties further agreed that Article 13.4 does call for management to give consideration to reassignment to another craft or occupational group within the same installation when considering light duty request, provided the pre-existing conditions of the Article are met.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

William F. Scott
Grievance and Arbitration

Joseph N. Amma, Jr.
Director of Contract Administration
of North America, Mail Handlers
Division, AFL-CIO

DATE 1/2/90

UNITED STATES POSTAL SERVICE

Mr. William H. Young
Executive Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001-2144

SUN-SC-C 89452
Re: H90N-4H-C 96029235
Class Action
Sarasota, FL 34230-9998

Dear Mr. Young:

Recently our representatives met in prearbitration discussions of the above-referenced grievance.

The issue in this grievance is whether a local "blanket policy" requiring an update of medical information every 30 days to continue in a light-duty assignment is a violation of Article 13 of the National Agreement.

After reviewing this matter, we mutually agreed that while no national interpretive issue is fairly presented in this case, the issue is resolved as follows:

The parties agree that the local practice of requiring an automatic update of medical information every 30 days is contrary to the intent of Article 13 and, therefore, will be discontinued. Consistent with the provisions of Article 13.4.F. of the National Agreement, an installation head may request an employee on light-duty to submit to a medical review at any time: *The installation head shall review each light duty reassignment at least once each year, or at any time the installation head has reason to believe the incumbent is able to perform satisfactorily in other than the light duty assignment the employee occupies. This review is to determine the need for continuation of the employee in the light duty assignment. Such employee may be requested to submit to a medical review by a physician designated by the installation head if the installation head believes such examination to be necessary.*

Please sign and return the enclosed copy of this decision as your acknowledgment of your agreement to settle this case, removing it from the national arbitration listing.

Sincerely,

Doug A. Tulino
Manager
Labor Relations Policies
and Programs

William H. Young
Executive Vice President
National Association of Letter Carriers,
AFL-CIO

Date: 4-09-2001

475 L'Enfant Plaza SW
Washington DC 20260

ARBITRATION AWARD

November 14, 1983

UNITED STATES POSTAL SERVICE

-and-

Case No. H8N-5B-C 22251

NATIONAL ASSOCIATION OF LETTER CARRIERS

Subject: Disqualification of Employee from Bid Assignment - Temporary Disability

Statement of the Issue: Whether the Postal Service's action in disqualifying an employee from her earlier bid assignment, and declaring such assignment to be vacant, was a violation of the National Agreement where the employee in question was unable to perform the full scope of her bid assignment due to temporary disability?

Contract Provisions Involved: Articles 3, 13, 19 and 41 of the July 21, 1981 National Agreement.

Appearances: For the Postal Service, D. James Shipman, Manager, Arbitration Branch (Central Region); for NALC, Richard N. Gilberg, Attorney (Cohen, Weiss & Simon).

Statement of the Award: The grievance is granted. M. McCollom should be placed in the bid assignment she held between late December 1980 and July 1981. She should be reimbursed for any wages or other benefits she lost by reason of this violation.

BACKGROUND

This grievance protests the Postal Service's action in disqualifying an employee, temporarily disabled by reason of an on-the-job injury, from her bid assignment. NALC claims this disqualification and the subsequent posting of her bid assignment as a vacancy were a violation of the National Agreement. The Postal Service disagrees.

Marilyn L. McCollum was hired as a part-time flexible city carrier in the Redondo Beach, California Post Office in December 1978. She strained her back while lifting a heavy bag of mail in late January 1980. This work-related injury resulted in her being totally or partially disabled from late January 1980 to July 16, 1982. For this entire period, she was unable to perform the full scope of letter carrier work. She was assigned, on many occasions, to limited duty consistent with her restrictions. Such assignments typically involved three or four hours' work per day.

McCollum was automatically converted from part-time flexible to full-time regular city carrier on November 29, 1980. She thus became eligible to bid on full-time regular vacancies. She bid for such a vacancy, Swing #12 relief route. She was awarded this bid assignment in December 1980 notwithstanding the fact that she was then physically unable to perform the full scope of the assignment. She was still disabled.

Some seven months later, Management disqualified her from this bid assignment on account of her physical inability to perform the work. Its letter of July 22, 1981 read in part:

> "This is official notification that you are being disqualified from your present bid assignment because of your physical inability to perform the full duties of the position to which assigned.
>
> "The position of Carrier requires that an employee be able to perform heavy lifting 45 pounds and over, not to exceed 70 pounds, and to have full physical capacity for standing, reaching and walking.
>
> "Examination of your medical documentation... certifies that you only have limited capacity to

perform some or all of the above cited position requirements, thereby necessitating this disqualification action from your current bid assignment.

"Effective July 25, 1981, you will be carried on the rolls as an unassigned regular..."

Management then declared McCollom's bid assignment vacant and posted it for bids. NALC promptly grieved, complaining that McCollom's bid assignment "is not vacant as long as she is on the rolls of the Postal Service in a L.W.O.P. [leave without pay] or other approved leave status." McCollom was fully recovered from her injury in July 1982. Management would not allow her to return to her previous bid assignment, Swing #12 relief route. That bid assignment had been filled by someone else in August 1981.

DISCUSSION AND FINDINGS

The critical provision in this case is Article 13, Section 4H:

"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." (Emphasis added)

These words, on their face, seem to apply to McCollom. She was a "full-time regular" who had apparently been placed on "temporary light duty..." She had earlier been awarded a bid assignment on Swing #12 relief route. When she recovered, she sought to be "returned to...[this] former duty assignment."

The Postal Service recognizes in its brief that the "reservation of duty assignment" set forth in this provision, if applicable to McCollom, would support her grievance. It argues, however, that Article 13, Section 4H is not applicable here. It contends that McCollom received a limited duty assignment pursuant to Chapter 540 of the Employee & Labor Relations Manual (ELM). It believes Article 13 pertains only to those on light duty. Its position, accordingly, is that because McCollom was on limited (rather than light) duty, she can assert no rights under Article 13 and she was not entitled to "reservation of [her] duty assignment."

There are several difficulties with this argument. Article 13 is much broader than the Postal Service is willing to admit. Its purpose, according to Section 1B, is to provide "full-time regular...employees who through illness or injury are unable to perform their regularly assigned duties" a means of "reassignment to temporary or permanent light duty or other assignments." These words draw no distinction between injury on or off the job. They also speak not just of "light duty" but of "other assignments" as well. Indeed, Section 2B1 specifically allows employees who have suffered "injury on the job" to request reassignment to "light duty or other assignments."* Thus, Article 13 does cover employees such as McCollom who have been injured on the job. There are portions of Article 13 which expressly state that they do not apply to employees injured on the job.** However, no such exclusionary language is found in Section 4H. Its "restoration of duty assignment" would seem to apply to injured employees regardless of where the injury occurred.

The Postal Service's contract analysis would produce a true anomaly. It would grant the "reservation of duty assignment" to someone injured off the job but would deny this "reservation of duty assignment" to someone injured on the job. In other words, the employee with the lesser equity would be protected while the employee with the greater equity would not. That could hardly have been what the parties intended.

Chapter 540 establishes an "injury compensation program." It refers to "employees injured on duty" and requires that they be placed on "limited duty" once they have partially overcome their disability. But these Chapter 540 rights cannot reduce the scope of Article 13. There is nothing in the National Agreement which would prevent an employee from exercising rights, if applicable, under both Chapter 540 and Article 13. It is true that Chapter 540 speaks only of "limited duty" while Article 13 speaks of "light duty." But, absent any explanation of the functional

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* Section 2B1 applies only to requests for "permanent", as opposed to "temporary", reassignment.

** See, for example, Section 2B2 and Section 4C, both of which state: "These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury."

difference between these terms, I believe this is a distinction without a difference. McCollom was restricted to three or four hours' work per day with no heavy or moderate lifting. She was plainly on "light duty" even though it may have been called "limited duty" by Management.

For these reasons, it would appear that McCollom was entitled to the protection of Article 13, Section 4H and that she therefore had a right to "return...to...[her] former duty assignment" when she was declared recovered in July 1982.

The Postal Service resists this conclusion on other grounds as well. It relies heavily on Article 41, Section 1C:

> "1. The senior bidder meeting the qualification standards established for that position shall be designated the 'successful bidder.'
>
> "2. Within ten (10) days after the closing date of the posting, the Employer shall post a notice indicating the successful bidder...
>
> "3. The successful bidder must be placed in the new assignment within 15 days except in the month of December.
>
> "4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment..." (Emphasis added)

It argues that this provision "must be read as constructing a mutuality of obligation." That is, Management "must work the employee in the job as posted, and the employee, in turn, must work in that job." It realizes that there may be "temporary alterations." However, it insists that "at some point the Postal Service may properly determine that the employee is not fulfilling the obligation, and move to disqualify the employee from the position..." It urges that Management properly disqualified McCollom after she'd failed to work her bid assignment for seven months.

Article 41, Section 1C4 provides that "the successful bidder shall work the duty assignment as posted." McCollom was awarded the bid assignment in question in late December 1980; she was disqualified in July 1981, some seven months later. The parties realized that "unanticipated circumstances" might prevent a successful bidder from promptly

working her bid assignment. Surely, a physical disability would qualify as an "unanticipated circumstance." Management then would have to make a "temporary change in assignment." It would select someone, presumably under Section 2B, to fill this available duty assignment until the disabled person could return.

The question remains as to whether Management could, after filling the duty assignment in this fashion for some period, declare the assignment vacant and post it for bids. NALC says Management cannot take such action. It believes Management's choices were either to fill the duty assignment through Article 41, Section 2B or to disqualify McCollom on the ground of permanent disability under Article 13.* The Postal Service, on the other hand, claims Management had a right under Article 41 Section 1C to declare this duty assignment vacant after some reasonable period of time. It stresses that the "unanticipated circumstances" demand only a "temporary change in assignment." It contends that Management's action in declaring McCollom's bid assignment vacant was justified.

Even assuming that the Postal Service's contractual position on Article 41, Section 1C is correct**, I do not think Management was entitled to declare McCollom's bid assignment vacant in July 1981. She had held her bid assignment seven months as of the date of her disqualification. That seems too short a period given (1) the fact that she had a temporary disability, a back sprain, (2) the fact that one of the examining physicians had noted her prognosis was "good", and (3) the fact that she was apparently working on light (or limited) duty during some of these seven months. Moreover, the "temporary" period contemplated by Article 41, Section 1C4 must be read in light of the "reservation of duty assignment" granted to those on "temporary" light duty under Article 13, Section 4H.

For these reasons, the finding is that McCollom was improperly disqualified from her bid assignment in July 1981. Her rights under Article 13, Section 4H were violated.

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* NALC asserts that such a disqualification for permanent disability could not be justified by the evidence in this case.

** I make no ruling on this issue.

AWARD

The grievance is granted. M. McCollom should be placed in the bid assignment she held between late December 1980 and July 1981. She should be reimbursed for any wages or other benefits she lost by reason of this violation.

Richard Mittenthal, Arbitrator

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260
April 22, 1981

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: Murphy, J.
Levittown, NY 11756
ESC-LM-C-18735

Dear Mr. Wilson:

On April 8, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed that an employee assigned to light duty in another craft pursuant to Article XIII of the National Agreement, and is declared recovered on medical review, shall be returned to the first available full-time regular vacancy in complement in the employee's former craft. This is mandated by the National Agreement.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Robert L. Eugene
Labor Relations Department

Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza SW
Washington, DC 20260

Mr. Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
O'Hare AMF, IL 60666
H1C-4A-C 35760

Dear Mr. Anderson:

On March 27, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether it was proper for management to terminate all permanent light-duty assignments on December 31, 1984.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 13 of the National Agreement. Whether management violated Article 13 of the National Agreement is a matter for regional determination.

Accordingly, we agreed to remand this case to Step 3 for further consideration by the parties, with the understanding that Article 13.5 does not give management authority to unilaterally terminate all light-duty assignments. The termination of light duty assignments is to be made on a case-by-case basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

Barbara J. Lorch
Labor Relations Department

Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case No. Q87M-4Q-C 77008684
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	)	
	)	
	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Teresa A. Gonsalves, Esq. James P. Verdi, Esq.
For the APWU:	Andrew D. Roth, Esq.

Place of Hearing:	Washington, D.C.
Dates of Hearing:	March 4, 2011 October 1, 2012
Date of Award:	November 26, 2013
Relevant Contract Provisions:	Articles 13, 19 and 30
Contract Year:	1987-1990
Type of Grievance:	Contract Interpretation

Award Summary:

The Union's appeal is denied.

Shyam Das, Arbitrator

BACKGROUND Q87M-4Q-C 77008684

In 1989 the Postal Service added a provision to the ELM, now Section 355.14, which states:

> The light duty provisions of the various collective bargaining agreements between the U.S. Postal Service and the postal unions do not guarantee any employee who is on a light duty assignment any number of hours of work per day or per week.

The parties have agreed that the issue presented in this case is:

> Did the Postal Service's 1989 addition to the Employment and Labor Relations Manual, stating that employees on light duty are not guaranteed any number of hours per day or per week, violate Article 19?

The following provisions of the National Agreement are relevant to the arbitration of this dispute:

ARTICLE 13

ASSIGNMENT OF ILL OR INJURED REGULAR WORK FORCE EMPLOYEES

Section 13.1 Introduction

* * *

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.

* * *

Section 13.2 Employee's Request for Reassignment

* * *

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....

Section 13.3 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 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.

C Number of Light Duty Assignments. The number of assignments within the 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.

Section 13.4 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.

* * *

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.

* * *

ARTICLE 19
HANDBOOKS AND MANUALS

Section 19.1

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

* * *

ARTICLE 30
LOCAL IMPLEMENTATION

* * *

Section 30.2 Items for Local Negotiations

There shall be a 30 consecutive day period of local implementation ... on the 20 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of this Agreement:

* * *

M The number of light duty assignments to be reserved for temporary or permanent light duty assignment.

N 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.

O The identification of assignments that are to be considered light duty.

* * *

Provisions relating to light duty assignments for employees unable to perform their regularly assigned duties due to an off-duty injury or illness date back to 1963. The current provisions in Article 13, quoted above, are substantively identical to provisions in the 1973 National Agreement between the Postal Service and the then Joint Bargaining Committee, comprised of the NPMHU, the APWU and the NALC.

In a letter to the NPMHU -- received on May 2, 1989 -- transmitting the text of a proposed addition to the ELM that (after minor revision) was promulgated as what is now Section 355.14, the Postal Service noted:

> The text ... includes a "no guarantee" provision. These changes are made to reflect the meaning of Article 13 as interpreted by arbitrator Mittenthal in his national award in Case H1C-4E-C 35028.

The cited decision by Arbitrator Richard Mittenthal (Mittenthal Award) is dated June 12, 1987. It involved a grievance arbitrated between the APWU and the Postal Service. At the start of that decision, Arbitrator Mittenthal stated:

> This grievance urges that full-time regulars on light duty assignments, resulting from off-duty injury or illness, are entitled to no less than eight hours' pay for each scheduled tour and forty hours' pay for each scheduled week. The APWU insists that Management violated these employees' rights when it sent them home before the end of their scheduled tours and refused to pay

> them for the hours they did not work. Its claim rests on the "work week" provisions of Article 8. The Postal Service insists that there is no work (or pay) guarantee on light duty assignments, that the "work week" for these employees was governed by Article 13 rather than Article 8, and that Management's actions did not violate the National Agreement.

In his Discussion and Findings, Arbitrator Mittenthal rejected the APWU's position, stating:

> The APWU maintains that Article 8 guarantees full-time regulars eight hours' work a day and forty hours' work a week. It insists this guarantee applies to all full-time regulars, regardless of whether they are on their normal assignment or on a light duty assignment. It believes that nothing in Article 13 detracts from the scope of the Article 8 guarantee. It urges, accordingly, that Management's action in sending these employees home on various occasions before the end of their scheduled tour, before they completed eight hours' work, was improper under the National Agreement.
>
> This argument fails because of the discretion granted Management by Article 13 in dealing with employees on light duty assignments, because of certain guarantee language found in Article 8 itself, because of the apparent widespread practice supporting the Postal Service's position, because of a Step 4 concession made by a responsible APWU official at the national level, because of the NALC interpretation of the language in question, and because of prior arbitration awards. All of these factors join to support the Postal Service's view that the National Agreement does not guarantee full-time regulars on light duty assignments eight hours a day or forty hours a week.

Addressing the last sentence of Article 13.3.C, Arbitrator Mittenthal stated as follows:

> These words reveal that the "tour hours" and "basic work week" of a light duty employee are based not just on the original "light duty assignment" but also on the "needs of the service." The "tour hours" and "basic work week" are not always a constant. They can be varied with the "needs of the service."... The "needs" in question relate to the operating requirements, the amount of work available, and so on. Where there is no work for a light duty employee, the "needs of the service" may well dictate sending the employee home. This is the kind of variance contemplated by

> Section 3C. It follows that Section 3C, like 3B, allows a departure from the eight and forty "work week" set forth in Article 8.

At the initial hearing in the present case, the parties expressed differing views on the correctness of, and the weight (if any), to be given to the Mittenthal Award, which the Postal Service maintains supports its position in this case. In its post-hearing brief, the NPMHU expresses its opinion that, on closer examination, the Mittenthal Award "does nothing to advance the inquiry" in the present case, because it addressed and answered a different issue than that presented by the Union here.

The Postal Service presented testimony from Joseph Berezo, its Manager of Contract Administration for the Mail Handlers. He has been employed by the Postal Service in various capacities for some thirty years. For twenty years prior to coming to headquarters in 2007, he served as a labor relations specialist in several Florida locations and at the southeast area level. During that time, as a technical advisor, he, in effect, negotiated numerous LMOUs establishing light duty assignments. Berezo testified that the LMOUs would identify the assignments by tour, but this did not mean they were eight-hour assignments. The practice during his thirty years of experience was that, when given their assignments, light duty employees were told where and when to report and the work they were to perform. He stressed that the available work used to construct light duty assignments varies on a daily basis. When that work was completed, and there was no more for them to perform, they were sent home. Berezo acknowledged he could not speak to the practice in other parts of the country. In his current national position, however, he has not seen the issue of guaranteed hours for light duty employees come up, except for cases in which the Union claimed a four-hour minimum guarantee under Article 8.8.

UNION POSITION

The Union contends that the ELM revision at issue violates Article 19 of the National Agreement because it is inconsistent with applicable provisions of the National Agreement. The Union rejects what it sees as the Postal Service's "absolutist" position that under no circumstances do the light duty provisions of Article 13 guarantee any employee on a

light duty assignment any set number of hours of work. The Union disputes the Postal Service's position that a Local Memorandum of Understanding (LMOU) that purports to guarantee an employee on a light duty assignment a set number of hours of work is inconsistent with Article 13 and, therefore, unenforceable pursuant to Article 30.2.

The Union maintains that, under Article 13's plain language, the issue of whether an employee on a light duty assignment is guaranteed a set number of hours of work is governed by the light duty provisions of the particular LMOU in effect in each postal installation, taking into account, as appropriate, any established past practices at the local level that may inform the proper interpretation of those provisions. The Union insists that LMOU provisions which have been interpreted and/or implemented to guarantee certain employees on certain light duty assignments a set number of hours of work are entirely consistent with Article 13, and, thus, fully enforceable in accordance with their terms.

The Union asserts Article 13.3 plainly avoids setting of any kind of uniform, national standard with regard to the establishment of light duty assignments. Subsections A to C of Article 13.3 identify certain considerations that local negotiators are to take into account in establishing light duty assignments, and also set certain parameters (however broad) within which the local negotiators are free to act. It is clear from Article 13.3.B that one of the matters that local negotiators are expected to consider and provide for in establishing light duty assignments is the number of hours that those assignments will entail. Moreover, when local negotiators establish one or more light duty assignments for full-time or part-time regular employees that do consist of a set number of hours -- be it eight hours a day or less -- those employees are guaranteed that set number of hours on their assignments and may not under any scenario be sent home without pay before working that set number of hours. The Union further argues that this is the clear and undeniable import of the language of Article 13.3.B stating that the establishment of a light duty assignment that "consist(s) of" eight hours or less "does not guarantee any hours to a part-time flexible employee." The Postal Service's absolutist position, in the Union's view, flies in the face of this Article 13.3.B language and should be rejected on that basis alone.

The Union asserts that, given the language of Article 13.3.B and the fundamental principle embodied in Article 13.3 that the establishment of light duty assignments is a matter that should be determined by local negotiations, the only proper reading of Article 13.3.C -- which states that 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" -- is the following: to the extent that an LMOU provides for a certain number of light duty assignments with set parameters, such as tour hours and work location, those contractually-provided for assignments are controlling and local management is not free to unilaterally deviate from those set parameters, but when the applicable LMOU leaves some or all of the parameters open, local management is free unilaterally to establish those parameters in accordance with "the needs of the service."

Similarly, the Union maintains, Article 13.4.D properly is read, consistent with 13.3.C, as a grant of residual authority to local management to make light duty assignments appropriate to the circumstances pertaining in a postal facility within the parameters left open by the "agreed-upon" light duty provisions of the applicable LMOU.

The Union adds that the plain language of Article 13 which is dispositive in this case is confirmed by statements in the nature of admissions included in LMOU-Negotiation training materials prepared by Postal Service headquarters which the Union presented as exhibits in this arbitration. One set of training materials, from 1994, includes a stern warning to local Postal Service negotiators to be "Careful!" not to "Negotiate language which would require management to provide eight hours work to a full-time employee on light duty." The other set of training materials, which the Union obtained a copy of in 2002, includes a statement that local Postal Service negotiators "may" bargain light duty assignments that consist of less than eight hours of work, which clearly reflects a reciprocal understanding on the Postal Service's part that local management negotiators also "may" bargain light duty assignments that consist of a guaranteed eight hours of work. These materials likewise contain a statement that Postal Service negotiators should strive to avoid bargaining LMOU language that could be read as establishing "an implied guarantee."

The Union rejects the Postal Service's reliance on the 1987 Mittenthal Award, to which the NPMHU was not a party. The Union stresses that, unlike the APWU in that case, the NPMHU has not taken the "absolutist" position that the National Agreement provides a "broad, all-encompassing guarantee" under which "all full-time regulars...on a light duty assignment" are guaranteed eight hours of work per day. The Union insists there is nothing in the Mittenthal Award that addresses the merits of -- much less supports -- the "absolutist" position taken by the Postal Service in this case.

Moreover, the Union insists, the Postal Service's reliance on the reference in the Mittenthal Award to the "apparent widespread practice" of the Postal Service sending full-time regular employees on light duty assignments home before the end of their scheduled tours because of a lack of work also is entirely misplaced. First, the Mittenthal Award actually identifies only five cities in which such a practice apparently had happened as of the 1987 date of that award, and there is nothing in the current record to indicate whether and, if so, to what extent, this "apparent widespread practice" has been adhered to "throughout the country" from that 1987 date forward. More importantly, given that the issue of whether an employee on a light duty assignment is guaranteed a set number of hours of work is governed by the provisions of the LMOU in effect at an individual installation, any inquiry into how "widespread" such a practice is would serve no useful purpose and be beyond the scope of this national arbitration. The only potentially relevant past practices inquiry would be an inquiry into the past practices of the local parties to that particular LMOU, which is not an issue to be resolved in national arbitration.

EMPLOYER POSITION

The Postal Service contends that ELM 355.14 is consistent with the National Agreement because the plain language of the National Agreement provides no guaranteed hours or pay to employees on light duty. When an employee is injured off-duty, the employee may request light duty work under Article 13. Article 13 does not require the Postal Service to grant such a request. Article 13.2.C states: "Installation heads shall show the greatest consideration for full-time regular or part-time flexible employees requiring light duty or other

assignments...." Even if an employee's request is granted, that employee is not guaranteed work hours, as is made clear in various provisions of Article 13. First, as set forth in Article 13.3.C, the basic work week for light duty employees is subject to "the light duty assignment and the needs of the service." In his 1987 award, Arbitrator Mittenthal determined that the "tour hours" of a light duty employee are based not just on the original "light duty assignment," but also on "the needs of the service." As he further observed, "Where there is no work for a light duty employee, the 'needs of the service' may well dictate sending the employee home."[1] Second, Article 13.3.B plainly states that light duty assignments may be less than eight hours per day or forty hours per week. Third, Article 13.4.D provides that the "hours of duty" for light duty employees "will be the decision of the installation head." When reading Article 13.4.D in conjunction with Article 13.3.C, it is clear that "the needs of the service," including the hours of work available, are determined by the installation head. In these multiple ways Article 13 provides contractual exceptions to Article 8's "guarantees" with respect to work hours.

The Postal Service further argues that the parties have an established past practice of sending light duty employees home without pay when no work is available. This practice predates -- and is consistent with -- the ELM provision at issue here. As Postal Service witness Berezo testified, "When you don't have work, you send [employees on light duty] home. That's the way we've done it for thirty years." The Union offered no testimony to the contrary. The Postal Service stresses the Union knew about this practice, but for decades did not raise any dispute concerning a guarantee prior to the filing of this grievance. The Union's own understanding is evident in the arguments it raised -- and, more importantly, did not raise -- at regional arbitrations prior to (and contemporaneous with) the protested ELM change. Without exception, the Union did not argue that light duty employees were guaranteed any hours. Instead, the Union only argued that the Postal Service failed to make every effort to find more

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[1] The Postal Service acknowledges that the Mail Handlers were not a party to the Mittenthal Award, but stresses that the parties, in crafting their positions, often have relied on national arbitration awards involving other postal unions. Both parties recognize that national arbitration awards involving other postal unions can be an excellent guide for interpreting common contractual language. This is reflected in these parties' Contract Interpretation Manual (CIM), in which some 62 national arbitration awards involving other postal unions are cited as authority. (The Union stresses that those awards were cited by agreement of the NPMHU and the Postal Service.)

work for light duty employees -- meaning the Postal Service should have searched for more work before sending the employee home. Thorough research by the Postal Service uncovered no Mail Handler grievance alleging the Postal Service violated any purported guarantee for light duty hours prior to 1989. The Union thereby acquiesced in the Postal Service's practice of sending light duty employees home when work was not available. The Postal Service also notes that it has maintained this same practice not only with the Mail Handlers, but also with its other unions.

The Postal Service stresses that both the NALC and the APWU, former bargaining partners with the Mail Handlers, agree that the National Agreement contains no light duty guarantee and that the ELM language is consistent with the National Agreement. Despite the same contractual language, common interests, and shared past practice with those unions, the NPMHU is the only union that still disputes this ELM provision or claims that a guarantee to light duty exists.

The Postal Service also insists that the ELM language in dispute is fair, reasonable, and equitable under Article 19. The Union has not presented any argument to the contrary. The ELM provision is reasonable because it only echoes what the National Agreement already provides and reflects the parties' past practice -- employees on light duty do not have guaranteed hours. The ELM provision also maintains a fair and equitable practice among the affected unions. If the ELM language is rejected, the Mail Handlers would secure a perceived protection its partners at the bargaining table already have acknowledged does not exist, without any additional negotiation. Moreover, should a guarantee be found to exist it could reasonably be expected that Mail Handlers would potentially lose -- not gain -- work hours. An installation head might be more likely to reject a Mail Handler's light duty request if a guarantee was attached, because sufficient work might not be available.

The Postal Service stresses that the Union's interpretation of the relevant provisions of the National Agreement fails to acknowledge the effect "the needs of the service" has on the employee's work week and tour hours. Even if an employee receives a light duty assignment that provides a set number of hours at a local installation, those hours still are

subject to "the needs of the service," as Arbitrator Mittenthal already concluded. The Postal Service asserts that the Union's reliance on management LMOU-Negotiation guidelines -- whose authenticity the Postal Service disputes -- is simply misplaced. Those "instructions" actually are consistent with the Postal Service's understanding that light duty guarantees are not provided in the National Agreement. If the Postal Service instructs its local managers not to guarantee any hours to light duty employees during local negotiations, this only shows that the Postal Service does not understand such a guarantee exists in the National Agreement.

FINDINGS

As the Postal Service stresses, employees are not guaranteed light duty assignments if they are unable to perform their regular job due to an off-duty injury or illness. But management is required to make every effort to seek work for such employees, and Article 13.3 provides for the establishment of light duty assignments through local negotiations.

It appears that often established light duty assignments given to full-time regular employees basically entail having the employee report to a designated work area on a particular tour -- much like a regular full-time duty assignment -- with the expectation that the employee (if physically capable) generally will be gainfully employed performing light duty work for a full eight-hour shift and 40-hour work week.[2] The present dispute at its core is about the Postal Service's ability to send a light duty employee home before the end of an eight-hour tour (or to work the employee for less than five service days) due to lack of work.

At the time this Article 19 dispute was appealed to arbitration by the Union in 1989, there was no requirement that the parties provide each other with a statement of their respective positions. There is no evidence that the Union set forth the basis for its objection to the provision now in ELM 355.14 prior to this arbitration proceeding which commenced over a decade later in March 2011. At the initial March 2011 hearing, the Union argued that, under

[2] For example, the 2009 LMOU for the Cincinnati Bulk Mail Center (Union Exhibit 12) provides for a minimum of three "light duty assignment areas, per tour" and states that employees on light duty "will be moved to any of the light duty areas [identified as: Rewrappings, Loose Mail and Culled Debris belts] in an effort to achieve eight (8) hours of work."

Article 8, just as the Postal Service could not send a non-light duty regular full-time employee home for lack of work (without pay) before completion of an eight-hour shift, the Postal Service could not send a light duty employee home. To permit that, the Union also argued, would effectively eradicate LMOUs establishing light duty assignments pursuant to Article 13. At the second day of hearing in October 2012, the Union's position had evolved to the extent it no longer based its position in this case on Article 8. Its position then and in its post-hearing brief, as I understand it, is that Article 13 authorizes local parties to enter into LMOUs that as interpreted or implemented guarantee certain hours of work in a day and in a week.[3] Therefore, the Union argues, ELM 355.14 is inconsistent with the National Agreement and, hence, Article 19, because it negates any such guarantees.

In the 1987 Mittenthal Award, the APWU argued that Article 8 guarantees all full-time regular employees eight hours of work per day and forty hours per week even if they are on light duty assignments. Arbitrator Mittenthal rejected that position for a number of reasons, but most important was his determination that Article 13, not Article 8, controlled the hours of work for employees on light duty assignments, and that Article 13 did not provide the guarantee the APWU claimed. In doing so, Arbitrator Mittenthal carefully and, in my view, persuasively analyzed the provisions of Article 13, and -- key for present purposes -- concluded that Article 13.3.C provides that the "tour hours" and "basic work week" of a light duty employee are based not just on the original "light duty assignment," but also on "the needs of the service." He went on to state:

> The "needs" in question relate to the operating requirements, the amount of work available, and so on. Where there is no work for a light duty employee, the "needs of the service" may well dictate sending the employee home. This is the kind of variance contemplated by Section 3C.

The terms of Article 13, which have remained essentially unchanged since at least 1973, may not all be as precise and harmonious as might be desired. The Union also insists that the evidence in this record and that cited in the Mittenthal Award is not sufficiently

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[3] It seems that the Union may go so far as to contend that if the LMOU sets the number of hours included in a particular light duty assignment that in itself constitutes a guarantee.

widespread as to establish the existence of a nation-wide past practice under which the parties have recognized that, consistent with Article 13, an employee on light duty may be sent home for lack of work. But there is no significant evidence to the contrary. What appear to be Postal Service training materials, put into the record by the Union, at most reflect cautionary advice to managers negotiating LMOUs not to agree to language that expresses or might imply a guarantee of hours of work -- which seems sensible whether or not a claim of such a guarantee ultimately could prevail in light of the controlling terms of Article 13. More telling is the point made by the Postal Service that in researching light duty assignment grievances processed by the Union in regional arbitration prior to and contemporaneous with the filing of the present national level grievance in 1989, it discovered none where the Union protested employees being sent home as violating a guarantee. Instead, the disputes were over the Postal Service's failure to make every effort to find more work for the employee, consistent with Articles 13.2.C and 13.4.A.[4]

In any event, ultimately it is the language of Article 13 that controls. ELM 355.14 provides:

> The light duty provisions of the various collective bargaining agreements between the U.S. Postal Service and the postal unions do not guarantee any employee who is on a light duty assignment any number of hours of work per day or per week.

The Union does not claim that Article 13, as such, guarantees an employee on a light duty assignment a certain number of hours of work per day or per week. Rather, as I understand its position, it argues that Article 13 allows for, or does not prohibit, local parties' agreeing to provide such a guarantee in an LMOU, and if an LMOU does provide such a guarantee, it is enforceable. I am in agreement with the Mittenthal Award's reading of the language in Article 13, and conclude that Article 13.3.C, in particular, does not allow for local parties to establish

[4] I suppose it may be possible that all of those cases arose at facilities where the Union would concede the LMOU provided no type of guarantee, and that where there were LMOUs that the Union would consider as providing a guarantee no employee ever protested being sent home due to lack of work. But that seems unlikely.

light duty assignments that guarantee an employee a set number of hours per day or per week without regard to "the needs of the service."[5] Article 13.3.C states:

> 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.
>
> (Emphasis added.)

Under this provision, "the needs of the service" not only are relevant in establishing the "light duty assignment" through local negotiations at the beginning of the contract period, but also in terms of the actual hours, work location and work week an employee is assigned while performing that assignment. That includes, as Arbitrator Mittethal found in applying identical language in the USPS-APWU National Agreement, the right of the Postal Service to send the employee home when there is no work for him or her to perform on the light duty assignment, subject, of course, to management's obligation under Article 13.2.C and 13.4.A to make every effort to find work for the employee.

Accordingly, I find that the provision now found in ELM 355.14 is not inconsistent with the National Agreement. The Union has not otherwise contended that it is not fair, reasonable, and equitable for purposes of Article 19.

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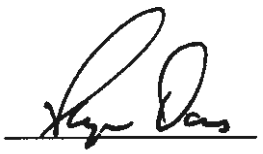
[5] Like Arbitrator Mittenthal, I am not persuaded that the provision in Article 13.3.B stating that "the establishment" of a light duty assignment consisting of "8 hours or less in a service day and 40 hours or less in a service week" "does not guarantee any hours" to a PTF warrants a finding, contrary to other provisions of Article 13.3, that such a guarantee exists for a full-time regular employee.

AWARD

The Union's appeal is denied.



Shyam Das, Arbitrator

Excerpt from
Goodman Interest Arbitration
Award

ASSIGNMENT OF ILL OR INJURED EMPLOYEES

BACKGROUND

In almost any endeavor illness and injury occur on the job. The current agreement contains several paragraphs indicating how such employees will be administered. Paricularly the Article is applicable to those who have filed claims under the Federal Employees Compensation Act.

UNION POSITION

The Union proposes additions to the current language to safeguard employees who have filed claims of harassment. The proposals include limitations on the time an employee who has sustained on the job injury may be required to report for a limited duty assignment, prohibitions against supervisors stating that filing claims may harm employee's careers, prohibitions from requiring employees who are on prolonged disability from daily contact with USPS, and providing Union notice of employees, who are called to accident board review meetings or other related meetings where more than one supervisor or safety officer is present. Some employees who have been injured or ill are not able to perform their regularly scheduled jobs. Such personnel are assigned to limited duty tasks. They have also been required to attend safety training classes. Sometimes these safety training sessions have been as much as eight hours in length, have been conducted at places distant from normal work locations, have

been conducted at irregular hours and sometimes involve nothing more than answering a telephone. Often they are nothing more than harassment techniques to discourage the filing of claims. There have also been times when supervisors have stated to employees that the filing of claims may act to the employee's disadvantage when promotions are in order. It also makes little sense for the employee to be required to contact the USPS on a daily basis when documentation has been presented that the employee will be absent for a period of time. Too, employees have been summoned for appearance before review boards with little or no notice in advance. Union requests for representation at these appearances have been uniformly denied. The Union's proposed language in this regard will do much to alleviate these harassing situations.

POSTAL SERVICE POSITION

Two sentences in the Union proposal do nothing more than state that the parties are subject to the Federal Employees Compensation Act. The proposal also restricts the USPS in fulfilling its obligations under the Act. In its presentation, the Union offered no evidence why its proposal should be granted. The Union even admitted that there had been no grievances filed to justify the proposed language. It is ironic that the language proposed allows Mailhandlers, who are on limited duty, to perform the work of other crafts, but does not allow other crafts on limited duty to perform Mailhandler

work. The Union proposal would also freeze part of the ELM that implements Department of Labor regulations. This is foolish in that if the Department of Labor Regulations change, then language frozen would be in conflict with those regulations. There has been no evidence that any supervisor threatened any employee for filing a claim. Furthermore, such conduct would be in violation of law. The Postal Service does not make it a practice to require employees who are on long term absences to make daily contact with the Service. There are times when such contact may be justified. There was no evidence presented to indicate that the Postal Service has abused employees in this regard. The proposal that employees always be given 24 hour notice before being called to meetings to review or discuss accidents is not acceptable in that this may not always be possible. Many times accident forms must be filled out within less than 24 hours after an accident. Too, it is not always possible to delay the reporting or discussion of accidents until a union representative is available. Simply stated, the Union presented no justification for the adoption of their proposals and have not indicated a single instance of Postal Service abuse of the matter.

CONCLUSIONS

Contract language which would do nothing more than state statutory requirements would be redundant and serve no useful purpose. Employees certainly are, at times, not able to

perform their normal duties, yet are receiving compensation. If, in such cases, the affected employee is able to perform some useful function, he should be required to do so, even if the task is doing nothing more than answering a telephone. By him answering a telephone, it frees another employee to do more strenuous tasks and increases the business of the employer - to provide service to the public. Injured employees sometimes are in that category as a result of carelessness, inattention, or lack of knowledge of the hazards of the job. It is to the advantage of the employee, the Union and the Postal Service for employees to receive safety training. The Union complains that sometimes this training is nothing more than viewing films. There is nothing wrong with using films in training. The use of audio-visual aids in education and training has long been recognized. Seeing a matter often leads to greater understanding than if lectures are used instead. Even Confucius stated that "a picture is worth 10,000 words." Certainly, Union representation might often be appropriate. Ample notice should also be given employees to appear before accident review boards or other meetings for discussion of accidents. It is also realized that at any one location the number of employees required to observe training for safety matters may be insufficient to justify the conduct of training at that location. Subsequently, employees from several locations could be brought together for safety training at a central location. No evidence other than innuendo was

presented to show that there has been abuse in this regard. Based on the above, the Panel AWARDS that a new Subsection G to Article XIII be added. Subsection G would read, "Employees will be given at least 24 hours notice before appearance is required before an Accident Review Board. Union representation will be permitted at all discussions of accidents upon request of the employee and provided that the acquiring of such representation does not delay the scheduled discussion."

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: C00M-1C-C05179842
Moore, Aldonette
Philadelphia PA 19116-9751

C00M-1C-C06002195
Class Action
Philadelphia PA 19116-9751

K00M-1K-C05016441
Class Action
Richmond VA. 23232-9997

Dear John:

I recently met with your representative, T.J. Branch, to discuss the above captioned cases at the fourth step of our contractual grievance procedure.

The issue(s) in these grievances are whether a light/limited duty employee can be assigned to a residual vacancy that they cannot physically perform.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties agree that an unassigned employee cannot be assigned to a residual vacancy unless the employee is able to perform the core functions of the position, with or without reasonable accommodation.

Accordingly, we agree to remand these grievances to Step 3 for further processing and/or regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Sincerely,

Allen Mohl
Labor Relations Specialist
Contract Administration (NPMHU) and WEI

John F. Hegarty
National President
National Postal Mail Handlers Union, AFL-CIO

Date: 12-13-11

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: Q00M-6Q-C 05099748
Q06M-6Q-C 11100872
CLASS
Washington, DC 20260-4100

I recently met with T.J. Branch to discuss the above-captioned grievances which are currently scheduled for national arbitration.

The issue in the above referenced grievances is whether certain revisions of Employee and Labor Relations Manual (ELM) Section 515, concerning the *Family and Medical Leave*, and Section 865, *Return to Duty after Medical Absences* are fair, reasonable and equitable.

After full discussion of this issue, we agree the Contract Interpretation Manual will be updated to clarify current ELM 515 language.

The current ELM 865 language does not negate management's obligation under the *MOU: Return to Duty* when returning an employee to duty after an absence for medical reasons.

The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated in the medical documentation shall be a proper subject for the grievance procedure on a case-by-case basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve these cases thereby removing them from the national arbitration list.

Time limits at this level were extended by mutual consent.

Allen Mohl
Manager,
Contract Administration (NPMHU)
And Employee Workplace Programs

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 2-10-14

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue NW
Washington DC 20001-2197

RE: G90N-4G-C 95026885
Kurszewski, T.
G90N-4G-C 95026886
Starrett, D.
G90N-4G-C 95026887
Niewdach, D.
Little Rock, AR 72231-9511

Dear Mr. Sombrotto:

On January 10, 1997, I met with your representative to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these cases is whether management violated ELM Section 546.14 in moving the grievants' limited duty assignments.

During this discussion, we mutually agreed that no national interpretive issue was fairly presented. Accordingly, we agreed that the provisions of ELM 546.14 are enforceable through the provisions of the grievance/arbitration process. Whether an actual violation occurred is fact based and suitable for regular arbitration if unresolved.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand these cases.

Sincerely,

Paul A. Lyons
Labor Relations Specialist
Grievance and Arbitration

Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO

1/28/97
Date

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

e. Coordinating with supervisors and the district on Human Resources Management issues.

f. Completing training for their duties using Postal Service-approved courses. At a minimum, all FSCs must complete the online FSC training course (see http://nced.usps.gov/safety/course.htm).

814 Employee Rights and Responsibilities

814.1 Rights

Employees have the right to:

a. Become actively involved in the Postal Service's safety and health program and be provided a safe and healthful work environment.

b. Report unsafe and unhealthful working conditions using PS Form 1767, *Report of Hazard, Unsafe Condition, or Practice.*

c. Consult with management through appropriate employee representatives on safety and health matters such as program effectiveness.

d. Participate in inspection activities where permissible.

e. Participate in the safety and health program without fear of:

(1) Restraint,

(2) Interference,

(3) Coercion,

(4) Discrimination, or

(5) Reprisal.

814.2 Responsibilities

All employees are responsible for:

a. Complying with all OSHA and Postal Service safety and health regulations, procedures, and practices, including the use of approved personal protective equipment.

b. Keeping the work area in a safe and healthful condition through good housekeeping and proper maintenance of property and equipment.

c. Reporting recognized safety hazards and unsafe working conditions immediately.

d. Performing all duties in a safe manner.

e. Keeping physically and mentally fit to meet the requirements of the job.

f. Reporting to their supervisors immediately any accident or injury in which they are involved, regardless of the extent of injury or damage.

g. Driving defensively and professionally, extending courtesy in all situations, and obeying all state, local, and Postal Service regulations when driving a vehicle owned, leased, or contracted by the Postal Service.

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. Vincent Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001-2197

Re: D94N-4D-C 97027016
CLASS ACTION
CHAPEL HILL, NC 27514-9998

D94N-4D-C 97027015
CLASS ACTION
ROCKY MOUNT, NC 27801-9998

D94N-4D-C 97027011
CLASS ACTION
GREENSBORO, NC 27420-9998

D94N-4D-C 97027003
CLASS ACTION
ROCKY MOUNT, NC 27801-9998

Dear Mr. Sombrotto:

On May 7, 1997, I met with your representative to discuss the above-captioned grievances at the fourth step of our grievance-arbitration procedure.

The issue in these listed grievances involves discipline issued to carriers based on various safety infractions. Is local management in violation of the National Agreement when it issued a local safety policy and subsequent stand-up talks?

The parties agreed that no national interpretive issue is fairly presented in these cases.

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

Accordingly, the parties agreed to remand these cases to Step 3 for application of the above understanding and further processing, including arbitration, if necessary.

Please sign the attached copy of this decision as your acknowledgment of agreement to remand these cases.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

Time limits were extended by mutual consent.

Sincerely,

Nora A. Becker
Grievance and Arbitration
Labor Relations

Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO

Date: 6/18/97

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 6 1982

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Overby:

On November 24, 1982, you met with Frank Dyer in pre-arbitration discussion of H8N-4J-C 33933, Milwaukee, Wisconsin. The issue in this case is whether management violated the National Agreement by reassigning the employee to another craft due to his inability to work safely.

It was mutually agreed to full settlement of this case as follows:

1. The Postal Service may discuss with an employee his/her safety record.

2. An employee may volunteer for reassignment to another craft. However, the Postal Service may not unilaterally make such a reassignment.

Please sign the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H8N-4J-C 33933 from the pending national arbitration listing.

Sincerely,

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

Halline Overby
Assistant Secretary-
Treasurer
National Association of
Letter Carriers, AFL-CIO

Enclosures

Foreign Postal Codes

Many foreign countries now use numeric postal codes that are similar or, in some cases, identical to our USPS ZIP Codes. The improper placement of these foreign postal codes causes sorting problems and missent mail. These errors occur because mailers position the foreign postal code after the country name. When mailers place the foreign postal code on the bottom right portion of an address, it is easy for U.S. letter-sorting machine clerks, distributing letters at the rate of one a second, to dispatch the letter to the U.S. city.

To ensure proper sortation and delivery, postal employees should advise mailers of the correct address format for international mail. The foreign address format should carry only the name of the country, typed or printed in capital letters in English, as the last line in the address block area. Because abbreviations can generate missorts, spell out the country name. For example, does Aus. stand for Australia or Austria? Place foreign postal codes on the line *above* the country of destination, *preferably* before the name of the city and state.

Proper addressing formats for international mail follow:

Line 1: Name of addressee

Line 2: Street and number including apartment number, if any, or post office box number

Line 3: Postal code, name of city, state, or province

Line 4: Country of destination in capital letters in English

Examples:

Jaime Lopez
8th Straco # 69
46800 Puerto Vallarta, Jalisco
MEXICO

Jacques Moliere
Rue de Champaign
06570 St. Paul
FRANCE

Mr. Sean Hashemi
71 Parker Avenue
London WIP 6HQ
ENGLAND

—Rates and Classification Dept., 5–4–89.

Clarification

Express Mail Military Service

The article, Express Mail Military Service, in POSTAL BULLETIN 21722, 4–27–89 (page 13), included six exhibits of Label 11-B, Express Mail Next Day Service, Post Office to Addressee (pages 14–15). To clarify how window clerks should use this label, Exhibits 1–6 again appear on pages 14 and 15, with instructions about which boxes to check. *—Delivery, Distribution, and Transportation Dept., 5–4–89.*

AIC: Field Generated Products

Effective Accounting Period 09, Fiscal Year 1989, field generated products will be assigned unique AIC codes to record expenditures and receipts.

Field generated products include items produced for a local market that generally fill a local market need. Examples of such items include products developed locally for first-day-of-issue ceremonies (when approved by the Office of Stamps and Philatelic Marketing) and products bearing copyrighted Postal Service artwork (stamp designs) for sale in connection with local or regional promotions.

Local offices must take all opportunities and make every effort to sell nationally authorized retail products and national philatelic products before venturing into the development and promotion of local products. Field generated products developed and sold locally should be manufactured in the United States and purchased from an authorized licensee of the Postal Service.

The expenditures for all field generated products will be made at the division and management sectional center. The accounting entries are to AIC 494, Field Generated Product Costs, or General Ledger Account 52448 for invoices paid at the San Mateo Postal Data Center. These purchases will be offset as a revenue reduction to Field Generated Product Sales to leave a net revenue earned in PSFR Line Number 03, Other Operating Revenue. Offices should record revenues from all field generated product sales in AIC 098.

Offices should not confuse these items with existing AICs for retail products (AIC 093, Mailing Related Products and Mail Preparation Items) or national philatelic products (AIC 092, Commemorative, Definitive, and Topical Mint sets and Other Items Produced and Distributed by Headquarters).

—Philatelic and Retail Services Dept., Department of the Controller, 5–4–89.

Safety Rule Violations

When safety rule violations occur, managers and supervisors have several alternative corrective measures at their disposal. Although discipline is one such measure, they should use it only when other corrective measures do not appropriately fit the circumstances.

Correction of safety rule violations, whether by discipline or other alternatives, should not be predicated on whether an accident happened but rather on a factual determination that improper conduct occurred. Where discipline is the chosen alternative, the facts must support the requirements of just cause.*—Labor Relations Dept., 5–4–89.*

EXHIBIT A

Form 2966-E *(Envelope)*

ITED STATES POSTAL SERVICE
orm 2966-E, July 1986

ATCH NOTE. CUSTOMS DECLARATION ENCLOSED
ETIN D' EXPÉDITION DÉCLARATION EN INCLUS

DISCIPLINE FOR SAFETY VIOLATIONS

his article clarifies the administration of discie for safety violations.

Article 16, Discipline Procedures, of the Nal Agreement clearly makes disciplinary ion appropriate for safety rule violations, unacptable safety performance, and failure to perm work as instructed. Management has the actual right to discipline employees for ate practices, whether those practices result in accident or not.

upervisors and managers must take necessary, rrective action to correct unsafe practices. When conducting any discussions or taking disciplinary action relating to safety, managers and supervisors must cite the safety rules or regulations violated or performance failures so that employees can correct unsafe practices. Disciplinary action must be appropriate to the infraction, not dependent on whether an accident occurred.

Supervisors and managers should also understand, however, that postal policy prohibits disciplinary action that may discourage accident reports or the filing of a claim for compensable injury with the Office of Workers' Compensation Programs.—*Employee Relations Dept., 1-22-87.*

DOMESTIC ORDERS

False Representation and Lottery. Enforced by Postmasters at cities listed.

State/city	Names covered	Product
Bethesda 20814-0860.....	Landover Contact Lens Center, P.O. Box 5860.	The sale of contact lenses.
Marlow Heights 20748-1	Landover Contact Lens Center, P.O. Box 1300.	The sale of contact lenses.
Phoenix 85016-7946.....	Genitab Research Center, 2515 East Thomas..	The sale of Genitab, Super Strength Genitab, P.E.S (Penis Enlargement System), S.P.E. (Super Pumpit Enlarger), S.F.S. (Spanish Fly Sugar), H.O.P (Hard-On-Pills), and I.F.O. (Instant Firming Oil), and any other product advertised as a sexual stimulant or

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260
November 20, 1981

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

H8C-5D-C-11000

Dear Mr. Wilson:

On November 19, 1981, you met with Frank Dyer in pre-arbitration discussion of H8C-5D-C-11000. After a thorough discussion of the issue, it was mutually agreed that the following would represent a full settlement of the case.

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

2. Any corrective action that may be initiated for failure to properly report an accident will have to stand the test of just cause on a case by case basis.

Please sign the attached copy of this letter acknowledging your agreement with this settlement, withdrawing H8C-5D-C-11000 from the pending national arbitration listing.

Sincerely,

Sherry S. Barber
General Manager
Arbitration Division
Office of Grievance
and Arbitration
Labor Relations Department

Kenneth D. Wilson
Administrative Aide, Clerk
Craft,
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

JUL 25 1985

Mr. Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Local
Yakima, WA 98901
H1C-5D-C 30950

Dear Mr. Anderson:

On July 3, 1985, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.

The issue in this grievance is whether management is properly requiring employees to use a locally developed form to document unsafe practices.

During our discussion, we mutually agreed that management may document unsafe practices. However, inasmuch as there is no national requirement for employees to acknowledge that the subject information was documented, they should not be required to sign a local form, such as the one referenced to in this grievance.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Barbara Lerch
Labor Relations Department

Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 19, 1981

AUG 21 1981

Mr. Wallace Baldwin, Sr.
Administrative Vice President
Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: R. Wrobel
Orlando, FL 32802
B8C-3W-C-29785

Dear Mr. Baldwin:

On August 14, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

During our discussion, we agreed to resolve this case based on our understanding of Article XIV, Section 2 which provides that when employees notify their supervisors of unsafe conditions, the conditions will be investigated immediately and corrective action taken if necessary.

We also agreed that no further action is necessary to resolve this case.

Please sign a copy of this letter as your agreement to the above resolution.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Wallace Baldwin
Administrative Vice President
American Postal Workers Union,
AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: C00M-1C-C 04148466
Wernendale, PA 15086-7576

Dear John:

Recently, our representatives, William Flynn and Donna Gill, met to discuss the above captioned grievance at the fourth step of the grievance arbitration process.

The issue in this grievance involves a practice requiring employees to push two hampers at a time with one hamper leading the other held by hand grasping the lead hamper and the trailing hamper to one side.

During our discussion, we mutually agreed that practice of pushing two hampers in the manner described above will cease and desist.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to Step 3.

Time limits at this level were extended by mutual consent.

Sincerely,

Valerie E. Martin, Manager
Contract Administration
(NPMHU)

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 3/18/05

475 L'Enfant Plaza SW
Washington DC 20260-4100
www.usps.com

2 of 6

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration Between UNITED STATES POSTAL SERVICE And NATIONAL ASSOCIATION OF LETTER CARRIERS	GRIEVANT: Class Action M. Hamilton POST OFFICE: Torrance, CA CASE NOS.: Q90N-4F-C 94024977/ 94024038 NALC NO.: 94/002

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Postal Service: Mr. John W. Dockins

For the Union: Mr. Bruce H. Simon

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: April 2, 1996

POST-HEARING REPLY BRIEFS: July 5, 1996

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Joint Statement on Violence and Behavior in the Workplace constitutes 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. It is so ordered and awarded.

Date: 8-16-96

Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION)
)
BETWEEN)
)
UNITED STATES POSTAL SERVICE)
)
AND) ANALYSIS AND AWARD
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS) Carlton J. Snow
(Class Action/M. Hamilton) Arbitrator
Grievance))
(Case Nos. Q90N-4F-C 94024977/)
94024038)
(NALC NO.: 94/002))

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. A hearing occurred on April 2, 1996 in a conference room of Postal Service headquarters located at 955 L'Enfant Plaza S.W., in Washington, D.C. Mr. John W. Dockins, Labor Relations Specialist, represented the United States Postal Service. Mr. Bruce H. Simon of Cohen, Weiss, & Simon in New York City represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. A court reporter for Diversified

Reporting Services, Inc. reported the proceeding and submitted a transcript of 180 pages.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no issues of substantive or procedural arbitrability to be resolved. The arbitrator officially closed the hearing on July 5, 1996 after receipt of the final post-hearing reply brief in the matter.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

> Does the Joint Statement on Violence and Behavior in the Workplace constitute an enforceable agreement between the parties so that the Union may use the negotiated grievance procedure to resolve disputes rising under the Joint Statement? If so, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

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.

IV. STATEMENT OF FACTS

In this case, the Union challenged the decision of the Employer to treat the Joint Statement on Violence and Behavior in the Workplace as something other than a contractual commitment between the parties.

The dispute arose as an aftermath of several violent incidents in the workplace and, in particular, the "Royal Oaks" incident in which an employe killed postal supervisors after receiving an unfavorable arbitration award. The two cases before the arbitrator advanced to the national level when two local branches of the National Association of Letter Carriers filed individual grievances alleging harassment of letter carriers by supervisors and requesting that the supervisors not be allowed to direct the work of letter carriers. The parties consolidated the two grievances, and a full hearing occurred at the regional level on April 21, 1995.

The Union contended that the Joint Statement on Violence

and Behavior in the Workplace constituted a contract between the parties which set forth standards of behavior for supervisors. The standards set forth in the Joint Statement on Violence and Behavior in the Workplace allow an arbitrator to deny a supervisor managerial authority over letter carriers, according to the Union. The Employer responded that Article 3 of the parties' agreement established exclusive rights for the Employer "to hire, promote, transfer, assign, and retain employees," and it is the belief of the Employer that those exclusive rights remain unaltered by any other document about which the parties may have held discussion. It is the belief of the Employer that the Joint Statement on Violence and Behavior in the Workplace constitutes a pledge by the Employer to take action that will reduce violence in the workplace. The different perspectives advanced through the parties' grievance procedure to the national level. When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Union

The Union states unequivocally that the Joint Statement on Violence and Behavior in the Workplace constitutes a contract between the parties. The Union asserts that, because of violent circumstances that led to drafting the Joint Statement, the parties intended to negotiate an agreement which required both parties to give up something in a mutual effort to obtain a safer working environment. The Union maintains that the Joint Statement was made by the parties in an effort to indicate a clear-cut break from past behavior. The Union believes that language in the Joint Statement clearly and unambiguously represents a contractual promise by both sides to work relentlessly in an effort to end violent behavior in the workplace.

The Union claims that, when its members are disciplined for violent acts, the Joint Statement is often cited in support of the Employer's disciplinary action against workers. In return, the Union asserts the Employer has agreed in the Joint Statement that supervisors who use violent tactics should also be disciplined. The Union contends that the grievance arbitration procedure is the appropriate forum for determining whether a supervisor should be disciplined for violating the Joint Statement.

B. The Employer

The Employer claims that, when management signed the Joint Statement, the parties never intended the document to be contractually binding in the same way as the National Agreement. Instead, the Employer argues that it made a pledge to take more concerted action against violence in the workplace. Management contends that there is no evidence at all of any intent to give away the Employer's exclusive managerial authority under Article 3 of the parties' collective bargaining agreement. The Employer also contends that there were insufficient contractual formalities present to give rise to an enforceable obligation. The Employer maintains that the Joint Statement at no point shows an intent by the parties to be contractually bound. Moreover, management asserts that it received no consideration for a right of the Union to use the grievance procedure in order to prevent a supervisor from managing letter carriers. Accordingly, the Employer concludes that the grievance must be denied.

VI. ANALYSIS

A. Altering a Right of Management

The right of management to manage is fundamental in the collective bargaining relationship. Such authority is crucial if management is to run an efficient organization and is to advance the agency toward a successful accomplishment of its mission. As one observer commented decades ago, "in the business organism there can be only one mind and only one nerve center if the various parts are to be coordinated into a harmonious whole." (See, Chamberlain, The Union Challenge to Management Control, 134 (1948)). Care must be taken not to undermine management's commitment to operate the organization efficiently.

The parties have codified the rights of management in their agreement with each other, and they specifically recognized management's exclusive right "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 employes." (See, Joint Exhibit No. 1, p. 5). The Employer argued that an asserted right of the Union to use the grievance procedure to remove or suspend supervisors might impinge on exclusive managerial prerogatives. The question is whether or not the parties have amended such managerial rights by entering into the Joint Statement on Violence and Behavior in the Workplace.

It is the position of the Union that the parties have the power to alter their contractual obligations to each

other by using methods that extend beyond the traditional negotiation process typically implemented to bring a labor contract into existence. Relying on U.S. Supreme Court precedents, the Union concluded that binding contractual obligations need not result only from a collective bargaining agreement in order to constitute an enforceable contract. (See, e.g., Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369 U.S. 17 (1962)). The Employer, on the other hand, maintained that there needed to be a specific "negotiated change" to the parties' collective bargaining agreement in order to modify managerial prerogatives. (See, Employer's Post-hearing Brief, 11).

The parties' straightforward problem implicates a fundamental question of gargantuan proportions, namely, what constitutes a contract? Scholars have filled library shelves addressing the question, and students have puzzled over the issue for hundreds of years. While circumstances and the form of a labor contract may be different, no special set of criteria has evolved in the common law protecting the existence of a labor contract. The Restatement (Second) of Contracts, a highly regarded source of guidance for understanding contracts, defines a "contract" as follows:

> A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. (See, § 1, p. 5 (1981)).

The question is whether or not the parties made binding promises to each other in the Joint Statement and whether or not the parties intended to create legal duties to perform

promises to each other. If so, there are enforceable remedies when a promise is broken. By "promise" is meant "a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made." (See, Restatement (Second) of Contracts, § 2(1) p. 8 (1981)). To test the "manifestation of intention to act," an objective standard is used; and undisclosed intentions receive little or no consideration.

One ordinarily would expect to find a collective bargaining agreement reduced to writing and executed by both parties. This is more an evidentiary issue than anything else. (See, e.g., Georgia Purchasing, Inc., 95 LRRM 1469 (1977); and Diversified Services, Inc., 293 LRRM 1068 (1976)). One also would expect a labor contract to contain promises concerning economic issues or conditions of employment. One would expect the parties to provide guidance in an agreement that helps govern "their day-to-day relations" and a broad "stability to the bargaining relationship." (See, J.T. Sand and Gravel Co., 91 LRRM 1187 (1976)). In evaluating an agreement between parties, the U.S. Supreme Court concluded that:

> 'Contract' in labor law is a term the implications of which must be determined from the connection in which it appeared. It is enough that this is clearly an agreement between employers and labor organizations significant to the maintenance of labor peace between them. . . . Its terms affect the working conditions of the employees. . . . It resolves a controversy arising out of, and importantly and directly affecting, the employment relationship. (See, Retail Clerk Int'l Ass'n v. Lion Dry Goods, 369 U.S. 17 (1962), emphasis added).

It is clear the U.S. Supreme Court believes that the term "contract" embraces not only traditional collective bargaining agreements but also other documents negotiated between the parties such as "statements of understanding" drafted, for example, as a method of settling a strike.

While recognizing that long established definitions of a "contract" apply to a labor agreement, it also must be recognized that the context and character of a collective bargaining agreement are different from a contract in a typical commercial transaction. The eminent Archibald Cox observed many years ago that:

> It is not unqualifiedly true that a collective-bargaining agreement is simply a document by which the union and employees have imposed upon management limited, express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. <u>There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties</u>. One cannot reduce all the rules governing a community like an industrial plant to fifteen or even fifty pages. Within the sphere of collective bargaining, the institutional characteristics and the governmental nature of the collective-bargaining process demand a common law of the shop which implements and furnishes the context of the agreement. (See, 72 Harv. L. Rev. 1482, 1498 (1959), Emphasis added.

The U.S. Supreme Court later quoted these words of Professor Cox in the Steelworkers' Trilogy. (See, <u>United Steelworkers of America v. Warrior & Gulf Navigation Co.</u>, 363 U.S. 574 (1960)).

There, of course, is an expectation that parties will have followed conventional methods of bargaining in order to create their set of promises to each other. At the same time,

there is an institutional character to a collective bargaining agreement that often makes it difficult to apply judge-made principles of the common law in the way they might be applied to a lease contract or a contract to sell a farm. The nature of a collective bargaining agreement as a system of self-government must not be forgotten, and the ongoing nature of the relationship between the parties may cause them loosely to draw their agreements and to add to or modify them more so than might be the case in a standard commercial transaction. Moreover, contract law itself generally has evolved in ways that makes it easier to modify agreements. For example, a modern approach to contract modification is set forth in Restatement (Second) of Contracts which states:

> A promise modifying a duty under a contract not fully performed on either side is binding if the modification is fair and equitable in view of circumstances not anticipated by the parties when the contract was made. (See, § 89, p. 237 (1981)).

A lack of classical formalities will not be dispositive in a dispute about contract modifications between knowledgeable parties engaged in an ongoing transaction.

B. Meaning of the Joint Statement

The Employer argued that the parties did not intend the Joint Statement on Violence and Behavior in the Workplace to constitute an enforceable contract. As mentioned previously, an objective theory of assent to an agreement is used to determine whether a contractually binding offer has been made and accepted. Through the intellectual force of Judge Learned Hand and Professor Arthur Corbin, an objective assessment of the

parties' intention carried the day, and it is the intention of the parties as judged by external or objective appearance that is used to evaluate whether the parties entered into an agreement. As Judge Hand observed, "a contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent." (See, Hotchkiss v. Nat'l City Bank, 200 F. 287, 293 (1911)). Judged by an objective appearance of intentions, the question is whether parties manifested an intent to agree.

In testing whether promises exchanged by parties constituted a binding promise, a hope, a prediction, or even a pledge, it is appropriate to apply a standard of reasonableness and to ask whether a reasonable person, judging objectively, would conclude that the parties intended their words to constitute a binding promise. Even if one party intended to make a pledge and the other party intended to offer a binding promise, a reasonable person, judging objectively, must ask whether the party offering a binding promise had reason to know of the other parties' undiscussed intention merely to make a pledge. In this context, a "pledge" is used as a nonbinding expression of opinion; but it is recognized that one definition of "pledge" is "a binding promise." There is a famous case in which one farmer thought he was expressing a nonbinding opinion about selling his farm, but the other farmer believed he made a binding promise to buy the farm, and the Court made clear that the undiscussed intention of a party is not

relevant under an objective theory of assent. (See, Lucy v. Zehmer, 196 Va. 493, 84 S.E.2d 516 (1954)).

The problem of a party making what was believed to be a nonbinding proposal but, in reality, was a binding promise is an old one. (See, e.g., Embry v. Hargadine, McKittrick Dry Goods Co., 105 S.W. 777 (1907)). The context, of course, cannot be ignored in determining whether or not a statement constituted a gratuitous "pledge" or a binding promise. As Restatement (Second) observed:

> The meaning given to words or other conduct depends to a varying extent on the context and the prior experience of the parties. Almost never are all the connotations of a bargain exactly identical for both parties; it is enough that there is a core of common meaning sufficient to determine their performances with reasonable certainty or to give a reasonably certain basis for an appropriate legal remedy. (See, § 20, comment b, p. 59 (1981), emphasis added).

As the U.S. Supreme Court has made clear, an arbitrator is a "creature of contract;" and an arbitration award is enforceable "only so long as it draws its essence from the collective bargaining agreement." (See, United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960)). Contractual language is the best evidence of the parties' promissory intent. One arbitrator concluded:

> It is a basic and fundamental concept in the arbitration process that an arbitrator's function in interpreting and applying contract language is to first ascertain and then enforce the intention of the parties as reflected by the language of the pertinent provisions involved. As a necessary and essential corollary is the principle that if the language being construed is clear and unambiguous, such language is itself the best evidence of the intention of the parties. And when language

> so selected by the parties leaves no doubt as to the intention, this should end the arbitrator's inquiry. (See, Ohio Chemical & Surgical Equipment Company, 49 LA 377, 380-381 (1967), emphasis added).

The Employer asserted that it intended to make a "pledge" in the Joint Statement according to which it pledged itself to help eliminate violent behavior in the workplace. Management did not intend its "pledge" to constitute an enforceable promise because "there was no intent to alter, amend, or modify the National Agreement." (See, Tr. 58). The Union responded that its intent was to enter into an enforceable promise with management.

An examination of the purpose for the Joint Statement, the actual verbiage itself, and dispute resolution processes used by the parties provide objective manifestations of their intent. It is unrebutted that the principle purpose of the parties in publishing the Joint Statement was to lend their mutual weight to an anti-violence campaign in the workplace. Words used by the parties expressed their concern that combating violence in the workplace was such a high priority it was necessary to take an unprecedented step of jointly issuing a credo against violence. To convey the intensity of their commitment to reducing violence in the workplace, the parties stated:

> The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.
>
> . . . .
>
> But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are

> basic human rights, and where those who do not respect those rights are not tolerated. (See, Joint Exhibit No. 4, emphasis added).

A representative of each party signed the document. Without regard to the unexpressed intentions of the parties, the document makes clear that the parties made promises to each other to take action. The parties addressed their statements to every member of the postal organization. They stated that:

> 'Making the numbers' is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions. (See, Joint Exhibit No. 4), emphasis added).

On one hand, the Employer argued that management was completely serious about an intent to take action in order to end violence in the workplace. On the other hand, the Employer asserted that it lacked the requisite intent to be contractually bound by the language of the Joint Statement. The Employer contended that, as expressed in the Joint Statement, the parties made a "pledge" of their efforts to accomplish objectives set forth in the document. The reference to the understanding between the parties as a "pledge" indicated to the Employer that the parties merely were communicating their disdain for violence in the workplace and were pledging themselves to end such misconduct. As the Employer viewed it, the Joint Statement definitely was not a contract but, rather, an effort to "send a message to stop the violence." (See, Employer's Post-hearing Brief, 13).

The Employer supported its theory of the case with

testimony from representatives present at discussions that led to the Joint Statement. As Mr. David C. Cybulski, Manager of Management Association Relations, testified:

> Following an exploration, again, of the circumstances leading to the tragedy [at Royal Oaks], the thought developed at the table that we should perhaps communicate what it is that we are doing. We are working collegally. We are trying to jointly approach these issues, as complex as they are.
>
> There has been a recognition here that there is something about the postal culture and perhaps something about the postal climate that we need to address and address in a more universal way than management exclusively issuing a statement or the labor union exclusively issuing a statement. (See, Tr. 90-91, emphasis added).

According to the Employer, it sought, in the aftermath of the "Royal Oaks" incident, to quell anxieties of employes by reaffirming an intent to end violence.

While it might be possible to interpret the word "pledge" in the Joint Statement as a nonpromissory commitment, the Statement must be interpreted as a whole document in order to assess its effect. It is a deeply rooted rule in aid of contract interpretation that a document should be interpreted so that its provisions make sense when read together. As Restatement (Second) observed, "since an agreement is interpreted as a whole, it is assumed in the first instance that no part of it is superfluous." ((§ 203, comment b, 93 (1981). The objective of reading a whole document is to give significance to each part and an interpretation is preferred that produces such a result.

Words in the last sentence of the Joint Statement such

as "pledge" and "efforts" must be read in conjunction with strong language throughout the prior six paragraphs which referred to "time to take action to show that we mean what we say," or "we will enforce our commitment," and "no tolerance of violence." Such statements indicated that the parties' past efforts had been less than successful and that the "Royal Oaks" tragedy signalled to the parties their need to make a drastic change in postal culture. The Joint Statement marked a departure from the past and pointed the way to organizational change. This was a document that evidenced an intent to take action rather than a mere statement of opinions and predictions. It was a "manifestation of intention to act" which justified a conclusion that a commitment had been made. After making strong promissory statements, the parties signed the document, signaling more than a gratuitous pledge.

The parties' conduct in negotiating the Joint Agreement added support to a justifiable conclusion that they exhibited an objective manifestation to be contractually bound. When approaching management with the idea of issuing a Joint Statement, Mr. Vincent Sombrotto, President of the National Association of Letter Carriers, doubted that the Employer would enter into such an agreement. (See, Tr. 69). In response to Mr. Sombrotto's proposal, the Employer did not flinch but, instead, asserted, "Try me." (See, Tr. 69). Such negotiation behavior exhibited an objective intent of the parties to make legally binding commitments to each other and, if not performed, legally enforceable promises that

could be the basis of a remedy. The language of the Joint Statement itself as well as the objective conduct of the parties evidenced their mutual assent to be legally bound by the Joint Statement.

Since the turn of the twentieth century, contract jurisprudence has recognized that an agreement can be "instinct with an obligation" and, therefore, enforceable as a contract. A relationship between parties is "instinct with an obligation" when it is "infused" or "imbued" or "filled" or "charged" with an obligation. (See, e.g., Wood v. Lucy, Lady Duff-Gordon , 118 N.E. 214 (N.Y. 1917)). The Joint Statement committed the parties to a course of action and created obligations for them. Even if the expression of the parties' intent in the Joint Statement was less than perfect, the language they used was instinct with an obligation which overcame any asserted indefiniteness in the document. The Joint Statement itself was clear in its manifestation of an intent to be bound; but even if one concluded that there was an imperfect expression of the parties' intent, the document was instinct with an obligation which supplied the binding requirement of the transaction. Moreover, courts have found that an agreement may be instinct with an obligation based on principles arising from the relationship of the parties and their course of conduct. (See, Toussaint v. Blue Cross and Blue Shield of Michigan, 292 N.W.2d 880 (1980)). A reasonable person would have viewed the surrounding circumstances of this transaction as contractually obligating the parties to each other.

C. Enforcing the Joint Statement

The Joint Statement did not specify a method concerning how to enforce the agreement. It is logical to presume that the parties intended to use standard enforcement mechanisms for disputes that might arise between the parties, namely, their negotiated grievance procedure set forth in the collective bargaining agreement. Such an interpretation is consistent with the parties' agreement.

Article 15.1 of the parties' agreement makes clear that the negotiated grievance procedure is not limited to disputes under the National Agreement which has been negotiated in the traditional way. The Agreement states that:

> 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 Unions 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. (See, Joint Exhibit No. 1, p. 75, emphasis added).

The parties agreed that the grievance procedure could be used to resolve "a dispute, difference, or complaint" related to "conditions of employment." Moreover, there is an indication in the parties' agreement that, when they intended to make available some other dispute resolution process in lieu of the negotiated grievance procedure, they expressly said so in the agreement. For example, Article 16.9 makes clear that dispute resolution under the Veteran's Preference Act remains available to relevant employes.

(See, Joint Exhibit No. 1, p. 91). In some cases, there is access to the Merit Systems Protection Board. (See, Joint Exhibit No. 1, p. 89). The parties clearly understood how to draft language into their agreement which expressed their intent that there would be an election of a forum different from the negotiated grievance procedure. (See, e.g., Exhibit No. 1, p. 14, Article 6(f)(1)).

The inference is clear that the collective bargaining agreement is presumed by the parties to be the enforcement mechanism used to resolve their disputes, differences, disagreements, and complaints with regard to conditions of employment. The Joint Statement did not provide an alternative means of enforcement. It is concerned with a condition of employment. Accordingly, it is reasonable to conclude that the Union may use the negotiated grievance procedure to resolve disputes under the Joint Statement on Violence and Behavior in the Workplace.

The Employer argued that using the negotiated grievance procedure is inappropriate because there is no quid pro quo. In other words, the Union allegedly gave up nothing to receive this additional benefit. In effect, the Employer argued that, even if there were a promissory undertaking on the part of the parties, it was an illusory promise based on a lack of consideration. The modern day requirement is that consideration be bargained for. But, except in instances not relevant in this case, courts do not test the economic equivalence of the bargain. As one court concluded:

> The doing of an act by one at the request of another, which may be a detriment or inconvenience, however slight, to the party doing it, or may be a benefit, however slight, to the party at whose request it is performed, is a legal consideration for a promise by such requesting party. The judgment of the purchaser is the best arbiter of whether the thing is of any value, and how great, to him. (See, Hardesty v. Smith, 3 Ind. 39 (1851)).

The rule that courts do not test the economic equivalent of a bargain is long standing. As another court observed, "the rule is almost elementary that where parties get all the consideration they bargained for, they cannot be heard to complain of the want or inadequacy of consideration." (See, Chicago and Atlantic Railways v. Derkes, 3 N.E. 239 (1885)). If there is consideration, there is no requirement of benefit to a party.

What constitutes consideration has bedazzled students for generations. The rule is that, with several exceptions not relevant in this case, "any performance which is bargained for is consideration." (See, Restatement (Second) of Contracts, § 72, p. 177 (1981)). The usual consideration is a return promise, and even that may be an implied promise. The question is whether there was a promise or, possibly, a performance given in exchange for a promise.

The bargain theory of consideration supports a conclusion that the mutual exchange of promises in this case constituted consideration. The mutual exchange of promises involved a commitment from each party "to make the workroom floor a safer, more harmonious, as well as a more productive workplace." (See, Joint Exhibit No. 4). Use of the negotiated grievance procedure

was an incidental result of the promissory exchange between the parties. Moreover, there was unrebutted evidence that the Employer, in fact, has benefited from the exchange between the parties and has used the Joint Statement in regional arbitrations against workers who exhibited behavior inconsistent with the Joint Statement. There, in fact, was consideration in the bargained-for exchange between the parties. The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties. As the U.S. Supreme Court instructed:

> There [formulating remedies] the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. (See, United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960)).

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Joint Statement on Violence and Behavior in the Workplace constitutes 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. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: 8-16-96

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue NW
Washington DC 20001-2197

RE: G90N-4G-C 95026885
Kurszewski, T.
G90N-4G-C 95026886
Starrett, D.
G90N-4G-C 95026887
Niewdach, D.
Little Rock, AR 72231-9511

Dear Mr. Sombrotto:

On January 10, 1997, I met with your representative to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these cases is whether management violated ELM Section 546.14 in moving the grievants' limited duty assignments.

During this discussion, we mutually agreed that no national interpretive issue was fairly presented. Accordingly, we agreed that the provisions of ELM 546.14 are enforceable through the provisions of the grievance/arbitration process. Whether an actual violation occurred is fact based and suitable for regular arbitration if unresolved.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand these cases.

Sincerely,

Paul A. Lyons
Labor Relations Specialist
Grievance and Arbitration

Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO

1/28/97
Date

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

UNITED STATES POSTAL SERVICE

Mr. William J. Flynn, Jr.
Manager, Contract Administration
National Postal Mail Handlers Union,
AFL-CIO
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: I84M-4I-C 87040125
(C4M-4Q-C 25680)
Class Action
St. Louis, MO 63155-6601

Dear Bill:

Recently, Joseph N. Amma, Jr. and myself held pre-arbitration discussions with you, Samuel D'Ambrosio and Arthur S. Vallone concerning the above-referenced grievance currently pending national level arbitration.

The issue in this grievance is whether a general supervisor violated the National Agreement when he issued a statement that all class action grievances filed by a shop steward must be filed with the stewards immediate supervisor regardless of where the grievance originated.

During this discussion it was mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that the determination of the immediate supervisor is a fact circumstance best suited for regional determination and application of Article 15.2 and 15.3. We further agreed that in the best interest of Article 15.3.A, a step one grievance should normally be initiated with the supervisor most likely responsible for the action giving rise to the dispute.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case and withdraw it from the list of cases pending National Arbitration.

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)

William J. Flynn, Jr.
Manager, Contract Administration
National Postal Mail Handlers Union
AFL-CIO

Date: 5/17/99

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Brian D. Farris
Director, City Delivery
National Association of Letter Carriers
AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

FEB 26 1988

Re: Branch
San Anselmo, CA 94960
H4N-5E-C 36561

Dear Mr. Farris:

On February 9, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

During our discussion, we mutually agreed that the term immediate supervisor as written in Article 15, Section 2, Step 1(a) of the National Agreement may be an acting supervisor (204b).

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Michael J. Guzzo, Jr.
Grievance & Arbitration
Division

Brian D. Farris
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 20, 1982

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: Class Action
Wilson, NC 27893
NIC-3P-C-6922

Dear Mr. Wilson:

On August 4, 1981, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

e matters presented by you as well as the applicable ntractual provisions have been reviewed and given careful c .sideration.

The question in this grievance is whether or not management violated Article 17 of the National Agreement when management would not allow a local Union steward time to write up a grievance on the Union's standard grievance outline work sheet. Local management's position was that no form should be completed until the employee and supervisor have discussed the grievance.

Article 15, Section 2, of the National Agreement entitles an employee to discuss a grievance with his immediate supervisor. It also entitles the employee to be accompanied and represented by the employee's steward or a union representative.

Article 17, Section 3, of the National Agreement entitles the steward to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance.

It seems logical that the Union would develop an internal format to ensure consistency and efficient use of the time allotted for a steward to interview a grievant or potential grievant. Not every item on the form would be completed in every case, as it may be determined that no corrective action or management response is required. Further, the form is completed during the interview and would consume no more time than any other method of note taking. Therefore, the Union steward may, while interviewing a grievant or potential grievant, complete his grievance outline worksheet.

If you agree with the position stated above, please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

R. L. Eugene

obert L. Eugene
Labor Relations Department

Kenneth D. Wilson

Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-6255

Mr. William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: H7M-4S-C 22798
CLASS ACTION
MINNEAPOLIS ST PAUL BMC 55200

Dear Mr. Quinn:

On February 1, 1993, I discussed the above referenced case with your representative, Jewell Reed.

The issue in this representative 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. The parties at Step 3 agreed to hold this case pending the outcome of case number H7C-4J-C 18047.

Accordingly, we agreed to remand the grievance to the parties at Step 3 for possible application of the attached resolution of case number H7C-4J-C 18047.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Melissa J. Boniger
Grievance and Arbitration
Labor Relations

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 2/15/93

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-4J-C 18047
Class Action
Milwaukee, WI 53203

Dear Mr. Neill:

Recently, the Postal Service met with Robert Tunstall in a prearbitration discussion of the above-referenced case.

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.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle case number H7C-4J-C 18047 and remove it from the pending national arbitration listing.

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration Division

Thomas A. Neill
Industrial Relations Director
American Postal Workers Union, AFL-CIO

Date 6-17-92

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 12, 1983

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: NALC Branch
Pomona, CA 91766
HLN-5G-C 8564

Dear Mr. Overby:

On March 23, 1983, we met to discuss the above-captioned grievance procedure.

The question in this grievance involves whether the union is entitled to be notified of Step 1 settlements or adjustments. The parties agree the following provides a full and final settlement of this case:

> The local union has a right to be notified of a settlement or adjustment which occurred at Step 1 of the grievance procedure.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to resolve this case.

Time limits were extended by mutual consent.

Sincerely,

Thomas J. Lang
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

NOV 30 1983

Mr. Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Anderson:

On November 28 you met with Frank Dyer in prearbitration discussion of H1C-4B-C 1716, Flint, Michigan. The question in this grievance is whether management violated the National Agreement by permitting a supervisor to be an observer at a grievance discussion between a local steward and an acting supervisor (204-B).

It was mutually agreed to full settlement of this case as follows:

> Either party may have an observer at a grievance discussion. Normally, it is expected that the parties will advise each other in advance of any intent to have an observer.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H1C-4B-C 1716 from the pending national arbitration listing.

Sincerely,

W. E. Henry 12/1/83

William E. Henry, Jr.
Director
Office of Grievance and Arbitration
Labor Relations Department

Gerald Anderson
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

FEB 28 1980

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: APWU Local
Phoenix, AZ
A8-W-0538/W8C5RC7203
APWU 0538

Dear Mr. Wilson:

On February 19, 1980, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

In settlement of this grievance, it is agreed that supervisors shall discuss all grievances filed by the Union at Step 1.

This decision is not intended to preclude supervisors from rejecting grievances which they believe are not grievable under the terms of the National Agreement.

Please sign the attached copy of this letter as your acknowledgment of the agreed to settlement.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO

April 23, 1981

Mr. Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: Class Action
Jacksonville, FL 32202
HOC-3W-C 24461

Dear Mr. Anderson:

This supersedes our prior decision dated April 17, 1981. Time limits were extended by mutual agreement.

On April 8, 1981, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented as well as the applicable contractual provisions have been reviewed and given careful consideration.

In full and final settlement of this grievance, it is agreed that the employer will discuss all alleged grievances at Step 1 of the procedure.

This agreement does not, however, preclude or limit the right of the employer to deny a grievance in that the issue is not grievable and/or is procedurally defective under the terms of the National Agreement.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Howard R. Carter
Howard R. Carter
Labor Relations Department

Executive Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

January 19, 1989

Re: H4C-3W-C 27397
Class Action
Crystal River, FL 32629

Dear Mr. Neill:

On December 23, 1988, we met in a prearbitration discussion of the above-referenced case.

The issue in this grievance is whether management may refuse to conduct Step 1 discussions by telephone rather than in person.

During the discussion, it was mutually agreed that the following would represent full and complete settlement of this case:

> The intent of the parties is to resolve cases at the lowest possible level whether it is done by telephone or in person. Normally, the parties will meet on Step 1 grievances in person, however, in unusual circumstances, to accommodate the process a Step 1 grievance may be done by telephone.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle case no. H4C-3W-C 27397 and remove it from the pending national arbitration listing.

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

DATE 1-24-89

Enclosure

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: Class Action
Boise, ID 83707
B7N-5R-C 4965

Dear Mr. Hutchins:

On September 7, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agree that where the local parties are in mutual agreement, grievance discussions may take place via telephone.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Dominic D. Scala, Jr.
Grievance & Arbitration
Division

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

(Date) 3/23/89

MAR 22 1994

Mr. Lonnie L. Johnson
National Director
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 450
1225 19th Street, N.W.
Washington, D.C. 20036-2411

Re: J. Ricci
New Haven, CT 06511
H1B-1J-C 10717

Dear Mr. Johnson:

On February 20, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance union's request to review a supervisor's Step 1 Grievance Summary form, PS-2608.

It was mutually agreed to full settlement to the case as follows:

1. The PS Form 2608 is not completed by the Postal Service at the time of the Step 1 discussion. Therefore, it is not available for the Union to review until Step 2.

2. If at Step 2 or any subsequent step of the grievance procedure, the Union requests to review the complete PS Form 2608 it will be made available.

The time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Lonnie L. Johnson
National Director
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

DEC 5 1986

Mr. Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Gulf Breeze, FL 32561
H4C-3W-C 14958

Dear Mr. Tunstall:

On July 22, 1986, and again on November 10, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by not scheduling a Step 2 meeting on grievance #9-85.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Article 15, Section 2, of the National Agreement to the particular circumstances.

The parties at this level agree that management has an obligation to meet with the union at Step 2 as long as the union has met the procedures outlined in Article 15.2, Steps 1 and 2 of the National Agreement.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Muriel A. Aikens
Grievance & Arbitration
Division

Robert L. Tunstall 1-13-87
Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 3 1985

Mr. Robert Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Local
Tacoma, WA 98413
H4C-5D-C 5830

Dear Mr. Tunstall:

On October 31, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the grievant has a right to attend the Step 2 meeting with the union representative.

During our discussion, we mutually agreed that the following constitutes full settlement of this case:

> The necessity of the presence of a grievant at a Step 2 meeting is determined by the union.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Muriel Aikens
Labor Relations Department

Robert Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

October 19, 1988

Re: D. DeLanter
Flint, MI 48502
H4C-4B-C 2899

Dear Mr. Neill:

Recently, a prearbitration discussion was held on the above referenced case. The issue in this case is whether management properly denied the grievant's presence at a Step 2 meeting.

In accordance with Article 15.2. Step 2 (c) and (d) the parties reaffirm and agree to these principles that:

1. If a grievant is not available to attend the scheduled Step 2 meeting, the parties may agree to reschedule the meeting to a date mutually convenient in order for the grievant to be present.

2. There must be adequate notice given by the union, and a significant reason demonstrated by the union in order to justify rescheduling the Step 2 meeting beyond the required seven (7) day limit.

3. The parties may mutually agree to extend the Step 2 meeting to a date mutually agreed upon.

4. All time spent in the Step 2 grievance meeting will be on a no gain/no loss basis in accordance with Article 17.4.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle case no. H4C-4B-C 2899 and remove it from the pending national arbitration listing.

Sincerely,

Stephen W. Furgeson
Acting General Manager
Grievance and Arbitration

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

Enclosure

Mr. William Flynn, Jr.
Manager, Contract Administration
National Postal Mail Handlers
Union, AFL-CIO
1101 Connecticut Avenue, NW. Suite 500
Washington, DC 20036-4303

RE: Class Action
Columbia, SC
D84M-1D-C 87013561

Dear Mr. Flynn:

Recently, Joseph Amma and myself had a pre-arbitration discussion with you, Arthur Vallone, and Samuel D'Ambrosio concerning the above-referenced grievance currently pending National level arbitration.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 15 of the National Agreement.

The parties at this level agree that the National Agreement does not dictate the location where Step 2 discussions must be held. This is a local dispute suitable for regional determination.

Accordingly, we agreed to remand this case to Step 3 for further consideration by the parties.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case and withdraw it from the list of cases pending National Arbitration.

Sincerely,

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU),Labor Relations

William Flynn, Jr.
Manager, Contract Administration
National Postal Mail Handlers Union
AFL-CIO

Date: 6/15/98

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers' Union
1101 Connecticut Avenue, N.W.
Washington, DC 20036-4304

Re: G06M-1G-C 11029012
Class Action
Savannah, GA 48174-9980

Dear John:

Recently, I met with T.J. Branch to discuss the above captioned case at the fourth step of our contractual grievance procedure.

The issues in this grievance are: does management have the right to designate its Step 2 designees from outside the installation, unilaterally determine the location of the Step 2 discussions, and require telephonic grievance discussions.

After full discussion of this issue, we agreed that no national interpretive issue is fairly presented in this case as the issues have previously been addressed as follows: Step 2 grievances shall be filed with the installation head or designee. Management is responsible for notifying the union of the proper representative to whom Step 2 appeals are to be made (CIM V3 Article 15 Page 6). The parties agree that the National Agreement does not dictate the location where Step 2 meetings must be held. Pre-arbitration settlement D84M-1D-C 87013561, (copy attached) in part states:

> "The parties at this level agree that the National Agreement does not dictate the location where Step 2 discussions must be held. This is a local dispute suitable for regional determination."

Individual telephonic Step 2 discussions are permitted only with agreement by both parties. These discussions and reviews will have the same contractual force and effect as if the parties had met in person.

Accordingly, we agree to remand this grievance to Step 3 for discussion and if necessary regional level arbitration in keeping with the provisions of the Memorandum of Understanding, Step 4 Procedures.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Allen Mohl
Allen Mohl, Labor Relations Specialist
Contract Administration (NPMHU)
and EAP/WEI Programs

Date: 6/22/12

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4101
WWW.USPS.COM

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

January 12, 1982

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

A8-W-2761

Re: APWU - Local
San Diego, CA 92199
H8C-5R-C-21811

Dear Mr. Wilson:

On December 17, 1981, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure as set forth in Article XV, Section 2 of the National Agreement.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The question in this grievance is whether management violated Article XV of the National Agreement by not providing privacy during Step 2 meetings.

Although the National Agreement does not specifically address this matter, management is mandated along with the Union to have meaningful dialogue in order to resolve grievances. While complete privacy may be difficult to achieve, local management should make the effort to ensure that Step 2 meetings are as private as possible with no unnecessary interruptions.

To the extent discussed above, we consider this grievance resolved.

Please sign and return a copy of this letter as your acknowledgment of agreement to resolve this grievance.

Sincerely,

Harvey White
Labor Relations Department

Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

FEB 8 1984

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: G. Johnson
Houston, TX 77201
H8N-3U-C 16250

Dear Mr. Overby:

On November 18, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management improperly authorized more than one representative to meet with the designated union steward at a Step 2 meeting.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

> Both the union and the Employer have historically had persons other than the actual designated representatives attend Step 2 meetings as observers. However, such persons shall attend at the mutual consent of the parties designated to discuss the grievance.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Leslie Bayliss
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO

In the Matter of Arbitration

between

Case No. H8N-5B-C 17682

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

OPINION

I

Article VIII (Hours of Work), Section 5 of the 1978-1981 National Agreement (JX-1) provides in pertinent part:

> 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:
>
> A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.
>
> B. Lists will be established by craft, section, or tour in accordance with Article XXX, Local Implementation.
>
> C. 1. . . .
>
> 2. Only in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list. During the quarter every effort will be made to distribute equitably the opportunities for overtime among

those on the list. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route in one of the employee's regularly scheduled days.

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.

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).

F. Excluding December, only in an emergency situation will a full-time regular employee be required to work over ten (10) hours in a day or six (6) days in a week.

The instant grievance arose in the Torrance, California, Post Office, which employs about 220 carriers. Each carrier is assigned to one of five zip-code sections. There is a separate Overtime Desired list for each section. The section involved in this case is 90503, called the 03 section, for short. At the time in question, 12 carriers were on the Overtime Desired list of the 03 section.

On the morning of 27 February 1981, carrier Route No. 317 was vacant, and no part-time flexible or reserve carriers were available to deliver the route as a regular eight-hour, straight-time assignment. Consequently, in order to have the route delivered that day, management had to assign it as overtime.

On 27 February, of the 12 carriers on the Overtime Desired list of the 03 section, one had bid out of the section, one was an acting supervisor, one was on sick leave, and one was on annual leave. Of the eight remaining, all were already scheduled for work, and three were scheduled to work until 5:00 or 5:15 p. m. on their own routes. Management thus had only two options: (1) it could "pivot" the vacant route among the remaining five carriers, or (2) it could call in an employee not on the Overtime Desired list to work the route on overtime.

"Pivoting" is defined in Section 617.2 of the Postal Operations Manual (JX-3) as follows:

> .11 Pivoting is a method of utilizing the undertime of one or several carriers to perform duties on a temporarily vacant route or to cover absences. Non-preferential mail may be curtailed within delivery time standards on the vacant route and/or on the routes of the carriers being pivoted.
>
> .12 Pivoting is not limited to periods when mail volume is light and when absences are high but can be utilized throughout the year for maintaining balanced carrier workloads.

Management followed the second course, calling in Ronald Summers, the carrier regularly assigned to Route No. 317, who had the day off. Summers worked eight hours. The Union promptly filed a class grievance (JX-2), which was denied at the first step. On 13 March 1981, the Union appealed to step 2, asking for eight hours of pay to be divided among five carriers on the 03 Overtime Desired list. Management's step 2 answer, dated 27 March, read in part:

> It would be a poor management practice to split up a route on overtime when a regular is available. Additionally it would be a disservice to our customers to have them receive their mail in the late afternoon by carrier working on overtime.

The Union then appealed to step 3. Management's response, dated 3 June, read in part:

> It is Management's position that all contractual provisions have been met where all Carriers on the Overtime Desired List have been called into work. Management is not obligated to split up a route to be carried by those employees on the Overtime Desired List already at work and assigned to other duties.
>
> In our judgment, the grievance involves an interpretive issue pertaining to the National Agreement or a supplement thereto which may be of general application, and thus may only be appealed to Step 4 in accordance with the provisions of Article XV of the National Agreement.

At the step 4 meeting, Howard R. Carter, for the Postal Service, and Halline Overby, for the Union, jointly executed a statement, dated 10 August, that no national interpretive issue was presented by the grievance and that it should therefore be remanded to step 3. On the remand, management again denied the grievance; its answer, dated 15 September, was identical with that given on 3 June. The case was then appealed to arbitration.

II

Both James Hurst, the Union's sole witness, and Donald G. Talbert, the Postal Service's sole witness, agreed that the common practice at the Torrance Post Office when there are not enough part-time flexible carriers to cover vacant routes

on straight time has been, first, to assign carriers from the Overtime Desired list who are not scheduled on that particular day; second, to pivot the route among carriers on the Overtime Desired list who are already scheduled; and third, to assign carriers not on the Overtime Desired list. They also agreed that the rule of thumb has been that no carrier should be scheduled on the street "after dark," which in February would be 5:15 p. m. (Talbert) 5:30 p. m. (Hurst). Finally, they agreed that although Article VIII, Section 5-F provides that except in December, or in an emergency, no full-time regular carrier will be required to work more than 10 hours in a day, carriers frequently voluntarily work in excess of 10 hours per day.

During the processing of the instant grievance, the Union argued that the overtime in question could have been distributed as follows (JX-2):

J. Ryan - 2.50 hours preshift [i.e., call in early] to case route, has normal 10 am starting time.

D. Bowser - 1.50 hours carrying

D. Arvin - 1.50 hours carrying

A. Bowman - 1.50 hours carrying

L. Sipe - 1.00 hours carrying

As shown by the time cards this would have resulted in the entire route being completed by 5:30 pm, not an uncommon time for residential routes to be comped in this city.

Had these carriers been pivoted in the manner suggested

by the Union, they would have worked the following total number of hours, respectively: Ryan - 10½ , Bowser-9½, Arvin-9½, Bowman - 10½, Sipe - 10.

The Union's position is that management's failure to pivot the vacant assignment on 27 February 1981 was a prima facie violation of Article VIII, section 5-C-2 and 5-D, and that none of the exceptions in 5-E applied. Recognizing that in some circumstances it may be "impracticable or unreasonable to pivot an overtime assignment," the Union offers as a "fair and workable standard" that articulated by Arbitrator Neil N. Bernstein in a regional award dated 30 December 1981, in a similar case. The language alluded to by the Union (Bernstein award, P. 8), reads as follows:

> The Service does have the right in the first instance to schedule working hours, but the scheduling that it does must be "reasonable". The concept of reasonableness necessarily includes some recognition and protection of the overtime allocation principles contained in Article VIII. The avoidance of compulsory overtime by maximum utilization of the service of the employees on the "Overtime Desired" list is a factor that must be considered in any appropriate scheduling decision. However, that is not to say that avoidance of compulsory overtime is an overriding consideration; there are many other factors that also are relevant, and they may sometimes dictate a work schedule that involves more compulsory overtime than is absolutely necessary. However, if the Service does adopt such a schedule, it must have "good cause" for doing so.

The Union argues that the Postal Service has failed to satisfy the "good cause" standard. It points out that under

Article XV (Grievance-Arbitration Procedure) of the National Agreement, both parties must state all of the facts and contentions upon which they rely during the grievance procedure, and it cites an award by Arbitrator Richard Mittenthal, dated 21 September 1981, refusing to consider arguments of the Postal Service advanced for the first time at the arbitration hearing. It emphasizes that all of the specific circumstances relied upon by management to prove the reasonableness and just cause for assigning the overtime work to Summers were mentioned for the first time at the arbitration hearing, and urges that they should therefore be inadmissible.

In addition, the Union contends that even if those circumstances are considered, they do not sustain management's position. Specifically, the Union argues that Article VIII, Section 5-F does not impose a flat ban on working over 10 hours in one day, but only a ban on compulsory assignment of work in excess of 10 Hours. It also denies management's claim that it would have taken more time to pivot the overtime work among the five carriers than it took Summers to complete it. Finally, while admitting that pivoting the overtime would have delayed some mail deliveries, the Union insists that this was irrelevant. No business mail was involved, and there has always been a substantial variation in times of residential deliveries of mail in Torrance.

The position of the Postal Service is that under Article III (Management Rights) of the National Agreement, it has the

right to resort to compulsory overtime for the purpose of minimizing overtime, using it in the most efficient manner, and avoiding delay in the mails. It points out, further, that management had no way of knowing, in advance, whether any or all of the five carriers on the Overtime Desired list who were already scheduled would be willing to work in excess of 10 hours or, if so, whether they would be able to finish before dark. Finally, it asserts that the assignment of the vacant route to Summers was reasonable because it was his regular route, it could be completed in less time than would have been required if it had been pivoted, and the assignment resulted in no delay in the mail delivery.

III

The Postal Service says that the thrust of the Union's argument is that management must exhaust the Overtime Desired list to the maximum extent possible (up to two hours overtime for each carrier on the list) prior to using a carrier not on the list. I do not agree. As I understand the Union's position, generalizing from its arguments in this case, it is that management must exhaust the Overtime Desired list before compelling someone not on the list to work overtime, provided that those on the list are willing to work up to or beyond 10 hours, as may be required, and provided that street deliveries can be completed before dark. I also infer that the Union would probably agree that in some circumstances it might be unreason-

able to require that overtime be offered to a carrier on the Overtime List even if the time involved would not increase his total hours worked in the day to 10.

On the other hand, the position taken by the Postal Service throughout the four steps of the grievance procedure was that Article VIII, Section 5 does not require it to assign overtime work to carriers on the Overtime Desired list if they have already been called in to work, and that management has no obligation "to split up a route to be carried by those employees. . .already at work and assigned to other duties." This interpretation is predicated, mistakenly, on Article III, which is expressly made "subject to the provisions of this Agreement," including Article VIII.

The Postal Service advanced other, more credible arguments at the arbitration hearing to support the reasonableness of its decision to assign the disputed work to Summers, but none of these except the later delivery of mail had been raised during earlier steps of the grievance procedure. I am fully in agreement with Arbitrator Nittenthal that the provisions of Article XV requiring that all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration should be strictly enforced. In this case, therefore, I have given no consideration to any of the arguments advanced by the Postal Service other than those referred to specifically in this and the preceding paragraph. The interpretation of Article VIII, Section 5

relied upon by the Postal Service in its answers at steps 2 and 3 of the grievance procedure is plainly in error. The argument that by pivoting the vacant route assignment in the manner suggested by the Union would have delayed the delivery of some residential mail seems to me inconsequential, in the light of the evidence of past practice, and not amounting to good cause for not doing so.

Both parties seem to accept Arbitrator Bernstein's good cause standard. By its very nature, however, this standard must be applied on a case-by-case basis; it does not lend itself to embodiment in a per se rule. In this case the Postal Service relied almost entirely on its own per se rule during the grievance procedure, and I have concluded that this rule goes too far. The Union should not interpret this decision, however, as meaning that under any conceivable circumstances the Postal Service is forbidden to assign overtime work to a carrier not on the Overtime Desired list simply because another carrier or carriers on that list, who have already been scheduled for work, desire to perform some or all of the overtime involved.

Although there is some question in my mind that all of the overtime work in this case, if pivoted as the Union asserted it should have been done, could have been completed before dark, the Postal Service waived its right to dispute the Union's claim by failing to challenge it directly in the grievance procedure. Accordingly, I shall grant the remedy requested.

Benjamin Aaron
Arbitrator

ARBITRATION AWARD

September 21, 1981

UNITED STATES POSTAL SERVICE
Helena, Montana

-and-

NATIONAL ASSOCIATION OF
LETTER CARRIERS
Branch 220

H8N-5L-C 10418
Case No. (N8-W-0406)

Subject: Assignment of Work - Enforceability of Local Memorandum of Understanding

Statement of the Issues: Whether the Helena Memorandum of Understanding with respect to the assignment of re-labeling work is enforceable or unenforceable? Whether Helena Management waived its unenforceability claim by failing to invoke the procedures set forth in the 1978 National Memorandum of Understanding for resolution of an alleged conflict between the Helena Memorandum and the 1978 National Agreement?

Contract Provisions Involved: Articles III, XIII, XV and XXX and the Memorandum of Understanding on XXX of the July 21, 1978 National Agreement. Article XLI, Section 3U of the November 14, 1978 Helena Memorandum of Understanding.

Grievance Data:

	Date
Grievance Filed:	April 28, 1980
Step 2 Answer:	May 22, 1980
Step 3 Answer:	June 30, 1980
Step 4 Answer:	December 19, 1980

Appeal to Arbitration:	January 22, 1981
Case Heard:	April 28, 1981
Transcript Received:	May 11, 1981
Briefs Submitted:	June 28, 1981

Statement of the Award: The grievance is granted. The Helena postal facility should reimburse the Regular Carrier or T-6 for re-labeling work improperly assigned to others in April 1980.

BACKGROUND

This grievance from Helena, Montana involves the Postal Service's refusal to honor a clause in a Local Memorandum of Understanding which requires cases for a particular route to be "...re-labeled by the Regular Carrier or T-6 only." NALC insists that this refusal is a violation of Article XXX of the 1978 National Agreement. The Postal Service argues, however, that this clause is unenforceable (1) because its subject matter does not fall within the 22 items enumerated for local negotiations in Article XXX, Section B and (2) because its terms are inconsistent or in conflict with Articles III and XIII. NALC disagrees with both of these propositions.

Since the mid-1960s, the parties have encouraged the execution of local agreements. Those local agreements included a variety of clauses. Some served to implement the general provisions of the National Agreement; others dealt with subject matter not covered by the National Agreement. The parties specifically contemplated local ageements which went beyond the terms of the National Agreement. For example, Article VII, Section 13(c) of the 1968 National Agreement prohibited local clauses which "repeat, reword, paraphrase or conflict with the National Agreement..." but added that "this is not to be interpreted to mean that local negotiations shall be restricted to only those options provided in articles in the National Agreement..."

This history was not ignored in the 1971 National Agreement, the first contract following the Postal Reorganization Act and the creation of the collective bargaining process now in effect. Article XXX stated that it was "impractical to set forth in the Agreement all detailed matters relating to local conditions..." and that therefore "further negotiations regarding local conditions will be required with respect to local installations, post offices, and facilities." It went on to say that "any agreement reached shall be incorporated in memoranda of understanding." It provided that no such memoranda "shall be inconsistent or in conflict with this Agreement..."; it provided for arbitration of impasses reached in local negotiations.

The 1971 local negotiations resulted in a huge number of impasses. More than 100,000 of them were appealed to arbitration. Obviously, the parties were unable to dispose of this volume of disputes. This difficulty prompted changes in the 1973 National Agreement. The parties decided

to limit the number of impasses by restricting "local implementation" to "22 specific items enumerated below..." Thus, the local negotiators could deal with any or all of these 22 items but were not required to discuss anything else. The parties provided for arbitration of impasses where the appeal to arbitration was timely and was authorized by the National Union President.

The language of the 1973 National Agreement, specifically, Article XXX, has been carried forward into the 1975 and 1978 National Agreements. It is crucial to the resolution of this grievance and must be quoted at length:

> "A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1978 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.
>
> "B. There shall be a 30-day period of local implemention to commence October 1, 1978 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1978 National Agreement:
>
> ...[Items 1 through 22]
>
> "C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President. 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 1978 National Agreement.
>
> "D. An alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure."*

* This quotation is taken from the 1978 National Agreement. The language of the 1973 and 1975 National Agreements is identical except for the year 1973 or 1975, respectively, instead of 1978.

Given this background, the facts which prompted the instant dispute should be considered. Route cases are labeled so as to allow a Letter Carrier to case mail in a proper delivery sequence. Re-labeling is periodically required, perhaps two hours' work on each carrier route once a year, because of route changes (e.g., new addresses). In the 1975 local negotiations in Helena, Montana, the parties agreed to a Memorandum of Understanding which included the following clause in Article XLI, Section 3:

> "U. Routes will be re-labeled by the Regular Carrier or T-6 only."

This clause does not fall within any of the 22 items enumerated in Article XXX-B. It was nevertheless applied by Management throughout the life of the 1975 National Agreement. It was not mentioned during the 1978 local negotiations and it appeared again, unchanged, in the 1978 Memorandum of Understanding. No claim was made by Management in those negotiations that the clause was inconsistent or in conflict with the National Agreement.

Helena Management used a part-time Flexible Carrier and a limited duty Regular Carrier to remove and replace labels on route cases on April 14, 1980. This was contrary to the terms of the 1978 Memorandum of Understanding. NALC Branch 220 grieved on April 28, 1980, alleging a violation of the Memorandum and seeking back pay for the Regular Carriers who would have performed this re-labeling had Management complied with Article XLI, Section 3U of the Memorandum.

DISCUSSION AND FINDINGS

This case concerns the enforceability of that portion of the 1978 Helena Memorandum of Understanding which deals with the assignment of re-labeling work. Two principal questions are before the arbitrator. The first is whether this Helena clause is rendered unenforceable by reason of the fact that its subject matter is outside the scope of the 22 items enumerated for local negotiations in Article XXX-B. The second is whether this Helena clause is inconsistent or in conflict with the 1978 National Agreement and hence unenforceable under Article XXX-A and -B. The Postal Service believes both questions call for an affirmative answer. NALC disagrees.

I - Enforceability - Subject Matter

The Postal Service argues that Article XXX-B limits the permissible scope of local negotiations. It insists that local parties have the authority to negotiate only on those 22 items enumerated in XXX-B. It urges that they have no authority to negotiate on other subject matter and that should they nevertheless do so, any agreement they reach would be unenforceable. It asserts that these principles require that the Helena clause on re-labeling be declared unenforceable inasmuch as it does not fall within the 22 enumerated items.

This argument rests on a single sentence in Article XXX-B, "There shall be a 30-day period of local implementation...on the 22 specific items enumerated below..." These words simply state that the local parties are to negotiate on these 22 items. A familiar rule of contract construction provides, "To express one thing is to exclude another." The Postal Service apparently relies on this rule in asserting that the local parties are not to negotiate anything other than these 22 items. Its position is that the local parties in Helena had no authority to negotiate the clause on re-labeling and that this clause must therefore be deemed null and void.

This point of view is not persuasive. To begin with, it must be remembered that the local parties had in the past routinely negotiated local memoranda on subject matter nowhere mentioned in the National Agreement. No one claims these memoranda were, for that reason, invalid. However, so many local issues were deadlocked in the 1971 negotiations that the procedure for resolving such impasses was overwhelmed and hence unworkable. This problem prompted the introduction of XXX-B in the 1973 National Agreement. Clearly, the concern of the national parties was not the subject matter of the local memoranda* but rather the number of impasses. It is true that XXX-B served to limit the subjects on which the local parties were required to negotiate. But that obviously was done in order to limit the number of potential impasses in the future.

Given this tradition of broad local memoranda and the limited objectives of XXX-B, it would take clear contract

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* The national parties were, of course, always concerned about local memoranda being consistent with the National Agreement. That matter is discussed later in this opinion.

language to prohibit the local parties from negotiating a clause on a subject outside the 22 listed items. No such language, no such prohibition, can be found in XXX-B. The Postal Service believes this provision describes what the local parties are authorized to negotiate. But it is equally plausible to argue, as NALC does, that this provision describes what the local parties are required to negotiate.* This interpretation is, I think, more consistent with the parties' history as well as collective bargaining reality.** The rule of construction noted earlier, when applied to this view of XXX-B, would indicate only that the local parties are not required to negotiate on any subject outside the 22 listed items. Thus, the local parties are free if they wish to expand their negotiating agenda to include subjects nowhere mentioned in XXX-B. That is exactly what happened in Helena when the local parties agreed to a re-labeling clause in the 1975 negotiations. They had the authority to negotiate such a clause.

Two other points deserve brief mention. First, the Postal Service concedes that any pre-1973 local memoranda on subjects outside the 22 listed items would be valid and binding notwithstanding XXX-B. It says only post-1973 memoranda are affected by the XXX-B constraints. If this distinction were correct, then the validity of many local clauses would depend not on their subject matter but rather on the date they happen to have been negotiated. The same clause might be valid if executed in the 1971 negotiations but invalid if executed in the 1973 negotiations. That would be a strange result. Second, the Postal Service cites several awards which have interpreted XXX-B in a manner consistent with its position. All but one*** of those awards were impasse arbitrations. They were not grievance arbitrations; they were not heard

* And Article XXX-B and -C together indicate that the parties are free to arbitrate what they are required to, but cannot successfully negotiate.

** Multi-facility (or multi-employer) collective bargaining contracts always permit local agreements so long as they are not in conflict with the master contract. That phenomenon is a result of the need for mutually acceptable arrangements for matters not covered by the master contract.

*** The one exception, Case No. AC-N-14034, was a grievance arbitration at the national level. But the arbitrator's opinion did not really deal with the issue before me in the present case.

at the national level; they do not appear to have involved a full airing of this XXX-B issue. In another award at the national level (Case No. A8-N-0036), Arbitrator Aaron stated, "...it can scarcely be contended that management is precluded by Article XXX, Section B, from agreeing to negotiate locally about any particular matter." Under these circumstances, I do not consider myself bound by the Postal Service citations.

For these reasons, my conclusion is that the Helena Local Memorandum clause on re-labeling was enforceable even though it covered a subject outside the 22 enumerated items in XXX-B.

II - Enforceability - Continuity of Memoranda

The Helena clause in question was initially agreed to in the 1975 local negotiations. It was incorporated in the 1975 Local Memorandum. No mention was made of this clause in the 1978 negotiations and the parties carried it forward into the 1978 Memorandum.

That clause is enforceable under Article XXX-A, "Presently effective local memoranda of understanding...shall remain in effect during the term of this [1978 National] Agreement..." It was in effect in April 1980 when Management ignored its terms and assigned re-labeling work to someone other than "the Regular Carrier or T-6..." According to XXX-D, such "an alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure."

III - Enforceability - Conflict with National Agreement

Article XXX-A provides that only those "presently effective local memoranda" which are "not inconsistent or in conflict with the 1978 National Agreement shall remain in effect during the term of this Agreement..." The Postal Service asserts that the Helena clause on re-labeling is "inconsistent or in conflict with" Articles III and XIII of the 1978 National Agreement and is hence unenforceable. NALC disagrees.

Article III (Management Rights) states in part:

> "The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees...in the performance of official duties;

B. To...assign...employees in positions within the Postal Service;

C. To maintain the efficiency of the operations...;

D. To determine the methods, means and personnel by which such operations are to be conducted..."

This contract language grants the Postal Service an "exclusive right" to "direct" the work force and "assign" work. Its broad discretion in these areas is "subject" to the provisions of the 1978 National Agreement. Neither party has cited any portion of the National Agreement which would limit that discretion in relation to the facts of this case. The M-39 Manual, Part 121.21, says that one of the Carrier's office duties is to "relabel cases if local management so desires..." These words merely indicate that Carriers are to perform re-labeling work only when Management asks them to do so.

The Helena clause on re-labeling work is part of a Local Memorandum of Understanding. It is not a provision of the 1978 National Agreement.* It states, "Route...[cases] will be re-labeled by the Regular Carrier or T-6 only." The issue raised by the parties is whether this clause, this restriction on Helena Management's right of assignment, is "inconsistent or in conflict with" Article III of the National Agreement.

The Postal Service's argument is not without appeal. It correctly observes that this local clause prohibits Helena Management from assigning re-labeling work to anyone other than the Regular Carrier or T-6. It insists that Management's "exclusive right" to "assign" is thereby limited, that the broad discretion granted by Article III is reduced by the Helena clause. In its opinion, therefore, the prohibition in this local clause is "inconsistent or in conflict with" its Article III rights. It says this inconsistency should prevent this clause from being treated, under XXX-A, as a

* Local memoranda are enforceable through the terms of the National Agreement. But that surely does not make any such memorandum a provision of the National Agreement.

"presently effective local memoranda..."

The difficulty with this argument is that it assumes Helena Management had no "right" to agree to such a clause. That is not true. One who holds an "exclusive right" has a wide variety of options. Thus, Helena Management had many alternatives with respect to the assignment of the disputed work. It was free to assign the re-labeling to any of its Carriers. It was free to assign the re-labeling to a special group of employees, the Regular Carrier or T-6 only. It was free indeed to reduce this latter arrangement (i.e., use of the Regular Carrier or T-6 only) to writing through a Local Memorandum. Each of these approaches represents a legitimate exercise of Management's "exclusive right" of assignment. It had a right to do whatever it wished to do.

In short, the "exclusive right" in Article III did not prevent Helena Management from contracting with the Local NALC Branch to limit the assignment of particular work to particular employees. That was simply one of the options available to it. Because this Helena clause was hence within Management's powers, it can hardly be considered "inconsistent or in conflict with" Article III rights. That being so, this local clause is not rendered unenforceable by XXX-A or -B. Helena Management was bound by this clause. When it assigned re-labeling to employees other than the Regular Carrier or T-6 on April 14, 1980, it violated that clause. Such a violation is subject to correction through the terms of XXX-D.

In reaching this conclusion, I have examined awards by Arbitrators Krimsly and Balicer cited by the Postal Service. Both appear to have been the result of impasse arbitrations. The Balicer award involves other provisions of the National Agreement besides Article III and seems to be distinguishable from the present case. The Krimsly award is based, at least in part, on the faulty premise that local parties cannot negotiate assignment restrictions because that is not one of the 22 local implementation items in XXX-B. I have already ruled otherwise in Part I of this opinion.

There remains the Postal Service's claim that the local clause in question is "inconsistent or in conflict with" Article XIII which concerns "assignment of ill or injured regular work force employees." The difficulty here is the lateness of this argument. Article XV describes in great detail what is expected of the parties in the grievance procedure. The Postal Service's Step 2 decision must make a "full statement" of its "understanding of...the contractual provisions involved." Its Step 3 decision must include "a statement of

any additional...contentions not previously set forth..." Its Step 4 decision must contain "an adequate explanation of the reasons therefor." In this case, the Postal Service made no mention of Article XIII in Steps 2, 3 and 4. Its reliance on this contract provision did not surface until the arbitration hearing itself. Under such circumstances, it would be inappropriate to consider this belated Article XIII claim.*

For these reasons, I find that the Helena clause on re-labeling is valid and enforceable and that Helena Management violated this clause in April 1980 by using employees other than the Regular Carrier or T-6 to perform the re-labeling work.

AWARD

The grievance is granted. The Helena postal facility should reimburse the Regular Carrier or T-6 for re-labeling work improperly assigned to others in April 1980.

Richard Mittenthal

Richard Mittenthal, Arbitrator

* This procedural objection to any consideration of XIII in this case was made by NALC at the arbitration hearing and in its post-hearing brief.

the parties to address: (1) The procedural question; and, (2) the safety issues. This is done as the parties agree at Step 4 that both the procedural and safety issues are noninterpretive in nature.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Mr. Robert L. Tunstall 2

Time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Robert Tunstall
Assistant Director
American Postal Workers
Union, AFL-CIO

bcc: Postmaster - Orlando, FL 32802
Southern Region
Article Code ... 15-03-02 REMANDED

Subject, Chron, Reading, Art. File, Lerch
LR310:MHOliver:G6ht02: 1/29/86

WHETHER MANAGEMENT'S REFUSAL TO HEAR THE GRIEVANCE ON ITS MERITS AT STEP 3 VIOLATES THE NATIONAL AGREEMENT WHEN THE UNION FAILED TO PROVIDE MANAGEMENT'S PRESENTATION AT STEP 2 WITH A COPY OF THE STEP 3 APPEAL.

DOCUMENT TYPE:	STPFOUR
UNION:	NATIONAL POST OFFICE MAIL HANDLERS UNION
CONTRACT YEAR:	1987
ARTICLE:	15
SECTION:	3
CREATE DATE:	10/20/88

Mr. Joseph N. Amma, Jr.
Director of Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
1 Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: Class Action
Jacksonville, FL 32203
H7M-3R-C 10666

Dear Mr. Amma:

On September 12, 1988, we met with your representative, Marcellus Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The threshold issue in this grievance is whether the National Agreement was violated (1) when management did not issue a Step 2 written decision in a timely manner and (2) when management refused to discuss the grievance at Step 3 when the Union did not provide management at Step 2 with a copy of the Step 3 appeal letter.

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in the threshold of this case. We further shared the mutual understanding that the provisions of Article 15 of the National Agreement obligates management to issue a written Step 2 decision in timely manner and also, obligates the Union to provide management's Step 2 representative with a copy of the Step 3 appeal letter.

Accordingly, we mutually agreed to remand this case to the parties at Step 3 for consideration of the merits and further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case.

Mr. Joseph N. Amma, Jr. 2

Time limits were extended by mutual consent.

Sincerely,

William F. Scott, II
Grievance & Arbitration Director
Division

Joseph N. Amma, Jr.
of Contract Administration
Laborers' International Union of North America, Mail Handlers Division, AFL-CIO

bcc: Postmaster
Southern Region
Article Code ... 15-03-01 REMANDED

Subject, Reading, Computer
LR410:SPulcrano:ht:10/20/88:OCA Computer Input
All-in-One
Folder:Step 4
Doc. No. 341

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whether grievants were entitled to payment as witnesses and for time spent in an advisory capacity during an arbitration hearing

DOCUMENT TYPE: STPFOUR
UNION: NATIONAL RURAL LETTER CARRIERS ASSOCIATION **CONTRACT YEAR:** 1988
ARTICLE: 15

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 7 1979

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: APWU - Local
Jacksonville, FL
A8-S-0309/S8C3WC6145
APWU - 0309

Dear Mr. Wilson:

On October 23, 1979, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

The matter at issue in this grievance is whether a steward is allowed a reasonable amount of time on-the-clock to write a Union statement of corrections and additions to the Step 2 decision.

The following represents our mutual interpretation of the contract provision covering this issue and settles all matters in dispute in this case.

We mutually agree that a steward is allowed a reasonable amount of time on-the-clock to write the Union statement of corrections and additions to the Step 2 decision. This is considered part of the Step 2 process. The Union statement should relate to incomplete or inaccurate facts or contentions set forth in the Step 2 decision.

Please sign a copy of this letter as your acknowledgment of the agreed to interpretation.

Sincerely,

James J. Facciola
Labor Relations Department

Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO

UNITED STATES
POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: C06M-1C-C 12277784
Class Action
Buffalo, NY 14240-9997

I recently met with your representative, Dick Collins, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is whether or not additions and corrections can be submitted by anyone other than the union Step 2 representative.

After full discussion of this issue, the parties agree that no interpretive issue is fairly presented in this case. Determination of this issue is based on the fact circumstances involved. A Union representative may submit additions and corrections to a Step 2 decision. Whether the additions and corrections are accurate is subject to challenge, regarding accuracy, throughout the rest of the grievance arbitration procedure.

Accordingly, we agree to remand this grievance to Step 3 for further processing and/or regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to regional level arbitration.

Time limits at this level were extended by mutual consent.

Vicki Benson
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 6/27/14

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 6/27/14

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

November 17, 1981

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: Class Action
Key West, FL 33040
H8N-3W-C-33606

Dear Mr. Overby:

On November 5, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

As full and final settlement of all matters relating to this grievance, we mutually agreed to settle this dispute as follows:

Normally, the Postmaster or management Step 2 representative will not issue corrections and additions to the Union. However, should this occur, the appropriate Union representative will be allowed reasonable official steward time to prepare a written response.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Howard R. Carter
Howard R. Carter
Labor Relations Department

Halline Overby
Halline Overby
Assistant Secretary Treasurer
National Association of Letter
Carriers, AFL-CIO

ARBITRATION AWARD

December 10, 1979

UNITED STATES POSTAL SERVICE
Parkersburg, West Virginia

-and-

Case Nos. AB-E-021,
AB-E-022

AMERICAN POSTAL WORKERS UNION

Subject: Payment of Stewards - Grievance Procedure

Statement of the Issue: "Is the Postal Service required to pay Union Stewards for time spent in writing appeals to Step 3 of the grievance procedure, pursuant to Article XVII, Section 4 of the 1978 National Agreement?"

Contract Provisions Involved: Article XV, Section 2, Steps 2 and 3 and Article XVII, Sections 2 and 4 of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	March 1979
Step 2 Meeting:	March 19, 1979
Step 3 Meeting:	April 17, 1979
Step 4 Meeting:	June 8, 1979
Case Heard:	September 6, 1979
Transcript Received:	September 19, 1979
Briefs Submitted:	Nov. 21 & 23, 1979

Statement of the Award: Steward Romine should be paid for time spent in writing appeals to Step 3 of the grievance procedure. The Postal Service's failure to pay him for such time was a violation of Article XVII, Section 4. He should be compensated for these hours.

BACKGROUND

These grievances protest the Postal Service's refusal to pay a Steward for time spent writing appeals from Step 2 to Step 3 of the grievance procedure. The Union insists the Steward is entitled to be paid for such "grievance handling" pursuant to Article XVII, Section 4 of the National Agreement. The Postal Service disagrees.

T. Romine is a Distribution Clerk in the Parkersburg, West Virginia post office. He is a Steward as well. Sometime in 1979, supervision gave him a number of adverse Step 2 decisions on grievances he had processed. He chose to appeal those grievances to Step 3. He asked his supervisor to be relieved during his tour because "I have to appeal a couple of adverse Step 2 decisions." The supervisor refused to let him do this paper work "on the clock", i.e., on Postal Service time.

Romine wrote the appeals to Step 3 on his own time. He then grieved, urging that he had a right to appeal grievances from Step 2 to Step 3 during regular working hours and that he should be paid for this appeal work. His claim is based on Article XVII, Section 4 which reads in part:

> "The Employer will authorize payment only under the following conditions:
>
> "Steps 1 and 2 - The aggrieved and one Union steward...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 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..." (Emphasis added)

A brief summary of the parties' main arguments would be useful. The Union insists that the Steward's preparation of

appeals from Step 2 to Step 3 constituted a Step 2 "grievance handling" activity and that he hence should have been paid for his appeal work under Article XVII, Section 4. The Postal Service contends that pay is due only for certain specified "grievance handling" activities and that the Steward's appeal work was not an "investigation" or a "meeting with the Employer" or the "writ[ing of] a grievance." It alleges also that his appeal work was not a Step 2 activity but rather was the initial stage of Step 3. It believes the Steward's claim should be rejected on either of these grounds.

DISCUSSION AND FINDINGS

The problem in this case arises from the ambiguity in Article XVII, Section 4. That provision, to repeat, calls for payment to Stewards for time spent in "grievance handling, including investigation and meetings with the Employer [and] ...writ[ing] a grievance."

The Postal Service treats "including" as a word of strict limitation. Its position is that "grievance handling" covers only those tasks expressly "includ[ed]" in Article XVII, Section 4 and that the Steward's appeal from Step 2 to Step 3 is not one of them. Dictionary definitions provide no answer. For the term "including" can be used in more than one way. It is not necessarily a word of strict limitation. No one would deny that the whole is the sum of its parts. When one speaks of the whole "including" certain enumerated parts, the reference could be to all the parts. But it could just as well be to some of the parts. Thus, when the parties embraced the idea of paying for "grievance handling" which "includ[ed]" certain enumerated tasks, it is not clear whether they meant to cover only those listed tasks (as the Postal Service claims) or whether they meant to cover any task which fell within the rubric of "grievance handling" (as the Union claims).

The answer to this question must be found elsewhere. There are several considerations which favor the Union's position. First, if the Postal Service were correct, the parties need only have stated in Article XVII that Stewards would be paid for time spent in "investigation and meetings with the Employer [and]...writ[ing] a grievance." There would be no need whatever for the words "grievance handling." Those

words would be mere surplusage.* However, the parties do not idly write into their Agreement words intended to have no effect. The very presence of the term "grievance handling" suggests that the parties had something more in mind than the three enumerated tasks.

Second, it is impossible to overlook the breadth of the term "grievance handling." It is much larger than any of the enumerated tasks. It encompasses "investigation", "meetings...", "writ[ing] a grievance", and more. Had the parties intended these three tasks to serve as a limit on payments to Stewards, they could easily have said so. They could have stated that payment was for time spent on the following kinds of "grievance handling" and then enumerated the three tasks. But the words they chose suggest that "grievance handling" is not circumscribed by these tasks.

Third, essentially the same issue was arbitrated under the 1971 National Agreement. There, a Steward sought pay for time spent appealing from Step 1 to Step 2A, i.e., for time spent reducing the grievance to writing. The Postal Service apparently took the same position as it does here. It urged that the Agreement called for payment for "grievance handling, including investigation and meetings with the Employer" and that writing a grievance was neither "investigation" nor a "meeting." Arbitrator Fisher held for the Union, explaining that the term "grievance handling" was broad enough to encompass writing a grievance.** He asserted, "In the absence of any contractual language stating that the actual writing of a grievance does not constitute 'handling', it is held that such activity requires payment by the Employer." Notwithstanding this broad view of "grievance handling", the parties have continued to use the very same language in their National Agreements.

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* The Union position, on the other hand, creates no surplusage. For the test then would be "grievance handling" and the three enumerated tasks would be the most prominent examples of what the parties meant by "grievance handling."

** This award is dated January 1973 and is referred to in the Union's arbitration files as Case No. 389.

For these reasons, I find that the word "including" in Article XVII, Section 4 is not a term of limitation. It follows that the payment for "grievance handling" is not limited to the three enumerated tasks. Steward Romine's action in appealing cases from Step 2 to Step 3 was plainly "grievance handling." He is therefore entitled to be paid for that time provided the appeals are truly Step 2 work. That question is discussed below.

In reaching this conclusion, I have fully considered another Postal Service claim. It emphasizes the following sentence which was added to Article XVII, Section 4 in the 1973 National Agreement: "The Employer will also compensate a steward for the time reasonably necessary to write a grievance." It argues that express inclusion of this writing as a form of compensable "grievance handling" indicates that other kinds of writing (e.g., the appeal from Step 2 to Step 3) are not covered. This argument is not persuasive. The fact is that this sentence represents nothing more than the parties' adoption of Arbitrator Fisher's award. The parties also continued to use the term "grievance handling." By doing so, they appear to have adopted Arbitrator Fisher's rationale that this term was broad enough to include tasks other than those enumerated in Article XVII, Section 4.

One other crucial question must be resolved. Stewards are paid only for Step 1 and Step 2 "grievance handling." The Union maintains that preparation of the appeal from Step 2 to Step 3 is part of Step 2 and is hence covered by Article XVII, Section 4. The Postal Service says this appeal is a Step 3 activity.

Article XV, Section 2 describes the various steps of the grievance procedure. The final stage of Step 2 and the initial stage of Step 3 read as follows:

> Step 2 - "(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."

Step 3 - "(a) Any appeal from an adverse decision in Step 2 shall be in writing to the Regional Director for Employee and Labor Relations, with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal."

These provisions offer little assistance. It is more useful to examine the Steward's function and the actual mechanics of moving a grievance from Step 2 to Step 3. The Steward meets with the Postal Service representative; he makes a detailed statement of the facts and contract clauses on which he relies; he introduces evidence if appropriate; he argues his case. This is of course the Step 2 meeting. Later, he receives the Postal Service's decision. If it is adverse, the Union may choose to appeal the grievance to Step 3. In that event, the Steward has other tasks to perform. He corrects the facts and contentions in the Step 2 decision if necessary; he puts together the required documents; and he writes out the reasons for the appeal. It seems to me that this is also a Step 2 activity. For not until the appeal is perfected, not until these papers are filed with the Postal Service Regional Director, does the dispute actually reach Step 3. Anything which precedes that filing is a Step 2 activity. This view is, I think, consistent with the language of the grievance procedure itself.

Thus, Steward Romine's appeals from Step 2 to Step 3 involved Step 2 "grievance handling" and the time he spent on this paper work was compensable under Article XVII, Section 4.

There is one final Postal Service claim which deserves brief mention. It points to a Union proposal in the 1978 contract negotiations which would have extended Article XVII, Section 4 to all steps of the grievance procedure and would have required payment of Stewards for time spent in "grievance handling, including investigation, writing the grievance, and all meetings with the Employer including arbitration hearings." It notes the proposal was rejected. And it alleges that the terms of the proposal demonstrate that the Union itself "did not believe that any activities beyond those specifically listed in Article XVII were reimbursible..." In my opinion, it demonstrates no such thing. The main thrust of the above proposal was to have Stewards paid by the Postal Service whenever they met with Management no matter what step of the grievance procedure was involved. That has nothing to do with the issue before me in this case.

AWARD

Steward Romine should be paid for time spent in writing appeals to Step 3 of the grievance procedure. The Postal Service's failure to pay him for such time was a violation of Article XVII, Section 4. He should be compensated for these hours.

Richard Mittenthal, Arbitrator

the parties to address: (1) The procedural question; and, (2) the safety issues. This is done as the parties agree at Step 4 that both the procedural and safety issues are noninterpretive in nature.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Mr. Robert L. Tunstall 2

Time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Robert Tunstall
Assistant Director
American Postal Workers
Union, AFL-CIO

bcc: Postmaster - Orlando, FL 32802
Southern Region
Article Code ... 15-03-02 REMANDED

Subject, Chron, Reading, Art. File, Lerch
LR310:MHOliver:G6ht02: 1/29/86

WHETHER MANAGEMENT'S REFUSAL TO HEAR THE GRIEVANCE ON ITS MERITS AT STEP 3 VIOLATES THE NATIONAL AGREEMENT WHEN THE UNION FAILED TO PROVIDE MANAGEMENT'S PRESENTATION AT STEP 2 WITH A COPY OF THE STEP 3 APPEAL.

DOCUMENT TYPE:	STPFOUR
UNION:	NATIONAL POST OFFICE MAIL HANDLERS UNION
CONTRACT YEAR:	1987
ARTICLE:	15
SECTION:	3
CREATE DATE:	10/20/88

Mr. Joseph N. Amma, Jr.
Director of Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
1 Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: Class Action
Jacksonville, FL 32203
H7M-3R-C 10666

Dear Mr. Amma:

On September 12, 1988, we met with your representative, Marcellus Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The threshold issue in this grievance is whether the National Agreement was violated (1) when management did not issue a Step 2 written decision in a timely manner and (2) when management refused to discuss the grievance at Step 3 when the Union did not provide management at Step 2 with a copy of the Step 3 appeal letter.

During our discussion, we mutually agreed that no national interpretive issue is fairly presented in the threshold of this case. We further shared the mutual understanding that the provisions of Article 15 of the National Agreement obligates management to issue a written Step 2 decision in timely manner and also, obligates the Union to provide management's Step 2 representative with a copy of the Step 3 appeal letter.

Accordingly, we mutually agreed to remand this case to the parties at Step 3 for consideration of the merits and further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case.

Mr. Joseph N. Amma, Jr. 2

Time limits were extended by mutual consent.

Sincerely,

William F. Scott, II
Grievance & Arbitration Division

Joseph N. Amma, Jr.
Director of Contract Administration
Laborers' International Union of North America, Mail Handlers Division, AFL-CIO

bcc: Postmaster
Southern Region
Article Code ... 15-03-01 REMANDED

Subject, Reading, Computer
LR410:SPulcrano:ht:10/20/88:OCA Computer Input
All-in-One
Folder:Step 4
Doc. No. 341

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whether grievants were entitled to payment as witnesses and for time spent in an advisory capacity during an arbitration hearing

DOCUMENT TYPE: STPFOUR
UNION: NATIONAL RURAL LETTER CARRIERS ASSOCIATION **CONTRACT YEAR:** 1988
ARTICLE: 15

Melissa Doniger
Grievance & Arbitration
Division

Marion Wright
Acting President
National Postal Mail Handlers
Union, AFL-CIO

Date: _____

bcc: Postmaster
Southern Region
Article Code ... 15-02-01 REMANDED
Issue Code ...
Subject, Reading, Computer
LR410:WScott:bm(att):17-Jul-1990:OCA Computer Input
KM Doc. No. 5915 (473)

WHETHER A LOCAL POLICY THAT STEP 2 REPRESENTATIVES MAY NOT GRANT EXTENSIONS OF TIME LIMITS TO APPEAL TO STEP 3 IS IN VIOLATION OF THE NATIONAL AGREEMENT.

DOCUMENT TYPE: STPFOUR
UNION: NATIONAL POST OFFICE MAIL HANDLERS UNION
CONTRACT YEAR: 1987
ARTICLE: 15
SECTION: 02
12
CREATE DATE: 09/23/91

Marion Wright
Acting President
National Postal Mail Handlers
Union, AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: H7M-4U-C 33358
Class Action
Denver BMC CO 80238

Dear Mr. Wright:

On September 6, 1991, we met with your representative, Terry Hatley, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a local policy that Step 2 representatives may not grant extensions of time limits to appeal to Step 3 is in violation of the National Agreement.

During our discussion, we mutually agreed that Article 15 does not preclude the granting of extensions by either Step 2 or Step 3 representatives. However, extensions are granted only by mutual agreement of the union and management

representatives.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Melissa J. Doniger
Grievance and Arbitration
Division

Marion Wright
Acting President
National Postal Mail Handlers
Union, AFL-CIO

Date: _____

bcc: Postmaster
Central Region
Article Code ... 15-02-12 SETTLE
Issue Code ...
Subject, Reading, Computer
LR410:MDoniger:rb:23-Sep-1991:OCA Computer Input
DM Doc. No. 2125

GRIEVANT PARTICIPATION AT STEP 2

DOCUMENT TYPE: STPFOUR
UNION: NATIONAL ASSOCIATION OF LETTER CARRIERS
ARTICLE: 15
SECTION: 02
08
CREATE DATE: 09/26/91

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7N-3W-C 37622
R DICKENS
CASSELBERRY FL 32707

Dear Mr. Sombrotto:

Recently, a meeting was held with NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the grievant has a right to attend the Step 2 meeting with the union

4

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case No. H8N-5B-C 17682

APPEARANCES: Howard R. Carter, for the Postal Service; Cohen, Weiss and Simon, by Keith E. Secular, Esq., for the Union

DECISION

This grievance arose under, and is governed by, the 1978-1981 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected by the parties to serve as sole arbitrator, a hearing was held on 19 November 1982, in Washington, D. C. Both parties appeared and presented evidence and argument bearing upon the following issue (Tr. 5-6):

> Did the employer violate Article VIII, Section 5 of the 1978 [-1981] National Agreement by calling in an employee not on the overtime desired list when employees who were on the list were on duty [?]
>
> If so, what shall the remedy be [?]

A verbatim transcript was made of the arbitration proceeding, and each side filed a post-hearing brief. Upon receipt

of both briefs on 15 February 1983, the arbitrator closed the record.

On the basis of the entire record, the arbitrator makes the following

AWARD

Under the particular facts of this case, the employer violated Article VIII, Section 5 of the 1978-1981 National Agreement by calling in an employee not on the Overtime Desired list when employees who were on the list were on duty.

The employer shall reimburse the following employees by paying them overtime pay for the indicated number of hours, respectively:

J. Ryan - 2.50 hours

D. Bowser - 1.50 hours

D. Arvin - 1.50 hours

A. Bowman - 1.50 hours

L. Sipe - 1.00 hour

Benjamin Aaron
Arbitrator

Los Angeles, California
12 April 1983

In the Matter of Arbitration

between

Case No. H8N-5B-C 17682

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

OPINION

I

Article VIII (Hours of Work), Section 5 of the 1978-1981 National Agreement (JX-1) provides in pertinent part:

> 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:
>
> A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.
>
> B. Lists will be established by craft, section, or tour in accordance with Article XXX, Local Implementation.
>
> C. 1. . . .
>
> 2. Only in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list. During the quarter every effort will be made to distribute equitably the opportunities for overtime among

those on the list. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route in one of the employee's regularly scheduled days.

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.

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).

F. Excluding December, only in an emergency situation will a full-time regular employee be required to work over ten (10) hours in a day or six (6) days in a week.

The instant grievance arose in the Torrance, California, Post Office, which employs about 220 carriers. Each carrier is assigned to one of five zip-code sections. There is a separate Overtime Desired list for each section. The section involved in this case is 90503, called the 03 section, for short. At the time in question, 12 carriers were on the Overtime Desired list of the 03 section.

On the morning of 27 February 1981, carrier Route No. 317 was vacant, and no part-time flexible or reserve carriers were available to deliver the route as a regular eight-hour, straight-time assignment. Consequently, in order to have the route delivered that day, management had to assign it as overtime.

On 27 February, of the 12 carriers on the Overtime Desired list of the 03 section, one had bid out of the section, one was an acting supervisor, one was on sick leave, and one was on annual leave. Of the eight remaining, all were already scheduled for work, and three were scheduled to work until 5:00 or 5:15 p. m. on their own routes. Management thus had only two options: (1) it could "pivot" the vacant route among the remaining five carriers, or (2) it could call in an employee not on the Overtime Desired list to work the route on overtime.

"Pivoting" is defined in Section 617.2 of the Postal Operations Manual (JX-3) as follows:

> .11 Pivoting is a method of utilizing the undertime of one or several carriers to perform duties on a temporarily vacant route or to cover absences. Non-preferential mail may be curtailed within delivery time standards on the vacant route and/or on the routes of the carriers being pivoted.
>
> .12 Pivoting is not limited to periods when mail volume is light and when absences are high but can be utilized throughout the year for maintaining balanced carrier workloads.

Management followed the second course, calling in Ronald Summers, the carrier regularly assigned to Route No. 317, who had the day off. Summers worked eight hours. The Union promptly filed a class grievance (JX-2), which was denied at the first step. On 13 March 1981, the Union appealed to step 2, asking for eight hours of pay to be divided among five carriers on the 03 Overtime Desired list. Management's step 2 answer, dated 27 March, read in part:

> It would be a poor management practice to split up a route on overtime when a regular is available. Additionally it would be a disservice to our customers to have them receive their mail in the late afternoon by carrier working on overtime.

The Union then appealed to step 3. Management's response, dated 3 June, read in part:

> It is Management's position that all contractual provisions have been met where all Carriers on the Overtime Desired List have been called into work. Management is not obligated to split up a route to be carried by those employees on the Overtime Desired List already at work and assigned to other duties.
>
> In our judgment, the grievance involves an interpretive issue pertaining to the National Agreement or a supplement thereto which may be of general application, and thus may only be appealed to Step 4 in accordance with the provisions of Article XV of the National Agreement.

At the step 4 meeting, Howard R. Carter, for the Postal Service, and Halline Overby, for the Union, jointly executed a statement, dated 10 August, that no national interpretive issue was presented by the grievance and that it should therefore be remanded to step 3. On the remand, management again denied the grievance; its answer, dated 15 September, was identical with that given on 3 June. The case was then appealed to arbitration.

II

Both James Hurst, the Union's sole witness, and Donald G. Talbert, the Postal Service's sole witness, agreed that the common practice at the Torrance Post Office when there are not enough part-time flexible carriers to cover vacant routes

on straight time has been, first, to assign carriers from the Overtime Desired list who are not scheduled on that particular day; second, to pivot the route among carriers on the Overtime Desired list who are already scheduled; and third, to assign carriers not on the Overtime Desired list. They also agreed that the rule of thumb has been that no carrier should be scheduled on the street "after dark," which in February would be 5:15 p. m. (Talbert) 5:30 p. m. (Hurst). Finally, they agreed that although Article VIII, Section 5-F provides that except in December, or in an emergency, no full-time regular carrier will be required to work more than 10 hours in a day, carriers frequently voluntarily work in excess of 10 hours per day.

During the processing of the instant grievance, the Union argued that the overtime in question could have been distributed as follows (JX-2):

J. Ryan - 2.50 hours preshift [i.e., call in early] to case route, has normal 10 am starting time.

D. Bowser - 1.50 hours carrying

D. Arvin - 1.50 hours carrying

A. Bowman - 1.50 hours carrying

L. Sipe - 1.00 hours carrying

As shown by the time cards this would have resulted in the entire route being completed by 5:30 pm, not an uncommon time for residential routes to be compled in this city.

Had these carriers been pivoted in the manner suggested

by the Union, they would have worked the following total number of hours, respectively: Ryan - 10½ , Bowser-9½, Arvin-9½, Bowman - 10½, Sipe - 10.

The Union's position is that management's failure to pivot the vacant assignment on 27 February 1981 was a prima facie violation of Article VIII, section 5-C-2 and 5-D, and that none of the exceptions in 5-E applied. Recognizing that in some circumstances it may be "impracticable or unreasonable to pivot an overtime assignment," the Union offers as a "fair and workable standard" that articulated by Arbitrator Neil N. Bernstein in a regional award dated 30 December 1981, in a similar case. The language alluded to by the Union (Bernstein award, P. 8), reads as follows:

> The Service does have the right in the first instance to schedule working hours, but the scheduling that it does must be "reasonable". The concept of reasonableness necessarily includes some recognition and protection of the overtime allocation principles contained in Article VIII. The avoidance of compulsory overtime by maximum utilization of the service of the employees on the "Overtime Desired" list is a factor that must be considered in any appropriate scheduling decision. However, that is not to say that avoidance of compulsory overtime is an overriding consideration; there are many other factors that also are relevant, and they may sometimes dictate a work schedule that involves more compulsory overtime than is absolutely necessary. However, if the Service does adopt such a schedule, it must have "good cause" for doing so.

The Union argues that the Postal Service has failed to satisfy the "good cause" standard. It points out that under

Article XV (Grievance-Arbitration Procedure) of the National Agreement, both parties must state all of the facts and contentions upon which they rely during the grievance procedure, and it cites an award by Arbitrator Richard Mittenthal, dated 21 September 1981, refusing to consider arguments of the Postal Service advanced for the first time at the arbitration hearing. It emphasizes that all of the specific circumstances relied upon by management to prove the reasonableness and just cause for assigning the overtime work to Summers were mentioned for the first time at the arbitration hearing, and urges that they should therefore be inadmissible.

In addition, the Union contends that even if those circumstances are considered, they do not sustain management's position. Specifically, the Union argues that Article VIII, Section 5-F does not impose a flat ban on working over 10 hours in one day, but only a ban on compulsory assignment of work in excess of 10 Hours. It also denies management's claim that it would have taken more time to pivot the overtime work among the five carriers than it took Summers to complete it. Finally, while admitting that pivoting the overtime would have delayed some mail deliveries, the Union insists that this was irrelevant. No business mail was involved, and there has always been a substantial variation in times of residential deliveries of mail in Torrance.

The position of the Postal Service is that under Article III (Management Rights) of the National Agreement, it has the

right to resort to compulsory overtime for the purpose of minimizing overtime, using it in the most efficient manner, and avoiding delay in the mails. It points out, further, that management had no way of knowing, in advance, whether any or all of the five carriers on the Overtime Desired list who were already scheduled would be willing to work in excess of 10 hours or, if so, whether they would be able to finish before dark. Finally, it asserts that the assignment of the vacant route to Summers was reasonable because it was his regular route, it could be completed in less time than would have been required if it had been pivoted, and the assignment resulted in no delay in the mail delivery.

III

The Postal Service says that the thrust of the Union's argument is that management must exhaust the Overtime Desired list to the maximum extent possible (up to two hours overtime for each carrier on the list) prior to using a carrier not on the list. I do not agree. As I understand the Union's position, generalizing from its arguments in this case, it is that management must exhaust the Overtime Desired list before compelling someone not on the list to work overtime, provided that those on the list are willing to work up to or beyond 10 hours, as may be required, and provided that street deliveries can be completed before dark. I also infer that the Union would probably agree that in some circumstances it might be unreason-

able to require that overtime be offered to a carrier on the Overtime List even if the time involved would not increase his total hours worked in the day to 10.

On the other hand, the position taken by the Postal Service throughout the four steps of the grievance procedure was that Article VIII, Section 5 does not require it to assign overtime work to carriers on the Overtime Desired list if they have already been called in to work, and that management has no obligation "to split up a route to be carried by those employees. . .already at work and assigned to other duties." This interpretation is predicated, mistakenly, on Article III, which is expressly made "subject to the provisions of this Agreement," including Article VIII.

The Postal Service advanced other, more credible arguments at the arbitration hearing to support the reasonableness of its decision to assign the disputed work to Summers, but none of these except the later delivery of mail had been raised during earlier steps of the grievance procedure. I am fully in agreement with Arbitrator Mittenthal that the provisions of Article XV requiring that all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration should be strictly enforced. In this case, therefore, I have given no consideration to any of the arguments advanced by the Postal Service other than those referred to specifically in this and the preceding paragraph. The interpretation of Article VIII, Section 5

relied upon by the Postal Service in its answers at steps 2 and 3 of the grievance procedure is plainly in error. The argument that by pivoting the vacant route assignment in the manner suggested by the Union would have delayed the delivery of some residential mail seems to me inconsequential, in the light of the evidence of past practice, and not amounting to good cause for not doing so.

Both parties seem to accept Arbitrator Bernstein's good cause standard. By its very nature, however, this standard must be applied on a case-by-case basis; it does not lend itself to embodiment in a per se rule. In this case the Postal Service relied almost entirely on its own per se rule during the grievance procedure, and I have concluded that this rule goes too far. The Union should not interpret this decision, however, as meaning that under any conceivable circumstances the Postal Service is forbidden to assign overtime work to a carrier not on the Overtime Desired list simply because another carrier or carriers on that list, who have already been scheduled for work, desire to perform some or all of the overtime involved.

Although there is some question in my mind that all of the overtime work in this case, if pivoted as the Union asserted it should have been done, could have been completed before dark, the Postal Service waived its right to dispute the Union's claim by failing to challenge it directly in the grievance procedure. Accordingly, I shall grant the remedy requested.

Benjamin Aaron
Arbitrator

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

November 5, 1982

Mr. Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: Class Action
Austin, TX 78710
H1C-3U-C-6106

Dear Mr. Wilson:

On October 22, 1982, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The question in this grievance is whether the Postal Service must grant the Union's request for copies of the PS Forms 2608 and 2609 (Grievance Summaries - Step 1 and Step 2).

During our discussion, we agreed that the disclosure provisions set forth in Article 17 of the National Agreement intend that any and all information which the parties rely on to support their positions in a grievance is to be exchanged between the parties' representatives at the lowest possible step. This will include the PS 2608 when management's representative at Step 2 or above of the grievance procedure utilizes the form to support their decision. Also, this will include the PS 2609 when utilized by management's representative at Step 3 or above. Since the PS 2608's and 2609's are not prepared until after the Step 1 or Step 2 meetings, these documents cannot be supplied until the Step 2 or Step 3 meeting, respectively.

Mr. Kenneth D. Wilson

Please sign and return the attached copy of this decision as your acknowledgment of agreement to settle this grievance.

Sincerely,

A. J. Johnson
Labor Relations Department

Kenneth D. Wilson
Assistant Director
Clerk Craft
American Postal Workers Union,
AFL-CIO

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: K06M-1K-C 07261874
Class Action
Raleigh, NC 27676-9997

Dear John:

Recently, I met with Richard Collins to discuss the above captioned case at the fourth step of our contractual grievance procedure.

Article 15.2, step 3 (d) requires the party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issue(s) to be decided. After a detailed review of this appeal, the parties at Step 4 of the grievance arbitration procedure have agreed that no national interpretive issue was identified

Accordingly, we agreed to remand this case consistent with the provisions of the Memorandum of Understanding, Step 4 procedures.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case at this level as indicated above.

Allen Mohl

Allen Mohl, Labor Relations Specialist
Contract Administration (NPMHU)
and EAP/WEI Programs

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 12-7-10

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

UNITED STATES POSTAL SERVICE	Case No. NB-NAT-2705
and	Reading Time Dispute
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	ISSUED: July 30, 1975

BACKGROUND

This national dispute between the above parties, concerning interpretation of the July 21, 1973 National Agreement, was initiated September 23, 1974 under Article XV, Section 2. A hearing was held in Washington, D. C., on January 29 and March 11, 1975. Thereafter both parties submitted their principal briefs as of May 9, 1975 and their reply briefs as of May 28, 1975. 1

The background facts presenting the interpretive issue are not seriously in dispute and relate to issuance of the new M-41 Handbook, which was transmitted on June 14, 1974 to become effective September 1, 1974. The NALC urges that under the National Agreement (and the Fair Labor Standards Act) all City Carriers should be compensated for time spent (either heretofore or hereafter) in the review and study of the new M-41 Handbook. 2

The earlier M-41 Handbook had been issued in 1966 and was titled "The City Carrier Instruction Book." Primarily this was an instructional tool for new employees, but it also 3

was a reference available for each Carrier to use in the normal course of his work. There were numerous operational changes and methods innovations after 1966 affecting the work of City Carriers which were introduced with appropriate training (when necessary) but the M-41 Handbook was not revised as these changes occurred. Largely for this reason a review to update the old M-41 Handbook was undertaken at the same time that revision of the M-39 Supervisor's Handbook was undertaken.

The first page of the new M-41 consists of a "Transmittal Letter" dated June 14, 1974 and signed by Frank M. Sommerkamp, Director, Delivery Services Department Operations Group. It includes the following: 4

"1 EXPLANATION

.1 The title of Methods Handbook M-41 has been changed to CITY DELIVERY CARRIERS DUTIES AND RESPONSIBILITIES and has been updated. This publication instructs delivery employees on the day-to-day functions of the city delivery service, and covers office and street duties of letter routes, collection routes, parcel post and combination services routes, and special delivery service.

.2 A separate chapter is included on mail count and route inspection.

.3 In view of the numerous changes made, delivery service managers, regular and part-time city carriers, and special delivery messengers should review this handbook to become thoroughly familiar with the changes and arrangement of instructions.

"2 DISTRIBUTION

Postmasters will furnish one copy of the handbook to:

.1 Carrier branch or station superintendent.

.2 Delivery service manager.

.3 Regular city carrier.

.4 Part-time city carrier, excluding casuals.

.5 Regular special delivery messenger.

.6 Part-time special delivery messenger, excluding casuals.

"3 REVISIONS

Changes will be published as necessary and carriers and special delivery messengers are responsible for keeping their copies of the handbook current."

(Underscoring added.)

On the second page of the new M-41, the following "Preface" appears: 5

> "City carriers perform an important function in the United States Postal Service. They serve millions of families and business firms daily.
>
> "City carriers are highly respected by the American public. This respect has been earned by many years of dedicated service, especially during national and local emergencies, including prolonged periods of extreme weather conditions.
>
> "You are now a member of this group of faithful and dedicated employees. <u>This handbook will help you give a high quality service that you will be proud of. Study this information carefully; ask your postmaster or manager to explain any points that are not clear to you</u>.
>
> "We offer you our best wishes for a long and happy postal career."
>
> (Underscoring added.)

Since the new M-41 Handbook describes Carrier duties and responsibilities in detail, and provides a reference for duties typically performed by City Carriers, it is clear that a competent Carrier should be essentially familiar with the substance of those portions of the M-41 which bear upon his particular work assignment. (A Carrier may, of course, acquire such familiarity through on-the-job training and experience.) Thus the earlier M-41 had been used as an instructional reference in training new Carriers and regular Carriers used it as a reference when needed. Except during training no Carrier had been compensated, specifically, for reading or reviewing the earlier M-41 or the various other Handbooks applicable to a Carrier's work until the present dispute arose. 6

Some time late in August or early September of 1974 NALC President Rademacher suggested to Postal Service officials that all City Carriers be compensated for time required to study the new Handbook. This request was denied. Thereafter the present grievance was initiated by a September 23, 1974 letter of President Rademacher to Senior Assistant Postmaster General Brown, reading: 7

> "The purpose of this letter is to ascertain whether a dispute exists between the Union and the Employer as to interpretation of our National Agreement and, if so, to initiate and present a grievance pertaining thereto at the national level, pursuant to the concluding paragraph of Article XV, Section 2, of this Agreement.

"The question of interpretation is whether letter carriers are entitled to compensation at rates specified in the National Agreement for time spent in reading and study of the instructions relating to work standards and job performance contained in Management's new M-41. Thorough knowledge of the aforesaid instructions is, of course, essential to performance of carriers' duties, and carriers are held responsible by Management for such knowledge.

"The question arises out of approaches, inconsistent in part, which have been taken by various Postmasters in the field, which do not provide working time for reading and study of the new instructions. On the one hand, carriers in some offices have been told that the M-41 is to be kept at all times in the carrier's route book, which cannot leave the premises. This, of course, precludes reading and study of the M-41 at home. But no time during the work week is allotted the carriers to read and study the instructions on the premises. On the other hand, other carriers have been told that they may take the M-41 home and they are expected to read and study the instructions on their own time, outside working hours.

"It is the Union's position that reading and study of the new M-41 is a requirement imposed by Management in the exercise of its powers

under Article III A, of the Agreement, and that, as a matter of fact and of law, it constitutes 'work' for which carriers must be compensated in accordance with Article VIII of the National Agreement. Our position is buttressed by Article IV, Section 3, which recognizes that it is the obligation of the employer to provide 'training' for the performance of new or changed jobs and explicitly provides that the employee 'will maintain his rate' during such training. Obviously, reading and study of the new instructions constitutes 'training' in the performance of the carrier's job as 'changed' by Management, and time 'on the job' must be provided therefore by Management.

"We believe that this position is so clearly correct that, upon having the matter brought to your attention, you will concur therein. It is immaterial to us whether carriers' regular assignments are reduced, for as long as necessary, so as to leave a portion of the regular work week available for reading and study of the M-41, or whether regular assignments are maintained and carriers are authorized and instructed to read and master the new M-41 at home or on the premises on overtime. Patently, the amount of time required to master the new instructions will vary from carrier to carrier. We are concerned only that as much working time as necessary be allotted each carrier for this purpose. We shall be glad to meet with you and discuss this aspect of the matter.

"In view of the immediacy of this issue, we invite your early attention and prompt response to this letter. If you find yourself in disagreement with our position as above stated, please consider this letter a request for arbitration of the question stated in the second paragraph hereof, within the meaning of the first paragraph of Section 3, Article XV, of the National Agreement, and a certification of the aforesaid case for referral to arbitration at the earliest possible date within the meaning of the second paragraph."

(Underscoring added.)

On September 30, 1974 Assistant Postmaster General Gildea replied to President Rademacher's letter, stating (in relevant part): 8

"The new M-41 Handbook is essentially similar to the old M-41, and we do not believe it appropriate to provide extra compensation for familiarization with the Handbook.

"As requested in your last paragraph, I am referring your letter to the Office of Arbitration Procedures in order to submit the issue to arbitration."

THE CONTRACTUAL PROVISIONS

"ARTICLE III--MANAGEMENT RIGHTS

"The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

. . . . . .

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;

. . . . . .

"ARTICLE XIX--HANDBOOKS AND MANUALS

"Copies of all handbooks, manuals, and regulations of the Postal Service that contain sections that relate to wages, hours, and working conditions of employees covered by this Agreement shall be furnished to the Unions on or before January 20, 1974. Nothing in any such handbook, manual, or

regulation shall conflict with this Agreement. Those parts of any such handbook, manual, or regulation that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, 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.

. . . . . .

"ARTICLE XLI--LETTER CARRIER CRAFT

"Section 3. Miscellaneous Provisions

. . . . . .

K. Supervisors shall not require, nor permit, employees to work off the clock."

In addition to Article XLI, Section 3, K, the NALC relies upon those provisions of the Fair Labor Standards Act (29 USCA Sections 201-209) which require payment for all overtime work at time and one-half the regular rate of pay. The Fair Labor Standards Act was extended to cover Postal Service employees as of May 1, 1974 by P.L. 93-259 (29 USCA Sections 203-(e)-(2)-(B). 9

THE ISSUES

While the parties disagree in their respective views of the issues involved here, it is enough for present purposes to set forth the issues described in the Union's brief in the following passage: 10

> ". . . The questions thus posed are (1) whether the National Agreement, properly construed, and/or the Fair Labor Standards Act, entitle letter carriers to be paid at rates specified in the Agreement for time spent heretofore and hereafter in review and study of the manual, and (2) whether the National Agreement, properly construed, requires the Postal Service to provide compensated time sufficient for each carrier to learn the manual before it may rely in any way on M-41 methods or procedures as a basis for adversely affecting any carrier's conditions of employment."

While there are additional facts, beyond those already noted, which bear upon proper disposition of this case, they need not be detailed here but will be noted where appropriate in the balance of this Opinion. 11

CONTENTIONS

1. NALC

The principal NALC argument stresses language in the June 14, 1974 transmittal letter for the new M-41 Handbook insofar as it states that city carriers "should review this handbook to become thoroughly familiar with the changes and arrangement of instructions," as well as the sentence in the Preface which reads: "Study this information carefully; ask your postmaster or manager to explain any points that are not clear to you." Section 352.6 of the Postal Manual, it notes, declares that: "Employees will perform duties as outlined in the Methods Handbook, Series M-41 ...," and all Carriers are instructed to review Chapter 9 of the new M-41 before performing a "dry run" (which precedes the annual route count and inspection), which includes completion of a Form 1838. According to various Union witnesses, field management in some locations interpreted their instructions in connection with the new M-41 to mean that experienced Carriers should read the new M-41, but should do so on their own time. Even if field management in some locations instructed Carriers to study the new M-41 on under-time, the NALC claims that most routes are so overburdened that Carriers seldom return to their stations in less than 8 hours. 12

Stressing that the new M-41 Handbook contains numerous provisions which are new or revised when compared with the old M-41 and the old M-39, the NALC asserts that study of the new M-41, even by experienced Carriers, entails a substantial amount of work. 13

Given these facts, the NALC urges that familiarization with the new M-41 Handbook must be deemed part of a Carrier's official duties, and holds that the Postal Service either must authorize time "on the clock" for all Carriers to study the new M-41, or pay for any time spent reviewing and studying the new M-41 outside regular working hours. This conclusion should apply not only to Carriers who already may have reviewed the new M-41, but also to any Carrier who might review it in the future. Moreover, any Carrier who has not yet reviewed the new M-41 cannot be disciplined in any way, according to the NALC, for failure to perform duties in accordance with methods and procedures set forth in the new M-41. 14

The NALC also urges that negotiating history makes clear the intent of Article XLI, Section 3-K, to require the Postal Service to pay for any work performed off the clock, whether or not characterized by it as "required." This history, as described by Executive Vice President Vacca, and the express language of Article XLI, Section 3-K, require a conclusion that the Postal Service must pay for work which it permits Carriers to perform "off the clock." 15

Even if the language of Article XLI, Section 3-K were less clear, the NALC holds that the Fair Labor Standards Act plainly would require that time spent studying the new M-41 should be compensated as "work." Here it cites numerous judicial holdings deemed to establish that the FLSA requires compensation for all work performed for the benefit of the employer. Against the background of these precedents, and administrative criteria developed in administering the FLSA, the NALC has no doubt that any time devoted by Carriers to studying the new M-41 clearly is compensable. The Wage Hour Administrator, indeed, has ruled specifically that training, 16

outside working hours, is compensable if "designed to make the employee handle his job more effectively" (29 C.F.R. Sec. 785.27 and 785.29).

Under the "suffer or permit" standard defined in the FLSA, work is compensable where an employer "knows or has reason to believe" that an employee is continuing to work, and the NALC asserts that the Postal Service itself has recognized the applicability of this standard. Thus a Postal Bulletin dated November 14, 1974 recites: 17

> "A non-exempt employee is entitled under the FLSA to overtime pay if management suffers or permits him to work more than 40 hours ... This is true whether the work has been requested or not if the manager or supervisor knows or has reason to believe it is being performed."

According to the NALC three categories of relief are appropriate under the evidence here: (1) all Carriers who have studied, or hereafter study, the new M-41 should be paid for that work, (2) the Postal Service should be barred from disciplining any Carrier because of a failure to comply with procedures of standards set forth in the new M-41 until such Carrier receives sufficient compensated time to study the new M-41 and become familiar with changes contained therein, and (3) the Postal Service may not effectuate any route adjustment which depends on a Carrier's knowledge of the new M-41. The NALC also suggests that the Award should require overtime payments to be made on the basis of each Carrier's own statement as to time spent studying the new M-41, provided that such claim appears reasonable. 18

2. Postal Service

The Postal Service version of the origin, purpose and scope of the new M-41 largely appears in the following passages in its brief: 19

> "By 1973, although numerous operational changes and innovations had been introduced, with appropriate training where necessary, the M-41 had never been revised and management undertook such a review in connection with the revision of the M-39 supervisors' handbook. Although the title of the M-41 was slightly changed, its purpose was essentially the same; i.e., a training tool for new carriers and a reference manual for incumbent carriers. The object of the revision committee was merely to incorporate those new programs and changes in procedure which were innovated since 1966 such as Park and Loop, Centralized Markup and other programs which were the subject of training at each installation where they were introduced. The committee additionally sought to incorporate into the carrier handbook those items which have always been applicable to carriers and the subject of special training but which were contained in other manuals and handbooks. Among the latter category were various provisions relating to motor vehicle operations which, although referred to in different chapters of the old M-41, were not the subject of a separate chapter as in the new

version. An additional change emphasized heavily by the Union at hearing was the addition of Chapter 9 relating to route inspections. This material was formerly contained in the M-39 supervisors' handbook but because of the carriers' zealous interest and in order to avoid the redistribution each year of the instructions relating to the dry run prior to inspections, much of this material was included in the new M-41.

"Consistent with its use as a training tool, the preface contained in the old M-41 was incorporated in the new in almost identical form. The new manual also contained a transmittal letter relating to its use by other carriers and supervisors which is discussed more fully below.

"Presumably under the provisions of Article XIX, the Union was furnished with a copy of the initial draft and a meeting was held between the parties in November of 1973, at which the contents of the M-41 were thoroughly discussed by the parties. Suggestions of changes were made by the Union, some of which were acted upon. A further meeting for the same purpose was held in June 1974. No question was raised at these meetings regarding training or on the clock review. Not until the book was already printed and distributed did the Union raise the question of on the clock time for review by carriers.

"It is undisputed that this request was unique, and in the past, time on the clock for review of reference manuals or instructional materials had never been granted or even requested. Of course, during the on the clock initial training program conducted for new carriers, the M-41 may be reviewed since it is used as a training tool but this is far different from what the Union requests herein."

The Postal Service does not view its issuance of a revised M-41 Handbook as in any way obliging it to provide on-the-job training or compensable time for study, since it is exclusively a Management function to determine what employee training is necessary. Where the parties intend to provide employees a familiarization period, they have spelled it out, as in Article XLI, Section 3-F, where Carriers assigned to new routes are allowed reasonable periods for familiarization. Nothing in Article XIX which deals specifically with Handbooks and Manuals suggests that Carriers should be provided with study time. Nor is there any practice to support the NALC position here. 20

The Postal Service characterizes the NALC request for paid time, on or off the clock, for all Carriers to study the M-41, and its request that all counts (and inspections) and disciplinary actions based on the new M-41 should be set aside, as constituting a "class action" grievance based on a claimed violation of the Agreement which allegedly occurred in August and September of 1974, when the new M-41 was distributed. In the Postal Service view such a class action cannot 21

properly be presented as a national "interpretive issue" under Article XV, Section 2, which states, insofar as relevant, "... 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 national level ..." If any individual employee has a grievance, it must be discussed within 14 days of the date on which the employee learns of its cause, according to Article XV, Section 2 (Step 1) and such discussion should be with the employee's "immediate supervisor." If any individual Carrier did not present a timely grievance in Step 1, there could be no proper basis for the NALC later to institute a class action grievance on such Carrier's behalf--the right to file national interpretive grievances was not intended to nullify the specific requirements concerning the filing of individual grievances.

The Postal Service stresses that in 1973 the NALC knew of the prospective distribution of the new M-41 and discussed drafts both in November of 1973 and again in the Spring of 1974. The NALC made no suggestion in these discussions that time on the clock be allotted Carriers for study of the new Manual. It was only after transmittal of the new M-41 that the NALC raised an issue as to whether Management was obligated to train employees. If this question had been raised in timely manner, the Postal Service could have drafted the transmittal letter more precisely to specify the Carriers' obligation in respect to study of the new Manual. 22

On this basis, the Postal Service urges that the only question properly before the Impartial Chairman now is whether or not Carriers were required or permitted to work off the clock because of the Postal Service written instructions regarding the new M-41. Even if this interpretive question were 23

decided in favor of the NALC, says the Service, the only affirmative relief should be to employees who had filed timely grievances and who could demonstrate in their individual grievances that they had acted in reliance upon Management instructions in this regard.

On the merits, the Postal Service deems the statement in the June 14, 1974 transmittal letter that each Carrier "should review this handbook" to be only a suggestion to become familiar with the changes in format. In view of the extensive index, glossary, and table of forms, and given the fact that every regular Carrier already was familiar with the essential duties of his position, it says, such a review could be completed in no more than 15 minutes. It emphasizes that the expanded glossary and introduction of an index of forms confirm that the Manual is intended essentially as a reference tool. 24

Any review of the new M-41, moreover, presumably, should take place during the regular workday as undertime occurs, even though the Service admittedly does not object if a Carrier wishes to take his copy home. The Postal Service stresses that none of the Union witnesses who were active Carriers indicated that he actually had studied the new M-41, and there is no evidence in the record to identify specific Carriers who did study it because of the instructions contained in the transmittal letter. On this state of the evidence, the Service urges, it would be impossible to find that the transmittal letter was intended to require study of the new M-41, or was so construed by the Carriers. 25

The Postal Service also asserts that it did not in any way "permit" Carriers to "work off the clock" when it transmitted the new M-41. While the Service does "permit" Carriers to study the new M-41 at home, it says that the negotiating history of Article XLI, Section 3-K, requires that the phrase "to work" be given a very narrow interpretation. No individual who voluntarily reviewed the new M-41 at home thus could be deemed to have acted within the meaning of the phrase "to work" under this provision. The Postal Service emphasizes that it made no requirement, and claims that it did not suggest, that Carriers take the new M-41 home for study. Indeed, it asserts that the question of whether the M-41 could be taken home was raised initially by the NALC. If individual Carriers asked permission to take the M-41 home, this was strictly for their own purposes. Here the Postal Service brief elaborates: 26

> "It certainly is reasonable to require payment for productive efforts an employee puts out with the permission and knowledge of an employer, even though not specifically directed, and this is essentially what Article XLI, Section 3k provides. However, it makes no sense whatsoever to allow payment for the purely voluntary performance of activities unconnected with primary job functions, especially when done primarily for the benefit of the employee, merely because the employer may derive some benefit by way of future improved job performance, and the contract cannot be so interpreted."

The Postal Service sees no possible application of the Fair Labor Standards Act here, since, under Article XV, Section 3, of the National Agreement, this case involves only "interpretation" of that Agreement. Another portion of Article XV, Section 3, declares that "All decisions of the arbitrator shall be limited to the terms and provisions of this Agreement." Even were the arbitrator to deal with interpretive problems under the Fair Labor Standards Act, this in no way could be a conclusive ruling as to proper application of the FLSA. Here the Service quotes from the Supreme Court Opinion in the Gardner-Denver case indicating that an arbitrator has no general authority to invoke public laws that conflict with the bargain between the parties. If the Service could be assured that decision in this case would resolve all FLSA issues effectively, it might be less objectionable for the arbitrator to pass upon such matters. But, the Service notes, the NALC itself may be unwilling and even powerless to give such an assurance. 27

Finally the Service suggests that under authoritative interpretations of the FLSA a one-time review of the new M-41, off the clock, presumably would be of a "postliminary" nature and not compensable. It also stresses that the minimal "study" of the new M-41 easily could be accomplished during Carriers' "undertime," since undertime arises whenever the work on a given day is below average to a significant degree. 28

FINDINGS

1. Nature of the Case

This is a national level grievance. Under the last paragraph of Article XV, Section 2, such grievances include only disputes between "the Union and the employer as to the interpretation of this Agreement." Despite this limitation the NALC apparently deems the present proceeding as a sort of "class action," in which rights of individual employees under both the Agreement and the Fair Labor Standards Act may be finally adjudicated. The Postal Service rejoins that proper disposition of a national level grievance may result only in issuance of a "declaratory judgment," without relief to individual employees, and that no FLSA issues properly may be considered. 29

The efforts by counsel to define the proper scope of national level grievances in terms of concepts such as "class action" or "declaratory judgment" are understandable, and possibly even helpful in grappling with specific problems as to the scope of rulings which may be warranted under this unique provision in Article XV, Section 2. 30

Nonetheless the proper scope of national level disputes must be determined within the framework of the National Agreement alone, giving due regard to the nature of the issues and the facts in each such dispute. The initiation of a national level grievance in Step 4 bypasses the important first three Steps of the grievance procedure, where all basic facts and arguments normally should be developed and the great bulk of all grievances should be settled. There thus should be no doubt that this exception to the normal requirements of the grievance procedure is intended to apply only to disputes 31

concerning "interpretation" of the Agreement, where it is important to obtain an authoritative interpretation without awaiting the painstaking development of facts and arguments in a multitude of individual grievances.

This conclusion is reinforced by the contrast between 32
the narrow phrase "dispute ... as to the interpretation of this Agreement" and the broad definition of "grievance" in Article XV, Section 1, which includes any " ... dispute, difference of opinion or complaint between the parties related to wages, hours, and conditions of employment." The Impartial Chairman, therefore, rules that the national level dispute provision in Step 4 was not intended to provide a vehicle for considering a multitude of individual grievances as a sort of "class action." If any grievances actually have arisen on behalf of individuals under Step 1, advancing claims under Article XLI, Section 3-K, they should be processed through the normal Steps of the grievance procedure until settled. Nothing in the June 4, 1973 decision in Case No. NB-NAT-3233 is inconsistent with this result. That case involved failure by the Postal Service to observe an obligation under Article XXXIV owed directly to the NALC as representative of all the Carriers, and the remedial action there was essential to eliminate direct consequences of that failure.

It also seems clear that issues of compliance with 33
the Fair Labor Standards Act are not within the proper scope of a national level dispute. Indeed, when the national level dispute provision was written the FLSA did not apply at all to the Postal Service--it became applicable only in 1974. Even though FLSA issues may properly be raised on behalf of individual employees in Step 1 of the grievance procedure under the broad definition of "grievance" which applies there, therefore, they cannot be treated as a national level dispute.

2. Application of Article XLI, Section 3-K

Article XLI, Section 3-K states that "Supervisors shall not require, nor permit, employees to work off the clock." While each party provides a different version of the negotiating history to support its interpretation of this provision, no useful purpose can be served by seeking to ascertain the various motives, hopes, and expectations of the various negotiators on either side. This type of inquiry usually proves fruitless in the end, and assuredly is unwarranted where the controlling provisions of the Agreement are clear enough on their face. That is the situation here. 34

Application of Article XLI, Section 3-K, here requires consideration of (1) whether a Carrier's review of the new M-41 might constitute "work," and if so (2) whether Carriers may be instructed or permitted to perform such work "off the clock" without being compensated for time so spent. 35

When the new M-41 was circulated most Carriers already were trained adequately and reasonably familiar with the requirements, responsibilities, and procedures applicable to their normal work assignments. Normally, moreover, it is for Management alone to determine the nature and extent of training to be provided experienced employees under Article III, subject to application of the other provisions of the 1973 National Agreement. Thus the Service now urges that there was no real need for experienced Carriers to have any specific period of time at all to study the new M-41. This argument fails, however, to face the real problems in the present case, which arose only because the Postal Service appeared either to require or to permit 36

the Carriers to study the new M-41 in order to become familiar with changes and the arrangement of instructions therein.

Study of the M-41 Handbook undoubtedly is "work" when performed by new Carriers in training. Use of the M-41 as a reference tool in performing Carrier duties also is "work." And surely review and study of the new M-41 during a Carrier's "undertime" constitutes work compensable under the Agreement. 37

In these circumstances it should be obvious that review or study of the new M-41 by a Carrier at home also constitutes "work," for purposes of Article XLI, Section 3-K, if performed at the direction of Management or with its permission. 38

On this score, the NALC characterizes the June 14, 1974 Transmittal Letter as a specific direction to all Carriers to study the new M-41. Such an interpretation of the Transmittal Letter is unrealistic, not only because of the language involved but also because of the nature of the Letter itself. It surely would be unusual for a specific order--applicable over the indefinite future--to be given to all Carriers in such a broadcast letter from national headquarters. The sentence in question, moreover, is totally silent as to when or where any such review by individual Carriers "should" take place. Finally, the operative and critically important word in this sentence is "should," and not "must." 39

Given these circumstances it would not have been reasonable for individual Carriers to construe the Transmittal Letter as requiring that detailed study of the new M-41 should be undertaken promptly, without further clarification by his or her immediate supervisor. The need for such clarification, 40

indeed, would seem even more apparent in view of the vague nature of the exhortation to become "familiar" with the "changes" and "arrangement of instructions" in the new M-41.

Finally, there is no evidence in this record that any individual Carrier actually did construe this language as an order. None of the NALC witnesses who were active Carriers actually had studied the new M-41 as a result of reading the Transmittal Letter. Accordingly, the Transmittal Letter did not embody an order to individual Carriers requiring them to review or study the new M-41 at any particular time or place. 41

This is not the end of the matter, however, since the ambiguity of the Transmittal Letter imposed upon field Management the necessity to respond to inquiries by Carriers and NALC representatives as to what actually was intended. There is no suggestion that specific instructions were sent to the field by National Headquarters, and the following NALC evidence as to events in several Post Offices has not been challenged for purposes of this case. 42

In September of 1974 the President of Branch 176 unsuccessfully asked the Baltimore Superintendent of Delivery Services to authorize time "on the clock" for the Carriers to study the new M-41. Route inspections were scheduled to begin in a few days in some Offices in the Baltimore area. The same Branch President later was advised by several Postmasters in the Baltimore area that ... "This office has instructed City Carriers to study the Handbook when they had the time on a light day. Also the Carriers have been given permission to take the Handbook home to study" (underscoring added). 43

When the new M-41 was handed out in several Post Offices in the Baltimore area, all Carriers were told that they 44

could take it home to review. In one instance a copy was sent to the home of a Carrier who was absent because of illness.

Local NALC officials in Tampa informally discussed the situation with Postal Service representatives in September of 1974 and in a grievance meeting on October 10 the Postal Service stated that-- "No time will be allowed on the clock. The Carrier is authorized to take the M-41 home so he can become thoroughly familiar with it" (underscoring added). Minutes including this statement were posted by Management for information of the Carriers. In view of impending route inspections the Tampa Post Office instructed all Carriers on January 8, 1974 to "review" Chapter 9 of the new M-41 Handbook "for detailed instructions." 45

In Little Rock, Arkansas, Carriers who received the new M-41 late in 1974 were required to sign a statement including-- "I also understand that I am to study the information contained in this Handbook so that I will be knowledgeable in carrier duties and responsibilities." 46

On September 18, 1974 a grievance was filed in Clute, Texas, protesting that route inspections were being conducted before Carriers had adequate time to study the new M-41. Denial of this grievance was upheld by the Clute Postmaster on October 2, 1974. According to President Lloyd of Branch 4723, the Postmaster told him that Carriers "didn't need the time to read the M-41 because there was nothing different in it from the old one." 47

In a September 11, 1974 grievance from Almeda Station (Houston, Texas) Branch 283 protested that Management had instructed Carriers to take the new M-41 home, contrary to the 48

specific statement in the M-41 that it should be kept in the Carrier's route book. The Step 3 denial of this grievance asserted that-- "The carriers were not ordered to take their M-41 Manuals home with them to review them. There is no agreement or provision for carriers to review this manual on the clock or on overtime" (underscoring added).

These local instances are by no means exhaustive but serve to establish that field Management, in a significant number of instances, either instructed or permitted Carriers to review the new M-41 at home. In many such offices, of course, some Carriers may have had sufficient undertime to review the M-41 while "on the clock" in the office. But in other instances, particularly where route inspections were scheduled to begin at an early date, it seems reasonable to infer that many Carriers were able to review the new M-41, and particularly Chapter 9 (as required), only at home or otherwise "off the clock." 49

In any such situation the review or study of the M-41 at home or "off the clock" indubitably was work within the meaning of Article XLI, Section 3-K and should be compensated as such. This is not to suggest that any given Carrier necessarily now has a right to insist, for the future, that he or she should be given any particular amount of paid time--either in the office or at home--to become familiar with the M-41. Nothing in this Opinion can bar the Postal Service from now issuing clear instructions indicating that no Carrier should study the M-41 at home and that any necessary review of the M-41 should be performed only on undertime, except as directed by a supervisor on the basis of defined special circumstances applicable to individual Carriers or groups of Carriers. 50

3. Remedial Action

The NALC requests an Award which would require that (1) all Carriers who have studied the new M-41, or who hereafter may study it, should be compensated for time so spent; and that (2) the Postal Service refrain from holding any Carrier responsible for knowing the contents of the new M-41 until such Carrier in fact has devoted time to studying the Manual--with the consequence that the Postal Service could not make (or effectuate) any route adjustments or impose any disciplines which rested upon any given Carrier's ignorance of relevant contents of the new M-41. 51

Since Management can implement only such Manual changes as are "fair, reasonable and equitable" under Article XIX, the NALC also urges that the Postal Service now should be enjoined from in any way seeking to hold Carriers responsible "at their peril" for changes in the M-41 without providing time for review and study of such changes. 52

a. Payment to Individual Carriers

Since this is a national level grievance involving a dispute as to interpretation of the National Agreement, it is inappropriate for the present Award to require payment of compensation to specific individual employees. Whether any individual Carrier is entitled to overtime under the interpretation of Article XLI, Section 3-K set forth in this Opinion necessarily will depend upon the facts in each individual case. To be entitled to overtime compensation, for example, an individual Carrier must establish that in fact he or she did study 53

the Manual at home (or "off the clock") at the direction of, or with the permission of, supervision. It also would seem essential for each such Carrier to establish the nature of such review, when undertaken, and how much time actually was required. Such details concerning individual grievants cannot be developed in a national level grievance, without eviscerating the grievance procedure established in Article XV.

The present decision thus seeks only to establish criteria for determining the merits of any proper grievances involving individuals which are pending in the grievance procedure or which may be filed hereafter. This is not to suggest that only individuals who themselves have filed grievances can be entitled to compensation under the present interpretation of Article XLI, Section 3-K. Grievances on behalf of individual Carriers or groups of Carriers already have been filed by the NALC locally, as authorized in the Step 1 provisions of Article XV. The evidence also suggests a possibility that, either by express or implied local agreement, the filing of grievances on behalf of individual Carriers in some instances has been delayed pending decision of this national level dispute. 54

The parties' presentations indicate such a great difference of opinion concerning the nature of an appropriate "review" of the M-41, and the time required therefor, as to warrant comment here. 55

The time to be compensated should not in any case exceed that which is reasonable under the given circumstances. Moreover, the claim of some NALC representatives that every Carrier should be so familiar with the new M-41 as to be able to handle every detailed or complicated problem which might 56

arise in the course of a Carrier's work (without consulting a supervisor) is unrealistic and specifically rejected by the Impartial Chairman, for reasons indicated in discussion at the hearing.

Both parties have provided estimates of time reasonably required for an experienced Carrier to review the new M-41, with the Postal Service suggesting no more than 15 minutes, and the NALC claiming that 10 to 12 hours or more might be essential. Neither estimate seems reasonable to the Impartial Chairman, or even close to the mark. No doubt an experienced Carrier in most instances would not have needed more than a few hours to familiarize himself or herself in a general way with the basic information in the new M-41 and the arrangement of instructions therein, when the Handbook initially was circulated. Whether an experienced Carrier, today, would need as much time is doubtful since the Handbook now has been available for use as a reference tool by all Carriers for many months. 57

b. Route Adjustments

It is impossible in this record to find any tangible evidence that all or most Carriers were materially prejudiced in their route inspections by not having had prior opportunity to review the new M-41. Supervisors are instructed to familiarize Carriers with necessary detail (including Chapter 9 of the new M-41) prior to all route inspections, and there is no reason here to assume that this was not done in most instances. Even if some Carriers did not review the new M-41 or at least Chapter 9, this does not automatically establish that the inspection of their route necessarily produced an unfair result. Finally, the M-39 Handbook, in Section 271, requires a special 58

route inspection upon request by the Carrier whenever a route is so overloaded as to require consistent use of overtime or auxiliary assistance.

Likewise, any case of possible improper discipline based on a Carrier's lack of familiarity with the new M-41, as such, can be dealt with adequately in the grievance procedure. There must be proper cause for discipline in any case, so that where discipline in fact was imposed solely for lack of knowledge which could have been obtained only by studying the new M-41, a grievance would have merit. 59

c. Injunctive Relief

There is no apparent need for an order broadly directing the Postal Service to refrain from holding Carriers responsible "at their peril" for changes in the M-41. Where Management has held or seeks to hold a Carrier responsible for such knowledge and the Carrier has had no opportunity to become familiar with relevant portions of the new M-41, an individual grievance protesting any action adverse to the Carrier presumably would be meritorious. Thus no useful purpose could be served by a directive here which simply would reinforce protections provided under the National Agreement. 60

AWARD

1. No opinion can be expressed concerning application of the Fair Labor Standards Act, as urged by the NALC, since (1) this would not constitute a dispute as to the interpretation of the National Agreement within the meaning of 61

Article XV, Section 2-Step 4, and (2) Article XLI, Section 3-K provides adequate basis for decision here.

2. Article XLI, Section 3-K requires payment of a Carrier for time spent studying the new M-41 Handbook at the direction of the Postal Service or with the permission of the Postal Service, but only to the extent detailed in the Opinion in this case. 62

3. All issues as to whether individual Carriers are entitled to compensation under the present interpretation of Article XLI, Section 3-K, shall be handled through the grievance procedure established under Article XV, giving due consideration to the facts in each individual case. No Carrier in any event shall be compensated for more study time than reasonably required for the study undertaken by that individual Carrier. 63

Sylvester Garrett
Impartial Chairman

In the Matter of the Arbitration between NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO and UNITED STATES POSTAL SERVICE	Case No. N8-NA-0344 Timeliness of 8 Cases OPINION AND AWARD

APPEARANCES:

For the USPS - Wyneva Johnson, Esq.
Office of Labor Law

For the NALC - Cohen, Weiss and Simon
Keith E. Secular, Esq.

Pursuant to the provisions of the current collective bargaining agreement between the above-captioned parties, this case was duly proceesed through to and presented in arbitration before the Undersigned. The hearing was held at the offices of the Postal Service in Washington, DC, on January 23, 1981. Thereafter, post-hearing briefs were submitted and exchanged.

THE ISSUES:

1. Whether Management can properly refuse to hear Step 4 appeals in Cases No. S8N-3P-C-11599; S8N-3P-C-10877; S8N-3P-C-11769; S8N-3W-C-1171; S8N-3W-C-12007; S8N-3D-C-11576; S8N-3W-C-11752; and S8N-3P-C-11781. These cases being under consideration in this proceeding? If not, what shall the appropriate remedy be?

2. In the event it is found that these cases were not filed in a timely manner, pursuant to the Agreement, can Management refuse to discuss these grievances before so indicating to the Union its reason for rejecting same? If not, what shall the appropriate remedy be?

STATEMENT OF THE CASE:

The eight decisions enumerated above were denied in Step 3, and these denials were received by the NALC on February 29 and March 6, 1980. Prior to March 21, 1980, the Postal Service advised the NALC's National Office that it had not received the appeals to Step 4 on these decisions. The Postal Service, subsequently, did receive appeals to Step 4, marked duplicate, on April 7, 1980. The Southern Region did not receive copies of these eight appeals.

PROVISION OF THE CONTRACT UNDER REVIEW:

ARTICLE XV

GRIEVANCE-ARBITRATION PROCEDURE

****

Section 2. Grievance Procedure - Steps

****

Step 3

****

(e) If either party's representative maintains that the grievance involves an interpretative 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 decisions 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 Regional Director of Employee and Labor Relations.

CONTENTIONS OF THE PARTIES:

The Union contended that the language of the Agreement only requires that the Union make its appeal within twenty one days. It does not require that the appeal be received within that time limit. By placing the appeal in the mail within twenty one days, the Union claimed it had met the time requirements to perfect its appeal. The Union also argued that its understanding had always been that the act of depositing the appeal in the mail within the time limits sufficed and that the USPS had never taken a contrary position. The Union pointed to a decision by Arbitrator Mittenthal, in Case No. N-C--4170D, wherein the date stamp on the envelope was considered determinative of the timeliness of an appeal. The Union also made reference to other arbitration decisions, not issued in Postal Service cases, where the date of mailing was regarded as the critical date and not the date that the appeal was actually received. Finally, the Union asserted that if date of receipt were considered critical then each region would have a different date when it had to mail its appeal depending upon its distance from National Headquarters of the Post Office. Obviously, the parties did intend to have a uniform time period apply wherever the appeal had to be made. The Union pointed out that when National Headquarters of the Postal Service notified the Postal Service that the appeals had not been received, a new set of appeal papers were mailed to the Postal Service within the 21 day period which still had not expired.

The Postal Service argued that it finally received these appeals on April 7, 1980. That was well beyond the 21 day period allowed under the contract. The Service also pointed out that at no time were copies received by the Southern Region although the agreement clearly and explicitly requires that this be done as well. The Service also asserted that in addition to not receiving the alleged original documents within the time limits, the second set of appeal papers was not received until April 7, 1980, about two weeks after it reasonably could have been anticipated that a duplicate set mailed within the 21 day time limit would have been received. The Postal Service also contended that the testimony of the NALC witnesses confirmed the understanding that appeals had to be received within twenty one days in order to be considered timely.

OPINION OF THE ARBITRATOR:

In Case No. N-C-4170D, decided by Arbitrator Mittenthal on February 13, 1974, and which the Union cited in support of its

claim, Arbitrator Mittenthal specifically held that the date placed on an appeal could not be controlling because of the obvious possibility of back dating. He stated, "Perhaps, in appropriate circumstances, the date that the letter is placed in the mailbox could be controlling..." The Undersigned might, in appropriate circumstances, for the sake of uniformity and consistency, find that the cancelation date on an envelope could establish the timeliness of a filing. In the instant case, however, there is no postmark on which to base sucj a finding. The initial mailing was never received by either the National or Regional Office of the Postal Service.

As to the second mailing, the testimony of the Union office employee in Atlanta was that she believed that she had placed these documents in the mail on March 21, 1980. She had no evidence from her office records to confirm such a statement. In point of fact, the Union could not and did not seek to rebut the Postal Service conetntion, verified with a time stamp, that these second appeal forms were received in Washington some two weeks after March 21st on April 7, 1980. Once again, the Regional Office of the Post Office did not receive copies of the duplicate documents at any time. Oneof the Union witnesses conceded that if the duplicates had been placed in the mail on March 21, still within the time limits, they should have been in Washington on or about March 24th.

Under the facts and circumstances revealed by this record, it cannot be found that the Postal Service received timely notice of the appeal of these eight cases to Step 4, as such notice is required by the provisions of the Agreement. The failure to copy in the Regional Office cannot be regarded as a ministerial error. The language of the Agreement madates that the Regional Director of Employee and Labor Relations receive a copy of appeals to Step 4. The Postal Service is entitled to rely upon the knowledge that this regional official has been notified by the Union about appeals being taken from decisions made in his region.

The Union also raised the issue of whether, despite a failure to comply with the contractual time limit requirements, the Postal Service was obligated to meet with the Union and discuss these eight grievances. Article XV, Section 2, Step 4(a), requires that the parties meet at the national level promptly, "In any case properly appealed to this step..." That word "properly" cannot be regarded as surplusage. It has a meaning and that meaning must encompass the compliance with procedural requirements. That has not occurred in the instant cases.

Additionally, it should be noted, in the prior arbitration decision by Arbitrator Mittenthal cited above, he found that: "The parties expressly agreed that failure to appeal within the contractual time limits would serve 'as a waiver of the grievance.' The parties to that stipulation are the same parties involved in this proceeding. The Undersigned cannot conclude from either the language of the Agreement nor the stipulation of these parties that the Postal Service is obliged to meet and discuss the merits of these grievances at Step 4.

Therefore, after due deliberation, the Undersigned makes the following

A W A R D

1. Management can properly refuse to hear Step 4 appeals in the cases here under consideration.

2. Management can refuse to discuss the merits of these grievances at Step 4, but it must, as it has in this case, advise the Union why it regards the grievances as not having been filed in a timely fashion and thus considered as waived.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
July 10, 1981

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

DEC 4 1987

Re: Class Action
Dallas, TX 75260
H1C-3A-C 46843

Dear Mr. Guffey:

On October 9, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the union must re-appeal to Step 3 a case which has been remanded from Step 4.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. No appeal to Step 3 is necessary when a case is remanded from Step 4.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

James E. Lacny
Grievance & Arbitration
Division

Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE Case No. H8T-5C-C-11160 (A8-W-0864)

and

AMERICAN POSTAL WORKERS UNION

APPEARANCES: David P. Cybulski, Esq., and Eric Scharf, Esq., for the Postal Service; James I. Adams for the Union

DECISION

This grievance arose under and is governed by the 1978-1981 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected by the parties to serve as the sole arbitrator, a hearing was held on 12 May 1982, in Washington, D. C. Both parties appeared and presented evidence and argument on the following issues:

(1) Is the grievance arbitrable.

(2) If so, did management at the San Rafael, CA post office violate the 1978-1981 National Agreement by including heavy lifting and the possession of an SF-46 (government driver's license) as requirements on the Notice of Intent for the position of Maintenance Control and Stock Clerk.

It was agreed that the arbitrator should hear evidence on both issues, but should ultimately not rule upon the second unless he concluded that the grievance was arbitrable.

A verbatim transcript was made of the arbitration proceeding, and each side filed a post-hearing brief. The record

was officially closed on 30 June 1982.

On the basis of the entire record in this case, the arbitrator makes the following

AWARD

(1) The grievance is arbitrable.

(2) Management at the San Rafael, CA post office did not violate the 1978-1981 National Agreement by including heavy lifting and the possession of an SF-46 (government driver's license) as requirements on the Notice of Intent for the positions of Maintenance Control and Stock Clerk.

Benjamin Aaron
Arbitrator

Los Angeles, California
7 July 1982

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE Case No. H8T-5C-C-11160 (A8-W-0864)

and

AMERICAN POSTAL WORKERS UNION

OPINION

I. Arbitrability

A.

On 16 April 1980, the San Rafael, California MSC posted a Notice of Intent (Ex-1) for a newly-authorized duty assignment, Maintenance Control & Stock Clerk. The notice read in part as follows:

> MAINTENANCE CRAFT
>
> In accordance with Article XXXVIII, Section 2, (A), (1), (2) & (C), (1) of the National Agreement this Notice of Intent is posted for the following duty assignment to be filled by using the appropriate selection registers.
>
> > Maintenance Control & Stock Clerk, schedules & controls the maintenance activities at a postal installation & performs a variety of clerical work involved in the requisitioning, receiving, storing issuing, & accounting for a wide variety of parts, tools, and supplies used in the maintenance of building and postal equipment. Heavy lifting required, must be able to lift 70 lbs. Vehicle Operator's card, SF 46 required.

Several maintenance craft employees applied for this assignment, but none was deemed to be qualified. A second Notice of Intent (EX-2), therefore, was posted on 24 April; and this

time it invited bids "from all full-time career employees in any craft within the San Rafael post office." The description of the job in the second notice was the same as in the first. A third Notice of Intent (EX-3) was posted on 30 April, because the previous two notices had inadvertently omitted the following words: "Typing required, must pass a typing test of 30 words a minute."

Meanwhile, on or about 10 May 1980, Owen Barnett, the Union's National Vice President for the Maintenance Craft in the Western Region, received a telephone call from David Swaney, an official of the San Rafael Local. Swaney said he thought that the posting of the new position violated the National Agreement, but that he needed more specific information. Barnett said that the necessary information could be found in Section 180 of the Personnel Handbook, Series P-12B (UX-2), but Swaney replied that he had no access to a copy of the handbook. Accordingly, Barnett agreed to send him a copy, and did so the next day. After receiving a copy of the handbook, Swaney telephoned Barnett on or about 17 May, and told the latter that in his (Swaney's) opinion, the posting had improperly included the requirements of a SF-46 and heavy lifting. Barnett then told Swaney to file a grievance.

On 29 May 1980, Swaney filed the instant grievance (JX-2, p. 9), in which he charged in part:

> Maintenance employees were denied the job because of the Vehicle Operator's Card SF 46 required. Also on the posting Heavy Lifting was required. . . .

Management's response at the first step was "Denied Grievance submitted untimely" (JX-2, p. 9).

The grievance was appealed to step two on 9 June 1980. Management's answer, dated 20 June (JX-2, p. 10), read in part:

> A. This grievance was submitted untimely, as the APWU had reason to know of the contents of the posting on April 16, 1980, at 11:30 a.m., and no later than April 24, 1980, 11:00 a.m. This grievance was filed on behalf of the Maintenance Craft at Step 1 on May 29, 1980, 1:25 p.m., over thirty (30) days after the fact.
>
> B. The posting of the position of Maintenance Control and Stock Clerk met the requirements of Article XXXVIII, Section 2 E and was in compliance with the P-1, P-11 and P-12 B.
>
> No violation has occurred, therefore, this grievance is denied. This grievance was extended by mutual consent.

The grievance was then appealed to step three, at which time it was discussed by Barnett and George E. Banks, Acting Regional Labor Relations Representative for the Postal Service. In a letter dated 17 July 1980, to Raydell Moore (JX-2, p. 6), the Union's Western Regional Coordinator, Banks stated in part:

> Providing lifting and driving requirements on the Notice of Intent does not establish a violation of the National Agreement. In fact, Article XXXVIII, Section 2, E 7, provides for such special or unusual requirements.
>
> In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article XV of the National Agreement.

The grievance was then appealed to step four, where it was discussed by Richard I. Wevodau, the President of the Union's Maintenance Craft, and Margaret H. Oliver, Labor Relations Department. Oliver's answer (JX-2, p. 3), set forth in a letter to Wevodau dated 18 March 1981, read in part:

> The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.
>
> The question in this grievance is whether or not management at the San Rafel, CA post office violated the National Agreement by including heavy lifting and the possession of an SF-46 as requirements on the Notice of Intent for the position of Maintenance Control and Stock Clerk.
>
> In our view, this grievance does not fairly present a nationally interpretive question; however, our response is required.
>
> The position in question is assigned to the maintenance craft. Article XXXVIII, Section 2E includes physical or other special requirements unusual to the specific assignment as suitable information for inclusion on a Notice of Intent.
>
> Accordingly, as we find no violation of the National Agreement, this grievance is denied.

B.

Article XV, section 2(a) of the National Agreement, provides that a grievance initiated at step one must be submitted "within 14 days of the date the employee or the Union first learned or may reasonably have been expected to have learned of its cause."

Article XV, section 3(b) provides in part:

> 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.

It is the position of the Postal Service that Swaney learned, or may reasonably have been expected to have learned, on or about 16 April 1980, when the Notice of Intent regarding the duty assignment of Maintenance Control & Stock Clerk was first posted, that it included the requirements of a SF-46 and the ability to lift 70 pounds. Because the grievance was not filed until 29 May, well beyond the 14-day limit, the Postal Service maintains that it was untimely. Moreover, the Postal Service argues that by specifically stating in its step-two answer that the grievance was untimely filed, it preserved its objection and could properly reassert it at the arbitration stage.

The Union's position is that it had not fully checked on all the facts associated with the notice here involved until about 17 May, and that no decision whether to file a grievance could be made until then. On this theory, of course, the filing of the grievance on 29 May would be within the 14-day period. Moreover, Barnett testified that in his discussion of the grievance with Banks at step three, Banks agreed with him that the grievance was timely. The record, however, contains no written verification of any such oral understanding.

C.

The arguments of the Postal Service, if taken at face value, suggest that Union representatives who investigate the facts of situations before filing grievances do so at their peril if such investigations take longer than 14 days, and that the language of Article XV, section 3(b) means that once an objection to the arbitrability of a grievance, on grounds of untimeliness, is raised by the Postal Service at step two or later, it retains its vitality at all subsequent stages of the grievance-arbitration procedure, regardless of the positions taken by the Postal Service in steps three and four. I have difficulty with both arguments.

On the basis of the evidence submitted, it appears that Swaney was not sure whether or not the Notice of Intent here in dispute violated the National Agreement. Accordingly, he telephoned Barnett for advice. When, three or four days later, he received the P-12B Personnel Handbook Barnett had sent him, Swaney studied it and concluded that the notice violated the National Agreement. He then telephoned Barnett to confirm that conclusion, and received Barnett's approval to file the grievance. It may be true that Swaney knew on or about 16 April 1980 that the duty assignment called for a SF-46 license and the capacity to lift 70 pounds, but I am not persuaded that he knew, or reasonably should have known, more than 14 days prior to 29 May that the notice actually gave rise to a legitimate grievance.

Barnett's account of the alleged understanding he had with Banks at the step-three meeting was too sketchy to be accorded any weight. On the other hand, the Postal Service's third-step and fourth-step answers previously quoted indicated its willingness to consider the grievance on its merits. Rejection of the grievance on the ground that it was not timely filed was not mentioned, and the grievance was denied on the merits. Contrary to the Postal Service, I interpret Article XV, section 3(b), as applied to the facts of this case, to mean simply that if the Postal Service failed to raise the issue of timeliness at step 2, it could not raise it at any subsequent stage of the grievance-arbitration procedure. That is substantially different from the Postal Service's interpretation that, once raised at step two, the objection of untimeliness could be reasserted at any subsequent stage, regardless of inconsistent positions taken by the Postal Service in the interim. I am satisfied from my reading of the Postal Service's third-step and fourth-step answers that it did, in effect, waive its objection to alleged untimeliness asserted at the second step. Accordingly, I find that the grievance is arbitrable.

II. The Merits

A

Section 180 of Qualification Standards, Bargaining Unit Positions (Personnel Handbook, Series P-12B) (UX-1, p. 4) reads in its entirety:

180 USE OF QUALIFICATION STANDARDS IN POSTING VACANCIES

> Position vacancies to be filled by bid, promotion, transfer, or assignment are posted in accordance with the applicable collective bargaining agreement and Handbook P-11. The qualification standard appropriate for the particular position is included in the announcement. This handbook shall be the source of such qualification standards. No additions, deletions, or alterations will be allowed by any local, district, or regional office.

Article XIX (Handbooks and Manuals) of the National Agreement provides in part:

> 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.

Both the Postal Service Qualification Standard for Maintenance Control & Stock Clerk (UX-3, p. 1) and the Standard Position Description (UX-3, p. 2) set forth the basic function of that job as follows:

> Schedules and controls the maintenance activities at a postal installa tion and performs a variety of clerical work involved in the requisitioning, receiving, storing, issuing, and accounting for a wide variety of parts, tools, and supplies used in the maintenance of buildings and postal equipment.

The position description makes no reference to driving a motor vehicle, possessing a SF-46 license, heavy lifting, or typing; but paragraph N provides: "Occasionally performs other job related tasks in support of primary duties." The qualification standard also makes no reference to driving,

holding a SF-46 license, or heavy lifting; it does, however, require the demonstrated ability to type 30 words per minute for five minutes with no more than two errors.

Section 524.4 (Best Qualified PS Positions) of Handbook P-11 (UX-6) states in part: "(If a qualification standard is published in Handbook P-12B, it must be used" [in the posting of such positions])." Maintenance Control & Stock Clerk is a "Best Qualified" position (Tr. 80-81).

Section 525.221 of the P-11 Handbook deals with evaluating the qualifications of job applicants. It states in part: "The qualifications consist of the qualification standard and any relevant selective factors that have been included in the posting."

Article XXXVIII of the National Agreement deals exclusively with the Maintenance Craft. Section 2 concerns posting of vacant duty assignments. Section 2-E (Information on Notice of Intent) includes the following item 7: "Physical or other special requirements unusual to the specific assignments."

Donald R. Noble, the maintenance superintendent at the San Rafael MSC, testified that the storeroom for that facility is located at Mission Rafael, about three miles away; most custodial supplies are stored there. He stated that the maintenance control and stock clerk must drive a half-ton pickup truck from the San Rafael MSC to the Mission Rafael storage facility about once a week to pick up supplies. The round trip takes about an hour. The supplies consist of toilet paper,

towels, cleaning bleaches, and other custodial supplies. A box of toilet paper weighs approximately 64 pounds.

B.

The Union's basic position on the merits is that because neither the qualification standard nor the standard position description for Maintenance Control & Stock Clerk includes any reference to a SF-46 or a heavy lifting requirement, and because the language of Section 180 of Personnel Handbook P-12B states that no additions, deletions, or alterations of qualification standards will be allowed by any local, district, or regional office, the disputed Notice of Intent in this case violated the National Agreement. The Union points out that Article XIX of the National Agreement sets forth a procedure that must be followed when the Postal Service wishes to make changes in handbooks, manuals, or published regulations. It also notes that Personnel Handbook P-12B sets forth in Part 4 (UX-2, p. 25) the procedures that must be followed when management requests a waiver of qualification standards.

The basic position of the Postal Service on the merits is that it has the right to establish "selective standards" bearing a reasonable relation to the published requirements of a particular position. It argues that the parties never intended that each postal facility in the country would operate in an identical manner, or that the National Agreement would deal with the minute details of every job. In the case of the job in dispute, the Postal Service contends that the tasks of

driving and heavy lifting are "incidental" to the primary function of the position and are "reasonably related" to it. It asserts that these tasks are covered by paragraph N of the job description, previously quoted, and that there has been no additions, deletions, or alterations of the "core elements" set forth in the qualification standard. In addition, the Postal Service claims that its Notice of Intent was covered by Article XXXVIII, section 2-E-7 of the National Agreement, previously quoted. Finally, the Postal Service relies upon the bargaining history of the 1978 National Agreement to support its contention that the Union previously attempted, unsuccessfully, to secure a provision that no maintenance employee would be required to possess an SF-46 license unless that requirement was embodied in Handbook P-12B as a condition of employment (EX-6). I do not find it necessary to consider that particular argument.

C.

On the basis of the evidence and arguments submitted, I conclude that the Postal Service had the right in this case to include the SF-46 and heavy-lifting requirements in the Notice of Intent for the duty assignment of Maintenance Control & Stock Clerk. The special circumstance involved--the physical separation of the San Rafael MSC and the storage facility at Mission Rafael--fully justified the requirement of the SF-46. Likewise, the heavy-lifting requirement was made necessary by the nature of the materials handled. Neither requirement

affected the "core elements" of the qualification standard and the job description. Both were covered by Article XXXVIII, section 2-E-7 of the National Agreement, Section 525.221 of the P-11 Handbook, and paragraph N of the job description.

The Union contends, however, that regardless of any other considerations, the grievance in this case should be granted because of an oral understanding between Wevodau and Frank Dyer, a Postal Service representative, in connection with a pre-arbitration settlement of Case No. H8T-3D-C-11020 on 23 September 1981 (UX-7, p. 1), to the effect that the pre-arbitration settlement applied to every case involving the "same issue."

The pre-arbitration settlement, which involved a typing requirement for a Tool and Parts Clerk, was as follows:

1. A typing requirement is not presently a part of the qualification standard for the position of a tool and parts clerk, SP1-31. Until such time as a change is initiated the typing requirement will be deleted from the posting.

2. On the basis of the particulars surrounding this case, the two jobs in question in this grievance will be reposted without the typing requirement.

3. This decision is not intended to preclude management from requiring an employee to type.

The pre-arbitration settlement agreement was signed by William E. Henry, Jr., Director , Office of Grievance and Arbitration, Labor Relations Department, on behalf of the Postal Service. Henry signed the document after discussing it with

Dyer. He testified that Dyer did not mention any oral understanding with Wevodau as to the future application of the settlement, and that Dyer had no authority to enter into any such understanding on behalf of the Postal Service.

Wevodau's version of his discussion with Dyer was as follows (Tr. 85):

> . . .Mr. Dyer brought this settlement directly to my office, and I questioned Mr. Dyer about it, and my questioning went along the line that, "Okay, this is a pre-arbitration settlement. Are you saying that this applies only to the instant grievance?", and the response was, "No, this was a grievance that was certified as an interpretive grievance, and this pre-arbitration settlement is an interpretive pre-arbitration settlement on that grievance and therefore applies to every case." And I said, "Well, do you mean that if I get other cases up here dealing with this same issue, that I'd have to certify each one of those for arbitration?", and he said, "No, this settlement will be applied to those."

Wevodau's account was generally corroborated by Thomas Freeman, Jr., Executive Vice President of the Maintenance Craft. On cross-examination, Freeman testified in part as follows (Tr. 128-29):

> Q. Did you state or did Mr. Wevodau state or any of the four individuals in the room state to Mr. Dyer or converse with Mr. Dyer to the effect that this settlement would hereafter preclude the Postal Service from including in a notice of vacancy, in a job posting, any duties not specifically contained in the position description or qualification standard?
>
> A. I don't think such a statement was made literally, a literal statement, no.
>
> Q. Was that in fact your understanding?
>
> A. No. My understanding, when this question was

raised, was that requirements such as typing that dealt with this issue of placing a requirement on a posting or on a position that was not in the P-12 Handbook would not be done, and that was my understanding when I left the office.

Dyer was not called as a witness.

I do not doubt the Union witnesses' good faith in offering their version of the alleged oral understanding between Wevodau and Dyer. In my judgment, however, whatever that understanding may have been, it cannot be allowed to have the effect claimed for it by the Union in this case. The subject of the alleged understanding was a typing requirement in an unrelated job. It was, at best, ambiguous. The written settlement agreement was signed on behalf of the Postal Service by an authorized representative who was wholly unaware of any oral discussion concerning its possible future application in other circumstances. The alleged oral understanding would have substantially extended the scope of the written settlement agreement. Given these facts, I cannot allow the testimony of the Union witnesses to alter the plain meaning of the written settlement agreement by extending it to future cases involving "the same issue." In the event that understandings as to the subsequent application of pre-arbitration settlement agreements are reached in the future, the parties are advised to reduce them to writing.

For all the foregoing reasons, the grievance is denied.

Benjamin Aaron
Arbitrator

In the Matter of the Arbitration between NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO and UNITED STATES POSTAL SERVICE	Case No. N8-NA-0344 Timeliness of 8 Cases OPINION AND AWARD

APPEARANCES:

For the USPS - Wyneva Johnson, Esq.
Office of Labor Law

For the NALC - Cohen, Weiss and Simon
Keith E. Secular, Esq.

Pursuant to the provisions of the current collective bargaining agreement between the above-captioned parties, this case was duly processed through to and presented in arbitration before the Undersigned. The hearing was held at the offices of the Postal Service in Washington, DC, on January 23, 1981. Thereafter, post-hearing briefs were submitted and exchanged.

THE ISSUES:

1. Whether Management can properly refuse to hear Step 4 appeals in Cases No. S8N-3P-C-11599; S8N-3P-C-10977; S8N-3P-C-11769; S8N-3W-C-11771; S8N-3W-C-12007; S8N-3D-C-11576; S8N-3W-C-11752; and S8N-3P-C-11781. These cases being under consideration in this proceeding? If not, what shall the appropriate remedy be?

2. In the event it is found that these cases were not filed in a timely manner, pursuant to the Agreement, can Management refuse to discuss these grievances before so indicating to the Union its reason for rejecting same? If not what shall the appropriate remedy be?

STATEMENT OF THE CASE:

The eight decisions enumerated above were denied in Step 3, and these denials were received by the NALC on February 29 and March 6, 1980. Prior to March 21, 1980, the Postal Service advised the NALC's National Office that it had not received the appeals to Step 4 on these decisions. The Postal Service, subsequently, did receive appeals to Step 4, marked duplicate, on April 7, 1980. The Southern Region did not receive copies of these eight appeals.

PROVISION OF THE CONTRACT UNDER REVIEW:

ARTICLE XV

GRIEVANCE-ARBITRATION PROCEDURE

****

Section 2. Grievance Procedure - Steps

****

Step 3

****

(e) If either party's representative maintains that the grievance involves an interpretative 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 decisions 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 Regional Director of Employee and Labor Relations.

CONTENTIONS OF THE PARTIES:

The Union contended that the language of the Agreement only requires that the Union make its appeal within twenty one days. It does not require that the appeal be received within that time limit. By placing the appeal in the mail within twenty one days, the Union claimed it had met the time requirements to perfect its appeal. The Union also argued that its understanding had always been that the act of depositing the appeal in the mail within the time limits sufficed and that the USPS had never taken a contrary position. The Union pointed to a decision by Arbitrator Mittenthal, in Case No. N-C--4170D, wherein the date stamp on the envelope was considered determinative of the timeliness of an appeal. The Union also made reference to other arbitration decisions, not issued in Postal Service cases, where the date of mailing was regarded as the critical date and not the date that the appeal was actually received. Finally, the Union asserted that if date of receipt were considered critical then each region would have a different date when it had to mail its appeal depending upon its distance from National Headquarters of the Post Office. Obviously, the parties did intend to have a uniform time period apply wherever the appeal had to be made. The Union pointed out that when National Headquarters of the Postal Service notified the Postal Service that the appeals had not been received, a new set of appeal papers were mailed to the Postal Service within the 21 day period which still had not expired.

The Postal Service argued that it finally received these appeals on April 7, 1980. That was well beyond the 21 day period allowed under the contract. The Service also pointed out that at no time were copies received by the Southern Region although the agreement clearly and explicitly requires that this be done as well. The Service also asserted that in addition to not receiving the alleged original documents within the time limits, the second set of appeal papers was not received until April 7, 1980, about two weeks after it reasonably could have been anticipated that a duplicate set mailed within the 21 day time limit would have been received. The Postal Service also contended that the testimony of the NALC witnesses confirmed the understanding that appeals had to be received within twenty one days in order to be considered timely.

OPINION OF THE ARBITRATOR:

In Case No. N-C-4170D, decided by Arbitrator Mittenthal on February 13, 1974, and which the Union cited in support of its

claim, Arbitrator Mittenthal specifically held that the date placed on an appeal could not be controlling because of the obvious possibility of back dating. He stated, "Perhaps, in appropriate circumstances, the date that the letter is placed in the mailbox could be controlling..." The Undersigned might, in appropriate circumstances, for the sake of uniformity and consistency, find that the cancelation date on an envelope could establish the timeliness of a filing. In the instant case, however, there is no postmark on which to base such a finding. The initial mailing was never received by either the National or Regional Office of the Postal Service.

As to the second mailing, the testimony of the Union office employee in Atlanta was that she believed that she had placed these documents in the mail on March 21, 1980. She had no evidence from her office records to confirm such a statement. In point of fact, the Union could not and did not seek to rebut the Postal Service contention, verified with a time stamp, that these second appeal forms were received in Washington some two weeks after March 21st on April 7, 1980. Once again, the Regional Office of the Post Office did not receive copies of the duplicate documents at any time. Oneof the Union witnesses conceded that if the duplicates had been placed in the mail on March 21, still within the time limits, they should have been in Washington on or about March 24th.

Under the facts and circumstances revealed by this record, it cannot be found that the Postal Service received timely notice of the appeal of those eight cases to Step 4, as such notice is required by the provisions of the Agreement. The failure to copy in the Regional Office cannot be regarded as a ministerial error. The language of the Agreement madates that the Regional Director of Employee and Labor Relations receive a copy of appeals to Step 4. The Postal Service is entitled to rely upon the knowledge that this regional official has been notified by the Union about appeals being taken from decisions made in his region.

The Union also raised the issue of whether, despite a failure to comply with the contractual time limit requirements, the Postal Service was obligated to meet with the Union and discuss these eight grievances. Article XV, Section 2, Step 4(a), requires that the parties meet at the national level promptly, "In any case properly appealed to this step..." That word "properly" cannot be regarded as surplusage. It has a meaning and that meaning must encompass the compliance with procedural requirements. That has not occurred in the instant cases.

Additionally, it should be noted, in the prior arbitration decision by Arbitrator Mittenthal cited above, he found that: "The parties expressly agreed that failure to appeal within the contractual time limits would serve as a waiver of the grievance. The parties to that stipulation are the same parties involved in this proceeding. The Undersigned cannot conclude from either the language of the Agreement nor the stipulation of these parties that the Postal Service is obliged to meet and discuss the merits of these grievances at Step 4.

Therefore, after due deliberation, the Undersigned makes the following

A W A R D

1. Management can properly refuse to hear Step 4 appeals in the cases here under consideration.

2. Management can refuse to discuss the merits of these grievances at Step 4, but it must, as it has in this case, advise the Union why it regards the grievances as not having been filed in a timely fashion and thus considered as waived.

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
July 10, 1981

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D.EISCHEN:JANUARY9,2009
SUSTAINED:NPMHU/APWU
98072898:REGIOAL

USPS/NPMHU NATIONAL ARBITRATION PROCEEDINGS
Case No. 194M-11-C-98072898

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

- and -

NATIONAL POSTAL MAIL HANDLERS UNION

-and-

AMERICAN POSTAL WORKERS UNION, AFL-CIO (INTERVENOR)

Subject: Validity of Step 2 decision issued post proper progression to Step 3 under Article 15.3.C

National Arbitrator

Dana Edward Eischen

Appearances

For the NPMHU:	Bredhoff & Kaiser, P.L.L.C. by Andrew D. Roth, Esq.
For the Postal Service:	Teresa A. Gonsalves, Esq. Anthony M. Thuro, Esq. (at the hearing) Joseph R. Berezo, Esq. (on the brief)
For the APWU:	O'Donnell, Schwartz & Anderson, P.C. by Brenda C. Zwack, Esq. (at the hearing) Lee W. Jackson, Esq. (on the brief)

PROCEEDINGS

The United States Postal Service ("USPS", "Postal Service" or "Employer") and the National Postal Mail Handlers Union("NPMHU", "Mailhandlers" or "Union") designated me to arbitrate National-level disputes under Article 15. 5. D of their National Agreement. The terms of Article 15.3.C of that USPS/NPMHU National Agreement are dispositive of the matter in dispute but, in advancing their respective positions in this case, both the USPS and the NPMHU also cited and relied upon arbitration awards construing virtually identical language in Article 15.4.C of the National Agreement between USPS and the American Postal Workers Union, AFL-CIO ("APWU"). After being provided with third party notice of this arbitration proceeding, the APWU elected to participate as an Intervenor in this case by appearing and participating in the hearing and filing a post-hearing brief. [At the arbitration hearing on June 13, 2006, Counsel for the APWU stipulated as follows: "Since we have intervened in this case as a third party, then [the decision in this case] interpreting that language would bind the APWU"]. *See* Tr. p.81, lines 10-12.

The USPS, the NPMHU and the APWU each were represented by Counsel and afforded full opportunity to present documentary evidence, testimony subject to cross-examination and oral argument at the hearing of this matter. Following receipt of the transcribed stenographic record, the Parties deferred filing post-hearing briefs, pending the possibility of a resolution of the controversy in connection with ongoing national-level collective bargaining negotiations. The Parties subsequently advised me that their discussions had not resolved the matter and eventually filed and exchanged their respective post-hearing briefs in late March 2008. At my request, the Parties graciously allowed me an extension of the contractual time limits for the rendition of this Opinion and Award.

PERTINENT CONTRACT PROVISIONS

USPS/NPMHU 2002-2004 NATIONAL AGREEMENT
ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 15.1 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.

Section 15.2 Grievance Procedure-Steps

* * *

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 I representative.

(b) Any grievance initiated at Step 2, pursuant to Article 2 of this Agreement, must be filed within fourteen (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.

(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) Where grievances appealed to Step 2 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 2, the "representative" grievance may be appealed to Step 3 of the grievance procedure. 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 2 pending resolution of the "representative" grievance, provided they were timely filed at Step I and properly appealed to Step 2 in accordance with the grievance procedure.

(f) Following resolution of the "representative" grievance, the parties involved in that grievance shall meet at Step 2 within seven (7) days of their receipt of that resolution, unless the parties agree upon a later date, to identify the other pending grievances involving the

same, or substantially similar issues or facts, and to apply the resolution to those grievances. 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.

(g) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form and shall be furnished to the Union representative within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. Any such settlement or withdrawal 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.

(h) 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.

(i) 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.

(j) 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.

Step 3: (a) Any appeal from an adverse decision in Step 2 shall be in writing to the appropriate management official at 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 Step 3 level by the Union's Regional representative, or designee. The Step 3 meeting of the parties' representatives to discuss the grievance shall be held at the respective Postal Service office (former regional headquarters) 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 jointly 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 this Agreement or some supplement thereto which may be of general application is involved in the case.

(d) The Union, at the Regional level, may appeal an adverse decision directly to arbitration at the Regional level 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 this 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 this 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 (2 1) days after receipt of the Employer's decision and include copies of the standard grievance form, the Step 2 and Step 3 decisions and, if filed, any Union corrections and additions filed at Steps 2 or 3. The Union shall furnish a copy of the Union appeal to the appropriate management official at the Grievance/Arbitration Processing Center.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issues(s) to be decided. The Employer's notice shall be included in the Step 3 decision. The Union's written notice shall be automatically included as part of the grievance record in the case but the filing of such notice shall not affect the time limits for appeal.

[See Memos, pages 137, 138]

Step 4: (a) In any case properly appealed or referred 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 or referral 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 Union 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.

Article 15.3

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. Every effort shall be made to ensure timely compliance and payment of monetary grievance settlements and arbitration awards. The Employer agrees that upon receipt of necessary paperwork, from the grievant and/or union, concerning a grievance settlement of arbitration award, monetary remuneration will be made. The necessary paperwork is the documents and statements specified in Subchapter 436.4 of the ELM. The Employer

will provide the union copies of appropriate pay adjustment forms, including confirmation that such forms were submitted to the appropriate postal officials for compliance and that action has been taken to ensure that the affected employee(s) receives payment and/or other benefits. In the event that an employee is not paid within sixty (60) days after submission of all the necessary paperwork, such employee, upon request, will be granted authorization from management to receive a pay advance equal to seventy (70) percent of the payment owed the employee. In the event of a dispute between the parties concerning the correct amount to be paid, the advance required by this section will be the amount that is not in dispute.

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.

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.

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 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 he 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,

E The parties have agreed to jointly develop and implement a Contract Interpretation Manual (CIM) within six (6) months after the effective date of the 1998 National Agreement. The CIM will set forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of this Agreement. It is not intended to add to, modify, or replace, in any respect, the language in the current Agreement; nor is it intended to modify in any way the rights, responsibilities, or benefits of the parties under the Agreement. However, production of the CIM demonstrates the mutual intent of the parties at the National level to encourage their representatives at all levels to reach resolution regarding issues about which the parties are in agreement and to encourage consistency in the application of the terms of the Agreement. For these reasons, the positions of the parties as set forth in the CIM shall be binding on the representatives of both parties in the resolution of disputes at the Local and Regional levels, and in the processing of grievances through Steps 1, 2 and 3 of the grievance-arbitration procedure. In addition, the positions of the parties as set forth in the CIM are binding on the arbitrator, in accordance with the provisions of Article 15AA6, in any Regional level arbitration case in which the CIM is introduced. The CIM will be updated periodically to reflect any modifications to the parties' positions which may result from National level arbitration awards, Step 4 decisions, or other sources. The parties' representatives are encouraged to utilize the most recent version of the CIM at all times.

[See Memos, pages 140, 141, Letters, pages 141, 143, 156]

ARTICLE 16 DISCIPLINE PROCEDURE

Article 16.5

In the case of discipline involving suspensions of fourteen (14) days , 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 fourteen (14) 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. However, if the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered.

In the case of suspensions of more than fourteen (14) days, or 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. However, if the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered.

USPS/APWU 2002-2004 NATIONAL AGREEMENT

Article 15.2

* * *

(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...

* * *

(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...

* * *

Article 15.4

* * *

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.

* * * * * *

BACKGROUND

The decade-old facts giving rise to this National-level grievance are fairly straightforward and not much in material dispute. On December 30, 1997, Lewis J. Rothman, III was notified by Management of a proposed 14-day disciplinary suspension, for alleged attendance irregularity and excessive absenteeism from his job in the Des Moines, Iowa BMC. The timely filed Step 1 grievance challenge by NPMHU, claiming lack of just cause for that discipline, (Grievance No. 22-333-00698) was denied by Management on January 16, 1998 and appealed to Step 2 by the Union

on January 23, 1998. When the Employer thereafter failed to schedule any Step 2 meeting within the time limits set forth in Article 15.2 Step 2 (c), the NPMHU, on February 4, 1998, simultaneously invoked the "deemed to move" provision of Article 15.3.C and also filed a formal appeal of Grievance No. 22-333-00698 to Step 3.[1] After the Union declined a request by Management to "remand" the case back to a Step 2 meeting, Management responded with the following document, dated February 19, 1998, labeled "Step 2 Denial":

> The subject Step 2 grievance was not discussed with your representative, Tony Irvin in accordance with Article 15, Section 2 of the National Agreement. The Union appealed with out the benefit of a meeting; respectfully request the grievance be remanded to step 2.
>
> The union contends the grievant was issued a 14 day suspension and allege violation of article 16 of the National Agreement and ELM 5 15. The union requests the discipline be expunged from all files and records.
>
> The facts in this case are the grievant received a 14 day suspension for failing to meet the attendance requirements, after receiving a 5 day suspension and a letter of warning for failing to meet the attendance requirements of his position. There was a settlement on the five day suspension. One date cited on the notice of suspension, was outside of the review period, however there were a sufficient number of absences to establish just cause. Information provided by the union in their written appeal did not establish a violation of article 16 or ELM 15.
>
> Inasmuch as the union has failed to establish a contractual violation, a contractual basis for the requested remedy, or that just cause did not exist, this grievance is denied.

The Union thereafter perfected its appeal of Grievance No. 22-333-00698, which eventually resulted in a regional arbitration award, on October 26, 1998, by Arbitrator Roger L. Goldman, *infra.* In the meantime, after Management had directed Mr. Rathman to begin serving the 14-day suspension on February 21, 1998, the NPMHU also filed Grievance No. 98072898; invoking Article 15.3.C and claiming violations of Articles 3,5,and 16.4 of the National Agreement. The string of successive Management denials of that grievance leading to this arbitration read as follows:

---

[1] As noted in my discussion of the Issue, *infra*, no opinion is expressed or implied in this decision on the countervailing positions of the Parties regarding whether filing a formal Step 3 appeal is a contractual necessity when a Step 2 grievance is"deemed to move" to the next Step of the grievance-arbitration procedure under the provisions of Article 15.3.C.

Step 2 Denial of March 30, 1998

The subject Step 2 grievance was discussed . . . on March 16, 1998, in accordance with Article 15, Section 2 of the National Agreement.

The union contends the grievant was placed on suspension and allege a violation of articles 3, 5, and 16, of the National Agreement. The union did not explain the relevance of articles 3 and or how they were violated. The union requests the grievant be made whole and the subject discipline be expunged from all files and records.

As claimed by the union, this grievance was appealed to step 3 without the benefit of a step 2 meeting. Management attempted to meet with the union at step 2 after their appeal, but the union refused.

In accordance with Article 16.4 of the National Agreement, the grievant did not begin his suspension until a step 2 decision had been issued prior.

In as much as the union has failed to establish a contractual violation, a contractual basis for the requested remedy or that just cause did not exist, this grievance is denied.

Step 3 Denial of June 2, 1998

Pursuant to the terms and obligations as set forth in Article 15 of the 1994 National Agreement, management and union designees met at Step 3 of the grievance procedure. The result of that meeting on the above referenced case is as follows:

The issue is whether management violated Articles 3, 5 and 16 of the National Agreement when the grievant was allegedly placed on suspension prior to management rendering its step two decision.

The record establishes that the grievant initiated a grievance concerning a notice of suspension received on January 6, 1998. The parties did not discuss that grievance at step two within the prescribed time limits. On February 4,1998 the union appealed that grievance to step three without holding a step two meeting. On February 19 management provided the local union with its written step two decision for the grievance at issue. On February 21 the grievant began serving the suspension period.

The local union's claim that management was prohibited from (ever) requiring the grievant to serve his suspension is totally baseless. The union has failed to present any evidence to support their allegation that management is barred from ever requiring an employee to serve a suspension when the grievance (protesting the suspension) is appealed to step three due to the failure to meet at step two in a timely manner. Indeed, the union's assertion would change the clear intent of the requirement to "delay" a suspension outlined In Article 16.4 of the Agreement. In any event, the step two decision n this case was "rendered" and provided to the union prior to the grievant beginning his suspension.

The union's attempt to disavow the step two decision is groundless as is their entire "position" in this matter. The union has failed to demonstrate a violation or the relevance of the cited Articles of the Agreement. Absent the union meeting their

burden in this contractual matter and absent the union providing a foundation for their requested remedy, this grievance is denied.

Step 4 Denial of November 9, 1998

On November 2. 1998, 1 met with your representative Dallas Jones to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement when management issued a Step 2 Decision without meeting with the Union at the Step 2 level of the grievance process.

The Union contends that this is an issue of due process in that management had to meet with the union before it could issue a Step 2 decision. The Union contends that if management failed to meet at Step 2, then it could not rightfully issue a Step 2 decision. The union further contends that if there is no Stop 2 decision, then management would be in violation of Article 16.4 of the National Agreement by forcing the Grievant to serve the fourteen (14) day suspension.

It is the position of the Postal Service that no interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. This is a local dispute suitable for regional determination by application of Article 16, Section 2 of the National Agreement to the particular circumstances. However, inasmuch as the Union did not agree, the following represents the decision of the Postal Service.

Article 15.2 Step 2: (c) of the National Postal Mail Handlers Union (NPMHU) National Agreement states in part; ' 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...

Article 15.3. C. off the National Agreement further states, in part; "Failure by the Employer to scheduled 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.

Management contends that the terms and conditions of Article 15 compel management to meet with the union as soon as possible after receipt of a timely Step 2 Appeal; likewise, Article 15 provides for the union to proceed to the next stop in the grievance process if management fails to meet within the required time period.

The evidence of record indicates that management did not to meet within the seven (7) day period after a grievance was initiated by the union. Although the seven (7) day time period had elapsed, the record indicates that management made good faith attempts to meet with the union to discuss the grievance. However, the terms of Article 15 state that the both parties have agree to any extension to meet beyond the seven (7) day period. The union's Step 2 Representative in this case did not agree to an extension; therefore, the union exercised its contractual rights and appealed the grievance to the Stop 3 level of the grievance process.

It is management's position that the grievance procedures outlined in Article 15 include provisions for the parties to take if the steps of the grievance process are not

> properly adhered to. Management argues that the union did in fact exercise its contractual rights by forwarding the grievance to Step 3 which was the appropriate resolve if the parties did not meet at Step 2.
>
> Furthermore, Article 15.2 Step 2: (h) of the National Agreement states in part: "Where agreement is not reached, the Employees decision shall be fumished 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..."
>
> In accordance with Article 16 of the National Agreement regarding suspensions of 14 Days or less, Section 16.4 states in part: "...the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered." This provision outlined in the discipline procedure requires management to render a decision prior to a grievant serving the suspension. This provision does not dictate that managements decision hinges on whether or not a Step 2 meeting took place.
>
> It is the Service's position that this is not a dispute for national interpretation. The terms and conditions of Article 15 dearly identify and plainly articulate the steps to process a grievance. There are no provisions at any level of the grievance process that prohibits management from issuing a Step 2 decision letter.
>
> After careful review of the facts surrounding this grievance, it is managements position that this dispute does not rise to application for interpretive determination. In view of the above considerations, this grievance is denied.

When that matter remained unresolved, NPMHU made a timely appeal for final and binding determination of the confronting procedural issue in Case No. 194M-11-C-98072898 to National-level arbitration, under Article 15.4.D of the Mail Handlers National Agreement between NPMHU and USPS. While the appeals of that case were progressing to this National Arbitration, however, the underlying grievance protesting the merits of the 14 day suspension (No. 22-333-00698) was decided long ago, in expedited arbitration by Arbitrator Roger L. Goldman, whose Award of October 26, 1998 reads, in pertinent part, as follows:

> FACTS: Grievant, Lewis J. Rothman III, was issued a Notice of Fourteen Day Suspension for being irregular in attendance. Grievant had previously received a Letter of Warning, dated December 31, 1996, and a five day suspension, dated May 27, 1997, both for failure To Maintain Regular Attendance.
>
> UNION'S POSITION: Union contends that the Suspension was punitive, rather than corrective action and therefore lacked just cause; that it was procedurally defective; and that it should be rescinded and Grievant made whole.
>
> MANAGEMENT'S POSITION: Management contends that there was just cause to issue the.,Notice of Suspension to Grievant; that the procedure was not defective; and therefore the grievance should be denied.
>
> * * *

A. Jurisdiction of the Arbitrator

There is a serious question whether the Arbitrator has jurisdiction of the case since Union referred the case to Step 4 of the grievance procedure on August 12, 1998, Management Exhibit 5. Pursuant to Article 15, Sec. 15.4(b)51 either party may remove a case from regional arbitration and refer the case to Step 4 of the grievance procedure. In that event, the referring party pays the entire cost of the regional arbitrator, unless another scheduled case is heard on that date. No other case was heard. Although the August 12, 1998 referral by Union to Step 4 did state the case was withdrawn from regional arbitration, neither party renewed the request that the case be withdrawn from regional arbitration on October 20, 1998, the date of the arbitration. Management sought a decision on the merits while Union sought a decision on both the procedural issue and the merits.

No provision in the Agreement was cited to Arbitrator that directly addressed the question: Can an Arbitrator proceed to decide an issue (in this case, the merits) while another issue is pending at Step 4 (in this case, the procedural issue)?

Since both parties were willing to have the arbitrator proceed on the merits and since the Arbitrator did hear evidence on the merits, it would seem inconsistent with the purposes of arbitration to be expeditious and inexpensive for the Arbitrator to dismiss the entire grievance on jurisdictional grounds. Accordingly, the Arbitrator will render a decision on the merits but will stay implementation of the decision until completion of the Step 4 proceeding and its possible appeal to National Arbitration.

B. Issues to be Decided

The parties differ on the jurisdiction of the Arbitrator to render a decision-on the procedural matter which is now pending at Step 4 of the grievance procedure.

The procedural matter arises from the failure of the parties to meet within 7 days of the receipt of the Step 2 appeal. Union claims that such a failure to meet prohibits a Step 2 decision from being validly rendered, and without a Step 2 decision, there can be no discipline. (Management contends that there was a valid Step 2 decision rendered, and that a Step 2 meeting is not necessary to make the Step 2 decision valid).

The Arbitrator agrees with Management that he cannot decide this procedural issue which is now pending at Step 4 as an interpretative issue under the National Agreement. Article 15, Section 15.4(b)5, does not contemplate a regional arbitrator resolving the very same issue, in the same case, that is pending at Step 4.

Therefore, the Arbitrator will not address the procedural issue but will only decide the merits.

* * *

AWARD: Grievance denied but the 14 day suspension is not to take effect until after the Step IV decision and appeal to Arbitration, if any, in the case involving this same Grievant, Regional # 194M-II-C-98072898, dated August 12, 1998 (sic). If the ruling in that case sustains the Grievance concerning the lack of a Step 2 meeting, the suspension upheld in this case is not to take effect and shall be expunged from all records. If the ruling in that case denies the Grievance, the 14 day suspension in the case before this Arbitrator shall take effect and may be cited in later discipline.[2]

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[2] The record shows that Mr. Rathman left the employment of the Postal Service sometime during the 8-year hiatus between the November 1998 Step 4 denial of Grievance #194M-11-C-98072898 and the June 2006 hearing of that grievance in this National-level arbitration.

POSITIONS OF THE PARTIES

The following statements of position have been extrapolated and edited from the respective post hearing briefs:

NPMHU

Once a grievance properly has been "deemed . . . move[d]" to Step 3 of the grievance arbitration process pursuant to Article 15.3C, Step 2 of that process has, by definition, ended. By agreement of the parties, "jurisdiction" (as it were) has passed from Step 2 of the grievance-arbitration process to Step 3, and from that point forward the grievance is to be handled and ultimately resolved exclusively in accordance with the various provisions of Article 15 governing those steps of the grievance-arbitration process beyond Step 2. This being so, there is no basis whatsoever in the National Agreement or in common sense for the Postal Service's assertion of a contractual right belatedly to issue a Step 2 decision in these circumstances for any purpose—whether for the purpose of resurrecting a timeliness objection to the Union's processing of the grievance that has been "waived" under Article 15.3B of the National Agreement, see infra pp. 21-24, or for the purpose of requiring the grievant to serve a fourteen-day suspension that has been tolled pending a Step 2 decision under Article 16.5 of the National Agreement. Recognition of such a contractual right belatedly to issue a Step 2 decision in these circumstances would in effect excuse the Postal Service's "[f]ailure . . . to schedule a [timely Step 2] meeting," and there is no warrant in Article 15.3C or in any other provision of the National Agreement for excusing such a failure on the Postal Service's part.

The premise of that Postal Service response is that where a collective bargaining agreement does not set out the parties' agreement on a particular issue in express language, it is never appropriate for an arbitrator to imply an agreement between the parties on that issue. But that premise is a false one, as every experienced labor arbitrator knows. Given the realities of collective bargaining, labor arbitrators regularly are called upon—and properly so—to resolve interpretative disputes over the consequences that flow from an agreed-upon contractual provision that does not state those consequences in express language. And, a labor arbitrator who answers that call by reasonably concluding that the wording of contractual provision "X" necessarily implies consequence "Y" does not thereby commit the cardinal sin of "re-writing" the parties' agreement for them.

For the foregoing reasons, the NPMHU respectfully requests that the Arbitrator to find that when a grievance properly is "deemed . . . move[d]" to Step 3 of the grievance-arbitration process under Article 15.3C of the National Agreement, based on a "[f]ailure by the [Postal Service] to schedule a [timely Step 2] meeting," the Postal Service may not thereafter issue a Step 2 decision with respect to that grievance for any purpose, including specifically (i) for the purpose of resurrecting a timeliness objection to the Union's processing of the grievance that has been "waived" under Article15.3B of the National Agreement; and(ii) for the purpose of requiring the grievant to serve a fourteen-day suspension that has been tolled pending a Step 2 decision under Article 16.5 of the National Agreement.

U.S.P.S.

The NPMHU has failed to meet its burden of demonstrating that the Postal Service violated the contract by issuing a Step 2 decision after the NPMHU had appealed the grievance to Step 3. The clear and unambiguous language of the parties' agreement does not prohibit the Postal Service from issuing a Step 2 decision if there has been no Step 2 meeting. Rather, the agreement specifies the single consequence resulting from a failure to schedule a step 2 meeting or issue a timely step 2 decision–the only consequence of not scheduling or having a meeting is that the Union may, after the relevant time periods have expired, move

the grievance to the next step of the process. *See* Postal Service and APWU, No. Q94C-4Q-C 98117564 (National Award, April 29, 2003:Snow, Arb.)

There was no prejudice to the grievant or Union as a result of the issuance of the Step 2 decision after the NPMHU's appeal to Step 3. Indeed, the Union here had a double opportunity to evaluate and respond to the Postal Service's position, as it filed two related grievances. Therefore, the NPMHU has no plausible argument that any prejudice whatsoever was caused by the "belated" Step 2 decision. And notably, it is due to the NPMHU's own refusal to cooperate in remanding the grievance to Step 2 that this "interpretive" issue even arose.

The cases also do not support the proposition that if a Step 2 decision is issued after an appeal has been taken under Article 15.3C, the union is entitled to an automatic victory, as it is effectively seeking here. The NPMHU's invitation to add new consequences on top of negotiated contract language must be declined, for what it seeks is improper and contrary to both the CBA, which prohibits the arbitrator from legislating for the parties, and to customary rules of contract interpretation, which prohibit decision-makers from — under the guise of contract interpretation — rewriting or modifying the parties' negotiated agreement. In addition to the fact that adding these negative consequences would be tantamount to rewriting the parties' contract, it would also encourage games of "gotcha". In short, there would be less incentive to cooperate, which both the NPMHU and the APWU agree is an important part of the grievance-arbitration process. The proposal of the NPMHU to find that additional consequences outside the contract flow from the absence of a Step 2 decision prior to an appeal to Step 3 would therefore not only conflict with the contract itself, but would also be a disservice to the truth and to the mutual cooperation that underlies successful collective bargaining relationships.

In addition, to accept the NPMHU's proposal would be tantamount to granting the Union a default judgment in all discipline cases involving 14-day suspensions–a result the Union has attempted but failed to achieve in bargaining. By seeking in arbitration what it failed to achieve in bargaining, the NPMHU hopes to chip ts way closer to its unachieved bargaining demands from 1993 and 1998. This is improper. *See* Elkouri at 454 ("[A] party may not obtain 'through arbitration what it could not acquire through negotiation'" (quoting Postal Service v. APWU, 204 F.3d 523, 530 (4th Cir. 2000)). Accordingly, the NPMHU's improper, unjustified and contra-contractual request should be denied.

The NPMHU's due process claims are disingenuous and without merit, as the Grievant suffered no harm. Further, no due process violation arises in cases where no Step 2 meeting is held or timely Step 2 decision is issued. The parties anticipated that Step 2 may be bypassed in drafting their agreement and, therefore, the parties provided for a full opportunity to explain their versions of the facts and arguments — including new arguments not raised previously — at Step 3. Although Article 15.3C begins with the phrase, "[f]ailure by the Employer to schedule a meeting," many instances exist where, due to one intervening event or another, it is virtually impossible for the Postal Service to schedule a Step 2 meeting within seven days or for the parties to meet at Step 2 within seven days as required by Article 15.2.Step 2(c). And common experience teaches that from time to time events happen that hinder the scheduling of a Step 2 meeting or someone's attendance at a Step 2 meeting, and one party is unwilling to agree to an extension agreement. To namejust a few examples, the parties' scheduled days off, sick, personal, or annual leave usage, natural or human-caused disasters, traffic problems, business travel, grievance processing, and/or arbitration hearings may make scheduling, or attaining an extension, within seven days difficult, if not impossible. Although the NPMHU is under an obligation to act in good faith, sometimes the Union plays games, as it admittedly did here in refusing to remand the grievance to Step 2.

The NPMHU urges that the opportunity to issue a Step 2 decision is extinguished once the Union has taken an appeal to Step 3 in accordance with Article 15.3C. The NPMHU reasons that once such an appeal has been taken, "jurisdiction" over the grievance resides solely at

Step 3 and no longer resides at Step 2. This artful and hyper-technical argument may make sense in the context of a district court opinion that has been appealed under clearly written jurisdictional statutes and judicial precedent. But it is specious in this context where no provision of the CBA discusses the Union's concept of "jurisdiction," or whether a Step 2 decision can be rendered after an appeal to Step 3 has been taken. Since the parties are expressly permitted to present new facts and arguments at Step 3, it follows that the Postal Service may issue a Step 2 decision after an appeal to Step 3 as a way to provide additional facts and arguments. The NPMHU's "jurisdictional" view, however, would effectively create a forfeiture where no "timely" Step 2 decision is issued. This nonsensical result could not possibly have been what the parties intended and, indeed, the Postal Service rejected such views during the 1993 and 1998 negotiations. Moreover, because "the law abhors a forfeiture," Elkouri at 482, the Postal Service's interpretation, which avoids one, is preferable. *See id.* ("If any agreement is susceptible of two constructions, one of which would work a forfeiture and one of which would not, the arbitrator will be inclined to adopt the interpretation that will prevent the forfeiture").

APWU

The APWU supports the NALC's position that the contractual language is clear in providing that the only instance in which the Postal Service may issue a Step 2 decision is where the parties have mutually agreed to an extension of the contractual time limits set forth in Article 15.2 of the collective bargaining agreements. It makes little sense to ignore the parties' mutual agreement that the only instance in which the Postal Service may hold a Step 2 meeting or issue a Step 2 decision beyond the contractual time requirements is where the parties have mutually agreed to an extension of time. Absent such agreement to extend the time limits, if the Postal Service fails to timely respond, it has forfeited its opportunity to issue a decision on the grievance at Step 2.

The Postal Service claims that the contractual language permits it to issue an untimely Step 2 decision, even where there has been no Step 2 meeting, because the contract is silent regarding the result of the Postal Service's failure to schedule a Step 2 meeting. This argument stretches the imagination and ignores the plain language of Article 15. The contract is not at all silent about the required steps of the grievance procedure, which requires the Postal Service to meet with the Union representative within seven days of receiving the Step 2 appeal. The Step 2 decision does not exist independent of the Step 2 meeting, but must be issued within ten days of the Step 2 meeting. If the Postal Service fails to meet either time limit, then absent an agreement to extend the time limits, Step 2 is over and the grievance is "deemed to move ... to the next Step of the grievance-arbitration procedure."

According to the Postal Service, however, this particular consequence apparently does not preclude it from continuing to treat the grievance as if it remained at Step 2 and the applicable time limits no longer apply. This reading of the contract defies logic and renders the relevant contractual provisions meaningless. If the grievance has moved to the next step of the grievance procedure, then the Postal Service may not continue to treat the grievance as if it remained at Step 2 by issuing an untimely Step 2 decision.

There is no silence or ambiguity regarding the impact of the Postal Service's failure to comply with the contractual time lines. Absent agreement to extend those time lines, the Postal Service may not schedule an untimely Step 2 meeting or issue an untimely Step 2 decision. IV. Accordingly, for the reasons set forth above and at the hearing in this matter, the Arbitrator should sustain NPMHU's grievance and find that, in the absence of a mutually agreed upon extension of time, the Postal Service may not issue a Step 2 decision beyond the time limits prescribed in the parties' collective bargaining agreement.

OPINION OF THE NATIONAL ARBITRATOR

ISSUE

The Parties did not present a joint submission of the issue(s) to be determined in this National-level arbitration case of Case No. 194M-11-C 98072898. In Steps 2, 3 and 4 handling, *supra*, both Parties had framed the issue presented by Grievance No. 194M-11-C 98072898 in straight forward factual terms whether a "Step 2 denial" dated February 19, 1998, of a grievance "deemed moved" to Step 3 on February 4, 1998 because no Step 2 meeting had been timely scheduled by the Employer, was effective to initiate a 14-day suspension on February 21, 1998, under the last sentence of ¶2 of Article 16.5 (formerly Article 16.4) of the USPS/NPMHU National Agreement. However, during the hearing on June 13, 2006, and later in their respective posthearing briefs, Counsel advanced various revisions of the issue formulations customized by artful pleading to better fit preferred theories of the case. At the June 13, 2006 arbitration hearing, the NPMHU proposed the following alternative formulation of the issue: *If the Postal Service fails to schedule a Step 2 meeting on a grievance within the time provided by Article 15.2 of the NPMHU/USPS Agreement (including mutually agreed to extension periods) --thus triggering Article 15.3C, which states that such a failure "shall be deemed to move the grievance to the next Step [i.e., Step 3] of the grievance-arbitration procedure" -- can the Postal Service thereafter issue a Step 2 decision with respect to that grievance?* In its March 21, 2008, post-hearing brief, NPMHU again reformulated its statement of the issue, as follows: *When a grievance properly is "deemed . . .move[d]" to Step 3 of the grievance-arbitration process under Article 15.3C of the National Agreement, based on a "[f]ailure by the [Postal Service] to schedule a [timely Step 2] meeting," may the Postal Service thereafter issue a Step 2 decision with respect to that grievance?*

For its part, the Postal Service initially re-framed its suggested issue as follows: *Does the Collective Bargaining Agreement prohibit the Postal Service from issuing a Step 2 decision if there has been no Step 2 meeting?* In its post-hearing brief, dated March 21, 2008, the Postal Service again reformulated its earlier suggested statements of the issue, as follows: *Does the Collective Bargaining Agreement ("CBA") between the NPMHU and Postal Service prohibit the Postal Service*

from issuing a Step 2 decision if there has been no Step 2 meeting and the NPMHU has appealed the grievance to Step 3 in accordance with Article 15.3C of the CBA?

As the Intervenor, APWU suggested that the following articulation best describes its perspective on the issue presented for determination in this case: *In the absence of a mutually agreed upon extension of time, may the Postal Service issue a Step 2 decision beyond the time limits prescribed in Article 15, Section 2, Step 2.f of the National Agreement between the APWU and the Postal Service?*

After carefully considering the facts and circumstances of this record and the competing formulations, I conclude that none of the foregoing formulations accurately sets forth the only issue fairly presented by the factual record of this case. In that regard, it begs the question to ask whether the Agreement "prohibits" issuing or whether the Postal Service "can" or "may" issue a Step 2 decision after the grievance has already moved on to Step 3, by dint of Article 15.3.C. Rather, the real (and only) question presented by the facts of this particular is case is whether such a belatedly issued Step 2 decision has any contractual validity, force or effect for purposes of the last sentence of ¶2 of Article 16.5. Moreover, the various revised issue formulations proposed by Counsel all openly invite *dicta* and/or arbitral determination of related disputed issues which might or could arise under a different set of facts but which are not adequately presented for determination in this record.

Finally, it must also be noted that the record in the present case squarely presents for arbitral determination only the limited issue of contractual interplay between Articles 15.2 Step 2(c), 15.3.C and the last sentence of 16.5 (16.4 in the previous contract). This case does not properly present any issue concerning the last sentence of Article 15.3.B-- a matter raised *de novo* by the NPMHU at the arbitration hearing. In the present case, the Postal Service asserted no timeliness objections below and the NPMHU never raised any Article 15.3.B waiver argument in any of the moving papers. Black letter law in labor arbitration holds that when written grievances and grievance procedure discussions clearly limit the issues in dispute, arbitrators should foreclose introduction of new claims at the time of the hearing (other than fundamental jurisdictional challenges). *See*, International Paper, 105 LA 970, 974 (Duda, 1996); Mason & Dixon Tank Lines, 94 LA 1225, 1228 (Byars, 1990);

City of Cadillac, 88 LA 924, 925 (Huston, 1987); NLRB Union, 76 LA 450, 456 (Gentile, 1981); Ralston Purina Co., 71 LA 519, 523-24 (Andrews, 1978). Were the rule otherwise, the most basic purpose of the Parties' grievance resolution mechanism--prompt discussion and consideration of issues at informal and earlier stages of the grievance procedure with the goal of resolution short of arbitration--would be frustrated.

Accordingly, I find that the only interpretive issue fairly presented by Case No. 194M-11-C-98072898 for determination in this National-level arbitration case is objectively framed as follows:

> Does a Step 2 decision issued by the Postal Service after the grievance has been progressed **properly** to Step 3 in accordance with the "deemed to move" provisions of Article 15.3.C, **because of** failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), have any validity, force or effect under the last sentence of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement?[3]

DECISION

The Postal Service quite correctly points out that the NPMHU bears the burden of proving its grievance claim in this case by a persuasive preponderance of record evidence. *See* Postal Service and Nat'l Rural Ltr. Carrier's Assoc., Case No. E95R-4E-C 99099528, at 19 (Nat'l Arb., Jan. 12, 2003: Eischen, Arb.) ("The charging party in a grievance over interpretation and application of a contract bears the burden of proving, by a preponderance of the record evidence, that the responding party violated the agreement in some fashion"; *see also* Postal Service andNat'l Rural Ltr. Carrier's Assoc., No. Q95R-4Q-C 02101253 (National Arb., May 15, 2006: Eischen, Arb.): "[I]t is well-established that the charging party in a nondisciplinary grievance bears the burden of proof, by a

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[3] My use of the emphasized conjunctive phrase *"**because of failure by the Employer to schedule a Step 2 meeting**"* tracks the literal language of Article 15.3.C and posits the undisputed fact that in this particular case no intervening event and no delay, default or dereliction by the employee or the Union caused or contributed in any way to the Employer's failure to schedule a Step 2 meeting within the time required by the Agreement. Similarly, my use of the emphasized adverb in "*progressed **properly** to Step 3 in accordance with the 'deemed to move' provisions of Article 15.3.C*" serves to skirt the significant dispute between the Parties (not fairly presented by the facts of this particular case) of how a grievance progresses contractually from Step 2 to Step 3 under the "deemed to move" provision of Article 15.3C (*"automatically"*, as the NPMHU would have it, or only through the filing of *"a formal appeal"*, as the Postal Service would have it). Thus, determination of the of the issue set forth in the foregoing formulation resolves the specific controversy presented in this case but preserves for possible arbitral resolution at a later date, hopefully in an appropriate case with an adequately informed record, the respective positions of the Parties on these various other potential but currently inchoate issues.

preponderance of the record evidence, that the responding party violated the parties' agreement as alleged in the grievance(s)" (citing cases).

The arbitrator's primary goal must be to effectuate the intent of the parties, which ordinarily is best ascertained from the plain words used in their collective bargaining agreement to express their bargain. Even when the parties to an agreement disagree on what was intended by disputed contract language, an arbitrator who finds the language to be unambiguous will enforce its plain meaning. *See* Safeway Stores, 85 LA 472, 476 (1985) (Thorp); Metropolitan Warehouse, 76 LA 14, 17-18 (1981) (Darrow). Arbitrators and courts alike presume that understandable language means what it says, despite the contentions of one of the parties that something other than the apparent meaning was intended. Independent School Dist. No. 47, 86 LA 97, 103 (1985) (Gallagher). Thus, it is a maxim of contract construction that an arbitrator cannot properly eviscerate the contract by ignoring clear-cut contractual language nor usurp the role of the labor organization and employer by legislating new language under the guise of interpretation. Clean Coverall Supply Company, 47 LA 272, 277 (Fred Witney, 1966). *See also,* Continental Oil Company, 69 LA 399, 404 (A. J. Wann, 1977) and Andrew Williams Meat Company, 8 LA 518, 524 (A. J. Chaney, 1947).

The following language of Article 15.3.C first appeared in the 1978 National Agreement and has appeared *in haec verba* in every National Agreement since that time:

> 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.

In a National Arbitration award issued shortly after that contractual provision (in its current form) appeared in 1978, Arbitrator Richard Mittenthal construed the language of Article 15.3C, as follows (USPS and NALC Case N8-NAT-0006, p.7):

> [T]he parties wrote into the present grievance procedure that a grievance will automatically move to the next step where there is a "failure by the Employer to schedule a meeting . . . in any of the Steps . . . within the time herein provided. . ." **The Postal Service has an obligation to schedule a Step 3 meeting once a proper appeal has been taken from a Step 2 decision. But that obligation pertains strictly to time constraints.**(emphasis added).

The use of the disjunctive "or" in the grammatical construction of Article 15.3.C makes it clear that a procedural failure by the Employer to schedule a [timely Step 2] meeting carries the same consequence as a failure of the Employer to render a [timely Step 2] decision-- *i.e.*, a timeliness failure by the Postal Service of *either* specified kind "shall be deemed to move the grievance to [Step 3] of the grievance-arbitration procedure."[4] Further, under that express wording, it is also clear that the catalyst for an Article 15.3.C "deemed to move" progression of a grievance from the current step to the next step of the grievance-arbitration procedure is a "[f]ailure by the Employer" to fulfill its contractual obligation to initiate one or the other of those two specified procedural actions in a timely manner at the current step.[5]

The bottom line question presented by this grievance and this factual record is whether the Parties mutually intended that a Step 2 decision "rendered" belatedly by the Employer, some two weeks after the grievance was "deemed to move" properly from Step 2 to Step 3 under Article 15.3.C, because the Employer had failed to timely schedule the Step 2 meeting, has any validity, force or effect for the purpose of requiring the Grievant to begin serving a fourteen-day disciplinary suspension that had been tolled, pending rendition of the Step 2 decision, by the following express language in the last sentence of ¶2 Article 16.5 of the National Agreement: " [I]f the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered". The undisputed facts of record and the plain words of the Agreement language persuade me that the Union carried its initial burden of making out a *prima facie* showing that the contracting Parties mutually intended no such thing.

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[4] At the risk of redundancy, I reiterate previous disclaimers that no opinion is expressed or implied in this decision on the countervailing positions of the Parties regarding whether filing a formal Step 3 appeal is a contractual necessity when a Step 2 grievance is"deemed to move" to the next Step of the grievance-arbitration procedure under the provisions of Article 15.3.C.

[5] *See also* page 5, footnote 4 of the NPMHU brief, *viz.*, "the NPMHU readily acknowledges that 'if there has been no Step 2 meeting' on a grievance owing to a failure of some kind on the NPMHU's part—for example, the failure by a Union representative to attend a Step 2 meeting timely scheduled by the Postal Service—the Service would ***not*** on account of that NPMHU failure be precluded from issuing a Step 2 decision on the grievance". (Emphasis in original).

Those undisputed facts of record in this case show that the Union or employee timely initiated the grievance and timely appealed the grievance to Step 2, that the Employer failed to timely schedule the Step 2 meeting and that the Employer "rendered" the Step 2 decision long after the grievance had been properly progressed to Step 3. The Postal Service responds that an untimely Step 2 decision issued in the absence of a Step 2 meeting and after the grievance is at Step 3 has the same force and effect under Article 16.5 as a timely issued Step 2 decision rendered after a timely Step 2 meeting because neither Article 15.2 nor 15.3 expressly state that a Step 2 decision belatedly rendered after the grievance has been progressed to Step 3 has no force and effect under the last sentence of ¶2 of Article 16.5 and because the last sentence of ¶2 of Article 16.5 does not expressly state that to have force and effect for the purpose of that sentence the Step 2 decision referenced therein must have been timely rendered before the grievance was progressed to Step 3. The Employer's "lack of express language" theory is misplaced and unpersuasive because it stands logic, reason and the so-called "plain-meaning rule" on its head.

The lack of such express disclaimer(s) is not fatal to the Union's grievance because the necessary implication of the cited Agreement provisions is that a Step 2 decision must be timely rendered while the grievance is still at Step 2 to have contractual validity, force and effect for the purpose of the last sentence of ¶2 of Article 16.5. Courts and arbitrators routinely recognize that it is proper and fitting to give effect to the manifest intent of contracting parties plainly evidenced in the "necessary implications" of their express contract language.[6] Such judicious inference of mutual intent founded in the logical, reasonable, natural and necessary implications of express contract language is readily distinguishable from improper arbitral rewriting of the Agreement.[7]

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[6] Indeed, discernment of mutual intent through necessary implication is particularly appropriate in the interpretation and application of a collective bargaining agreement, which is"more than a contract; it is a generalized code to govern the myriad of cases which the draftsmen cannot wholly anticipate. . .The collective agreement covers the whole employment relationship." United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578-82, 80 S.Ct. 1347, 46 LRRM 2416 1960, citing, at 363 U.S. 579 n.6, Cox, "Reflections Upon Labor Arbitration", 72 Harvard. L. Rev. 1482, 1498-99 (1959).

[7] *See* USPS and NALC/APWU (Intervenor) Case H4N-3U-C-58637/H4N-3A-C-59518, National Award, (Mittenthal, Arb., August 3, 1990) and USPS and NALC Case G9ON-4G-D93040395, National Award, (Mittenthal, Arb., August 18, 1994).

Experienced practitioners and arbitrators understand that a collective bargaining agreement is not (and cannot reasonably be expected to function as), an ersatz "Napoleonic Code"; addressing in express language every consequence and contingency that flows logically from agreed-upon contractual provisions. For example, it would be odd indeed if the parties to this collective bargaining agreement had found it necessary to specify expressly in Articles 15.3.C. or 16.5 that they did not mutually intend that the Employer could circle back unilaterally to Step 2, after the grievance was properly progressed to Step 3, to issue a belated Step 2 decision it had failed to render in a timely manner when the grievance was at Step 2 for the purpose of requiring a grievant to start serving a 14-day disciplinary suspension which had been tolled pending rendition of the Step 2 decision. To the contrary, the reasonable, logical and necessary implication of the plain language of Articles 15.3.C and 16.5 is that a Step 2 decision must be rendered in a timely manner and before the grievance is progressed properly to Step 3 to have any validity and contractual force or effect under the last sentence of ¶2 of Article 16.5.

Although obviously not binding in this National Arbitration, the decision of the United States Court of Appeals for the Second Circuit in Eastman Kodak Co. v. STWB, Inc., 452 F.3d 215 (2d Cir. 2006), which was rendered shortly after the hearing in this case, lends strong support to this common sense reading of Articles 15.3C and 16.5. The Eastman Kodak decision involved an ERISA regulation adopted by the United States Department of Labor ("DOL")—dubbed the "deemed exhausted" provision/regulation by the Second Circuit—which provides in full:

> In the case of the failure of a[n] [ERISA] plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

[*See id.* at 221 (quoting 29 C.F.R. § 2560.503-1(*l*)).]

The Second Circuit agreed with the DOL that the "deemed exhausted" regulation properly was interpreted to foreclose the defendant ERISA plan from "effectively 'undeem[ing]' exhaustion by enacting, for the first time, procedures that complied with the claims regulation after [plaintiff] filed suit and after failing to offer an appropriate procedure in the many months preceding

[plaintiff's] lawsuit." *Id.* at 222 (emphasis added). As the appellate court succinctly put it, "[g]iving retroactive effect to a plan amendment in these circumstances . . . *plainly conflicts with the 'deemed exhausted' regulation.*" *Id.* (emphasis added). And, as the appellate court added: "The 'deemed exhausted' provision was plainly designed to give claimants faced with inadequate claims procedures a fast track into court—*an end not compatible with allowing a 'do-over' to plans that failed to get it right the first time.*" *Id.* (emphasis added). Applying that reasoning to the facts of this case, to allow the Postal Service a unilateral "do-over" of Step 2, after a grievance properly has been progressed to Step 3 under the "deemed to move" provision of Article 15.3C of the National Agreement, because of the Postal Service's failure to get the contractually-required Step 2 procedures right the first time, would plainly conflict with the mutual intent of the Parties, as manifested in the plain language and the logical, reasonable and necessary implications of Articles 15.2, Step 2 (c), 15.3.C and the last sentence of ¶2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement.

In my considered judgement, the Union carried its ultimate burden of persuasion in this case that a Step 2 decision issued after the grievance has been "deemed to move" properly to Step 3, by dint of Article 15.3.C, lacks contractual validity, force or effect to implement a 14-day suspension under the last sentence of ¶2 of Article 16.5 (formerly 16.4) of the National Agreement.

USPS/NPMHU NATIONAL ARBITRATION PROCEEDINGS

Case No. 194M-11-C-98072898

AWARD OF THE IMPARTIAL ARBITRATOR

1) A Step 2 decision issued by the Postal Service after the grievance has been progressed **properly** to Step 3 in accordance with the "deemed to move" provisions of Article 15.3.C, **because of** failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), has no validity, force or effect under the last sentence of ¶ 2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement.

2) Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the meaning, application or implementation of this Award.

Dana Edward Eischen

Signed at Spencer, New York on January 9, 2009

STATE OF NEW YORK }
COUNTY OF TOMPKINS } SS:

On this 9th day of January 2009, I, DANA E. EISCHEN, hereby affirm and certify, upon my oath as Arbitrator, that I am the individual described herein, that I executed the foregoing instrument as my Award in this matter and acknowledge that I executed the same.

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, NW. Suite 500
Washington, DC 20036-4304

Re: C98M-1C-C 01146875
Dykes
Lexington, KY 40511-9998
Local Union # DW41001A

Dear John:

I recently met with your representative, William Flynn, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance at Step 4 is whether management violated Article 15 of the 1998 National Agreement when it presented its case before an arbitrator after the Union unilaterally notified the arbitrator that it was canceling the hearing for that date.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that neither party has the right to unilaterally cancel an arbitration hearing once it has been scheduled pursuant to Article 15.4. If either party maintains that unforeseen circumstances prevent them from presenting their case, they may appear before the arbitrator to request a continuance and the arbitrator shall have the authority to grant or deny the request on its merits. If such a continuance is granted, the requesting party shall be responsible for all costs of the arbitrator for that date.

Accordingly, we agreed to remand this case to regional level arbitration to be placed in front of the Arbitrator from whom it was withdrawn.

For purposes of this specific case, we further agree that the only issue before the Arbitrator will be the merits of the case.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case to regional level arbitration.

Time limits at this level were extended by mutual consent.

Sincerely,

Frank X. Jacquette III
Labor Relations Specialist
Contract Administration
(NRLCA/NPMHU)

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 7-25-03

ARBITRATION AWARD

February 15, 1985

UNITED STATES POSTAL SERVICE

-and-

Case No. H1N-NA-C-7

NATIONAL ASSOCIATION OF LETTER CARRIERS

-and-

AMERICAN POSTAL WORKERS UNION
Intervenor

Subject: Payment of Union Witnesses - Travel and Waiting Time For Arbitration Hearings

Statement of the Issue: Whether the Postal Service is required by the National Agreement to pay Union witnesses for time spent traveling to and from arbitration hearings and for time spent waiting to testify at arbitration hearings?

Contract Provisions Involved: Article 5; Article 15, Section 4A(5); Article 17, Section 4; and Article 19 of the July 21, 1981 National Agreement.

Appearances: For the Postal Service, Eric J. Scharf, Attorney, Office of Labor Law; for NALC, Richard N. Gilberg, Attorney (Cohen, Weiss & Simon); for APWU, Anton Hajjar and Philip Tabbita, Attorneys (O'Donnell & Schwartz).

Statement of the Award: With respect to travel time, the grievance is denied. With respect to waiting time at the hearing, the grievance is disposed of in the manner set forth in the foregoing opinion.

BACKGROUND

This grievance concerns Union witnesses who attend an arbitration hearing during their regular working hours. Such witnesses are paid for time spent testifying and reasonable waiting time at the hearing. The question in this case is whether they are also entitled to pay for time spent traveling to and from the hearing and all time waiting at the hearing. NALC and APWU claim that payment for such time is required by Article 15, Section 4A(5) of the National Agreement. The Postal Service disagrees.

Because this is an interpretive question initiated by NALC at Step 4 of the grievance procedure, there is no specific set of facts before me. It would be helpful therefore to describe in general terms how the parties handle Union witnesses. Ordinarily a Business Agent informs Management in advance of the names of the employees he intends to call as witnesses at a pending arbitration. He may confer with Management to determine when the witnesses should be released from work. But Management usually is in the best position to predict when witnesses will be needed. For most arbitrations involve disciplinary action and hence require the Postal Service to present its case first. Management estimates the length of its presentation and plans for Union witnesses accordingly. It tells supervision to release the witness at a certain time although occasionally the witness may request to leave earlier.

If the hearing is held in the same facility where the witness is working, no travel time issue is likely to arise. But if the hearing is somewhere else, the witness must often take a car, bus or train to the hearing site. After he arrives, he may have to wait a period of time before he is called upon to testify. This travel time to and from the hearing and waiting time at the hearing are the crux of this dispute.

Article 15, Section 4A(5) of the National Agreement addresses this subject:

> "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 time spent as a witness is part of the employee's regular working hours." (Emphasis added)

NALC stresses the phrase "time spent as a witness" and contends that "witness" status begins when an employee is released from work to attend the arbitration and ends when the employee returns to regular work. It believes, accordingly, that "time spent as a witness" includes travel and all wait time. It further maintains that Article 15, Section 4A(5) should be construed in the Union's favor because of past practice. It alleges that the practice nationally has been to compensate Union witnesses for travel and all wait time. It claims that the Postal Service unilaterally discontinued this practice after the award in Case No. N8-N-0221 which held that Article 17, Section 4 did not entitle grievants to pay for time spent traveling to and from Step 2 meetings.

The Postal Service asserts that the phrase "time spent as a witness" cannot be read in isolation but rather must be related to the far more significant phrase, "when appearing at the hearing." It urges that the latter words plainly reveal the parties' intention to pay only for such time as witnesses are actually present "at the hearing", i.e., time spent testifying and reasonable waiting time. It denies that there has been a practice of paying witnesses in the manner claimed by NALC. It contends that Management policy nationally has been to pay witnesses only for time spent testifying and reasonable waiting time. It maintains that any instances of payment for travel time or all wait time would be deviations from its long-standing policy and practice.

It should be noted that although this case only involves witnesses at an arbitration hearing, the parties agree that grievants should be treated the same as witnesses for pay purposes.

DISCUSSION AND FINDINGS

Article 15, Section 4A(5) deals with employees whose "attendance as witnesses" is "required" at an arbitration hearing "during their regular working hours." It provides that such witnesses "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." The underscored language is the primary test for determining when an employee-witness is "on Employer time." He is paid only "when appearing at the hearing." These words clearly refer to physical presence at the hearing. When an employee-witness is traveling from his work location to the hearing site or vice-versa, he is certainly not "...at the hearing." Thus, travel time is not compensable.

NALC seeks to avoid this conclusion by stressing the contract phrase, "time spent as a witness." It asserts that when an employee is traveling to the hearing to testify or returning to his work place after testifying, all of that is "time spent as a witness." It urges he should therefore be considered "on Employer time" and be paid when traveling.

The difficulty with this argument is that it ignores the relationship between principle and proviso in the sentence in question. The principle is that the employee-witness be paid "when appearing at the hearing." The proviso is simply a means of insuring that the employee-witness be paid for "appearing at the hearing" only to the extent that such appearance time occurs "during regular working hours." This proviso serves to narrow the principle upon which it rests*, to limit the application of Section 4A(5). It is a secondary test for determining when an employee-witness is "on Employer time." But NALC here seeks to make the proviso a primary test, to allow the proviso to enlarge the application of Section 4A(5). That certainly is not what the parties intended. Indeed, if NALC were correct, there would have been no need for the parties to say anything other than that the employee shall be "on Employer time" for all "time spent as a witness." That would in effect treat the principle and the critical words in Section 4A(5), "when appearing at the hearing", as mere surplusage. Such a reading of Section 4A(5) conflicts with the plain meaning of its terms.

These findings are supported by my earlier award in Case No. H8N-1A-C-7812 (also referred to as Case No. N8-N-0221). There, the issue was whether grievants are entitled to pay for travel time to and from Step 2 meetings. Article 17, Section 4 called for grievants to be paid in Step 2 "for time actually spent in grievance handling, including investigations and meetings with the Employer." The ruling was that this contract language does not encompass travel time. I stated:

> "...While the grievant is on a bus or train en route to the [Step 2] meeting, he is not engaged in the 'actual...handling...' of a grievance. He is traveling, nothing more. His 'grievance handling' begins only when he arrives at the meeting..."

* That is the normal function of a proviso.

Similarly, "time spent as a witness" in the Article 15, Section 4A(5) proviso begins when the employee arrives at the arbitration hearing and ends when he leaves. These words do not encompass travel time. They apparently were meant to be synonomous with time spent "appearing at the hearing."

Moreover, the parties were well aware of how to express a pay formula in terms which would embrace travel time. They stated in Article 17, Section 4 that "...the Employer will compensate any witnesses for the time required to attend a Step 2 meeting." Clearly, the "time required to attend..." includes travel time. The arbitration witness clause speaks of paying the employee "when appearing at the hearing" or for "time spent as a witness." It says nothing whatever about "time required to attend..." the arbitration hearing. It can hardly be interpreted to mean the same thing as the Step 2 witness payment clause.

NALC resists these conclusions in the belief that Article 15, Section 4A(5) must be interpreted in light of past practice. It maintains that Management has customarily paid travel time to employees required as witnesses at arbitration hearings. It urges that this long-standing practice has become an accepted part of the postal bargaining relationship and should be a controlling consideration in the disposition of this grievance.

This argument is not persuasive. To begin with, the principle set forth in Article 15, Section 4A(5) seems reasonably clear. I have already explained why this language plainly supports the Postal Service's view. Given my reading of Section 4A(5), it would require the strongest proof of past practice to interpret this clause in a manner contrary to its apparent intent, that is, to interpret this clause as authorizing pay for travel time. NALC and APWU have not met that test. They have introduced evidence that travel time was paid to arbitration witnesses on many occasions. But the Postal Service has introduced evidence that travel time was not paid on other occasions and, more importantly, that its policy has for years always been to deny payment for travel time. The most that can be said, on the present state of the record, is that there has been a mixed practice. It is clear, however, that the management group responsible for negotiating Section 4A(5) never acquiesced in any payment of travel time to arbitration witnesses.

It would serve no useful purpose to review all of the evidence introduced by the parties. But certain points made by the Postal Service should be noted. For those points together preclude a finding that the parties had in effect, through past practice, agreed that Section 4A(5) calls for the payment of travel time to arbitration witnesses.

First, there are several grievance answers in which the Postal Service unequivocally rejected the payment of travel time for arbitration witnesses. A NALC grievance (V-74-6217) requested payment for travel time to and from arbitration for a grievant-witness. That grievance was denied in Step 3 in 1974, the Postal Service asserting that "there is no requirement for the employer to pay for the witness' travel time." Another NALC grievance (NC-N-4440) requested payment for such travel time for a grievant-witness. That grievance was denied in Step 4 in 1977, the Postal Service asserting that "there is no contractual provision which allows for the payment of travel to and from the hearing site." The matter was appealed to arbitration but later withdrawn in 1980. The withdrawal letter*, signed by the parties, stated the Postal Service's position that "only time at the arbitration hearing is compensable."

APWU seems to have conceded the practice question in its resolution of a recent grievance (H1C-5F-C-20272). That grievance was settled in Step 4 in 1984, the parties agreeing that the Postal Service "is not contractually obligated to pay employees for the time spent traveling to and from the hearing location nor has such a policy been established by the Postal Service." Although this settlement was later repudiated by APWU on the ground that it had been misled by Management, the fact remains that an informed Union representative acknowledged that the Postal Service had never established a policy of paying travel time to arbitration witnesses.

All of this was confirmed by the testimony of various Postal Service Regional Managers. They instructed their local management people not to pay travel time to arbitration witnesses. Some of them communicated that message to Union

* This withdrawal was "without precedent." However, I refer to it here not to prove NALC conceded anything but rather to show the Postal Service was still asserting its view that Section 4A(5) did not authorize pay for travel time.

representatives. The Northeast Manager of Arbitration recalled a 1975 conversation with a NALC Business Agent who objected to the Postal Service's refusal to pay travel time and suggested that travel be minimized by scheduling arbitrations at local sites. An Eastern Manager recalled a NALC Local President complaining about the Postal Service being "cheap" for not paying travel time. It may well be that Management's instructions were sometimes (or often) misunderstood or ignored. But the resultant payments for travel time were certainly not made with the knowledge or approval of those responsible for Postal Service policy on Section 4A(5).

Moreover, the bargaining history is highly suggestive. NALC proposed in the 1978 negotiations* that the arbitration witness clause be changed to read, "...Employees whose attendance is required at [arbitration] hearings during their regular hours shall be on Employer time." These words would have granted pay for travel time for witnesses. The Postal Service rejected the proposal. If the NALC proposal simply reflected a long-established national practice, as NALC claims, there would have been no reason for the Postal Service to object to this change in contract language. Its objection suggests the practice was quite different. Either the practice was to deny travel time or there was a mixed practice. The Postal Service was obviously attempting to prevent the introduction of a new contractual rule, paid travel time for witnesses.

None of this is meant to detract from the force of the Union's evidence. Rather, the purpose is to illustrate my conviction that there was a mixed practice. To prevail here, the Unions would have to show a practice so uniform and so widely accepted as to warrant finding that the higher echelons of labor-management authority had agreed to apply Section 4A(5) in the manner urged by NALC and APWU. No such showing has been made. Therefore, practice cannot alter my earlier interpretation of Section 4A(5).

* I rely on bargaining history not to prove the meaning of Section 4A(5) but rather to help determine the nature of the disputed practice.

The remaining issue is whether arbitration witnesses are entitled to pay for all waiting time at the hearing as the Unions claim or only reasonable waiting time as the Postal Service claims.

The answer can be found, once again, in the language of Section 4A(5). The arbitration witness is "...on Employer time when appearing at the hearing." These words suggest that all time spent at the hearing is compensable. There is, however, one important qualification. The benefit in Section 4A(5) applies only to those "whose attendance is required at the hearing..." Suppose, for instance, a witness appears at the very start of the hearing some hours before he is expected to testify. His presence then may or may not be "required." The reason for his being there may be critical. If his knowledge of the case is vital and the Union advocate needs him by his side, surely his presence is "required." He would be entitled to pay for all waiting time. But if he is called to corroborate what others will be testifying to and he is merely an observer, his early presence is hardly "required." He would not be entitled to pay for all waiting time. The point at which someone's attendance is "required" is a question of fact. The relevant considerations are the judgment of the parties' advocates, the nature of the case, the relationship of the witness to the case, the testimony he is expected to give, and so on. This ruling is not altered in any way by past practice.

AWARD

With respect to travel time, the grievance is denied. With respect to waiting time at the hearing, the grievance is disposed of in the manner set forth in the foregoing opinion.

Richard Mittenthal, Arbitrator

SEP 20 1976

Mr. Alfred K. May
Assistant Secretary-Treasurer
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: William Dennehy
Yonkers, NY
NC-N-2064(NC-72)V76-5616

Dear Mr. May:

On September 8, 1976, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The issue raised in this grievance questions whether the Employer is required to compensate an employee for attendance at an arbitration hearing when no relevant testimony is given.

Article XV, Section 3 of the National Agreement requires that employee witnesses shall be on Employer time when appearing at the arbitration hearing, provided the time is during the employee's regular working hours. There is no distinction made in this section as to whether testimony is given or whether such testimony is relevant. The intent of the language in this part is that it be a "no loss-no gain" situation. It is implicit in this section that a person requested to appear at an arbitration hearing as a witness, is necessary to the orderly process of the hearing and is knowledgeable about the issues in the case being arbitrated. This section does not intend that a person is on official

time for appearing at an arbitration hearing as an "observer" who cannot furnish information which has a substantive or probative value in relation to the case being heard.

Available information involving the particulars presented in this case indicates that the grievant's appearance at the arbitration hearings in question was within the spirit and intent of Article XV, Section 3 of the National Agreement. It is indicated that he appeared for the purpose of attesting to the validity and accuracy of route data forms utilized during the count and inspection of routes, which were presented into the record in this case. Such testimony can reasonably be viewed as contributing to the orderly processing of the case in arbitration.

Accordingly, by copy of this letter, the Postmaster is instructed to take the necessary measures to assure that the time in question in this case is charged to official time and that the grievant is reimbursed accordingly.

Sincerely,

(signed)

William E. Henry, Jr.
Labor Relations Department

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. John F. Hegarty
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

RE: A98M-1A-C 01219270 Brooklyn, NY
A98M-1A-C 01186587 Brooklyn, NY
A98M-1A-C 99192695 Brooklyn, NY
A98M-1A-C 01234558 Brooklyn, NY

Dear John:

I recently met with your representative, Dick Collins, to discuss the above captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is the manner in which management in Brooklyn, New York, selects employees to work overtime, once Management has determined that overtime is necessary to meet operational needs.

After full discussion of this issue, we mutually agree that no national interpretive issue is fairly presented in this case. The facts and circumstances presented in the above referenced grievances are resolved by arbitration award number A94M-1A-C 98082567, arising from this same Brooklyn, New York post office, and decided by Arbitrator Sarah Cannon Holden on August 12, 1999, as a member of the regular regional arbitration panel. That case arose from a substantively similar dispute between the local parties over the right of mail handlers on the overtime desired list to be assigned the opportunity to work overtime assignments prior to employees whose names were not on the overtime desired list.

The parties agree that Article 15.4, Section A6 of the National Agreement clearly provides that "All decisions of an arbitrator will be final and binding." The parties further agree that this exclusion of further contractual avenues includes appeals to Step 4 of the grievance arbitration procedure. The parties further agreed that a regional arbitration award is binding precedent in the facility in which a case was heard when a subsequent grievance involves the same material facts as those presented in the arbitrated case. (See Step 4 grievance decisions H7M-3W-C 20857, and H7M-3W-C 19636) Such is the case in the above referenced grievances.

Accordingly, we agreed to remand these cases to the parties at the area/regional level to be settled in accordance with the language contained in Arbitrator Holden's award.

Please sign and return the enclosed copy of this letter as your acknowledgement of agreement to remand this case to the parties at the regional level for settlement.

Time limits at this level were extended by mutual consent.

Donna M. Gill, Labor Relations Specialist
Contract Administration (NRLCA/NPMHU)
Labor Relations

06/03/04
John F. Hegarty
National President
National Postal Mail Handlers Union

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

WASHINGTON, D.C. 20036
AREA CODE 202
833-9346

October 3, 1975

Mr. James V. P. Conway
Senior Assistant Postmaster
General
Employee and Labor Relations
United States Postal Service
Washington, D.C. 20262

Dear Mr. Conway:

At the Blue Ribbon Committee meeting on September 23, 1975, the subject of the filing of requests for reconsideration by arbitrators of their awards was discussed. It was agreed that sound labor relations policy and the arbitration processes established under Article XV would be better served by precluding requests for reconsideration by either a Union or Postal Service for reconsideration of arbitration awards. Accordingly, it was agreed that, beginning with the date of this letter, no requests or motions for reconsideration of arbitration awards would be filed by any Union signatory to the 1975 National Agreement or by the Postal Service.

Out of an abundance of caution, I wish to make clear that nothing herein is intended to preclude any right that any party may have to seek judicial review of an arbitrator's award. Nor is anything herein intended to preclude an arbitrator from correcting clerical mistakes or obvious errors of arithmetical computation.

If you find that this letter accurately expresses our agreement, please sign in the space provided below.

/s/
James V.P. Conway
Senior Assistant Postmaster
General

/s/
Bernard Cushman
Chief Spokesman for the
Unions

BC/ap

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: E06M-4E-C08288303
Class Action
Saint Joseph, MO 64501-9998

Dear John:

I recently met with your representative, Dallas Jones, to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the arbitrator failed to give weight to a previous settlement on the same issue.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case. Arbitration is the last step of the grievance-arbitration procedure. There are no further contractual avenues for management or the union to challenge or appeal an arbitration award, although judicial relief or enforcement of an arbitration award may be available (source: National Level Agreement dated October 3, 1975).

Accordingly, we agree to remand this grievance to Step 3 to discuss and/or adjudicate any remaining issues or proceed to regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case at this level as indicated above.

Time limits at this level were extended by mutual consent.

Allen E. Mohl, Labor Relations Specialist
Contract Administration (NPMHU)
and EAP/WEI Programs

John F. Hegarty
National President
National Postal Mail Handlers Union

Date: 3/22/11

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

ARBITRATION AWARD

July 7, 1980

UNITED STATES POSTAL SERVICE

-and- Case No. N8-NA-0141

NATIONAL ASSOCIATION OF LETTER CARRIERS

Subject: Authority of the Arbitrator - Maximization of Full-Time Assignments - Remedy

Statement of the Issues: Whether the arbitrator has the authority under the National Agreement to remedy the failure of the parties, through a Joint Committee, to agree on maximization criteria? If so, what is the appropriate remedy?

Contract Provisions Involved: Article VI; Article VII, Section 3; Article XV, Sections 2 and 4; and the Memorandums of Understanding on Maximization and on Jurisdictional Disputes of the July 21, 1978 National Agreement.

Grievance Data:

	Date
Grievance Filed:	September 21, 1979
Case Heard:	April 16, 1980
Transcript Received:	April 30, 1980
Briefs Submitted:	June 10, 1980

Statement of the Award: The arbitrator has the authority to remedy the Joint Committee's failure to agree on maximization criteria under the pertinent Memorandum of Understanding. The parties are directed to take the steps described in Part III (Remedy).

BACKGROUND

This case arises from the parties' failure to develop criteria for the establishment of additional full-time duty assignments pursuant to the Memorandum of Understanding on Maximization. The dispute concerns the arbitrator's authority to remedy this failure. NALC urges that the arbitrator has this authority and should exercise it; the Postal Service claims the arbitrator has no such authority.

The regular work force in a postal installation consists of full-time employees and part-time employees. The size of these groups, in relation to one another, has been a continuing source of disagreement between the parties. The National Agreement has provisions which govern this relationship. Article VII, Section 3 requires that any installation with 200 or more man-years of employment be staffed with "90% full-time employees." It states also that the Postal Service "shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules..." It contains the following conversion formula: "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."

NALC has apparently been dissatisfied with both this 90% figure and the conversion formula. It believed that full-time employees should constitute even more than 90% of the work force and that many part-time employees should be converted to full-time status. It pressed for such changes. The question of maximizing the number of full-time employees was discussed in the 1978 negotiations. Those discussions resulted in the following Memorandum of Understanding which is incorporated in the 1978 National Agreement:

> "The parties hereby commit themselves to the maximization of full-time employees in all installations. Therfore, they agree to establish a National Joint Committee on Maximization. That Committee shall, during the first year of the 1978 National Agreement, develop criteria applicable by craft for the establishment of additional full-time duty assignments with either regular or flexible schedules. To this

end, the Committee shall develop both an approach to combining part-time flexible work hours into full-time duty assignments and a method for determining scheduling needs compatible with the creation of the maximum possible number of such assignments."*

NALC wrote to the Postal Service on February 28, 1979, requesting a meeting of the National Joint Committee. The first meeting was held on March 9. It was attended not just by NALC but by APWU and LIUNA as well, the other unions covered by the National Agreement. The parties agreed to exchange proposals with respect to maximization criteria. NALC submitted its proposal on March 19; the Postal Service sent its ideas to NALC on March 21, outlining the points to be pursued in developing the necessary criteria.

The second meeting was held on March 23. The ideas and proposals, exchanged earlier, were discussed. NALC requested data relating to auxiliary assignments. It was agreed that separate discussions would thereafter take place between the Postal Service and each of the unions. The initial meeting with NALC alone occurred on April 17. The Postal Service suggested "criteria for establishing a data base to determine the need to maximize the number of full-time duty assignments." The next meeting with NALC took place on May 10. NALC presented a list of pending maximization grievances, alleged violations of Article VII, Section 3. It asked that these grievances be handled in a more expeditious manner. It suggested a new set of criteria for the conversion of part-time hours into full-time assignments. It reduced this suggestion to writing, a letter proposal, and sent it to the Postal Service on May 11. In that letter, it also withdrew its previous request for data on auxiliary assignments.

The next meeting on September 12 involved all the unions. However, separate discussions between the Postal Service and NALC were resumed later that day. NALC initiated a Step 4 grievance on September 21, complaining of the failure of the Joint Committee to develop maximization criteria. It nonetheless was willing to engage in further discussion of the problem. The Postal Service replied by letter on October 26, proposing new maximization criteria.

* This Memorandum is dated September 15, 1978.

That proposal was discussed at another meeting on December 3. NALC was apparently prepared to accept such criteria if it was understood that coverage of scheduled and unscheduled absences by part-time employees could qualify the latter for conversion to full-time status. That condition was unacceptable to the Postal Service. The parties thus were unable to reach agreement. They tried once more, on January 4, 1980, but were again unsuccessful. NALC appealed the matter to arbitration on January 9.

It should be noted that the negotiations between the Postal Service and APWU and between the Postal Service and LIUNA were successful. Those negotiations led to written agreements on "experimental" maximization criteria. NALC was unwilling to accept the terms of those agreements.

POSITIONS OF THE PARTIES

NALC argues that the Memorandum of Understanding "mandated" the parties to develop maximization criteria, that the Postal Service and NALC failed to do so, and that this failure means the "Memorandum...has been violated." It believes this is a "breach of contract", the Memorandum being part of the National Agreement, for which the arbitrator should issue an appropriate remedy. It asserts that "a general unrestricted arbitration clause, such as Article XV, confers broad remedial powers on the arbitrator so as to deal with a wide variety of situations."

It insists it is not asking that the National Agreement be "altered, amended or modified" in any way. Rather, its position is that the arbitrator should do what the parties have improperly failed to do in violation of their contractual responsibilities. It claims adoption of the Postal Service view would mean that the Memorandum of Understanding was "a nullity -- an 'agreement' without any practical effect...which Management could violate with impunity." It alleges that the failure to carry out the Memorandum's mandate was "attributable solely to Management's bad faith."

It asks the arbitrator to remedy the claimed violation by either (1) issuing maximization criteria which would adopt NALC's last proposal in the December 1979-January 1980 Joint Committee meetings or (2) ordering the parties to resume negotiations on this matter, setting ground rules (including a deadline) for those negotiations, and reserving the power to formulate criteria in the event the parties are unable to do so.

The Postal Service contends that the arbitrator "lacks authority to remedy the parties' inability to develop maximization criteria." It urges that the arbitrator has only that authority which the parties have granted him under the National Agreement. It notes that the Memorandum of Understanding says nothing whatever about arbitration. It insists the parties nowhere gave the arbitrator the authority to resolve maximization issues which the Joint Committee was unable to resolve. It maintains that "had the parties intended [such] interest arbitration in the event agreement could not be reached, they would have included an arbitration clause in the Memorandum of Understanding."

It emphasizes the presence in the National Agreement of arbitration clauses to deal with the resolution of jurisdictional disputes not disposed of by the Committee on Jurisdiction* and to deal with the resolution of lay-off rules disputes not disposed of by the parties through Article VI negotiations. It believes the absence of such an arbitration clause in the Memorandum on Maximization indicates that the parties did not contemplate arbitration of any Joint Committee impasse.

It relies on Article XV, Section 4D(1) which says "only cases involving interpretive issues under this Agreement or supplements thereto...will be arbitrated at the national level." It asserts that this case, absent an arbitration clause in the Memorandum of Understanding, raises no "interpretive issue" and hence is not arbitrable. It states that NALC's desired remedies would modify the National Agreement contrary to the arbitral limitations in Article XV, Section 4A(6). Finally, it flatly denies that Management members of the Joint Committee were guilty of bad faith in negotiating maximization criteria.

For these reasons, the Postal Service says that this grievance is not a proper subject for arbitration and that the arbitrator has no authority to provide a remedy for the parties' failure to agree on maximization criteria.

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* These arrangements are spelled out in the Memorandum on Jurisdictional Disputes.

DISCUSSION AND FINDINGS

The arbitrator's authority is derived from the National Agreement. He is "limited" by Article XV, Section 4A(6) "to the terms and provisions of this Agreement." He is expressly prohibited by this same section from altering, amending or modifying such terms and provisions. He is, when serving on the "national panel", restricted by Article XV, Section 4D(1) to "interpretive issues under this Agreement or supplements thereto of general application..." His function, in short, is the interpretation and application of these various contractual commitments.

The Memorandum of Understanding on Maximization is either a "term" or "provision" of the National Agreement or a "supplement thereto of general application." NALC reads the Memorandum as establishing a firm and fixed obligation; the Postal Service reads the same words quite differently. Thus, the NALC grievance does raise "interpretive issues" with respect to the Memorandum. It follows that the dispute is arbitrable and that I have authority to consider the NALC allegation that the Memorandum has been violated.

The crux of this case is the meaning of the Memorandum, the significance of the failure of the Joint Committee created by the Memorandum to agree on maximization criteria. NALC insists that this failure is a violation of the Memorandum and that the arbitrator must therefore provide a remedy for this violation. The Postal Service disagrees, asserting that the Joint Committee simply deadlocked and that the parties failed to make provision in the Memorandum for resolution of such a deadlock. Its position seems to be that the Memorandum has not been violated and that the arbitrator has no authority to provide any kind of remedy in these circumstances.

The crucial issue, in other words, is whether there has been a contract violation. If a violation of the Memorandum has occurred, as NALC claims, the arbitrator must then formulate an appropriate remedy.* The authority

* The arbitrator may, of course, remand the remedy question to the parties. But he still must be prepared to devise a remedy in the event the parties are unable or unwilling to work out the problem themselves.

to do so is implicit in the terms of the National Agreement. Indeed, the remedy for an alleged violation is a facet of every grievance. The parties specifically stated in the grievance procedure that NALC must designate the "remedy sought" in its appeal to Step 2 and in the discussions at Step 2. As the grievance passes through later steps to arbitration, the "remedy sought" remains an essential ingredient of the dispute. Hence, when the arbitrator considers the grievance and finds merit in a NALC claim, he is free to deal with the remedy question. That must have been contemplated by the parties. The grievance procedure is a system not only for adjudicating rights but also for redressing wrongs.

I - Contract Violation

The Postal Service acknowledges that it was obliged to participate with NALC in a Joint Committee in an attempt to establish maximization criteria. It says it satisfied this procedural obligation. Its view seems to be that, from a substantive standpoint, the Memorandum involved merely a conditional commitment. It believes that Management would only be bound by maximization criteria if the Joint Committee agreed to such criteria. It maintains that because no agreement was reached, the condition was not met and Management was relieved of any duties it may otherwise have had regarding new maximization criteria. It concludes that the Memorandum was not violated and that the arbitrator should leave the parties precisely where he finds them.

This argument is not without a surface appeal. But a careful reading of the Memorandum, in light of its evident purpose and in contrast to the provisions of Article VII, Section 3, indicates that more than a conditional commitment was made in this case.

To begin with, Article VII, Section 3 requires postal installations with 200 or more man-years of employment to operate with 90% full-time employees. It also commits Management to "maximize the number of full-time employees ...in all...installations." The Memorandum repeats this commitment and then goes further. It creates a Joint Committee which "shall...develop criteria applicable by craft for the establishment of additional full-time duty assignments..." These underscored words, it seems to me, represent the real purpose of the parties. They reveal

that the Memorandum was intended as a means of expanding the complement of full-time employees beyond the 90% figure set forth in Article VII, Section 3. The Memorandum must be read with that purpose clearly in mind.

The Postal Services suggests that the parties are bound only by what the Joint Committee agrees to, that no obligation exists in the absence of a Joint Committee agreement. That is too narrow a reading of the Memorandum. The parties committed themselves, in unmistakeable terms, to greater maximization. They were uncertain how that agreed upon goal should be achieved. They appear to have recognized that maximization was a technical question which needed far more study. Hence, they placed the problem in the hands of a Joint Committee which was supposed to create the procedure, the maximization criteria, which would enable the parties to realize the greater maximization they had bargained for. The Joint Committee was a means to an end, not an end in itself.

The Memorandum, construed in this way, is certainly not a conditional commitment. It is a firm and definite commitment to greater maximization during the life of the 1978 National Agreement. The parties have no choice in this matter. They were commanded to appoint a Joint Committee which was in turn commanded to produce the necessary maximization criteria. The Memorandum's language is mandatory, the Joint Committee "shall...develop criteria..." and "shall develop...an approach to combining part-time flexible work hours into full-time duty assignments..." The failure of the Joint Committee meant that the purpose of the Memorandum has been defeated, that the parties' commitment to greater maximization has not been carried out.

For these reasons, I find there has been a contract violation. On account of the Joint Committee impasse, the parties are in breach of their Memorandum commitment to greater maximization. It is no less a breach because the parties bear equal responsibility for the impasse.* Most contract violations involve the employer inasmuch as the union is typically the grieving party. Few violations derive from union conduct. But this tradition, from a conceptual point of view, does not prevent the occurrence of a joint violation under the kind of unusual circumstances present here.

* The NALC charge that the Postal Service did not negotiate in good faith in the Joint Committee discussions is not borne out by the evidence.

I I - Other Considerations

In arriving at these conclusions, several Postal Service arguments have been considered and rejected. Those arguments deserve brief comment.

First, it is true that there is no mention of arbitration in the Memorandum of Understanding on Maximization. The Postal Service views this silence as a crucial consideration. However, given the existence of a contract violation (Part I) and given the arbitrator's inherent power to remedy violations, this silence is immaterial.*

Second, it is true that Article VI of the National Agreement specifically grants an arbitrator the right to dispose of "unresolved issues" with respect to lay-off rules and procedures. The Postal Service emphasizes that no such grant of arbitral authority is found in the Memorandum on Maximization. However, Article VI has a very special history. It was not written by the parties. It was written by Arbitrator Healy in an interest arbitration agreed to by the parties in an attempt to resolve a deadlock in the 1978 negotiations. The reference to arbitration in Article VI was a device for Arbitrator Healy to retain jurisdiction over certain phases of the lay-off controversy which he had returned to the parties for additional negotiations.

Third, it is true that the Memorandum on Jurisdictional Disputes expressly permits arbitration of disputes unresolved by the Committee on Jurisdiction. The Postal Service notes that no such provision was made for disputes unresolved by the Joint Committee on Maximization. However, these Committees are entirely different. The Jurisdiction Committee is a dispute-resolution group which anticipates disagreements. It required a special arbitration procedure because of the special problems posed by a dispute involving more than one union. The then

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* If the Postal Service had refused to participate in the Joint Committee at all, that refusal would be a violation of the Memorandum. An arbitrator could surely order the Postal Service to participate in the Joint Committee, to do what it had promised to do, notwithstanding the silence of the Memorandum on the matter of arbitration. Thus, alleged violations of the Memorandum can properly become the subject of arbitration proceedings.

existing procedure would not have bound anyone other than the aggrieved union and the Postal Service. The Maximization Committee, on the other hand, anticipated no disagreements. For it was commanded to work out the details necessary to realize the agreed upon goal of greater maximization. It required no special arbitration procedure. It was expected to carry out its function during the first year of the 1978 National Agreement.

None of these arguments call for a different result in this case.

I I I - Remedy

The appropriate remedy raises a different set of problems. Mr. Justice Douglas, speaking for the Supreme Court in the Enterprise Wheel case, observed that the arbitrator must "bring his informed judgment to bear in order to reach a fair solution...[in] formulating remedies."*

NALC asks the arbitrator to impose maximization criteria on the parties, to do what the Joint Committee failed to do. It believes I should adopt the criteria it suggested at the Joint Committee meetings. In my opinion, no such remedy could be justified at this time. There are not enough facts or arguments in the record to make a confident finding as to what would be fair maximization criteria. Fairness is, in any event, a "two-way street." Any remedy must be fair from the standpoint not only of the employees (i.e., providing greater maximization of full-time assignments) but also of Management (i.e., protecting the operational needs set forth in the Memorandum).

The remedy shall be two-fold. First, the Joint Committee is directed to return to the bargaining table and to make a good faith effort to reach agreement on maximization criteria. I cannot assume those negotiations will be fruitless. Indeed, the parties should realize that their failure to agree is likely to result in an imposed solution. That is a new element which should serve to prompt the parties to more sympathetic consideration of one another's needs. Second, should the Joint Committee fail to reach agreement within a period of 60 days from

* United Steelworkers of America v. Enterprise Car & Wheel Co., 363 U.S. 593, 597 (1960).

the date of this award, either party may request a hearing before one of the "national panel" arbitrators. At that hearing, both sides will be given an opportunity to propose criteria and to submit evidence and argument on the question of what criteria should be adopted. The arbitrator will then determine the criteria to apply under the Memorandum.

AWARD

The arbitrator has the authority to remedy the Joint Committee's failure to agree on maximization criteria under the pertinent Memorandum of Understanding. The parties are directed to take the steps described in Part III (Remedy).

Richard Mittenthal

Richard Mittenthal, Arbitrator

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	
	)	Case No. Q94C-4Q-C 98062054
UNITED STATES POSTAL SERVICE	)	
	)	Grievance: Rights of Intervenor
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION	)	
	)	
	)	
and as Intervenor	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Postal Service: Mr. Kevin Rachel

For the APWU: Mr. Darryl Anderson
Ms. Melinda Holmes

For the NALC: Mr. Keith Secular

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: April 14, 1999

POST-HEARING BRIEFS: August 2, 1999

RELEVANT CONTRACTUAL PROVISION: Article 15

CONTRACT YEAR: 1994-98

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the National Association of Letter Carriers, when it has intervened in an area-level arbitration case, has the right to refer the case to Step 4 of the grievance procedure. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: January 1, 2000

Melinda Holmes of the O'Donnell, Schwartz, and Anderson law firm in Washington, D.C. represented the American Postal Workers Union. Mr. Keith Secular of Cohen, Weiss, and Simon in New York, N.Y. represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence and to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. Mr. Peter Shonerd of Diversified Reporting Services, tape-recorded the proceeding for the parties and submitted a transcript of 137 pages. The advocates fully and fairly represented their respective parties.

There were no challenges to the substantive or procedural arbitrability of the dispute, and the parties stipulated that the matter properly had been submitted to arbitration. They authorized the arbitrator to state the issue. The parties elected to submit the matter on the basis of evidence presented at the hearing as well as post-hearing briefs. The arbitrator officially closed the hearing on August 2, 1999 after receipt of the final brief in the matter.

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION	)	
between	)	
UNITED STATES POSTAL SERVICE	)	ANALYSIS AND AWARD
and	)	Carlton J. Snow Arbitrator
AMERICAN POSTAL WORKERS UNION	)	
and as Intervenor	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS (Case No. Q94C-4Q-C 98062054)	)	

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from November 21, 1994 through November 20, 1998. A hearing occurred on April 14, 1999 in a conference room of Postal Headquarters located at L'Enfant Plaza in Washington, D.C. Mr. Kevin Rachel, Deputy Managing Counsel, represented the United States Postal Service. Mr. Darryl Anderson and Ms.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Does the National Association of Letter Carriers, on intervening in an area-level arbitration case, have a contractual right to refer a case to Step 4 of the relevant grievance procedure?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

Section 5. Arbitration

A. General Provisions

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.

B. Area Level Arbitration - Regular

5. If either party concludes that a case referred to Area 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. (Emphasis in the original.)

IV. STATEMENT OF FACTS

In this case, the American Postal Workers Union argued that another union which intervened in an APWU area level arbitration proceeding enjoyed no contractual right to refer the dispute to Step 4 of the grievance procedure codified in the contract between the Employer and the APWU. To pursue its contention, the American Postal Workers Union initiated a grievance against the Employer at Step 4 on February 17, 1998. It is this narrow issue which has been submitted to the arbitrator.

The focus of the dispute between the parties is on the correct interpretation of the labor contract, and factual matters are not in dispute. The limited purpose of the grievance is to determine whether unions that choose to intervene in area level arbitration proceedings of the American Postal Workers Union enjoy a contractual right to refer the APWU grievance to Step 4 of the grievance procedure. To preserve any right it might have in the matter, the National Association of Letter Carriers intervened and enjoyed full participation at the arbitration hearing at the national level.

V. POSITION OF THE PARTIES

A. American Postal Workers Union

It is the contention of the American Postal Workers Union that an intervening union in an APWU area-level arbitration proceeding has no authority to withdraw a grievance from arbitration and refer it to Step 4 of the APWU grievance procedure. The APWU believes that an intervening union may fully participate in the arbitration process but that only the APWU or the Employer actually may refer an APWU grievance to Step 4 of the grievance procedure. According to the APWU, (1) the plain meaning of the parties' agreement, (2) the context in which the terms in the contract have been used, (3) the bargaining history between the APWU and the Employer, and (4) considerations of efficiency compel adoption of its position in this dispute. The American Postal Workers Union asserts that, while an intervening union enjoys a right to participate actively in an arbitration proceeding in which it intervenes, this right is distinct and separate from the authority, as Intervenor, to guide a grievance through the contractual process set forth in the collective bargaining agreement between the Employer and the American Postal Workers Union. The APWU believes that, while an intervening union possesses participatory rights, it

does not possess internal appellate rights secured as a part of the bargain between the Employer and the American Postal Workers Union.

The American Postal Workers Union also argues that the Employer and the APWU agree on two pivotal aspects of the dispute, namely, (1) that the intervening union does not have a right to withdraw or to settle an APWU grievance; and (2) that, after another union has intervened, the APWU retains the authority to withdraw the grievance or to settle it, without consultation with the intervening union.

B. The Employer

The Employer contends that a union which chooses to intervene in an area-level arbitration proceeding may withdraw the grievance from area-level arbitration and send it forward to Step 4 of the APWU grievance procedure. It is the belief of the Employer that contractual language in the collective bargaining agreement between the Employer and the APWU does not prohibit such a course of action. In fact, the Employer contends the verbiage of the parties' agreement strongly implies that an intervening union is to be accorded the same rights in the arbitration proceeding that are enjoyed by the grieving union. Moreover,

the Employer maintains that both the past practice of the parties as well as federal arbitration policy favor resolving this issue by recognizing that an intervening union possesses the right to withdraw a grievance from area-level arbitration and to submit it to Step 4 of the APWU grievance process.

C. National Association of Letter Carriers

The position of the National Association of Letter Carriers is substantially similar to that of the United States Postal Service.

VI. ANALYSIS

A. Arbitral Jurisprudence

Parties who negotiate collective bargaining agreements are presumed to know that, if it becomes necessary for an arbitrator to interpret the labor contract, he or she will rely on arbitral jurisprudence as an important source of interpretive principles. To the extent that parties leave gaps in their agreement, arbitrators will use rules that have evolved in arbitral jurisprudence to fill gaps in incomplete contracts, unless the parties have made clear their intent to bargain around such default rules. The collective bargaining agreement of the parties remains as an arbitrator's lodestone, but contractual incompleteness is remedied by applying arbitral jurisprudence to fill contractual gaps in a manner consistent with the intent of the parties.

It is part of the genius of arbitral jurisprudence that it includes a body of principles consistent with Anglo-American legal standards of contract interpretation. Parties are presumed to understand that an arbitrator will draw on this source of guidance in fulfilling arbitral duties. Moreover, the parties have designed their arbitral process as a precedential system, and national arbitration decisions provide a conclusive interpretation of the parties' agreement. The parties have enjoyed a long

relationship of collective bargaining, and it is their custom to incorporate prior decisions into their agreement, unless and until they bargain around such decisions.

One well-established standard of contract interpretation states that:

> When interpreting agreements, arbitrators use the ordinary and popular meaning of words, unless there is an indication that the parties intended a special meaning. (*See* St. Antoine, *The Common Law of the Workplace*, 69 (1998).)

This arbitral standard is merely a restatement of a common law rule used in aid of interpretation. It states that, "where language has a generally prevailing meaning, it is interpreted in accordance with that meaning." (*See Restatement (Second) of Contracts*, §202(3)(a), 86 (1981).) Whether the source is arbitral jurisprudence or a court of law, interpretive principles are applied to the context of a full document. As *Restatement (Second)* makes clear, "English words are read as having the meaning given them by general usage," but the context of a contractual provision provides the backdrop against which any disputed verbiage must be understood. (*See* p. 89 (1981).) As a part of reading a contract in context, an arbitrator assumes, absent contrary evidence, that parties used contractual language in a sense which would generally be understood throughout the country; and without

turning it into a fortress, a dictionary may provide a good source of general usage of language.

B. Meaning of the Contract

Any resolution of the dispute between the parties must be rooted in the agreement reached by them at the bargaining table and codified in their collective bargaining agreement. A starting point in the analysis is Article 15.5.A.9 of the agreement which states:

> In any arbitration proceeding in which a Union feels that its interest 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. (*See* Joint Exhibit No. 1, p. 103.)

There is no ambiguity about the fact that the American Postal Workers Union and the Employer agreed to allow unions that possess an interest in the outcome of an arbitration proceeding between the APWU and the Employer to participate in the arbitral process. It is equally clear from the context of the parties' agreement that they have not defined precisely how an intervening union may protect its "affected interests." Rights to which an intervening union is entitled are not explicitly enumerated in the

agreement between the Employer and the American Postal Workers Union. As a consequence, arbitrators from time to time have been asked to determine the scope of rights enjoyed by an intervening union. For example, an arbitrator found that the APWU, as the intervenor, had a right to present exhibits in a dispute between the Employer and the Mail Handlers Union, notwithstanding the fact that the APWU did not present the exhibits at Step 2 of the grievance procedure. (See Employer's Exhibit No. 6, Case No. W7M-5F-C 7637 (1989); *see also*, Case No. H4N-4J-C 18504 (1989).)

Even though the collective bargaining agreement between the American Postal Workers Union and the Employer did not explicitly define specific rights of an intervening union, the parties would have the arbitrator infer certain rights from the text of the collective bargaining agreement. For example, the National Association of Letter Carriers argued that, as an intervening union, it must be characterized as a "party" to the arbitration proceeding. As such a "party," the NALC contended that it enjoys rights equal to every other party to the proceeding. It is the belief of the NALC that Article 15.5.A.9 of the APWU agreement impliedly classes an intervening union as a "party" to the arbitration proceeding. This conclusion allegedly is supported by the contractual requirement that an

intervening union must share the cost of the arbitration process with all "other" parties. The contractual reference to "other Union parties" necessarily requires that an intervening union be a party to the proceeding, in the opinion of the NALC. Otherwise, use of the word "other" in the contractual provision would be superfluous. As *Restatement (Second) of Contracts* makes clear, "where an integrated agreement has been negotiated with care and in detail and has been expertly drafted for the particular transaction, an interpretation is very strongly negated if it would render some provisions superfluous." (*See* 93 (1981).)

Consistent with the argument of the NALC, prior arbitration decisions have treated an intervening union as a "party" to the proceeding. (*See* Case No. W7M-5F-C 7637 (1989).) As the 1989 arbitration decision concluded, "once a party to the process, there is no basis for treating one party differently from another." (*See* Case No. W7M-5F-C 7637, p. 51 (1989).) This arbitral conclusion, of course, must be understood as meaning that an intervening union can only possess rights in the arbitration proceeding that do not conflict with rights of the original grievants. For example, an intervening union would not have a right to withdraw a grievance from arbitration or to settle a dispute against the wishes of the original parties. In other words, logic inherent in the parties' agreement

teaches that some rights held by the original parties to the dispute are not available to the intervening union.

Article 15.B.5 of the parties' agreement states that, "if either party concludes that a case referred to Area Arbitration involves an interpretive issue . . . , that party may withdraw the case from arbitration and refer the case to Step 4 of the grievance procedure." (*See* Joint Exhibit No. 1, p. 104, emphasis added.) The word "either" is subject to much dispute. In the view of the APWU, the word "either" is one of qualification and means that not every party may refer a case to Step 4. According to the APWU, the dictionary definition of the word "either" implies that only one of two parties is entitled to this right of referral. The position vigorously espoused by the APWU is that the parties with such a right obviously are the original two parties, namely, the APWU and the Employer. If, however, three parties are present in an intervention, it is not a foregone conclusion that the term "either party" refers to only two of the three parties. The text of the collective bargaining agreement itself gives no direct instruction with respect to whether or not an intervening union has a right to refer a matter to Step 4.

The National Association of Letter Carriers supported its theory of the case by returning its own volleys over the net. Opposed to the

APWU's view, the NALC responded that the reference in the agreement to the word "either" was intended to describe the "typical" arbitration proceeding between two parties. Because an intervening union, however, is also a "party" to the proceeding, the NALC argued that the word "either" must be construed broadly to include a third party in the "atypical" circumstance when an intervening union is present. According to the NALC, the presence of three parties in a proceeding compels a broad construction of the word "either " in Article 15.B.5 of the APWU agreement. It is the belief of the NALC that, notwithstanding the dictionary definition of the word, its construction is not inconsistent with the common meaning attached to the word.

The ease of the parties' ability to play dueling decisions, in an effort to show that established arbitral principles favor their respective cases, only served to illustrate that the term "either party" is ambiguous and not dispositive of the issue presented to the arbitrator. The American Postal Workers Union argued that the phrase, in and of itself, determined the result in the case. But the tenn, even assuming its clarity in the abstract, certainly is not clear when considered within the factual context in which it is used. In the typical arbitration setting, only two parties are present, namely, the original grieving union and the Employer. But the parties have designed

their arbitration process to include the atypical case in which three parties might be present. The APWU argued that use of the word "either" meant the parties intended to afford only the original two parties the right at issue in this case, but the argument failed to address the impact of such a contractual construction on an intervenor's rights. While the APWU's construction of the term is feasible, it is not logically required. The term "either" could just as logically be understood to mean any one of the three parties.

Nor does the argument that the status of an intervening union is that of "an equally contributing party" dictate the result in this case. Although an intervening union's status as a third party to the arbitration proceeding calls into question the APWU's theory of the case, the status of the intervening union as a party that contributes equally to the cost of the arbitration process fails to define other specific rights of an intervening union under the collective bargaining agreement. In other words, this is one of those cases where the contractual force of gravity has pulled the parties into a black hole where few words have been used but the gap in the parties' agreement is resplendent with meaning. None of the parties' understanding of intervenor rights is necessarily unreasonable, but neither is any single theory of the case dispositive.

The American Postal Workers Union added velocity to its argument that only the original two parties enjoy a right to submit a dispute to Step 4 by asserting that the NALC and the Employer would spread confusion with their contractual interpretation. As the APWU saw it, the NALC and the Employer confused an intervening union's right to participate in the arbitration proceeding with the right of the original parties to guide the grievance through the grievance procedure. The APWU complained that the NALC must not expect to control an APWU grievance. Thus, the APWU argued that an intervening union enjoys a right to participate in the arbitration proceeding and, accordingly, possesses all rights necessary to guarantee such participation. But the status of an intervenor does not extend to unrelated rights incident to the grievance procedure, according to the APWU. For example, the right to refer a matter to Step 4 is incident only to the grievance procedure and is not a right that emanates from participating in arbitration, according to the APWU. Hence, such a right is not available to an intervenor, as the APWU sees it.

The APWU premised its construction of the agreement on the design of the grievance procedure set forth in the labor contract. For example, only the APWU may file a grievance under the collective bargaining agreement. Only the APWU and the Employer may settle or

withdraw a grievance. Only the APWU and the Employer at Step 3 may determine whether an interpretive issue exists, whether a settlement should conclude the dispute, or whether to advance the matter to arbitration, either at the regional or national level. (*See* Joint Exhibit No. 1, art. 15, Step 3(c), (d), and (e).) The parties agree that an intervening union is not entitled to these rights because such intervenor rights would deny the original grievant and the Employer the right to participate under their own collective bargaining agreement.

Accordingly, the APWU argued for the existence of a distinction between a procedural right to guide a grievance through the grievance procedure (a right given only to original parties) and the right substantively to participate in an arbitration proceeding (a right given to both the original parties and the intervening union). The APWU maintained that, since the right to refer a matter to Step 4 is not incident to the arbitration proceeding, an intervening union must be denied such a right.

Even assuming the division for which the APWU argued exists, a bright line between rights incident to the grievance procedure and rights incident only to participation in the arbitration process is not nearly as bright as the APWU suggested. The right to transmute a regional arbitration hearing into a national grievance by referring a dispute to Step 4 affects

both the substantive nature of the arbitration proceeding itself as well as the procedural posture of the dispute. If a matter is sent to national arbitration, an intervening union will be bound by a ruling that affects its interests and is national in scope. The ability to refer a matter to Step 4 and, then, to national arbitration is tantamount to the ability to affect a party's interest. The right to do so is not less intrinsic to the arbitration process than the right to present evidence in a case to advance one's cause, and such a right to present evidence is an essential part of participating in the arbitration proceeding.

Relying on Article 15.2, Step 3(e), the American Postal Workers Union also argued that the phrase "either party" supports its construction of the labor contract. The provision states:

> If either party's representative maintains that the grievance involves an interpretive issue under the National Agreement . . ., the Union representative shall be entitled to appeal an adverse decision to Step 4 . . . . (*See* Joint Exhibit No. 1, p. 96, emphasis added.)

According to the analysis of the APWU, the phrase "either party" is consistently used in a manner that restricts its application to the original parties. As the APWU sees it, since the term "either party" is restricted to only the original parties, the use of the same term in Article 15.5.B.5 is necessarily qualified by that same meaning.

The use of the term "either party" in one setting, however, does not necessarily dictate that all circumstances surrounding the use of the term were intended to qualify the meaning of the term when used in another, entirely different setting. The fact that the parties applied the term "either party" to situations where the number of parties to which the term referred varied from two to three or more suggests that the parties did not intend to saddle the term with one rigid meaning. It is equally plausible that the parties intended a broader meaning of the word "either." It could include a meaning that encompassed three or more parties. Moreover, results achieved when using this analysis change with the order of its application. It is at least plausible that the term "either party" is defined by its use in Article 15.5.B.5 (where it is used in a three party setting) so that it might logically follow that, if an intervenor found itself in Step 2, it might have a right to refer the matter to Step 3. The point of this abstract litany is that, while the contract is clear about the fact that an intervening union may participate in the arbitration proceeding, nothing in the labor contract dictates with clarity and specificity what rights are given the intervening union. Nothing in the text of the agreement or the structure of the grievance procedure itself provides an absolute source of guidance for the arbitrator.

Hence, it is necessary to turn to other sources of guidance in the relationship between the parties, such as bargaining history and past practice.

C. The Matter of Past Practice

The U.S. Supreme Court has been clear about the importance of past practice as a source of guidance in understanding the contractual intent of the parties to a labor contract. As the Court stated:

> The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law--the practices of the industry and the shop--is equally a part of the collective bargaining agreement although not expressed in it. (*See United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 576 (1960).)

As the Court recognized, past practice in a collective bargaining relationship is important because "there are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties." (P. 575.) As another court noted, past practice and bargaining history are useful in determining contractual intent, observing that "it is necessary to consider the scope of other related bargaining agreements, as well as the practice, usage, and

custom pertaining to all such agreements." (*See U. S. Postal Service v. National Rural Letter Carriers*, 959 F.2d 283, 288 (D.C. Cir. 1992).)

Past practice has been the subject of scholarly examination for decades, and it would be inaccurate to comment on the topic without making reference to that doyen of arbitral insight, Richard Mittenthal. He set forth ground-breaking observations on past practice almost four decades ago, and the principles he posited have stood the test of time and been universally adopted by labor arbitrators. (*See* Mittenthal, *Proceedings of the Fourteenth Annual Meeting of the National Academy of Arbitrators* 30 (1961).)

Mittenthal taught that conduct or activity "qualifies as a past practice if it is shown to be the understood and accepted way of doing things over an extended period of time." (P. 32.) He suggested that it was appropriate to test a past practice by its (1) clarity and consistency; (2) longevity and repetition; (3) acceptability; and (4) mutuality. When past practice is used to give meaning to an ambiguous contractual provision, its use is chiefly evidentiary. The burden of going forward with such evidence, of course, is on the party asserting the existence of a past practice. (*See* St. Antoine, *The Common Law of the Workplace*, 81 (1998).)

The National Association of Letter Carriers invoked past practice as a source of guidance to clarify ambiguity in Article 15 of the agreement between the APWU and the Employer. With past practice as the backdrop, the NALC relied on three arbitration cases to assert that an intervening union enjoys a right to refer a dispute to Step 4 of the grievance procedure. In the first case, the APWU intervened in a 1987 regional arbitration proceeding and asserted a right to withdraw the case from arbitration and to refer it to Step 4 of the grievance procedure. (*See* NALC Exhibit No. 1.) Both the Employer and the APWU supported such a right of referral. The NALC declined to take a position as to whether or not the referral was permissible under the NALC agreement but did not expressly oppose the referral. (*See* NALC's Post-hearing Brief, p. 4, fn. 1.)

The second case on which the NALC relied was a national arbitration decision. (*See* NALC's Exhibit No. 3, Case No. H7N-4Q-C 10845 (1991).) In this 1991 dispute, the NALC filed a grievance which proceeded to arbitration; and at this point the APWU intervened. The Employer, then, altered its position so that it was consistent with the NALC, the original grievant. Despite the fact that the original parties to the dispute now agreed, they did not withdraw the dispute but proceeded to process the matter because the APWU was not in agreement with the joint position of

the NALC and the Employer. The NALC concluded that "this disposition reflects the parties' mutual understanding that APWU once it intervened, was equally entitled to have this interpretive matter resolved on the merits." (*See* NALC's Post-hearing Brief, p. 5.)

Finally, the NALC relied on a settlement agreement in 1994 between the NALC and the Employer. (*See* APWU's Exhibit No. L.) The 1994 settlement agreement between the NALC and the Employer reached the following determination:

> During our discussion, we mutually agreed that upon intervention at a hearing, the intervening union becomes a full party to the hearing. As a party, the intervening union has the right to refer a grievance to Step 4. (*See* APWU's Exhibit No. L, emphasis added.)

The NALC argued that this settlement agreement revealed what the parties have understood their past practice to be, namely, "(1) that an intervening union is a full party to the arbitration proceeding; and (2) that full party status necessarily encompasses the right to refer a grievance to Step 4." (*See* NALIC's Post-hearing Brief, p. 5.)

Arbitrator Mittenthal taught that a past practice must be tested against a pattern of clarity and consistency. When this test is applied to the facts of the case before the arbitrator, the first Mittenthal principle is not satisfied. The 1991 decision is not determinative because the intervening

union did not attempt to refer the dispute to Step 4. Consequently, it is not a useful source of guidance in establishing an intervening union's right of referral. The remaining two decisions, however, are useful in unraveling the issue presented to the arbitrator. In both situations, an intervening union referred a dispute to Step 4. Although the disputed right is defined with clarity, it has not been applied with consistency. The 1987 case relied on by the NALC was referred to Step 4 by the Employer over NALC reservations with respect to the scope of intervention rights. The attempt in 1987 to keep the arbitration referral "as procedurally clean as possible" by having the Employer refer the matter to Step 4 (instead of the intervening union accompanied with the NALC's qualified approval) stands in contrast to the wholesale adoption of the policy referred to in the 1991 settlement agreement. (*See* NALC's Exhibit No. 1 and APWU's Exhibit No. L.). Moreover, in a case on which the NALC did not rely in this proceeding, the past practice was rejected by both the APWU as well as a regional arbitrator. (*See* APWU's Exhibit No. Q.) Additionally, no national-level case cited by the NALC presented a wholesale adoption of the principle. At best, the cases cited represented an ambiguous application of the right, ranging from a qualified approval (where an original party referred a dispute

to Step 4) to adoption of an uncontested right, while also including an example of a rejection of the right altogether.

Mittenthal also taught that an alleged past practice should be tested by its longevity and repetition. No bright line separates conduct or activity that has longevity and is consistent from conduct that is not. Often whether the conduct of parties satisfies this particular criterion is a reflection of the equitable discretion of an arbitrator. As Mittenthal taught:

> A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of a certain conduct do not 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. (P. 32, emphasis added.)

It is the conclusion of this arbitrator that two instances over a seven year period are not sufficient to satisfy this test of a past practice.

The final lens through which an alleged past practice should be viewed is that the activity or conduct must be acceptable to both parties to the agreement and mutually consented to by them. Evidence submitted to the arbitrator made clear that any alleged practice in this case, although accepted at various points in time by each party, has not been consistently accepted by them. Although the Employer always has supported the right of an intervening union to refer a dispute to Step 4 of the grievance procedure,

both the APWU and the NALC have been wavering in their support and have espoused the right only if it served their interests. Thus, in 1987 the APWU supported the right of referral, while the NALC allowed it to occur but reserved the right to reject it in future proceedings. At other times, the APWU has objected to the NALC's motion, as an intervening union, to refer a matter to Step 4. An arbitrator sustained the objection and denied the intervening union any right of referral, although the case was subsequently referred to Step 4 of the grievance procedure pursuant to the Employer's motion of referral.

Such an inconsistent pattern of conduct hardly satisfies the definition of a past practice as activity that is "shown to be the understood and accepted way of doing things over an extended period of time." On the contrary, each party has attempted to make the best use of such an alleged right of referral to serve immediate organizational interests. The consequence of such an approach has produced an inconsistent application of the alleged right. It would be inappropriate to allow the doctrine of past practice to be used like a dowser's hazel twig "to witch" an area of land for water with all of its uncertainty and "hit or miss" characteristics.. The concept of past practice, when evidence supports its use, is a reasonably

predictable tool of contract interpretation and should be used in a way that helps stabilize the meaning of the parties' collective bargaining agreement.

D. The Matter of Bargaining History

An invaluable source for understanding the meaning of a labor contract is the bargaining history of the parties. Evidence of bargaining history in this case is rooted in testimony by Mr. William Burrus, Executive Vice-president of the American Postal Workers Union. Years ago, he served as president of the Cleveland, Ohio Local as well as a member of the bargaining advisory committee. He acted as a liaison between his geographical area and national negotiators for the national contract. Although often briefed about the substance of national negotiations, he participated in no joint meetings in the early years of his career. (*See* Tr. 61.)

With regard to the right of an intervening union to refer a matter to Step 4 of the grievance procedure, Mr. Burrus testified that:

> The information I was provided by the negotiators in 1978 [was that the] right to refer was limited between the Postal Service and the grieving union .... (*See* Tr. 63.)

He understood that only the original two parties to the dispute had a right of referral.

Coming forward in time to 1994, Mr. Burrus had been promoted to the position of Executive Vice-president of the American Postal Workers Union. He served in contract negotiations as the APWU's chief spokesperson on noneconomic contractual issues. At this point in time, the NALC and the APWU were in transition from a period of joint bargaining to bargaining separately with the Employer. According to Mr. Burrus, it was necessary after the NALC's departure to "sanitize" contractual language by removing all references to the NALC from the APWU collective bargaining agreement. This insured that the agreement would reflect promises between only the Employer and the APWU.

Mr. Burrus testified that the parties did not modify language in Article 15.5.B.5 (the referral provision) because the understanding of the parties made it unnecessary to do so. He testified as follows:

> The language in question was not changed because it was understood by the parties in the 1994 negotiations as accurately reflecting the existing parties to the 1994 agreement. It was our understanding even before the breakup of the joint bargaining committee, NALC and APWU, that the language in Subsection 5 applied to the grieving union and the U.S. Postal Service. (*See* Tr. 66-67.)

Mr. Burrus contended that the meaning attributed to the language in 1978 was retained by the parties in subsequent agreements. Hence, it was unnecessary to make any change in that particular contractual provision after the two unions discontinued joint bargaining.

In 1998, the Employer and the APWU made changes to Article 15 of the collective bargaining agreement. The language at issue in this proceeding, however, was not changed. Prompted by concerns of efficiency, the parties removed from regional representatives any power to refer a case to national arbitration. They vested such power in representatives at the national level. Although the issue of referral by an intervening union was a subject of discussions in negotiations between the Employer and the APWU, the parties in their wisdom elected not to share such evidence with the arbitrator. (*See* Tr. 75.)

The theory espoused by the APWU was that the meaning of language adopted by the parties in 1978 was intended to apply only to the grieving union and the Employer. According to the APWU, such language and its meaning never changed in subsequent agreements. As a result, the APWU argued that this meaning infused the disputed language before the arbitrator in this proceeding.

The evidence, however, failed to be persuasive in several ways. First, Mr. Burrus, whose verisimilitude is unchallenged, was never present during the joint discussions in 1978. He based his understanding on the perceptions shared with him by APWU negotiators, and there was no suggestion that their understanding reflected the mutual intent of the parties. Moreover, the evidence was clear that discussions Mr. Burrus held with APWU negotiators did not directly concern referral in the context of a union which already had intervened in an arbitration proceeding. *(See* Tr. 71-72.) The limited nature of discussions he held with negotiators about the subject in dispute before the arbitrator failed to be persuasive with respect to their intent to restrict application of Article 15.5.B.5 to only the original grievant and the Employer.

Second, the meaning attributed to Article 15.5.B.5 by Mr. Burrus has not been handled in a manner by the parties that is consistent with a mutual agreement to restrict the right of referral to only the original parties to a grievance. Initial conduct by the parties under the collective bargaining agreement demonstrated that its meaning was unclear with respect to the right of an intervening union to refer a matter to Step 4. In 1987 (when the issue first arose), neither the NALC, the APWU, nor the Employer had a ready answer with respect to whether the collective

bargaining agreement allowed an intervening union to refer a matter to Step 4 of the grievance procedure. (*See* NALC's Exhibit No. 1.) In the class action grievance of 1987, the APWU, as an intervening union, attempted to refer a case to Step 4 of the grievance procedure. A NALC memorandum described the response to the situation as follows:

> The file will reflect that the APWU intervened at regional level arbitration in this case and requested that the case be submitted to Step 4.
>
> Subsequently, because it is unclear whether the contract allows an intervening union to submit a case to Step 4 and in order to keep this matter as procedurally clean as possible, the Postal Service decided to submit the case to Step 4 as indicated by the enclosed. (*See* NALC's Exhibit No. 1, p.5, emphasis added.)

Even though the APWU asserted a right of referral as an intervening union, all three parties apparently recognized that the collective bargaining agreement was unclear with respect to the scope of an intervenor's rights.

Whatever meaning may have been given to Article 15.5.B.5 in 1978, it is no longer conclusive in 1999. The most recent set of negotiations between the parties addressed the meaning of this disputed provision as well as whether an intervening union may refer a matter to Step 4. The parties determined, however, that such discussions should be characterized as "off-the-record" and should not be shared with the arbitrator. It seems reasonable to conclude that, during those discussions, the parties asserted

contrary positions. Since 1994, the Employer has strongly supported the right of referral by an intervening union. (*See* APWU's Exhibit No. L.) Since at least 1997, the APWU has refused to acknowledge an intervening union's right of referral. (*See* APWU's Exhibit No. K.) Despite the disagreement, off-the-record discussions failed to produce any alteration in Article 15.5.B.5 of the parties' agreement. Despite years of conflicting decisions, the parties failed to resolve the issue by clarifying the language in their collective bargaining agreement. (*Compare* Case No. 91N-412 (1992) with Case No. G90C-4G-C 92040749 (1994).) It is reasonable to conclude from the totality of the record submitted to the arbitrator that the bargaining history of the parties failed to provide a definitive source of guidance with respect to the meaning of the disputed language before the arbitrator. The parties have left it to the arbitrator to fill the gap in their agreement by following other well-established rules of contract interpretation.

E. Design of the Parties' Dispute Resolution System

The APWU argued that it would violate the parties' collective bargaining agreement and clearly exceed an arbitrator's authority to interpret the labor contract as giving an intervening union broader rights than those provided under the agreement itself. (*See* APWU's Post-hearing Brief, p. 23.) The argument is wide of the mark, however, because the parties' collective bargaining agreement has left a gap to be filled with respect to rights of an intervening union. Arbitral jurisprudence calls on rules of contract construction to capture any ambiguous or silent meaning inherent in language selected by the parties to express their bargain. Such gap-filling procedures are a fundamental aspect of contract interpretation and long have been recognized not only by arbitrators but by courts of law as well. While it is not the role of an arbitrator to make contracts for parties, decision-makers for almost two hundred years have accepted the role of defining the scope of language in a contract. (*See, e.g., Gardiner v. Gray,* 171 Eng. Rep. 46 (K.B. 1815).) It is an arbitrator's duty to defer to the agreement of the parties, but applying established methods of filling contract gaps constitutes a legitimate aspect of determining their contractual intention. The eminent Justice Learned Hand once observed that, "as courts become increasingly sure of themselves, interpretation more and more

involves an imaginative projection of the expressed purpose upon situations arising later, for which the parties did not provide and which they did not have in mind." (*See L. M. Jackson & Co. v. Royal Norwegian Government*, 177 F.2d 694, 702 (2nd Cir. 1949), *cert. denied*, 339 U.S. 914 (1950).)

Arbitrators within the parties' own arbitration system, likewise, have been compelled to engage in the gap-filling process. As Arbitrator Mittenthal recently stated, an arbitrator must "listen to what is left unsaid." (*See* 54 Dispute Resolution Journal 40, 41 (1999).) Over a decade ago, a national level arbitrator observed that "arbitrators are frequently required to address matters raised by the parties without having the benefit of an express contract provision upon which to base their judgment." (*See* Case No. H4N-4J-C 18504, (1989), p. 9.).) It is not unusual for an arbitrator to use principles of contract interpretation as a source of guidance in filling gaps in a contract as long as the meaning is drawn from the parties' collective bargaining agreement. As the U.S. Supreme Court made clear, an arbitrator may "look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement." (*See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 595 (1960).)

Another useful building block of contract interpretation is the doctrine of reasonable expectations. The doctrine of reasonable expectations often is a helpful tool when an ambiguous provision in a contract must be interpreted. A contractual provision is ambiguous if it admits of more than one plausible interpretation and if the plausible interpretations have contrary effects on rights of the parties. Using the doctrine of reasonable expectations to determine common expectations and to clarify contractual ambiguity is bedrock arbitration law. It is using the language of the parties' contract itself to infer that the parties shared a common expectation. It is assuming that woven into their common expectation is a standard of fairness. The U. S. Supreme Court has said that an arbitration award must draw its essence from the parties' collective bargaining agreement. In searching for the "essence of the agreement," an arbitrator seeks the essence of a fair agreement. As the parties well understand, every contract includes an implied covenant of good faith and fair dealing. *(See Restatement (Second)* of Contracts §205, 99 (1981).)

The totality of the parties' agreement makes it reasonable to conclude that an efficient, speedy dispute resolution system constituted a shared expectation of the parties. The parties are presumed to have understood the impact of principles governing the right of intervention on

the efficiency of their dispute resolution system. They implicitly understood that intervention is a device that balances competing interests of the parties. On one side of the balance is the interest of an existing party in controlling the course of an arbitration proceeding it initiated. On the other side of the balance is the interest of a union in entering an arbitration if the outcome will have an effect on its bargaining unit members. In addition, the union seeking to intervene might possess some expertise or additional information that could help an arbitrator make the best decision. Finally, the parties implicitly understood that an arbitrator has an interest in resolving controversies efficiently and that such efficiency is advanced by deciding related disputes in a single proceeding. While arbitrators generally defer to the right of original parties to control the arbitration proceeding, an appropriate balance occasionally must be struck between conflicting goals. As one scholar observed, "the basic problem of intervention practice is the adjustment between the need [for protection of third parties] and the traditional view that an [arbitration proceeding] is a private controversy in which outsiders have no place." (*See* Berger, 50 Yale L.J. 65 (1940).) Courts have struggled with finding the same balance. As one court stated, "the decision whether intervention of right is warranted thus involves an accommodation between two potentially conflicting goals: to achieve

judicial economies of scale by resolving related issues in a single lawsuit and to prevent the single lawsuit from becoming fruitlessly complex or unending." (*See Smuck v. Hobson*, 408 F.2d 175, 179 (D.C. Cir. 1969); *see also Tobias, "Standing to Intervene,"* 1991 Wis. L. Rev. 415 (1991).)

In designing their system of dispute resolution, the parties chose arbitration as their enforcement mechanism. As a quick and efficient means of dispute resolution, private arbitration proceedings are a logical alternative to traditional litigation. Both the APWU and the Employer (as well as the NALC in a nearly identical design) have recognized the importance of an efficient dispute resolution system by recognizing the possibility of arbitrating any "dispute, difference, disagreement, or complaint between the parties related to wages, hours, and conditions of employment." (*See* Joint Exhibit No. 1, p. 91.) Concerns of efficiency, speed, and expense permeate the parties' collective bargaining agreement, and the parties made clear their commitment to an informal, speedy disposition of grievances. (*See* Joint Exhibit No. 1, p. 91-108.) Indeed, society generally has recognized benefits of arbitration by narrowly restricting judicial review of arbitration decisions. Some courts have gone so far as to ordering parties to pay their opponent's legal fees if they disingenuously assert that an arbitration award failed to draw its essence

from the contract. (*See Teamsters Local No. 579 v. B.&M Transit, Inc.*, 882 F.2d 274 (7th Cir. 1989); and *Dreis and Krump Mfg. Co. v. Int'l Association of Machinists*, 802 F.2d 247 (7th Cir. 1986).) Even in public policy matters, the U. S. Supreme Court has been clear about the enforceability of an arbitration award unless it violates "some explicit public policy that is well-defined and dominant and is to be ascertainable by reference to the laws and legal precedents and not from general considerations of supposed public interests." (*See United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 33 (1987).)

Strong evidence of the parties' intent to capture these benefits of a relatively informal and speedy dispute resolution system is found in Article 15.5.A.9 itself. The "right of intervention" set forth in Article 15.5.A.9 recognizes competing interests that arise when an employer deals with a number of collective bargaining representatives. Disputes, for example, between the American Postal Workers Union and the Employer with regard to allocation of work, elimination of existing jobs, cross-craft transfers, and interpretations of the collective bargaining agreement often implicate interests of the National Association of Letter Carriers and possibly other unions. Under Article 15.5.A.9, a union whose "interests may be affected " can protect those interests by intervening in the arbitration

proceeding, instead of filing its own grievance under its labor contract with the Employer. This aspect of the dispute resolution system advances goals of efficiency and economy by consolidating what inevitably would have been two or more proceedings into a single undertaking. By designing their dispute resolution system in this way, the parties also reduce the risk of conflicting arbitration awards. Should conflicting awards be issued, it no doubt would prompt protracted litigation between the parties.

Advancing efficiency and economy by consolidating arbitration proceedings is a value mirrored in American case law. Even though the concept of intervention is a relatively recent development in the law and is vested in the civil law of Louisiana, strong policy reasons for its adoption have led to its rapid growth. For example, the U. S. Court of Appeals for the Ninth Circuit has recognized that "compelling all three parties to submit their grievance to the same arbitration is practicable, economical, convenient, and fair. It not only avoids the duplication of effort, but also avoids the possibility of conflicting awards." (*See U.S. Postal Service v. American Postal Workers Union,* 893 F.2d 1117, 1121 (9th Cir. 1990).) Other courts have concluded that benefits of consolidated hearings outweigh concerns about the inability of parties to agree on an arbitrator. (*See, e.g., U.S. Postal Service v. National Rural Letter Carriers,* 959 F.2d

283 (D.C. Cir. 1992).) As a general rule, the U.S. Supreme Court has elevated the goal of efficiency when addressing the issue of consolidated arbitration proceedings. (*See, generally, Volt Information Sciences, Inc. v. Leland Stanford University*, 489 U. S. 468 (1989).) Recognizing potential tension between the goal of promoting efficiency and violating a party's contractual right, it becomes the burden of the party objecting to the consolidation to demonstrate prejudice to a substantial right. Merely desiring to have one's dispute heard in a separate proceeding is not a sufficiently substantial right to prevent consolidation. If, on the other hand, one contract called for disputes to be resolved in litigation and another related contract called for disputes to be resolved in arbitration, it arguably would prejudice a substantial right of a party to construe the agreement as imposing an arbitral forum.. The parties impliedly intended their agreement to be construed in a way that struck an appropriate balance which gives respect to competing interests of the parties. As one scholar stated, "throughout the history of the intervention doctrine, the traditional *raison d'etre* of intervention of right--minimizing the injury to third parties caused by judicial processes--has conflicted with court concern about prejudice to existing parties and impairments of orderly judicial

processes." (*See* 89 Yale L.J. 586, 591 (1980).) No prejudice to a substantial right has been shown in the dispute before this arbitrator.

In this case, substantial harm to the goals of efficiency and economy would result by denying an intervening union a right to refer a dispute to Step 4. First, denial of such a right would deter future interventions. A union that sought to intervene in a dispute in an effort to compel a national interpretation would be narrowly restricted in its ability if the APWU's construction of Article 15.5.A.9 was adopted as the correct one. Instead, the union that desired to intervene would be required to file its own grievance under a similar collective bargaining agreement or might initiate a judicial proceeding against the Employer. Absent resolution of the interpretive issue, repeated arbitration proceedings, with potentially inconsistent results, likely would be the consequence. Such a conclusion would cause the parties to waste valuable resources. To avoid such waste some courts have permitted intervention. (*See Matter of Arbitration between Office and Professional Employees*, 1998 WL 226160 (S.D.N.Y., May 5, 1998); *See also Emergy Airfreight Corp.*, 1998 WL 720180 (E.D.N.Y., October 8, 1998).)

Another important reason supports a conclusion that the parties intended to permit an intervening union to refer a dispute to Step 4. It is

reasonable to expect that parties will qualify contractual language which is not in accord with their expectations, and the absence of unambiguous qualifying language in this case suggests the Employer and the APWU recognized that it would clutter the landscape of risk if such qualifying language were added to the agreement. The risk would be that such language would have created a climate of greater uncertainty and would have risked driving various collective bargaining units with whom the Employer dealt further apart. When the parties made promises to each other in their collective bargaining agreement, it is reasonable to assume their expectation was that they were designing a system which would work; and both parties committed themselves to making the system work economically and efficiently. To apply the APWU's construction of the agreement in this case would deprive the parties of some of the essential value of making the grievance-arbitration system serve its purpose, namely, to make the relationship with the Employer work more efficiently.

Although rights of clerks and letter carriers are no longer determined jointly, both unions retain a common past; and their futures are inextricably enmeshed. By retaining similar collective bargaining agreements, the APWU and the NALC remain tightly connected not only by the common mission of the Employer but also by a plethora of arbitration

awards that have given their agreements a shared meaning. Creating two separate galaxies of unrelated, independent arbitration proceedings involving closely similar issues would pose a threat to each galaxy and undermine the overall efficiency of the Employer with its work force.

At a minimum, the APWU's proposed design for the dispute resolution system would undermine an incentive for cooperation between the APWU and the NALC. Such a design would further tax resources of the Employer and would impede its ability to resolve conflicts within its overall work force. A common tradition has the potential of bringing the parties closer together and making it easier for the Employer to streamline workplace processes. Building an impregnable firewall between segments of the work force inevitably will increase tensions between the parties and require more resources to protect similar, but separate interests. It advances the interests of all parties for their galaxies not to diverge irrevocably. Allowing an intervening union a right to turn an area-level arbitration into a national-level one advances the goal of cooperation between the parties by requiring collective bargaining representatives and the Employer to remain in constant communication with each other and by compelling the interpretation of similar agreements in one setting.

Believing that this entire line of argument burns itself out like a supernova, the APWU argued that greater, not less, efficiency would be promoted by denying an intervening union the right of referral. According to the APWU, giving a third party a right to refer a matter to Step 4 would waste resources by creating procedural uncertainty in the grievance process. As the APWU saw it, such uncertainty was highlighted by the Monroe arbitration. (*See* APWU's Exhibit O.) In the Monroe case, the NALC intervened in an area-level arbitration between the APWU and the Employer. The dispute was sent to Step 4 where, without allowing the NALC to participate in the Step 4 proceeding, the original parties to the dispute issued a resolution to the effect that there was no interpretive issue and referred the matter back to area-level arbitration. On remand, the arbitrator concluded that:

> Either (1) this matter has not been properly remanded to regional level arbitration because the Intervenor NALC was not a party to the Step 4 resolution; or (2) if the remand is proper, the Intervenor has the same rights now as before under Article 15 to intervene and again, as before, to refer the matter to Step 4. (*See* Case No. G90C-4G-C 92040749 (1994), pp. 4-5.)

The APWU concluded that such a result from the arbitrator demonstrated the procedural limbo that disputes will undergo as the parties try to define rights of the intervenor after the matter has been referred to Step 4.

First, the APWU's concern can be addressed by clarifying the procedural posture of the case after it has been remanded. Although this decision does not define those rights, it is reasonable to believe that future awards would allow the interventor, who had referred the matter to Step 4, to participate in those negotiations. Participation in the Step 4 proceedings, as contemplated by the arbitrator in the Monroe decision, would minimize procedural uncertainty by allowing all parties to participate in determining how the dispute should proceed. Striking the appropriate balance in that part of the process must await another day and another arbitrator.

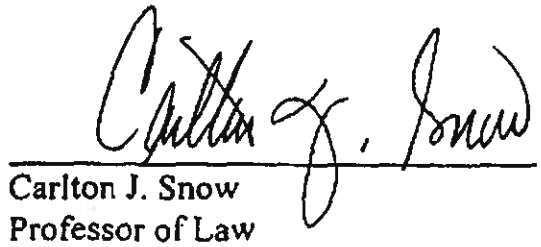
Moreover, even if increased time and resources were expended as disputes bounce back and forth between Step 4 and area-level arbitration, the loss would be minor compared to the loss associated with a decrease in tripartite grievance arbitration. To a certain extent, any loss associated with procedural uncertainty ought to be mitigated by the parties' own good judgment and economic incentive to minimize resources spent on allowing a dispute to bounce around needlessly in a procedural limbo. In short, economic and efficiency concerns should drive the parties toward a mutual resolution of any procedural uncertainty, as the ultimate disposition of the case in Monroe, Louisiana demonstrated. If the parties, however, are regularly required to initiate two grievances in order to address disputes that

arise from a single set of circumstances, the waste of resources cannot be similarly mitigated. Irrevocably trapped in separate proceedings, the parties would be unable, or at least have less incentive, to resolve the dispute in a three-party setting. The result would be a proliferation of arbitration proceedings, potentially conflicting interpretations of similar language in contracts with the same Employer, and a deleterious impact on the ability of the Employer to plan and to manage its workforce. A shared expectation of the parties was that their agreement would advance the Employer's efficient management of the workforce, and that expectation supports a conclusion that the parties to the agreement intended an intervening union to enjoy the right to withdraw a dispute from area-level arbitration and to submit it to Step 4 of the grievance procedure.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the National Association of Letter Carriers, when it has intervened in an area-level arbitration case, has the right to refer the case to Step 4 of the grievance procedure. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date: January 1, 2000

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Certified Number : Z 201 154 938

Mr. William H. Quinn
National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: A90M-1A-C 94023140
Class Action 94005
Hauppauge, NY 11760-9998

A90M-4A-C 93050831
R. Ramos 92494
New York, NY 10199-9511

Dear Mr. Quinn:

On October 22, 1998, I met with your representative, Richard Collins, to discuss the above-referenced grievances at the fourth step of our contractual grievance procedures.

The issue in these grievances is whether the union appealed the grievances to Step 3 in a timely manner.

After reviewing this matter, we mutually agreed that no national interpretive issue is presented in these cases.

The case file indicates that these cases were appealed to Step 4 from regional arbitration. Accordingly, in compliance with the Memorandum of Understanding, Step 4 Procedures, we agreed that they will be returned directly to regional arbitration to be heard before the same arbitrator who was scheduled to hear the cases 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.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Time limits at Step 4 were extended by mutual consent.

Sincerely,

Carolyn B. Shirkey
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 11/12/98

475 L'ENFANT PLAZA SW

ARBITRATION AWARD

January 18, 1983

UNITED STATES POSTAL SERVICE

-and-

Case No. H8C-4C-C 12764
(AB-C-1859)

AMERICAN POSTAL WORKERS UNION

Subject: Withdrawal from Regional Arbitration

Statement of the Issue: Whether the instant grievance presently belongs in regional arbitration as the APWU asserts or in Step 4 of the grievance procedure as the Postal Service asserts?

Contract Provisions Involved: Article XV, Sections 2, 3 and 4 of the July 21, 1978 National Agreement.

Grievance Data:

	Date
Grievance Filed:	December 3, 1979
Step 2 Answer:	January 14, 1980
Step 3 Answer:	February 26, 1980
Appeal to Arbitration:	February 28, 1980
Regional Arb. Hearing:	January 18, 1981
Attempted Withdrawal:	February 13, 1981
National Arb. Hearing:	September 14, 1982
Briefs Submitted:	Nov. 29, 1982 and January 3, 1983

Statement of the Award: The instant grievance belongs in Step 4 of the grievance procedure.

BACKGROUND

This case involves a dispute as to where the instant grievance belongs in the grievance and arbitration procedure. The APWU says that it belongs in regional arbitration and that the Postal Service did not properly remove it from regional arbitration to Step 4. The Postal Service disagrees. It urges that it referred the grievance to Step 4 in accordance with the procedure set forth in Article XV, Section 4B(5) of the National Agreement. It believes there is no sound basis, at this time, for returning this matter to regional arbitration.

The grievance was filed on December 3, 1979, on behalf of two part-time flexible employees in Duluth, Minnesota. These employees had been scheduled in advance to work a certain day but were then told not to report. They did not report. They claimed, however, that they were entitled to be paid "for four hours guarantee as if they had worked." The Postal Service denied the grievance at the various steps of the grievance procedure. Its Step 3 answer added:

> "In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration..."

The APWU agreed with this Management view and appealed the case to regional arbitration.

A hearing was held before Arbitrator Gerald Cohen on January 19, 1981. The Postal Service representative, J. K. Hellquist, apparently was surprised by the argument made by the APWU. He concluded during the hearing that the grievance seemed to raise an interpretive issue under the National Agreement. He told Arbitrator Cohen and the APWU that he would, after the hearing but prior to the filing of post-hearing briefs, determine whether he wished to refer the case to Step 4 in accordance with Article XV, Section 4B(5). That provision reads:

> "If either party concludes that a case referred to Regional Arbitration involves an interpretative 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."

Hellquist wrote to Arbitrator Cohen and the APWU on February 13, 1981. His letter stated in part:

> "After lengthy discussions with the Union in the person of Mr. Williams, APWU Regional Coordinator, Mr. Williams has indicated to me that it was the decision at the national level of the [APWU]...that employees who are advised to not come in to work under similar circumstances constitutes an obligation on the part of the employer for call-in pay. In view of the fact that the Union insists that this is a national interpretation of the call-in pay provision, which is allegedly supported by Arbitrator Garrett's National Award on this subject, the employer considers this to be a national issue that should be handled at Step 4 of the grievance procedure.
>
> "The arbitrator should issue no opinion and award on this matter until there has been a determination at Step 4 as to whether or not this is a national interpretive issue. If it is decided that this is a national interpretive issue, the arbitrator's jurisdiction over this matter is revoked by virtue of the contract language. If the Postal Service decides at Step 4 that this is not a national interpretive issue, the arbitrator will be advised as to whether or not the parties wish to have it decided." (Emphasis added)

The APWU replied on February 20, 1981. It urged that the Hellquist letter did not comply with Article XV, Section 4B(5) because although there'd been a "referral" to Step 4, there'd been no "withdrawal" from regional arbitration. Its letter explained its position in these words:

> "...Mr. Hellquist's request does not conform to the agreement and, therefore, you [Arbitrator Cohen] do not have the authority to honor that request.
>
> * * *
>
> "The parties have a further opportunity under Article XV, Section 4B(5) to reassess their positions and determine whether one party or the other

wishes to withdraw from arbitration at the regional level and refer the case to Step 4. The contract is clear. The party which determines the case involves an interpretive issue must withdraw and refer. The language does not permit a referral without the withdrawal as Mr. Hellquist seems to be requesting. In his letter, ...he states: 'The employer considers this to be a national issue that should be handled at Step 4 of the grievance procedure.' If that is true, he should withdraw the case and refer it to Step 4. However, in the [next]...paragraph, he requests that you not issue a decision until a determination has been made at Step 4 as to whether or not this is a national interpretive issue. He goes on to state that if the Postal Service at Step 4 decides unilaterally that the issue is not a national interpretive issue, you (Arbitrator Cohen) will be advised as to whether or not to decide the case.

"Mr. Hellquist cannot have both a Step 4 grievance and a case certified for arbitration all within the same case. He must decide, as he assured us at the hearing he would, prior to the date set for filing briefs.

* * *

"In light of all of the above, I must assume, in the absence of a specific withdrawal from arbitration by the Employer, that you retain authority to decide this case within the time frame mutually agreed to at the hearing..."

The APWU filed its post-hearing brief on February 24, 1981. It urged Arbitrator Cohen to "decide this case in accordance with the mutual agreement made at the hearing." The arbitrator initially accepted the APWU's view of Hellquist's February 13, 1981 letter. He advised the parties on March 2, 1981 that "the matter has not been formally appealed to Step 4" by the Postal Service and that he therefore would "pursue my duties as the Arbitrator..." Hellquist did not file a post-hearing brief. Instead, he promptly advised the arbitrator and the APWU on March 5, 1981 that "my prior letter indicates that the matter has been referred to Step 4." The arbitrator, relying on this last statement from Hellquist, notified the parties on March 16, 1981 that "I will take no further action in the matter, as my jurisdiction and authority ceases immediately upon reference to Step 4."

The APWU protested. But Arbitrator Cohen stood by his ruling. It is not clear whether there has actually been a Step 4 meeting on this grievance after March 16, 1981. The APWU took the position that the Postal Service had not properly removed this grievance from regional arbitration and that the merits of the grievance should be returned to Arbitrator Cohen for a decision. It brought this procedural issue to national arbitration.

DISCUSSION AND FINDINGS

The applicable contract principle is found in Article XV, Section 4B(5). Where either party determines that a case involves a national interpretive issue, it "may withdraw the case from [regional] arbitration and refer the case to Step 4 of the grievance procedure." The question here is whether the Postal Service properly invoked this right in the instant case. The Postal Service says it did; the APWU says it did not.

The evidence plainly supports the Postal Service's position. The regional arbitration was held on January 19, 1981. During the course of the hearing, the Postal Service spokesman (Hellquist) stated that he would advise the arbitrator and the APWU, prior to the filing of post-hearing briefs, whether he wished to refer this grievance to Step 4 pursuant to Article XV, Section 4B(5). Some twelve or thirteen days before the briefs were due, Hellquist wrote to the arbitrator and the APWU. He stated that "the employer considers this to be a national issue that should be handled at Step 4 of the grievance procedure." His intentions could not have been clearer. He was invoking Article XV, Section 4B(5) and "refer[ring] the case to Step 4 of the grievance procedure."

The APWU asserts that Article XV, Section 4B(5) requires two separate and distinct actions: "withdraw[ing] the case from [regional] arbitration" and "refer[ring] the case to Step 4 of the grievance procedure." It concedes that the necessary referral took place[1] but it insists that no withdrawal occurred. This argument, however, is unrealistic. It enshrines form at the expense of substance.

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1 This concession is obvious from the APWU's February 20, 1981 letter quoted at length earlier in this opinion.

The act of referring the case to Step 4 necessarily included withdrawing the case from regional arbitration. The Postal Service did not have to utter the precise words of Article XV, Section 4B(5) to trigger the application of this provision. It simply had to express its intention to invoke this provision, its intention to move the dispute from regional arbitration to Step 4. It did so.[2]

Hellquist's letter stated too that Arbitrator Cohen "should issue no opinion...until there has been a determination at Step 4 as to whether or not this is a national interpretive issue." He then added that if a national issue is involved "the arbitrator's jurisdiction over the matter is revoked..." but that if a national issue is not involved "the arbitrator will be advised as to whether or not the parties wish to have it decided." The APWU, in its correspondence with Arbitrator Cohen[3], viewed Hellquist's words as evidence that the Postal Service was not withdrawing the case from regional arbitration. I cannot agree. This portion of the Hellquist letter was merely a statement of opinion as to what might be decided in Step 4 and how any such decision would affect Arbitrator Cohen's authority to rule on the merits of the dispute. Nothing he said here has any significance for purposes of this dispute. For he had already stated in clear and unequivocal language that the Postal Service was moving the case to Step 4 and hence necessarily removing the case from regional arbitration.

The Postal Service did not waive its right to refer the case to Step 4. It told Arbitrator Cohen and the APWU in the regional arbitration hearing that it would advise them, prior to the filing of post-hearing briefs, whether it wished to invoke Article XV, Section 4B(5). It decided to invoke this provision and gave notice of its decision in Hellquist's February 13, 1981 letter. This was almost two weeks before the brief ffling date. The case was properly referred to Step 4.

---

2 Arbitrator Cohen's initial ruling that Hellquist's February 13, 1981 letter did not properly invoke Article XV, Section 4B(5) is certainly not binding on this national arbitrator. That ruling was, in my opinion, wrong.

3 The APWU did not really pursue this point in its post-hearing brief at this national arbitration.

The Postal Service also requests in this national arbitration that the grievance be denied on its merits. However, only the procedural problem under Article XV, Section 4B(5) was explored at the national arbitration hearing. I do not have sufficient evidence or argument for a ruling on the merits. In any event, the case properly belongs in Step 4 for further discussion and disposition.

AWARD

The instant grievance belongs in Step 4 of the grievance procedure.

Richard Mittenthal, Arbitrator

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE Case No. H1C-NA-C 52

and

AMERICAN POSTAL WORKERS UNION

APPEARANCES: D. James Shipman for the Postal Service; O'Donnell, Schwartz & Anderson, by Susan L. Catler, Esq.

DECISION

This grievance arose under and is governed by the 1981-1984 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected by the parties to serve as sole arbitrator, a hearing was held on 13 January 1984, in Washington, D. C. Both parties appeared and presented evidence and argument. The arbitrator finds the issues to be as follows:

1. Does Article 15, Section 4.B(7) of the National Agreement preclude either party from ordering a verbatim transcript of a regular arbitration hearing at the regional level without the consent of the other?

2. Did the Postal Service violate Article 15, Section 4.B(7) of the 1981-1984 National Agreement by ordering a verbatim transcript of all regular arbitration hearings at the regional level before one particular arbitrator?

3. If the answer to Issue #1 or Issue #2, or both of them, is in the affirmative, what is the appropriate remedy?

A verbatim transcript was made of the arbitration proceeding. Each side filed a post-hearing brief.

On the basis of the entire record, the arbitrator makes the following

AWARD

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

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

3. The grievance is denied.

Benjamin Aaron
Arbitrator

Los Angeles, California
4 May 1985

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE Case No. H1C-NA-C 52

and

AMERICAN POSTAL WORKERS UNION

OPINION

I

Article 15, Section 4.B(7) of the 1981-1984 National Agreement (JX-1) provides in pertinent part:

> Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level 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.

Article 15, Section 4.A(7) provides in pertinent part: "All arbitrators on the Regular Regional Panels . . . shall serve for the term of this Agreement and shall continue to serve for six (6) months thereafter, unless the parties otherwise mutually agree."

Some time in April, 1982, the Postal Service notified the Union that transcripts would be made of regular arbitrations at the regional level before a particular arbitrator. (In January, 1982, the Postal Service had passed up its op-

portunity to remove this arbitrator from the Regional Panel.) Thereafter, transcripts were routinely requested by the national office of the Postal Service in all regular regional arbitrations conducted by that arbitrator. The reason subsequently given by the Postal Service at the arbitration hearing for following this procedure was that its representatives had observed that the arbitrator had "some difficulty . . . [in keeping] the facts straight and we believe that particular Arbitrator may need some assistance in that for our own interest, to protect our own interest." (Tr. 16)

On 26 April 1982, William Burrus, the Union's General Executive Vice President, wrote a letter (UX-1) to Joseph F. Morris, Senior Assistant Postmaster General, Employee and Labor Relations Group, stating in part:

> The . . . Union maintains that demand for transcripts in all Hearings before a specific arbitrator is violative of the National Agreement.
>
> Article 15, Section 4.B(7) states in part "normally, there will be no transcripts of arbitration hearings."

In a letter dated 4 February 1983 (JX-2) to James C. Gildea, Assistant Postmaster General, Labor Relations Department, Union President Moe Biller submitted a "dispute over the interpretation of Article 15, Section 4, B(7) as prohibiting USPS policy of demanding transcripts in all cases heard before" the arbitrator in question. His letter

also stated in part:

> The union interprets the language of exception ". . . except either party at the National level may request a transcript." as requiring the party who desires a transcript to make such request from the other party.
>
> The union further interprets the application of "normally" as restricting the right of either party to demand transcripts in all cases heard before a particular arbitrator.

On 22 February 1983, William E. Henry, Jr., Director, Office of Grievance and Arbitration, wrote a letter to Burrus (JX-2), stating the position of the Postal Service on the Union's grievance, as follows:

> It is the position of the Postal Service that the language in dispute reserves to each party individually the right to have a regular regional arbitration hearing recorded and transcribed when the need arises, without seeking the concurrence of the other party; and that this same right is reserved for the submission of post-hearing briefs on the same basis. This position anticipates that appropriate reasonable notice be given the other party in each such instance.

On 9 March 1983, the Union formally appealed the dispute to arbitration. (JX-2)

Concerning the practice followed before the arbitrator in question during the period between April, 1983, and January, 1984, a representative of the Postal Service, D. James Shipman, advised that the Postal Service initially had advised the Union by telephone of its intention to order a transcript of the hearing, but later had acceded to the Union's demand that the request be in writing. Shipman also

provided the following additional information (Tr. 62-63):

> When we have made a request or a notification . . . to the National Union concerning [this particular arbitrator], we've never received back a written response or anything saying, "We do not agree to this," or, "We object to it." There have been instances wherein advocates who agree to a level arbitration hearing have, in fact, asserted objections at the hearing.
>
> [The arbitrator in question] has basically taken a look at the particular cases and in some cases he found that, irrespective of whether it was he or any other Arbitrator, there was a basis for taking a transcript and permitted the taking of a transcript.
>
> . . . In one case . . . [he] reserved a ruling on whether or not to take a transcript and he wrote an opinion and award which . . . addressed the question of whether a transcript ought to be taken and he took it upon himself to interpret this language as requiring some agreement by the parties et cetra. However, he did allow the transcript in that particular case and then said "This is how I'm going to rule in future cases."
>
> In one other case . . . [he] declined to allow the Court Reporter to take a transcript for the purpose of making a record of the proceeding and in that particular matter it ultimately eventuated that the Court Reporter remain[ed] simply for the purpose of making notes for the Postal Service and this was strictly a Postal Service record. A copy was not provided to the Arbitrator.
>
> In another case, the Union objected to the presence of a Court Reporter and it was pointed out to [the arbitrator] that a request had, in fact, been made in that case at the National level and notification by the Postal Service to the Union. The Union, at the National level, had never asserted any objection to the presence of a Court Reporter and the Union . . . at the Regional

> level hearing, could not then assert an objection to the standard procedure. In that case he permitted the presence of the Court Reporter and did receive a copy of that and rendered an opinion and award concerning the matter . . . .

Phillip Tabbita, a Union representative, added the following to Shipman's account (Tr. 64):

> . . . [I]n quite a number of cases that . . . [this particular arbitrator] has had, the objections have been raised and . . . [he] has acted quite vigorously to avoid a ruling on that, feeling that . . . the transcripts were directed at him but he would prefer not to be the person who decides whether or not the transcript will be taken and a number of other advocates have failed to pursue their objections, based on his desire not to be the focal point in making the decision.

The Postal Service also called as a witness, Frederick W. Frost, Jr., formerly General Manager, Arbitration Division and currently General Manager, Labor Contract Administration, who testified, over the Union's objections, concerning the background of negotiations over Article 15, Section 4.B(7) prior to its introduction into the 1978-1981 National Agreement.(Ex-4) His testimony, in essence, was to the effect that he had refused to yield to Union proposals that transcripts could be ordered only by mutual agreement, and that the parties had ultimately agreed that

> the National parties could make a determination in the sense that if I wanted a transcript on the National basis, I would call Frosty [Forrest M. Newman, APWU Director of Industrial Relations] or call [Frank] Conners [Vice President of the NALC] and tell them, "I'm going to get a transcript in this case" (Tr. 44).

The Postal Service also introduced a letter dated 26 May 1983 (EX-6) to Sherry S. Barber, General Manager, Arbitration Division, from John P. Richards, APWU Industrial Relations Director, reading as follows:

> Pursuant to Article 15, 4B(7), the . . . Union will have a court reporter for: [specify the date, arbitrator, location, grievance number, and grievant]. . . .
>
> P.S. Frank Dyer of the USPS was informed by phone this date.

It also appears that the determination whether to file a post-hearing brief in any given regular regional arbitration case has been made unilaterally by each party, without requesting the consent of the other.

II

Union counsel objected to the admission of Frost's unrebutted testimony at the arbitration hearing on two grounds: first, because the language of Article 15, Section 4.B(7) is "clear," and second, because "bargaining history was not mentioned in the Step 4 decision, where it should have been mentioned, if they're going to rely on it." (Tr. 23(a)) I do not find either objection persuasive.

To characterize the language of Article 15, Section 4.B(7) as "clear" strains credulity; the provision is studded with ambiguities, as the competing arguments of the parties prove only too well. Specifically, they cannot agree on the meaning of "Normally" or of "request." Nor do I believe

that the Union has been prejudiced because the Postal Service introduced testimony about bargaining history for the first time at the arbitration hearing. Of course, it would have been better practice for the Postal Service to have indicated its partial reliance on bargaining history in the grievance procedure, but the Union can hardly claim to have been surprised by Frost's testimony at the arbitration hearing. Whenever the meaning of contract language is in dispute, the parties are automatically on notice that the relevant bargaining history may come up in an arbitration hearing. In any case, I think this particular dispute can be resolved primarily on the basis of a common-sense interpretation of the disputed provision.

Construed in context, the word "Normally" means, in my judgment, "usually," rather than "in all but abnormal cases." I reject the latter interpretation because there is no indication in the National Agreement itself or in the bargaining history that the parties ever had a common understanding of what constitutes an "abnormal" case, and also because the former interpretation seems to conform better with past practice.

It also seems clear that the word "request" does not mean what it normally does in a different context; rather, in this provision it means "notify." That this interpretation takes a certain liberty with the contract language is

true; but it also adopts a construction that conforms with that adopted by the parties themselves. Thus, as previously noted, when the Union decided it wanted a transcript in a regular case at the regional level, it advised the Postal Service that it would "have" a court reporter, and added that a Postal Service representative had been "informed" of its decision by telephone. That is not a request; it is a notification. Frost's testimony of Postal Service practice was to the same effect. Finally, according to statements by both Postal Service and Union representatives, even the particular arbitrator in question was uncertain how to handle the issue of a transcript ordered by the Postal Service, deciding on some occasions to allow it, on others to refuse to use it, and on still others, quite understandably, to avoid ruling on the question.

I therefore conclude that Article 15, Section 4.B(7) of the National Agreement does not preclude either party from ordering a verbatim transcript of a regular arbitration hearing at the regional level without the consent of the other, so long as reasonable advance notice is provided, and that in the circumstances of this case the Postal Service did not violate the National Agreement by regularly ordering transcripts in cases heard by one particular arbitrator.

This determination is not intended, of course, as an endorsement of the Postal Service's policy, the consequences

of which are to cause great embarrassment to the arbitrator in question and to create doubts in the Union's mind about the Postal Service's good faith. Nevertheless, there is no indication that the number of cases heard by that arbitrator constituted so unusually high a percentage of regular cases in that region as to offend against the principle that neither party will usually (i.e., "normally") order a transcript.

Benjamin Aaron
Arbitrator

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	
	)	
AMERICAN POSTAL WORKERS UNION	)	CASE NO.: H4C-3W-C 8590
	)	
and	)	
	)	
UNITED STATES POSTAL SERVICE	)	

BEFORE: Professor Carlton J. Snow

APPEARANCES:

For the U.S. Postal Service: Mr. J.K. Hellquist

For the Union: Ms. Susan L. Catler

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: November 20, 1992.

POST-HEARING BRIEFS: February 18, 1993

AWARD:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that Article 15.4.B(7) provides each party with the procedural right to file a post-hearing brief after notifying the other party and the arbitrator of its intent to do so. The grievance is denied. It is so ordered and awarded.

DATE: March 31, 1993

Carlton J. Snow

Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION BETWEEN AMERICAN POSTAL WORKERS UNION AND UNITED STATES POSTAL SERVICE (Case No. H4C-3W-C 8590) (Post-Hearing Briefs Grievance)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from July 21, 1987 through November 20, 1990. A hearing occurred on November 20, 1992 in a conference room of the USPS Headquarters Building located at 475 L'Enfante Plaza in Washington, D.C. Ms. Susan L. Catler of the O'Donnell, Schwartz, and Anderson law firm in Washington, D.C. represented the American Postal Workers Union. Mr. James K. Hellquist, Labor Relations Assistant, represented the United States Postal Service.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The hearing was transcribed by a reporter for Diversified Reporting Services, Inc. The arbitrator received a transcript of 88 pages. The advocates fully and fairly represented their respective parties.

The parties agreed that the matter properly had been submitted to arbitration and that there were no issues of substantive or procedural arbitrability to be resolved. They submitted the matter on the basis of evidence presented at the hearing as well as arguments set forth in post-hearing briefs. The arbitrator officially closed the hearing on February 18, 1993 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Does Article 15.4.B(7) which states that "either party at the hearing may request to file a post-hearing brief" provide 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?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

15.4.A.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.

15.4.B.7. Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level 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.

15.4.C.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;

. . . .

IV. STATEMENT OF FACTS

In this case, there has been a disagreement about the correct interpretation of contractual language in Article 15.4.B(7) of the parties' National Agreement. At the conclusion of an earlier rights arbitration hearing before another arbitrator, the Employer informed the Union of its intention to file post-hearing briefs. The Union objected to filing post-hearing briefs in that case on the basis of efficiency. The parties were unable to resolve their disagreement, and they ultimately submitted the matter to the arbitrator for resolution. The arbitrator in the earlier case determined that post-hearing briefs were unnecessary and ruled that the Employer could not file a post-hearing brief in the matter. The Employer appealed that decision to Step 4 of the grievance procedure for resolution of the issue with regard to whether the parties have a contractual right to file post-hearing briefs in regular regional arbitration cases after notifying the other party and the arbitrator of an intent to do so. Being unable to resolve their differences, the matter proceeded to arbitration at the national level.

V. POSITION OF THE PARTIES

A. The Union

It is the position of the Union that language in Article 15.4.B(7) is clear and unambiguous, and the Union maintains that the plain meaning of the language should be adopted. According to the Union, the plain meaning means that a party may request permission from the arbitrator to file a post-hearing brief, but the arbitrator has authority to deny the request. That is the plain meaning of "either party at the hearing may request to file a post-hearing brief," and the Union believes it should be implemented.

The Union contends that the plain meaning of the language is supported by the context in which the parties placed it. According to the Union, the sentence immediately following the language at issue demonstrates that the parties were capable of drafting language which provided for a unilateral, procedural right of a party. The sentence immediately follow ing states:

> 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 arguments at the conclusion of the hearing. (See, Joint Exhibit 1, pp. 67-68, emphasis added, and Union's Post-hearing Brief, p. 6).

According to the Union, interpreting the phrase "may request" in the disputed language to give the parties an absolute right to file a post-hearing brief, in effect, would interpret the phrase "may request" completely out of Article 15.4.B(7).

It is also the belief of the Union that bargaining

history supports its interpretation of the disputed language. First, the Union argues that an earlier award by Arbitrator Aaron did not dispose of the issue before this arbitrator. According to the Union, the Aaron award merely determined that the parties had a right to request a verbatim transcript in regular regional arbitration proceedings without the consent of the other party. It is the contention of the Union that, in the case before this arbitrator, it is not saying both parties must consent to the filing of post-hearing briefs. Rather, the Union is arguing that the arbitrator has the authority to deny a party's request to file a post-hearing brief.

The Union also believes that bargaining history shows impartial Chairperson Sylvester Garrett urging the parties to adopt language that would prohibit the parties from filing post-hearing briefs in regular arbitration hearings unless the arbitrator requested briefs. The Union believes that the parties' rejection of that position does not support the Employer's interpretation of contractual language but, instead, demonstrates the parties adopted language which provides that a party may request leave to file a post-hearing brief, but the arbitrator retains authority to deny that request.

Additionally, the Union contends that the testimony of witnesses at the arbitration hearing failed to support the Employer's interpretation of the disputed language. It is the belief of the Union testimony from witnesses merely illustrated that, in most cases, the parties are able to

reach agreement on whether to file post-hearing briefs and that, therefore, the issue normally was not submitted to an arbitrator for resolution. According to the Union, the Employer presented no evidence of any arbitrator having ruled that regional arbitrators lack authority to preclude post-hearing briefs.

The Union contends the general rule, supported by reference to U.S. Supreme Court case law, is that arbitrators determine procedural rules to be followed by parties at arbitration hearings. That is, "when the subject matter of a dispute is arbitrable, 'procedural' questions which grow out of the dispute and bear on its final disposition are to be left to the arbitrator." (See, Union's Post-hearing Brief, 3, quoting United States Paperworkers International Union v. Misco, Inc., 484 U.S. 29, 40 (1987)). It is the position of the Union that the contractual language at issue in this case does not withdraw from arbitrators their well-recognized authority to determine procedural rules but, rather, codifies their authority by requiring a party to "request" permission from the arbitrator before filing a post-hearing brief.

B. The Employer

It is the position of the Employer that Article 15.4.B(7) grants both parties a right to submit a post-hearing brief in any regular regional arbitration case without the consent of the other party or permission from the arbitrator, after proper notification to the other party and the arbitrator. The Employer maintains that a 1985 national level arbitration award issued by Arbitrator Aaron is dispositive in the case. Arbitrator Aaron interpreted similar language in Article 15.4.B(7) with respect to the contractual right to request a transcript at regular regional arbitration hearings, and he concluded that the language granted a procedural right to each party to have the hearing transcribed, provided appropriate notice had been given to the other party.

It is the position of the Employer that this arbitrator is precluded from interpreting the language of Article 15.4.B(7) with respect to filing post-hearing briefs in any way that is contrary to the Aaron award. As the Employer sees it, "what the Union would like this arbitrator to do in this case is to rule that the words 'may request' mean something different than the words 'may request' mean eight words further on down the sentence. Arbitrator Aaron's ruling in that case disposed of the issue as to what 'may request' means for Article 15.4.B(7) in both instances of filing, as well as having transcripts in an arbitration proceeding." (See, Employer's Post-hearing Brief, 4).

The Employer maintains that, even if Arbitrator Aaron's

award is not dispositive of the issue before this arbitrator, the bargaining history of the parties as well as their past practice under the disputed provision supports management's interpretation of Article 15.4.B(7). The Employer contends the testimony of its witnesses established that, in regular regional arbitration cases, the Employer always has submitted post-hearing briefs whenever it determined briefs to be necessary, after notification to the other party. This allegedly has been done without first requesting permission from the arbitrator to do so. According to the Employer, the fact that the language in Article 15.4.B(7) has remained the same throughout the 1984-87 as well as the 1987-90 collective bargaining agreements means that the Aaron award interpreting the language now has been incorporated by the parties into the National Agreement. It is the position of the Employer that the bargaining history between the parties shows the Union proposed that Article 15.4.B(7) be read to mean both parties must consent to filing post-hearing briefs unless the arbitrator requested them, but the Employer rejected the Union's proposal. It is the contention of the Employer that the Union now is attempting to achieve through arbitration what it failed to obtain at the bargaining table.

VI. ANALYSIS

A. The Plain Meaning Rule of Interpretation

The dispute in this case involves an interpretation of Article 15.4.B(7) of the parties' National Agreement. It states:

> Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level 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. (See, Joint Exhibit No. 1, pp. 66-67, emphasis added).

A fundamental objective of interpreting contracts is to give effect to the intent of the parties, and the Union has argued that this goal is best achieved here by applying the plain meaning rule of contract interpretation. In other words, the Union has argued that the phrase "may request" should be interpreted according to the ordinary meaning of those words. The ordinary meaning of "request" is "to ask for something or for permission or authority to do, see, hear, etc., something; to solicit; and is synonymous with beg, entreat and beseech." (See, Union's Post-hearing Brief, 6).

During the last four decades in the United States, there has been a shift in judicial and scholarly attitudes toward the plain meaning rule. The eminent contract scholar, Samuel Williston, as well as the first Restatement of Contracts took the position that, in an effort to understand the meaning of

language, it was appropriate to consider prior negotiations only if the language of the parties' contract was unclear and ambiguous. As Section 230 of the first Restatement stated, "Oral statements by the parties of what they intended the written language to mean are excluded, though those statements might show the parties gave their words a meaning that would not otherwise be apparent." Justice Oliver Wendell Holmes, a proponent of the viewpoint set forth in the first Restatement, once stated that he would be willing to look outside a contract for extrinsic evidence to prove that "'ten dollars' meant in Canadian dollars, but it [the extrinsic evidence] would not be allowed to show the parties meant twenty dollars." (See, Mellon Bank, 619 F.2d 1001 (3rd Cir. 1980)). This approach to contract interpretation would look beyond the four corners of the document only when the contract is ambiguous on its face.

The Restatement (Second) of Contracts, however, has moved away from the restrictive plain meaning rule championed by Williston. Section 202(1) of Restatement (Second) of Contracts states:

> Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable, it is given great weight. (See, p. 86 (1981), emphasis added.)

It is not necessary to prove an ambiguity in the contractual language of the parties before evaluating the totality of circumstances that created the language. The language of the parties is understood only in context. As the Restatement

(Second) of Contracts has instructed:

> It is sometimes said that extrinsic evidence cannot change the plain meaning of a writing, but meaning can almost never be plain except in a context. Accordingly, the rule stated in Subsection (1) (interpretation of an integrated agreement) is not limited to cases where it is determined that the language used is ambiguous. Any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usage of trade, and the course of dealing between the parties. (See, p. 126 (1981)).

The parties' collective bargaining agreement is the most important codification of their contractual intent, but modern contract theory permits reference to the negotiation history of the parties in an effort to show the meaning of language in their agreement.)See, "The Plain Meaning Rule in Labor Arbitration," LV Fordham Law Review 681 (1987).

B. Bargaining History

The Employer submitted a number of exhibits from contract negotiations for the 1984-87 collective bargaining agreement. One such exhibit consisted of final minutes for the 1978 negotiations. (See, Employer's Exhibit No. 9). During those negotiation meetings, the parties extensively discussed the subject of post-hearing briefs in regular regional arbitration cases. In 1978, the Employer proposed the following language for Article 15.4.B(7):

> Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level 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. (See, Employer's Exhibit No. 8, pp. 16-17).

In response to the Employer's suggestion with regard to post-hearing briefs, the Union in 1978 submitted the following counter proposal:

> ~~Normally,~~ there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level arbitration, <u>unless otherwise mutually agreed</u> ~~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. (See, Employer's Exhibit No. 9, pp. 18-19).

The Union's proposal called for bracketed words to be deleted and underlined words to be added to the proposal.

Mr. James Conway, Chief Spokesperson for the Employer in 1978, refused to accept the Union's counter proposal. He critiqued the Union's proposal by observing that "you,[the Union] are asking us to give up an independent judgment" regarding whether to file a post-hearing brief in a particular case. (See, Employer's Exhibit No. 9, p. 23). Mr. Conway offered the following explanation for the Employer's position with regard to filing post-hearing briefs. He stated:

> We feel the language as proposed on Page 18, Item (7) is logical and think either party should have the option of requesting a transcript or post-hearing brief with control at the National level, so that there are no abuses by either parties. We see no reason to surrender the right of the Employer to have that option. We are saying that normally there will be none, but we are opening up the option of either party to request it, and therefore, we are not proposing to change our position in that respect. (See, Employer's Exhibit No. 9, p. 21, emphasis added).

The parties stipulated before this arbitrator that the disputed contractual language has not changed since the 1984-87 collective bargaining agreement and that the parties adopted the Employer's proposal.

C. Meaning of the Bargaining History

Bargaining history submitted to the arbitrator strongly supports the Employer's position that the parties' retained the right to file post-hearing briefs on request at regular regional arbitration hearings. Although the parties may have used the phrase "may request," there is clear and convincing evidence that the Employer informed the Union at the bargaining table of its understanding that the language meant either party may file a post-hearing brief as a matter of right, after properly notifying the other party of an intent to do so and without the arbitrator's permission. The law is no stranger to words in a contract having a meaning different from that set forth in the dictionary. (See, e.g., Allied

Steel and Conveyors, Inc., 277 F.2d 907 (1960),(where the court interpreted "should" to mean "may.")

In the parties' agreement, there has been no express denial of a right to file a post-hearing brief. Juxtaposing the language in Article 15.4.B(7) with the language in Article 15.4.C(3), it is clear that the parties were capable of drafting language expressly prohibiting any filing of post-hearing briefs. (See, Joint Exhibit No. 4, p. 67). If the parties had intended to prohibit post-hearing briefs unless permitted by the arbitrator, they were capable of doing so. As one court has observed:

> Where the bargain is the result of elaborate negotiations in which the parties are aided by counsel, in such circumstances it is easier to assume that a failure to make provision in the agreement resulted not from ignorance of the problem, but from agreement not to require it. (See, General Foods Corp., 365 F.2d 77, 79 (1966)).

D. The Impact of Past Practice

Restatement (Second) of Contracts has taught that it is appropriate to interpret words of an agreement in light of all the circumstances, and an important circumstance giving strong evidence of the meaning of the parties is found in the way they have implemented their bargain. As Section 202(4) of Restatement (Second) states:

> Where an agreement involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection

to it by the other, any course of performance accepted or acquiesced in without objection is given great weight within the interpretation of the agreement. (See, p. 86 (1981)).

The Employer's interpretation of language in Article 15.4.B(7) conforms to the parties' practice under the provision. Mr. Martin Rothbaum, Labor Relations Program Analyst Principal for the Northeast Region, testified about the practice of the parties. He indicated that he personally has handled at least a thousand arbitration cases in the Northeast, Central, Eastern, and Southern Regions. He testified as follows with respect to the practice of filing post-hearing briefs at regular regional level arbitrations:

QUESTION: When you arbitrate cases in these locations, have you ever had an occasion to file a brief?

ANSWER: Yes sir.

QUESTION: Who made that decision to file a brief?

ANSWER: I did.

QUESTION: Was it made in conjunction with agreement with the Union?

ANSWER: No sir. Where we felt it was necessary to file a brief, I made that determination and told the arbitrator I intended to do so.

QUESTION: Did you consult with the arbitrator to ask permission if you could file a brief?

ANSWER: No sir. (See, Tr., 57).

A number of advocates report to Mr. Rothbaum, and later in his direct examination, he offered the following observation:

QUESTION: Could you reflect on what you know the practice to be from working with these other advocates and directing them in regards to the filing of post-hearing briefs?

ANSWER: Well, not only do we teach it, but we also engage, if there was ever a problem, to give direction, that we have the right to file a brief if we feel it necessary to do so, and the Union has the right to file a brief if they feel it necessary to do so. (See, Tr., 58).

Several other witnesses testified the same as did Mr. Rothbaum, including representatives from each of the regions.

Although the Union is accurate in its contention that none of the witnesses had ever submitted the issue of post-hearing briefs to an arbitrator for resolution, evidence submitted to the arbitrator was clear in showing that the parties did not believe an arbitrator's permission was necessary before filing a post-hearing brief, as long as the other party properly had been notified. The practice described in the evidence conforms to the Employer's interpretation of language in Article 15.4.B(7), and such evidence further supports a conclusion that the parties did not intend arbitral permission to be necessary in order to be able to file a post-hearing brief. It is clear from the evidence that the parties intended each party to retain a unilateral right to file a post-hearing brief in regular regional arbitration cases on proper notification without the other party's consent or an arbitrator's permission.

The Employer argued that Arbitrator Aaron's award is binding precedent on this arbitrator and established that the parties intended the phrase "may request" in Article 15.4.B(7) to mean that each party would have a right to a verbatim transcript as well as a right to file a post-hearing brief in

regular regional arbitration cases on proper notification to the other party. Arbitrator Aaron interpreted the phrase "may request" in the context of Article 15.4.B to mean "notification." He observed:

> It also seems clear that the word "request" does not mean what it normally does in a different context; rather, in this provision [Article 15.4B(7)] it means "notify." (See, Case No. H1C-NA-C 52, p. 7 (1985)).

Arbitrator Aaron's award, however, does not constitute a precedent for the grievance before this arbitrator. The issue before Arbitrator Aaron was as follows:

> Does Article 15, Section 4.B(7) of the National Agreement preclude either party from ordering a verbatim transcript of a regular arbitration hearing at the regional level without the consent of the other? (See, Case No. H1C-NA-C 52, p.1 (1985)).

The issue before Arbitrator Aaron is not the issue before this arbitrator. Arbitrator Aaron's award was issued in 1985. During that proceeding, the Employer again informed the Union of its understanding that Article 15.4.B(7) provides each party with a unilateral right to file a post-hearing brief on proper notification. The parties negotiated a new contract in 1987, and the language in Article 15.4.B(7) remained unchanged. This fact further supports the arbitrator's conclusion that the parties' intent underlying Article 15.4.B(7) was to preserve for each party a unilateral right to file a post-hearing brief in regular regional arbitration cases.

The Union in its post-hearing brief cited several

decisions of the United States Supreme Court as well as a number of arbitration cases for the proposition that arbitrators have an inherent authority to set procedural rules to be followed at arbitration hearings. The Court has been clear that, "once it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." (See, John Wiley & Sons v. Livingston, 370 U.S. 543, 547 (1964)). The arbitrator certainly would not presume to challenge the soundness of the Court's decision. The parties in this case, however, have themselves chosen to vary the judicial guideline.

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. The parties are free to set the procedural rules for arbitrators to follow. In this case, the parties have bargained for a right to file post-hearing briefs in regional arbitration cases on notifying the other party. An arbitrator may not deny the parties that contractual right.

Article 15.4.A(6) of the parties' agreement states that "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." (See, Joint Exhibit No. 1, p. 65). On the basis of bargaining history as well as the past practice of the party, it is reasonable to conclude that the parties intended to retain to themselves the unilateral right to file post-hearing briefs in regular regional arbitration cases on proper notification to the other party of an intent to do so. Under Article 15.4.B(7), an arbitrator does not have authority to deny a party the right to file a post-hearing brief on proper notification to the other party.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that Article 15.4.B(7) provides each party with the procedural right to file a post-hearing brief after notifying the other party and the arbitrator of its intent to do so. The grievance is denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: March 31, 1993

In the Matter of Arbitration	)	
	)	
Between the	)	
	)	
United States Postal Service	)	
	)	
and the	)	
	)	
National Post Office Mail Handlers,	)	Case No. HIM-3D-C-42523
	)	
Watchmen, Messengers and Group	)	
	)	
Leaders Division of the Laborers'	)	
	)	
International Union of	)	
	)	
North America, AFL-CIO	)	

Hearing held on December 19, 1985
Before James M. Harkless, Arbitrator

Appearances

For The Postal Service

John S. Ingram
Manager, Arbitration Branch,
Labor Relations Division,
Southern Regional Office

John A. Hyatt, Labor Relations
Representative, Southern
Regional Office

Frank M. Dyer, Labor Relations
Specialist, Labor Relations
Department, Headquarters

Francis C. Keenan, Program
Manager, Contract Administration,
Eastern Region

Sidney I. Sicker, Regional
Manager, Arbitration Branch,
Northeast Region

For The Union

Joseph N. Amma, Jr.,
Division of LIUNA, AFL-CIO,
Washington, D.C.

Marcellus Wilson,
Administrative Technical
Assistant, LIUNA, AFL-CIO,
Washington, D.C.

Moses R. Perez, Administrative
Technical Assistant, LIUNA,
AFL-CIO, Washington, D.C.

On the post-hearing brief:
Jules Bernstein,
Susan M. Sacks
Connerton, Bernstein & Katz

The issue presented in this case is whether the Union may, over the objection of the Postal Service, use a tape recorder at Regional level arbitration proceedings.

The issue arose on September 17, 1985, when the grievance of D. Miles, an employee at the Atlanta, Georgia Bulk Mail Center was scheduled to be heard in arbitration at the Regional level before Arbitrator Samuel J. Nicholas, Jr. In a letter to the parties' representatives, dated September 20, 1985, Nicholas recounted what occurred at the hearing, in part as follows:

> "Prior to the commencement of the hearing, Union's representative, Mr. James C. Terrell, requested that he be permitted to record the proceedings for the sole purpose of having an accounting of the testimony for aiding him in his preparation of Union's post-hearing brief. USPS strongly objected to this request and stated that Management had initiated a 'policy' that precluded the use of a tape recorder by either party for recording testimony given at arbitration hearings...The Arbitrator duly noted the USPS memorandum, as prepared by Mr. Gordon Jacobs, General Manager, Labor Relations Division, Southern Regional Office, and dated August 21, 1985. Upon further argument heard on Union's Motion, the Arbitrator ruled that USPS could not show good and sufficient reason for precluding Union its sought request. Specifically, the Arbitrator advised that the parties' new collective bargaining Agreement, dated July 21, 1984-July 20, 1987, does not contain language which precludes a party from recording arbitral proceedings, be they of the regular or expedited type. Article 15, Section 15.4 B7, in relevant part, provides "Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level arbitration,. . .' In no way can this language be interpreted as a mandate against the use of a party recording the proceedings in all scheduled cases. Had the framers of the Agreement had such intent in mind it must be presumed that words and phrases other than that written would have been incorporated into the Agreement. Also, it must be presumed that the parties chose to write the instant words supra in order to allow the parties and the Arbitrator considerable flexibility for the purpose of

"making a Record in a given case and to be in accord with the majority of arbitral and court held thought which allows an Arbitrator to make the decision as to what type of Record may be made in a case and by whom, with full consideration given to the subject collective bargaining Agreement.

The Arbitrator found the USPS reliance on Section .29, Subsection .291 of its Employee & Labor Relations manual is not controlling on the instant subject, for this particular language relates to employee services ('During the course of activities related to postal employment') and not the airing of grievances before a neutral third party subsequent to one's removal from service. To be sure, the relied upon language does not refer to one's unemployment or any reason therefor. Also, with the Arbitrator having been advised by these parties that other Arbitrators (Coffey & Carson) have honored similar Motions on other such occurrences he was of the opinion that Union should be permitted to make its record as requested.

Upon receiving the Arbitrator's decision the USPS representative conferred with local Management and, in turn, advised the Arbitrator that USPS was withdrawing from the proceedings..."

Shortly thereafter, on October 7, 1985, the Postal Service sent Nicholas a letter confirming its withdrawal of the case from Regional level arbitration in accordance with Article 15. 4B5 of the Agreement and referral of it to Step 4 of the grievance procedure. The parties were unable to resolve the dispute at Step 4. Therefore, the case was appealed to the National level as one involving "an interpretive issue under the National Agreement or some supplement thereto which may be of general application...".

In addition, on October 8, 1985, in Grievance No. SIM-3D-D 46367 (T. Thompson, Grievant), the same issue arose before Arbitrator John F. Caraway at a Regional level arbitration

proceeding. In a written decision issued the same day, Caraway stated he considered himself bound by the ruling of Arbitrator Nicholas. He, therefore, granted the Union request to use a tape recorder at the hearing and the Postal Service withdrew from the hearing. In his decision, Caraway also observed:

> "It must be emphasized that the use of a tape recorder is simply a form of note taking. The official transcript of the hearing is the Arbitrator's notes. If a conflict exists between the tape recorder transcript and the Arbitrator's notes, the latter governs. Use of a tape recorder is conditional upon its use not being disruptive to the hearing. This Arbitrator has had no such problem in the many cases in which a tape recorder has been used in cases heard by him."

At the hearing before this Arbitrator, the parties agreed that the merits of the disciplinary action imposed in this case and the Thompson grievance would proceed to Regional arbitration as soon as possible; that no tape recorder would be used; and that this would be without prejudice to any rights which the Union may be found to have in this proceeding.

The pertinent provisions of the National Agreement are:

"ARTICLE 15
GRIEVANCE - ARBITRATION PROCEDURE

. . .

Section 15.4 Arbitration General Provisions

. . .

A6 All decsions 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...

. . .

"B Regional Level Arbitration - Regular

. . .

B5 If either party concludes that a case appealed or referred to Regional 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...

. . .

B7 Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Regional level arbitrations, 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.

. . .

C Regional Level Arbitration - Expedited

. . .

C3 the hearing shall be conducted in accordance with the following:

. . .

C3b no briefs shall be filed or transcripts made;

. . .

D National Level Arbitration

D1 Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

. . .

"ARTICLE 19

HANDBOOKS AND MANUALS

Section 19.1

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."

. . .

Relevant parts of the Employee and Labor Relations Manual (ELM) read:

"668.29 Interception of Oral or Wire Communications by Postal Employees

.291 During the course of activities related to postal employment, no postal employee will record, monitor, or otherwise intercept oral or wire communications of any other person through the use of any electronic, mechanical or other device, nor listen in on a telephone conversation, nor direct another to do so, unless all parties involved in the communication consent to such interception.

. . .

.293 For the purposes of this section, the terms oral communication, wire communication, intercept, and electronic, mechanical, or other device have the meaning used in Chapter 119, Title 18, United States Code."

668.3 Privacy of Information

Employees have an ethical obligation to hold information of a personal nature pertaining to postal customers and employees in confidence and to actively protect it from uses other than those compatible with the purpose for which the information was collected..."

Title 18 of the USC provides in part:

"CHAPTER 119-WIRE INTERCEPTION AND

INTERCEPTION OF ORAL

COMMUNICATIONS

Section 2510. Definitions as used in this Chapter

. . .

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;"

. . .

The Postal Service contends that the parties' use of the word "normally" in Article 15.4b(7) indicates they intended "there will be very few transcripts of arbitration hearings". Moreover, the Service argues that in this language "the parties addressed the question of transcripts and/or verbatim recordings of the hearings by stating that they normally do not wish to have a written or transcribed record of a regional hearing". As the Service sees it, the language in Article 15.4C3(b) prohibiting transcripts in expedited arbitration at the Regional level further demonstrates "that transcripts are not desired" in Regional level arbitration. Also, the Service says the parties have no bargaining history concerning requests for transcripts in Regional arbitration hearings; that this shows they desire to eliminate them to assure a faster hearing and speedier resolution of such cases.

In addition, the Postal Service points out that, under

Article 19.1 of the Agreement, Sections 668.291 and 668.3 of the ELM are applicable to the situation presented here. The Service says that Regional arbitration proceedings "deal with a variety of subjects ranging from the removal of an employee to complicated contractual issues". In effect, the Service suggests that tape recording such information could be misused by revealing "information of a personal nature pertaining to...postal employees" which should be kept in confidence.

The Service cites numerous decisions of the Courts, the NLRB, and arbitrators concerning tape recording either negotiating sessions or grievance meetings to support the proposition that "unilateral recording" of such proceedings "tend to have a chilling effect" or one "that prohibits the free exchange of ideas and expression of thought". Also, the Service believes this would "serve to inhibit the conduct of the parties at" arbitration hearings; that "it would tend to cause the parties to speak for the record, rather than to the merits of the issue at hand". Furthermore, the Service suggests that in an organization of its size, it would be difficult afterwards to control who listened to such tapes or how they might be used or altered. The Postal Service says the parties' established past practice is to take handwritten notes at arbitration proceedings; that this has worked and should be sufficient in the future.

The Postal Service contends the Union has been inconsistent because, at least on one occasion, it agreed with the Postal Service's objection to a Grievant's use of a tape recorder.

Furthermore, the Service maintains that prior to the Thompson case, Arbitrator Caraway ruled against the Union's request to use a tape recorder in another arbitration proceeding. Finally, the Service maintains that in order to rule in favor of the Union in this case, this Arbitrator would have "to write a condition into the agreement" concerning the use of tape recorders, and that this would be violative of the provisions in Article 15.4A6.

The Union contends that Article 15.4B7 permits it to tape record Regional level arbitration hearings for the sole purpose of providing the Union representative with an accurate record of the proceedings. The Union asserts Section 668.291 of the ELM does not forbid it; that two Regional Arbitrators have already upheld the Union on this question and that this Arbitrator "should likewise adopt that position".

Quoting from How Arbitration Works, Elkouri and Elkouri (4th ed. 1985), p. 425, the Union argues that previous arbitration decisions concerning the identical issue and/or contractual provision have considerable precedential weight; that such an award "usually becomes a binding part of the agreement and will be applied by arbitrators thereafter". The Union urges that this Arbitrator should adhere to the interpretation which Arbitrators Nicholas and Caraway gave to Article 15.4B7 of the Agreement and Section 668.291 of the ELM.

Also, the Union requests that no weight be given the internal Management Memorandum which the Service presented concerning a decision, purportedly by Arbitrator Caraway,

disallowing the APWU's use of a tape recording. The Union points out there is no evidence intrinsic in the document that the decision is his. Even if it is, the Union claims it is not the text of Caraway's decision, but a memorandum prepared by the Postal Service and fails to give Caraway's reasons for deciding as he did.

The Union maintains that tape recording a Regional arbitration hearing is a form of "notetaking"; that Article 15.4B7 makes no mention of this and refers only to "transcripts". Moreover, the Union notes that this provision merely states that "(n)ormally, there will be no transcripts". In essence, the Union says it cannot be inferred "from language permitting written transcripts under certain circumstances that a tape recording of the proceedings may not be had". The Union agrees that the purpose of Article 15.4B7 is to speed up the arbitration process and to reduce its costs by eliminating post-hearing briefs and transcripts. However, the Union insists that this provision "simply does not address" the question of a party using "an inexpensive, accurate and more convenient method of note taking". The Union maintains that mere silence on the subject is not enough to infer that tape recording a Regional level arbitration hearing is prohibited.

The Union denies that Section 668.291 of the ELM applies in this case. This is so, because the Union says an arbitration hearing does not involve an "oral communication" as defined in 18 U.S.C. Section 2510. Also, the Union contends the Postal

Service has never claimed to have a subjective expectation of privacy in such situations. But, the Union argues that even if this were so, it would not be an objectively reasonable expectation. This is because the Union asserts an arbitration hearing is analogous to a judicial proceeding in which there is a record and statements are made to a neutral third party.

The Union takes the view that the cases on which the Service relies do not apply because they deal with a stenographic transcript, or tape recording, of collective bargaining sessions or grievance meetings. The Union asserts none of those issues are present in this case. The Union acknowledges, as Justice Douglas observed in United Steelworkers of America v. Warrior and Gulf Navig.Co., 363 U.S. 569(1960), that arbitration "is part and parcel of the collective bargaining process itself". Nevertheless, the Union argues the NLRB rulings finding it to be an unfair labor practice for a party to insist to impasse on tape recording bargaining or grievance sessions are not applicable to arbitration proceedings. The Union asserts that the NLRB recognizes the latter are different and that the policy considerations calling for "spontaneity and flexibility" in bargaining and grievance sessions which might be inhibited by tape recording them are not present in arbitration.

Also, the Union maintains the Postal Service has failed to demonstrate "any reasonable policy supporting a blanket prohibition on the Union's taping arbitration hearings". In effect, the Union declares the Postal Service testimony about the

negative impact which this would have on the arbitration hearing amounts to "the rankest speculation". The Union accordingly urges the Arbitrator to find that it can "tape record regional arbitration hearings for the purpose" outlined at the outset.

Discussion

The Union is correct that, ordinarily, prior arbitral awards involving identical issues under the same Agreement have great precedential weight. However, in this Agreement, the parties have agreed that grievances "involving interpretive issues under (the) Agreement or supplements thereto of general application" will be handled at Step 4 (National level) of the grievance procedure. If not resolved there, they are to be arbitrated at the National level. Here, the question involving the interpretation of Article 15.4B7 of the Agreement and Section 668.291 of the ELM did not arise until this case was before Regional Arbitrator Nicholas. When it did, the Postal Service exercised its right, under Article 15.4B5, to withdraw the case from arbitration at the Regional level and referred it to Step 4 of the grievance procedure. This also occurred in the Thompson grievance which was before Arbitrator Caraway. In these circumstances, the rulings of Arbitrators Nicholas and Caraway can have no "final and binding" effect or be given any precedential value in this proceeding.

Turning then to the issue presented, this Arbitrator can find no support in the Agreement, or in the ELM, for the position

of the Postal Service. Article 15.4B7 states that "(n)ormally, there will be no transcripts of arbitration hearings...in cases heard in Regular Regional level arbitrations". The Agreement has no definition of what the parties regarded as "transcripts". Generally, in labor arbitration proceedings, "a transcript" is considered to be a typewritten verbatim record of what happened at the hearing. Such a transcript can be achieved in a variety of ways. They include stenographic techniques using a stenotype machine, shorthand notes, or voice recording. It also can be done by utilizing a tape recorder. However, it is the typewritten record, not the means of producing it, which is generally viewed in labor arbitration as "a transcript". The Postal Service equates the tape recording of an arbitration hearing with a typewritten transcript. Clearly, they are not the same. Moreover, tape recording the hearing would not necessarily be inconsistent with the manifest purpose of Article 15.4B7 to provide for a speedier and less costly resolution of grievances at the Regional level. And, in the absence of any evidence evincing some other intent, the Arbitrator believes the word "transcripts" in Article 15.4B7 should be construed in line with the general understanding of that term in labor arbitration. *]

In view of this conclusion, there obviously is nothing in the Agreement specifically prohibiting a party from tape

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*] The policy considerations which the NLRB has invoked in deciding whether a party violates the law in insisting to impasse on tape recording bargaining sessions or grievance meetings are not relevant to the interpretation of this clause of the Agreement dealing with arbitration.

recording a Regional level arbitration hearing. The Agreement simply does not address that matter. It is axiomatic, that where the parties have not spelled out in the Agreement the details of how an arbitration hearing will be conducted, or mutually agreed on the procedures to be followed, this is left to the reasonable discretion of the arbitrator. Hence, it did not violate the Agreement in this case for the Regional Arbitrator to grant the Union representative's request to tape record the hearing for the purpose of aiding in the preparation of the Grievant's post-hearing brief.

In this regard, the Arbitrator notes that Article 15.4B7 also provides that "(n)ormally, there will be no...filing of post-hearing briefs in cases heard in Regular Regional level arbitration". This contrasts with Article 15.4C3b which says in expedited Regional level arbitration "no briefs shall be filed". Plainly, Article 15.4B7 leaves it to the discretion of the Regional Arbitrator in Regular cases to determine those unusual instances when post-hearing briefs are appropriate. In expedited arbitration, Article 15.4C3b specifically prohibits them. This same reasoning applies to the parties' treatment of transcripts, in these two provisions. Thus, even if a tape recording were regarded as "a transcript" under Article 15.4B7, this would not rule out the use of one in all cases. It would still be within the Regional Arbitrator's discretion whether the particular case is so different from normal to warrant the use of a transcript.

With regard to the provisions of the ELM which the Postal

Service cites, they have no application to arbitration proceedings. The Arbitrator agrees with the Union that statements made at an arbitration hearing do not come within the meaning of an "oral communication" where the Regional Arbitrator grants a Union representative's request to tape record the proceeding. This is so, even though the request is granted over the objection of the Postal Service. As for Section 668.3, it is doubtful that it applies to information about employees of a personal nature divulged at an arbitration hearing. At any rate, this is a matter of conjecture on the part of the Postal Service. Should an employee improperly disclose such information, that would be the appropriate time for the Postal Service to enforce the rule.

Decision

For the reasons given, the Arbitrator finds that it does not violate the Agreement, or the ELM, for a Regional Arbitrator to grant a Union request to tape record the arbitration hearing over the objection of the Postal Service.

May 22, 1986

James M. Harkless
Arbitrator

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
905 16th Street, N.W.
Washington, DC 20006-1765

Re: B7N-3W-C 20857
Class Action
Tampa, FL 33630

Dear Mr. Amma:

On August 4, 1989, we met with your representative Marcellus Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a regular regional arbitrator's award is binding throughout that particular region.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that a regular regional arbitrator's award is binding only on the installation where the grievance arose and only to the extent that a subsequent grievance involves the same material facts. It may be cited outside the participating installation as persuasive authority only, not binding authority.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

William F. Scott
Grievance & Arbitration
Division

for Joseph N. Amma, Jr.
Director
Contract Administration
Laborers' International Union
of North America, Mail
Handlers Division, AFL-CIO

DATE: 1-31-90

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division, AFL-CIO
905 16th Street, N.W.
Washington, DC 20006-1765

Re: H7M-3W-C 19636
Class Action
Orlando, FL 33630

Dear Mr. Amma:

On August 4, 1989, we met with your representative Marcell[illegible] Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a regular regional arbitrator's award is binding throughout that particular region.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that a regular regional arbitrator's award is binding only on the installation where the grievance arose and only to the extent that a subsequent grievance involves the same material facts. It may be cited outside the participating installation as persuasive authority only, not binding authority.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

William F. Scott
Grievance & Arbitration
Division

Joseph N. Amma, Jr.
Director
Contract Administration
Laborers' International Union
of North America, Mail
Handlers Division, AFL-CIO

DATE: 5/14/90

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union
AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: G90M-1G-D 94057283
FARRELLY R
EL PASO TX 79910-9997

Dear Mr. Quinn:

On March 26, 1996, I met with your representative T.J. Branch to discuss the aforementioned grievance at the fourth step of the contractual grievance procedure.

The issue in this case is whether management violated the National Agreement when management referred the case from expedited to regular arbitration.

After reviewing this matter, we mutually agreed that no national interpretive issues is fairly presented in this case. Article 15, Section 4.C3 allows for either party to conclude that issues in a case involving complexity or significance may warrant reference to regular arbitration. Pursuant to this section either party may refer a case and notify the other party of such reference at least twenty-four hours prior to the scheduled time for the expedited arbitration.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing or to be rescheduled for arbitration, as appropriate.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time Limits at this level were extended by mutual consent.

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

Date: 4/17/96

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 4/18/96

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

06368.pdf
D.EISCHEN:SEPTEMBER25,2003
SUSTAINED:NPMHU
94024725/94021081:NATIONAL

USPS/NPMHU
NATIONAL ARBITRATION PROCEEDINGS

In the Matter of the Arbitration Between UNITED STATES POSTAL SERVICE - and - NATIONAL POSTAL MAIL HANDLERS UNION	Case Nos. B90M-1B-C 94024725 B90M-1BC 94021081 Subject: Citation of Modified 15 Arbitration Awards

Dana Edward Eischen, National Arbitrator

Appearances

For the NPMHU: Bredhoff & Kaiser, P.L.L.C.
by Bruce R. Lerner, Esq.
-and-
Jason Walta, Esq.

For the Postal Service: Howard J. Kaufmann, Esq.
Senior Labor Relations Counsel

Also Present

For the NPMHU: William J. Flynn, Jr.
Manager, National Contract Administration

For the USPS: Patricia Heath, Labor Relations Specialist, USPS HQ
Frank X. Jacquette, III, Labor Relations Specialist, USPS HQ

PROCEEDINGS

In January 2002, the United States Postal Service ("USPS", "Postal Service" or "Employer") and the National Postal Mail Handlers Union("NPMHU", "Mailhandlers" or "Union") designated me arbitrate National-level disputes arising under Article 15, Section 5 D of their 2000-2004 National Agreement. Ultimately, the terms of that USPS/NPMHU National Agreement are dispositive of the matter in dispute. However, in advancing their respective positions in this case, both the USPS and the NPMHU cited and relied upon contract language contained in various Memoranda of Understanding between USPS and the American Postal Workers Union ("APWU").

At the hearing of this matter in Washington, D.C. on March 11, 2003, the USPS and NPMHU were represented by Counsel and afforded full opportunity to present documentary evidence, testimony subject to cross-examination and oral argument. At the outset of the arbitration hearing, I was assured by the USPS and NPMHU representatives that the APWU apparently had elected not to participate in the proceedings, after being provided with Third Party notice of this arbitration.

Following receipt of the transcribed stenographic record, post hearing briefs and reply briefs were filed and exchanged nu USPS and NPMHU and the record was closed. At my request, the Parties graciously allowed me some additional time for the rendition of this Opinion and Award.

ISSUE

The Parties did not submit a joint stipulation framing the issue presented for determination in this National-level arbitration case. At the arbitration hearing, the NPMHU proposed the following formulation of the issue:

> Whether the NPMHU is entitled to cite an arbitration award- not as binding precedent, but for whatever persuasive value the award may have- that was issued under the Modified Grievance procedure between the APWU and the Postal Service by an arbitrator who knew at the time of his decision that the award could be cited as binding precedent between the APWU and the Postal Service in the post office from which the award arose?.

The USPS did not take express exception to the NPMHU's forgoing suggested statement of issue; although, in the Step 4 denial letter dated December 6, 2000, the USPS had described the disputed issue in this case more broadly, as follows:

> [W]hether management violated the National Agreement when it maintained that arbitration awards issued under the Modified Article 15 procedure with the American Postal Workers Union (APWU) were not citable in arbitration of a case initiated by the National Postal Mail Handlers Union?

Article 15, Section 5 D1 of the USPS/NPMHU National Agreement specifies that "only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level". Consistent with the contract language which establishes my jurisdiction and authority in this matter and the facts and circumstances of this record, I conclude that the following interpretive issue is presented for determination in this National-level arbitration case:

> Is the NPMHU barred from citing and proffering in arbitration proceedings under Article 15 of the USPS/NPMHU Agreement, not as authoritative precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU Agreement by an arbitrator who was informed at the time of his decision that the "Mod-15" award could be cited as binding precedent between the APWU and the Postal Service in the post office from which the award arose?

PERTINENT CONTRACT PROVISIONS

2000 Mail Handlers National Agreement (between NPMHU/USPS)

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 15.1 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.

Section 15.2 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 1 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.

* * *

(e) If either party's representative maintains that the grievance involves an interpretive issue under this 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 decisions and, if filed, any Union corrections and additions filed at Steps 2 or 3. The Union shall furnish a copy of the Union appeal to the appropriate management official at the Grievance/Arbitration Processing Center.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issues(s) to be decided. The Employer's notice shall be included in the Step 3 decision. The Union's written notice shall be automatically included as part of the grievance record in the case but the filing of such notice shall not affect the time limits for appeal.

Step 4: (a) In any case properly appealed or referred 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 or referral 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 Union 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.

* * *

Section 15.4 Arbitration

A General Provisions

A1 A request for arbitration shall be submitted within the specified time limit for appeal.

A2 No grievance may be arbitrated at the National level except when timely notice of appeal is given the Employer in writing by the Union. No grievance may be appealed to arbitration at the Regional level except when timely notice of appeal is given in writing to the appropriate management official at the Grievance/Arbitration Processing Center by the certified representative of the Union in the particular Region. Such representative shall be certified to appeal grievances by the Union to the Employer at the National level.

* * *

A6 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. (Emphasis added).

A7 The parties agree that, upon receipt of the award, each arbitrator's fees and expenses shall be paid in a prompt and timely manner.

A8 All arbitrators on the District Regular Contract/Discipline Panels and the District 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.

A9 Arbitrators on the National and on the District Regular Contract/Discipline and District Expedited Panels shall be selected by the method agreed upon by the parties at the National Level. The parties shall meet for this purpose within ninety (90) days after signing this Agreement. In the event the parties cannot agree on individuals to serve on these panels, or to fill any vacancies, selection shall be made by the alternate striking of names from the appropriate list.

B Regional Level Arbitration-Regular

B1 In each District three (3) separate dockets of cases to be heard in arbitration shall be maintained for the Union by the Employer at the Area level:

B1a one for all removal cases and cases involving suspensions for more than 30 days;
B1b one for all cases appealed or referred to Expedited Arbitration; and
B1c one for all other cases appealed to arbitration at the Regional Level.

* * *

C Regional Level Arbitration- Expedited

C1 The parties agree to continue the utilization of an expedited arbitration system for disciplinary cases of 30 days suspension or less which do not involve interpretation of this Agreement and for such other cases as the parties may mutually determine. This system may be utilized by agreement of the Union through the Union and the Vice-President, Labor Relations, or designee. In any such case, the Federal Mediation and Conciliation Service or American Arbitration Association shall immediately notify the designated arbitrator.

The designated arbitrator is that member of the District Expedited Panel who, pursuant to a rotation system, is scheduled for the next arbitration hearing. Immediately upon such notification the designated arbitrator shall arrange a place and date for the hearing promptly but within a period of not more than ten (10) working days. If the designated arbitrator is not available to conduct a hearing within the ten (10) working days, the next panel member in rotation shall be notified until an available arbitrator is obtained.

C2 The parties agree that all cases will be heard in arbitration within 90 days from the date of the grievance appeal to arbitration. If a grievance is not heard in arbitration within the 90 days, the grievance will be scheduled as the first case to be heard on the next available arbitration date. If, one (1) year after the effective date of this Agreement, this hearing requirement is not complied with by a particular District Panel(s) for three (3) consecutive Accounting Periods, the parties will meet to jointly select a sufficient number of additional arbitrators for that panel(s) to ensure compliance with this hearing requirement. Such meetings and addition of arbitrators will continue, as jointly agreed to by the parties, until the panel(s) is in compliance with the hearing requirement.

C3 If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the District Regular Contract/Discipline Arbitration Panel(s), 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.

C4 The hearing shall be conducted in accordance with the following:

C4a the hearing shall be informal;
C4b no briefs shall be filed or transcripts made;
C4c there shall be no formal rules of evidence;
C4d the hearing shall normally be completed within one day;
C4e 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 District Regular Contract/Discipline Arbitration Panel, the case shall be referred to that panel; and
C4f 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.

C5 No decision by a member of the District 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.

C6 The District Expedited Arbitration Panel shall be developed by the National parties, on a geographic area basis, with the aid of the American Arbitration Association and the Federal Mediation and Conciliation Service.

D National Level Arbitration

D1 Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level. (Emphasis added)

D2 A docket of cases appealed to arbitration at the National level shall be maintained for the Union. 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.

MEMORANDUM OF UNDERSTANDING (Incorporated into December 24, 1984 Award)
between the
UNITED STATES POSTAL SERVICE
AND
JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

The parties agree to establish at the national level a "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, and shall be chaired by an individual selected by the parties and subject to the direction of the parties. The fees and expenses incurred by this individual shall be paid as follows: One-fourth by NALC, one-fourth by APWU, and one-half by 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 shall convene periodically but at least quarterly, at such times and at such places as it deems appropriate during the term of the 1984 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.

MEMORANDUM OF UNDERSTANDING (October 7, 1986)
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO, AND
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

The parties hereby agree to test a modification of the grievance and arbitration procedure under the auspices of Task Force on Discipline. The following principles will apply:

1. The test of the modified grievance and arbitration procedure will only be done at offices where local union officials and local managers are willing to test the modified procedure.

2. Each office will have a sufficient number of arbitrators on the panel to ensure timely processing and hearing of arbitration cases. Generally, grievances that are not resolved at Step 2 should be heard within one month.

3. The parties, at the national level, will agree on the standard form that should be used or developed in processing grievances.

4. The parties, at the national level, will provide seven calendar days' advance written notice prior to termination of the modified grievance-arbitration procedure at any test office.

Memorandum of Understanding of September 1988
(between USPS and APWU and NALC)

The parties hereby agree that any arbitration award arising under the Modified Article 15 grievance and arbitration procedure will be referenced in the following manner:

1. It shall not be cited as precedent in any future arbitration proceedings occurring outside of a test office.

2. It way, however be cited as precedent in any future arbitration proceedings occurring within a test office.

This Memorandum will apply to any office implementing Modified Article 15 and shall continue as long as the program is in existence at the test office.

* * *

Memorandum of Understanding of November 1988
(between USPS and APWU and NALC)

. . . this language [of the MOU of September 1988] in no way changes the present contractual provision which provides that expedited arbitration decisions shall not be regarded as a precedent or be cited in any future proceeding.

Memorandum of Understanding of April 1995
(between USPS and APWU)

RE: Modified Arbitration Decisions

The parties agree that Arbitration Awards issued under any Modified Grievance procedure are not to be cited in any future arbitrations when and if the parties withdraw from that modified grievance procedure.

Arbitration Awards rendered in any modified grievance procedure are intended to apply only in the specific subject office of the grievance and only while the office is under the modified grievance procedure.

BACKGROUND

There were significant snowstorms in the New Haven, CT area on January 8, 1994 and February 12, 1994 . A number of postal employees who were absent from the workplace or who arrived late on those days requested administrative leave. When the Postal Service denied the leave requests for affected employees, the APWU and the Mail Handlers filed a number of grievances under their respective National Agreements, alleging violations of provisions of the Employee and Labor Relations Manual (ELM). When those grievances were denied by USPS at all levels of handling, each of the Unions appealed its deadlocked grievances to arbitration under the applicable provisions of their respective separate National Agreements.

Specifically, the NPMHU grievances were appealed to regional arbitration under the "Expedited" arbitration provisions, as set forth in Article 15.4. C of the USPS/NPMHU National Agreement *supra*. The APWU grievances were appealed to local area arbitration under the provisions of a "Grievance-Arbitration Procedure for Resolving Grievances at the Lowest Level" (a.k.a."Modified Article 15" or "Mod-15"), as set forth in Article 15 of the USPS/APWU National Agreement, as modified by various supplemental Memoranda of Understanding ("MOU")of December 24, 1984, October 7, 1986 and September-November 1988, *supra*. A proper understanding of the instant case requires brief discussion of the bargaining history which led to the separate and independent arbitration systems to which the New Haven CT 1994 snowstorm grievances were appealed by APWU and NPMHU under the respective USPS/APWU and USPS/NPMHU National Agreements.

For the first ten years under the Postal Reorganization Act ("PRA") of 1970, the Mail Handlers and the APWU had bargained jointly with the National Association of Letter Carriers, AFL-CIO ("NALC"); resulting in a single National Agreement governing the Postal Service's relationship with the various unions. In 1981, however, NPMHU opted out of joint bargaining and during the ensuing twenty years has negotiated separate National Agreements with the Postal Service, culminating in the "2000 Mail Handlers National Agreement". The APWU and the NALC continued to jointly negotiate National Agreements with the Postal Service through 1987, but since the 1991 bargaining round each of those unions also has negotiated separate National Agreements with the USPS.

Notwithstanding the independent bargaining tracks with USPS since 1981, the common lineage of the APWU and NPMHU National Agreements continues to show through in the three-tier system of arbitration ("Regional expedited", "Regional regular" and "National-level"). This pyramidal hierarchy first appeared in the jointly negotiated 1978 National Agreement, to which the NPMHU, the APWU, the

Postal Service and other postal unions all were parties. As initially set forth in that 1978 Agreement, and as retained in the respective separate agreements, the top tier of arbitration is National-level Arbitration, in which the parties arbitrate "only cases involving interpretive issues under [the] Agreement or supplements thereto of general application." [There is no dispute that decisions issued by National-level arbitrators are binding on a nationwide basis against all parties participating in the arbitration and may be cited in subsequent arbitrations without limitation]. Below National arbitration is "Regular" regional-level arbitration, which has been established to issue final and binding decisions at the local level. [Regular regional arbitration awards are fully "citable" and also are binding against participating parties at the postal installation from which the case arose]. The bottom tier of arbitration, common to each of the National Agreements, is "Expedited" arbitration, conducted at the regional or local level using less formal abbreviated hearing procedures. [By common understanding, the awards resulting from Expedited arbitration are otherwise final and binding but have little or no authoritative value under the National Agreements, as typified by Article 15.4.C5 of the USPS/NPMHU National Agreement, which expressly provides that "[n]o decision by a member of the Expedited Panel ... shall be regarded as precedent or be cited in any future proceeding."

Although the three-tier arbitration system initially established in 1978 has remained virtually intact in the separate NPMHU and APWU National Agreements and continues to operate to this day, there are also significant differences in the separate National Agreements, specifically including certain unique supplemental understandings. Thus, the NPMHU was not a party to the October 1986 Memorandum of Understanding by which the Postal Service and the APWU established the "Mod-15" arbitration procedure. Consequently, NPMHU was not a party to the various supplemental Memoranda

of Understanding of September 1988, November 1988 and April 1995, *supra*, in which USPS and APWU further amended their Mod-15 agreement.

The APWU administrative leave grievances arising out of the January-February 1994 snowstorms were heard on September 21, 1994 by Arbitrator Joseph Parker under the "Mod-15" arbitration process which APWU and USPS had elected to use in the Greater Connecticut Area, including New Haven CT. On October 25, 1994, Arbitrator Parker issued a series of arbitration awards in the USPS/APWU Mod-15 proceedings, upholding in some cases and denying in other cases the APWU grievances. Each of the Mod-15 decisions by Arbitrator Parker contained the following disclaimer:

> This Award shall not be cited as precedent in any future arbitration proceedings accruing (sic) outside of this test office. It may however, be cited as precedent in any future arbitration proceeding accruing (sic) within this test office.

The Mail Handlers and USPS had experimented at other locations with a separate Modified 15 process, the details of which were not fully developed on this record, but had not elected for Modified 15 status in New Haven, CT. Thus, the Mail Handlers' administrative leave grievances arising out of the same January-February 1994 snowstorms at that same location were appealed for hearing in "Expedited" regional-level arbitration under the terms of Article 15 of the NPMHU National Agreement with the Postal Service. For reasons not disclosed on this record, however, the NPMHU's January-February 1994 snowstorm grievances were not scheduled to be heard in "Expedited" arbitration until some three years after the above-referenced Mod-15 decisions by Arbitrator Parker had been rendered. During that interim, the USPS and the APWU had entered into the April 1995 MOU, *supra*, further amending their Mod-15 arrangements; followed in October 1995 by the APWU's withdrawal from any further participation in Mod-15 arbitration in the Greater Connecticut Area, including New Haven CT.

The foregoing undisputed facts establish the context in which the pending NPMHU 1994 New Haven, CT snowstorm grievances finally were scheduled for hearing on November 20, 1997, before Arbitrator John Phelan, in "Expedited" regional-level arbitration under Article 15.4.C of the USPS/NPMHU National Agreement. The issue which is now before me in this National-level arbitration first arose during a November 13, 1997 pre-arbitration conference between local representatives, when the APWU advocate served notice on his USPS counterpart of intent to cite and submit to Arbitrator Phelan one or more of the above-referenced Mod-15 arbitration awards which Arbitrator Parker had issued some three years earlier. When the USPS advocate objected that such usage of the USPS/APWU Mod-15 awards was "inappropriate", the Parties mutually agreed to adjourn the pending arbitration of the merits of the underlying grievances; pending a National-level determination of the procedural "interpretive issue pertaining to the National Agreement".

NPMHU promptly appealed the matter to and, following discussions and mutual extension of the time limits, USPS submitted the following Step 4 response to the NPMHU National President on December 6, 2000:

> The issue in this grievance is whether management violated the National Agreement when it maintained that arbitration awards issued under the Modified Article 15 procedure with the American Postal Workers Union (APWU) were not citable in arbitration of a case initiated by the National Postal Mail Handlers Union (NPMHU) claiming administrative leave for certain employees for January 8,1994.
>
> NPMHU contends that it is not precluded from submitting arbitration awards issued under a Modified Article 15 test conducted under the terms of the APWU collective bargaining agreement for their persuasive value. In the instant case, the union attempted to submit into the record awards issued by Arbitrator J. Parker in four grievances processed under the USPS-APWU Modified Article 15 grievance and arbitration procedure.
>
> It is the position of the Postal Service that awards issued under a modified grievance and arbitration procedure are citable only in subsequent cases filed under the same collective bargaining agreement arising within the office in which the test is being conducted. That principle is clearly defined in documents executed by the parties to the test conducted in the S. Connecticut P&DC. The Memorandum of Understanding (MOU) of September 6,1988 between the Postal Service and the APWU specifically states that cases arising under the modified procedure "shall not be cited as precedent in any future arbitration proceedings occurring outside of a test office."

It is further the position of the Postal Service that the NPMHU is barred from citing arbitration awards issued under a separate collective bargaining agreement negotiated with another union when that collective bargaining agreement precludes such submission. The citing of expedited arbitration awards arising under the 1990 APWU National Agreement is barred by the terms of Article 15.4.C.4. thereof (15.5.C.4 in subsequent National Agreements). NPMHU is barred from submitting the Parker awards by the terms of the September 1988, and April 1995, MOUs, referenced above. Additionally, the Parker awards themselves stipulate that they "shall not be cited as precedent in any future arbitration proceedings accruing outside of this test office."

This was further reinforced in the Step 4 decision between the Postal Service and the American Postal Workers Union for case J87-4J-C 89016049 (copy attached), "that arbitration awards rendered in any modified grievance procedure are intended to apply only in the specific subject office of the grievance and only while the office is under the modified grievance procedure".

It is further noted that the test of the Modified Article 15 procedure in the S. Connecticut P&DC was discontinued on November 18,1995. Thereafter, even the APWU is precluded from citing awards issued under the modified procedure in other arbitration hearings by the terms of the MOU of April 1995. The instant grievance was scheduled for expedited arbitration on November 20,1997.

The NPMHU conducted tests of a similar Modified Article 15 procedure in several offices, subsequent to negotiation of the 1987 Collective Bargaining Agreement. However, the NPMHU never participated in such a test in the S. Connecticut P&DC.

Relating to the union's request for administrative leave . . . the position of the Postal Service is outlined in the Step 2 and Step 3 decisions, incorporated herein by reference.

In view of these considerations, this grievance is denied.

When the matter remained unresolved, NPMHU made a timely appeal for final and binding determination of the confronting issue, in National-level arbitration under Article 15.4.D of the 2000 Mail Handlers National Agreement between NPMHU and USPS.

POSITIONS OF THE PARTIES

The following statements of position have been extrapolated and edited from the respective post hearing briefs:

The NPMHU

Absent an express agreement to the contrary, the NPMHU may cite any arbitration award that represents an arbitrator's reasoned interpretation of the governing agreement. The gravamen of the Postal Service's argument in this case is that it may take a subsequent agreement it makes with the APWU to limit the citation of certain sources of arbitral authority and, without obtaining the NPMHU's consent, apply that agreement to the NPMHU as well. There are, however, significant considerations of contract law, policy and fairness that cut against this position.

Both the history of the relevant agreements and the application of basic arbitral principles strongly support the position that the NPMHU may cite, as persuasive authority, an arbitration award issued under the Modified Grievance Procedure between the APWU and the Postal Service by an arbitrator who knew at the time of his decision that the award could be cited as binding precedent. Based on the structure and purpose of the Mod-15 procedure, and the clear language of the September 9, 1988 MOU, there can only be one understanding of the agreement between the APWU and the Postal Service relative to the citation of Mod-15 awards, as of October 1994. That is, at the time those awards were issued, they could be cited as binding authority within the test facility, and could be cited outside the facility - not as binding precedent, but for whatever persuasive authority they might be given. It therefore is clear that the awards should be considered sufficiently well reasoned to qualify as a source of authority that the NPMHU may rely upon in subsequent arbitrations.

The Postal Service also posits that allowing the NPMHU to cite the Mod-15 awards would deprive it of the benefit of the bargain it made with the APWU. The Postal Service suggests that a Regular Regional arbitrator who finds a Mod-15 decision persuasive could have his own decision cited by the APWU in a subsequent case. Whether such a scenario would violate an agreement between the Postal Service and APWU is a question to be answered in a different grievance - namely, a case between the Postal Service and the APWU, who are free to establish the rules governing their own arbitration procedure. In any event, the speculative possibility that such second-order citation may occur is not a sufficient basis for imposing terms on the NPMHU without its consent. In short, neither fairness nor equity require the NPMHU to observe limitations on the citation of authority in arbitration that have been negotiated after the issuance of the disputed arbitration awards by the Postal Service and another postal union.

For the foregoing reasons, the Arbitrator should conclude that the NPMHU is entitled to cite and rely upon, for their persuasive value, the five awards issued by Arbitrator Parker in October 1994 under the Mod-15 procedure established between the APWU and the Postal Service. An appropriate remand order also should be issued.

The USPS

The Mail Handlers union was never a participant in the Modified 15 process in New Haven. Nevertheless, the Mail Handlers union attempted to avail themselves of a New Haven APWU/USPS Modified 15 award, despite the fact that Modified 15 awards (1) could not be cited by any other union except the APWU local in the test office; (2) could only be cited in another Modified 15 arbitration in the same test office; and (3) could only be cited by parties if the office was an active participant of the Modified 15 process. In short, the Mail Handlers union is attempting to utilize a 1994 APWU Modified 15 award in a 1997 Mail Handler arbitration proceeding arising under its own agreement, while the Postal Service and APWU are explicitly precluded from utilizing the same decision in any forum. As such, the Mail Handler's attempt to cite the 1994 APWU Modified 15 awards must be denied.

The case presentation by the Mail Handlers was sparse, relying on counsel's interpretation of the USPS/APWU contract language, without any witness support for counsel's interpretation. Admittedly, where contract language is ambiguous, an arbitrator can be called upon to render an interpretation reconciling the ambiguous language. However, here there is no ambiguity and the arbitrator's authority is severely limited. The parties to the Modified 15 proceedings (*i.e.*, the Postal Service and the APWU) are in a full agreement that Modified 15 awards can only be cited by the parties to the award in the test office, only in a modified proceeding, and only if the parties remain participants to the Modified 15 process. Therefore, when both parties to a contract are in agreement about the meaning and intent of specific language contained in a contract or memorandum of understanding, a non-party's interpretation is meaningless and not relevant, especially if the third party seeks to benefit by its singular interpretation.

A Modified 15 award is a type of settlement that exists in the postal service on a non-citable, non-precedential basis. Surely, when both parties are precluded by contract language from presenting a non-citable settlement to be reviewed by an arbitrator a non-party should not have greater fights to cite the parties' non-citable settlement. Non-precedential, non-citable agreements are widely used within the Postal Service and the outcome of this case may have an impact on the future of any such settlements. Indeed, the Modified 15 award is akin to a court decision that is "non-publishable", which means that it cannot be cited not only by either party in the future but any other litigants. Thus, the attempt to use as evidence arbitration awards which by their terms are limited as to time and place, is contrary to the Snow Award, (inasmuch as the Mail Handlers have no contractual right in its contract to cite these non-precedential Modified 15 awards), but also violates the specific limitations of those award which, as previously noted, are comparable to a non-publishable and non-citable judicial decisions. In sum, the Mail Handler position is unseemly in light of the experimental nature of the program.

Finally, there are significant labor relations issues which should preclude a ruling expanding the use of Modified 15 awards, as urged by the Mail Handlers in this case. A ruling for a party not part of the process would have a "chilling" effect on any future experimental programs in the Postal Service. The risk of a "rogue" award being resurrected and cited by others opens the proverbial "Pandora's Box". Moreover, in terms of elemental fairness, a non-party seeks to reap the benefits, while a party like the Postal Service is precluded from citing any Modified 15 awards except against the APWU at the New Haven office and only during the Modified 15 processes use in New Haven. For all the foregoing reasons, the Mail Handlers' grievance should be denied in its entirety.

OPINION OF THE IMPARTIAL ARBITRATOR

Since 1981, NPMHU and APWU have negotiated somewhat similar but separate and independent National Agreements with the Postal Service; each of which also incorporates certain unique supplemental understandings. Because the NPMHU and the APWU no longer are bound by a single National Agreement with USPS, it follows that neither is contractually bound by supplemental Memoranda of Understanding unique to those separate National Agreements, *i.e.*, MOUs which USPS has negotiated with one or the other but not with both. There is no dispute that NPMHU was not a signatory to the October 1986 Memorandum of Understanding by which the Postal Service, the APWU and the NALC established a "Grievance-Arbitration Procedure for Resolving Grievances at the Lowest Level", a.k.a., "Modified Article 15" or "Mod-15". Nor can there be any doubt that NPMHU was not a party to the supplemental Memoranda of Understanding of September 1988, November 1988 and April 1995 between USPS and APWU regarding citation of Mod-15 arbitration decisions.

The Postal Service's position that its contractual understandings with the APWU relative to Mod-15 arbitration under the USPS/APWU National Agreement are somehow binding upon NPMHU is contrary to primary principles of contract law. It is elemental that a party cannot be bound to an agreement to which it does not assent and to which it is not a party. *See, e.g.*, 17 Am. Jur. 2d Contracts § 22 (2002). Indeed, USPS stands logic on its head when it posits that "the Mail Handlers union cannot avail themselves of a New Haven APWU/USPS Modified 15 award" because the NPMHU "was never a participant in the Modified 15 process in New Haven."

Equally unavailing are the Postal Service's plea that equity requires quasi-contractual imputation of express mutual undertakings between USPS and APWU regarding citation of Mod-15 arbitration decisions into Article 15 of the USPS/NPMHU National Agreement. Such legislative intervention by

arbitral fiat would exceed the express limits on my authority set forth in the second sentence of Article 15.4.A.2: "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**". (Emphasis added). Moreover, the Postal Service argument that it is somehow "unfair" for NPMHU to cite Mod-15 decisions which USPS has undertaken with APWU to refrain from citing simply begs the question at issue in this case. It cannot seriously be maintained that NPMHU was a Third Party beneficiary of the agreements USPS made with APWU, by which each limited the other's right to cite arbitration decisions issued under the USPS/APWU Mod-15 procedures. The critical point is that the Postal Service and APWU agreed in collective bargaining negotiations to limit their respective rights to cite Mod-15 arbitration decisions in subsequent arbitrations but NPMHU and USPS have no such contractual undertaking.

As a general principle, absent mutual agreement to the contrary, advocates in a collective bargaining agreement arbitration may cite and proffer for the arbitrator's acceptance and consideration any authority that they deem persuasive. Absent mutual agreement to the contrary, an arbitrator in a labor-management arbitration has very broad discretion to accept or reject such proffered evidence and, if accepted, to accord antecedent decisions whatever degree of persuasive value s/he deems appropriate. *See* John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 556-557, 84 S. Ct. 909, 55 LRRM 2769 (1964); Interstate Brands Corp. v. Teamsters Local 135, 909 F.2d 885, 135 LRRM 2006 (6th Cir. 1990). *See also* Elkouri & Elkouri, How Arbitration Works 605 (BNA 5th ed. 1997) (citing NAA/AAA/FMCS *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* § 2(G) (1996)); Owen Fairweather, Practices and Procedure in Labor Arbitration, 161 (1983); Dana E. Eischen, The Arbitration

Hearing: Administration, Conduct and Procedures in "Labor and Employment Arbitration" (Edited by Bornstein, Gosline & Greenbaum), Chapter 1, Vol.1, § 1.01[7][a] (Matthew Bender 2nd ed. 1999).

Article 15.4.C.5 of the of the USPS/NPMHU National Agreement does expressly restrict the citation and authoritative value of "Expedited" arbitration decisions. However, nothing in Article 15 of the USPS/NPMHU National Agreement or past practice thereunder restricts either Party from citing and proffering any other type of arbitration awards from any other source to an arbitrator conducting an "Expedited" arbitration hearing under Article 15.4.C. of the USPS/NPMHU National Agreement. If, *arguendo*, appeals to equity struck a resonant chord, it would be patently unfair to impose upon the NPMHU by arbitral fiat a restriction on its rights to cite USPS/APWU Mod-15 decisions in arbitration under Article 15 of the USPS/NPMHU National Agreement, simply because USPS refrains from reciprocal citation to Mod-15 decisions under a self-imposed restriction it negotiated with APWU under a separate and independent National Agreement. As Arbitrator Carlton Snow observed in USPS/APWU/NALC National Arbitration Case No. H94N-4H-C 96090200 (Nov. 4, 1998): "If promises to one craft infringe on rights of another, the Employer is obligated to negotiate the authority to implement such rights [promises] within the craft whose rights are being infringed .... Simply because complying with one agreement would violate the other does not relieve management of its obligation to comply with both."(*Id.* at 23.)

Based on all of the foregoing, I conclude that NPMHU is not barred by contract, past practice or equity from citing and proffering in arbitration proceedings under Article 15 of the USPS/NPMHU Agreement, not as authoritative precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU Agreement, by an arbitrator who was informed at the time of his decision that the "Mod-15" award could

be cited as binding precedent between the APWU and the Postal Service in the post office from which the award arose. Because only that very narrow issue was presented for determination in this record, it should be understood that my decision in this case is intentionally stated in such narrow terms.

Finally, whether the Mod-15 decisions cited and proffered by NPMHU are accepted into the hearing record and, if accepted, how much persuasive value to accord them in determining the merits of the underlying grievances, are matters left to the informed discretion of the arbitrator in the "Expedited" proceedings under Article 15.4.C. On that basis, the NPMHU 1994 snowstorm grievances are remanded to the Regional arbitrator, for disposition of the procedural issue consistent with the terms of this Award. Ironically enough, whatever determination the Article 15.4.C arbitrator ultimately makes concerning relevance, admissibility or persuasive value of the Mod-15 awards cited and proffered by NPMHU in arbitration of the pending NPMHU 1994 snowstorm grievances will have no precedent value under the express terms Article 15.4.C 5 of the USPS/NPMHU National Agreement.

USPS/NPMHU
NATIONAL ARBITRATION PROCEEDINGS
AWARD OF THE IMPARTIAL ARBITRATOR

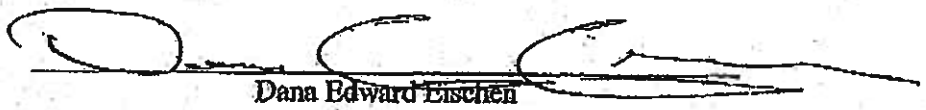
1) Neither contract language nor mutual past practice under the USPS/NPMHU National Agreement bars the NPMHU from citing and proffering in arbitration proceedings under Article 15 of the USPS/NPMHU National Agreement, not as authoritative precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU Agreement by an arbitrator who was informed, at the time of his decision, that the "Mod-15" award could be cited as binding precedent between the APWU and the Postal Service in the post office from which the award arose.

2) Memoranda of Understanding between USPS and APWU which limit or restrict the rights of the USPS and APWU to refer to and cite "Mod-15" arbitration decisions as authority in subsequent arbitration proceedings do not bar NPMHU, a non-party to such Memoranda of Understanding, from citing and proffering in arbitration proceedings under Article 15 of the USPS/NPMHU Agreement, not as authoritative precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU Agreement, rendered by an arbitrator who was informed at the time of his decision that the "Mod-15" award could be cited as binding precedent between the APWU and the Postal Service in the post office from which the award arose.

3) In arbitration proceedings under Article 15 of the USPS/NPMHU Agreement, discretion is vested in the individual arbitrator to accept or reject such above-described "Mod-15" arbitration decisions as the NPMHU may cite and proffer and, if accepted, to accord such above-described "Mod-15" arbitration decisions whatever persuasive value the individual arbitrator deems appropriate.

4) Case Nos. B90M-1 B-C 94024725 and B90M-1 B-C 94021081 are remanded back to Regional arbitration, for hearing and decision consistent with the terms of this Award.

5) Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the meaning, application or implementation of this Award



Dana Edward Eischen
Signed at Spencer, New York on September 25, 2003

STATE OF NEW YORK }
COUNTY OF TOMPKINS } SS:

On this 25th day of September, 2003 I, DANA E. EISCHEN, affirm and certify, upon my oath as Arbitrator, that I am the individual described herein, that I executed the foregoing instrument as my Award in this matter and acknowledge that I executed the same.

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: B90M-1B-C 94024725
B90M-1B C 94021081

Dear Mr. Hegarty:

This is in reference to Arbitrator Eischen's decision regarding the above captioned cases. These cases involve management's claim that Mod-15 arbitration awards cannot be introduced in arbitration by a union not participating in the Modified Article 15 program.

Mr. Eischen found:

(1) Neither contract language nor mutual past practice under the USPS/NPMHU National Agreement bars the NPMHU from citing and proffering in arbitration proceedings under Article 15 of the USPS/NPMHU National Agreement, not as precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU Agreement by an arbitrator who was informed , at the time of his decision, that the "Mod-15" award could be cited as binding precedent between the APWU and the Postal Service in the post office from which the award arose.

(2) Memoranda of Understanding between USPS and APWU which limit or restrict the rights of the USPS and APWU to refer to and cite "Mod-15" arbitration decision as authority in subsequent arbitration proceedings do not bar NPMHU, a non-party to such Memoranda of Understanding, from citing and proffering in arbitration proceedings under Article 15 of the USPS/NPMHU Agreement, not as authoritative precedent but for whatever persuasive value the arbitrator deems appropriate, arbitration decisions issued under the Modified Grievance Procedure of the USPS/APWU Agreement, rendered by an arbitrator who was informed at the time of his decision that the "Mod-15" award could be cited as binding precedent between the APWU and the Postal Service in the post office from which the award arose.

(3) In arbitration proceedings under Article 15 of the USPS/NPMHU Agreement, discretion is vested in the individual arbitrator to accept or reject such above-described "Mod-15" arbitration decisions as the NPMHU may cite and proffer and, if accepted, to accord such above-described"Mod-15" arbitration decisions whatever persuasive value the individual arbitrator deems appropriate.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

Pursuant to Mr. Eischen's decision, the above captioned cases are remanded back to Regional arbitration, for hearing and decision consistent with the terms of the award.

Please sign and return the enclosed copy of this decision as your acknowledgment of your agreement to remand these cases, therefore removing them from the pending national arbitration listing.

Sincerely,

Andrea B. Wilson
Manager
Contract Administration NRLCA/NPMHU

Date: 11/19/2003

John R. Hegarty
National President
National Postal Mail Handlers Union

Date: _____

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
THE LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, MAIL HANDLERS DIVISION, AFL-CIO

The United States Postal Service and the Laborers' International Union of North America, Mail Handlers Division 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 times.

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.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department

4/27/88
DATE

Joseph N. Amma, Jr.
Director of Contract
Administration
Laborers' International Union
of North America, Mail
Handlers Division, AFL-CIO

4/28/88
DATE

In the Matter of Arbitration Between UNITED STATES POSTAL SERVICE And NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	OPINION AND AWARD Nicholas H. Zumas, Arbitrator Case No.: H1M-NA-C-99

BACKGROUND

This is a Step 4 appeal to National Level Arbitration pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO (hereinafter "Union"). Hearing was held in Washington, D.C. on February 26, 1986, at which time testimony was taken, exhibits offered and made part of the record and oral argument was heard. The hearing was stenographically reported resulting in a transcript of the proceedings numbering 107 pages. Post-hearing briefs were filed on April 29, 1986.

APPEARANCES

For the Service: D. James Shipman, Esq.

For the Union: Joseph N. Amma, Jr.
Ralph H. Goldstein, Esq.

STATEMENT OF THE CASE

In this grievance, the Union protests the unilateral implementation by the Service of three programs which the Union alleges fundamentally change the nature of the disciplinary process by eliminating suspensions (as well as Letters of Warning in one of the programs). The grievance also protests the unilateral termination by the Service of one of the programs. The Union asserts that these programs are violative of the provisions of successively collectively bargained National Agreements and long-established past practices relating to progressive discipline. By implementing these programs and by terminating one of them unilaterally, the Union charges that the Service violated its duty to bargain under the National Agreement and the National Labor Relations Act, and disregarded past practice.

The Service contends that the National Agreement does not prohibit the implementation of the these programs or preclude the types of discipline utilized in these programs. The Service

further contends that it has no obligation to negotiate over the provisions of these programs; and that the past practice between the parties clearly indicates a unilateral right to implement such programs.

The parties, unable to resolve the matter during the various Steps of the grievance procedure, referred the dispute to this Arbitrator for resolution.

ISSUES

The Union frames the issue as follows:

> "Whether the Service has a duty to bargain with the Union over changes in the employee discipline process, and whether the Service violated this duty under the National Agreement and the National Labor Relations Act by implementing unilaterally three new disciplinary programs, by terminating one of the programs unilaterally, and by failing to bargain with the Union over these programs; and if so, what should the remedy be."

The Service frames the issue as follows:

> "Whether the Service violated Article 16 of the 1981-84 National Agreement by implementing these pilot programs at certain sites within the Central Region."

RELEVANT CONTRACT PROVISIONS

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

3.1 To direct employees of the Employer in the performance of official duties;

3.2 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;

3.3 To maintain the efficiency of the operations entrusted to it;

3.4 To determine the methods, means, and personnel by which such operations are to be conducted;

3.5 To prescribe a uniform dress to be worn by designated employees; and

3.6 To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be of recurring nature.

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 and conditions of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 16

DISCIPLINE PROCEDURE

Section 16.1 - Statement of Principle

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.

Section 16.2 - Discussions

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 a 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.

Section 16.3 - Letter of Warning

A letter of warning is a disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

Section 16.4 - 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 two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

Section 16.5 - 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 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 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 given 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.

* * *

Section 16.8 - Review of Discipline

A. 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.

B. In associate 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.

Section 16.9 - 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.

Section 16.10 - 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, a 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.

STATEMENT OF FACTS

In late 1983 and early 1984, management in the Service's Central Region initiated three pilot employee motivational programs at three postal facilities. Lawrence G. Handy, a Central Region Labor Relations official, described their purpose as follows:

"...We developed three separate programs, pilot programs, if you will, which were designed to minimize the necessity for disciplining employees, and to approach the relationship between the employee and the supervisor in a more positive vein than had previously

been done."

The first of the three programs implemented was Positive Attendance Control (hereinafter "PAC"). PAC became effective on November 26, 1983 in the St. Louis Post Office. In this program, no time off discipline (suspension) was to be given with respect to any attendance-related deficiencies or infractions. In lieu of suspension, progressively more severe Letters of Warning were to be issued for any attendance-related deficiencies. A PAC 1 letter was similar to a Section 16.3 Letter of Warning. A PAC 2 letter would be issued in lieu of Section 16.4 supension (14 days or less). A PAC 3 letter would be issued in lieu of a Section 16.5 suspension (14 days or more). Both the PAC 2 and PAC 3 letters would include statements that the employee's offense was serious enough to merit a suspension of the appropriate length. The Service considered the PAC program a success. In the year prior to the implementation of the program, 172 Section 16.3 Letters of Warning had been issued, while in the following year only 51 PAC 1 letters were issued. There had been 33 Section 16.4 suspensions, but only 3 PAC 2 letters. There were 37 Section 16.5 suspensions issued the previous year, but no PAC 3 letters were issued the following year.

The second program established was No Discipline Employee Motivation (N-DEM). This program became effective on January 21, 1984 in the St. Paul, Minnesota Post Office. This program

eliminated the use of Letters of Warning and suspensions altogether, except that it allowed management to retain the right to discharge for serious offenses such as theft or assault. The basic thrust of the N-DEM was to allow management to discuss problems with employees and encourage employees to resolve them. This program was eventually terminated on July 1, 1985 because, according to Handy, there were "operational problems." When asked to amplify, Handy stated that, "The working management did not feel comfortable with the program, or I should say certain members of management didn't feel comfortable with the program...there are some supervisors even today that think that the only thing to solve a problem with an employee is to give them a suspension or suspensions."

The third program implemented was No Time Off Letter of Warning (N-TOL). This program was implemented on February 18, 1984 in the Louisville, Kentucky Post Office. The program eliminated time-off suspensions for work-related deficiencies and substituted progressively severe Letters of Warning. Employees were given the right to appeal the issuance of a Letter of Warning under the grievance arbitration procedure.

The program, like PAC, used three letters. A N-TOL 1 letter was similar to a Section 16.3 Letter of Warning. A N-TOL 2 letter would be issued in lieu of a Section 16.4 suspension. A N-TOL 3 letter would be the substitute for a Section 16.5

suspension. Both N-TOL 2 and N-TOL 3 letters would include statements that the employee's offense was serious enough to merit a suspension of the appropriate length.

The Service also considered this program a success. In the year before the establishment of the N-TOL program, 185 Section 16.3 Letters of Warning were issued, while only 16 N-TOL 1 letters were written. There had been 59 Section 16.4 suspensions, but only 10 N-TOL letters. A total of 32 suspensions under Section 16.5 was reduced to 4 N-TOL 3 letters.

Before each program was implemented, the Service advised all employees. They also presented a slide-show to all supervisors, explaining the program. This same slide-show was presented to the four major unions. It was also presented to the Regional representatives, the Local representatives and the Shop Stewards of the unions. The Service offered to make the presentation to employees at local union halls, but only the National Association of Letter Carriers accepted this offer.

There is some dispute as to the initial reaction to these programs. Handy, who was a Program Manager in the Central Region at the time, testified that the reaction was favorable. Marcellus Wilson, an Administrative Technical Assistant for the Union, testified that he attended a December 1983 meeting where PAC was explained. Wilson testified that the Union protested the

establishment of the program.

As indicated earlier, the Service issued a Memorandum dated July 2, 1985, stating that the N-DEM program would be terminated; and that the Service would "return to using the discipline procedures set forth in Article 16 of the National Agreement." (Underscoring added)

On March 21, 1984, the Union filed a Step 4 grievance protesting the Service's "unilateral action in altering the terms, conditions and past practice application of Article 16 of the National Agreement in several sites in the Central Region." It should be noted that the American Postal Workers Union filed a similar grievance, but there is no record that it had been progressed to National Arbitration.

POSITION OF THE UNION

The Union asserts that the Service violated the National Agreement when it unilaterally implemented these three programs and refused to engage in collective bargaining, contending that they are inconsistent with the successively negotiated National Agreements and long-established past practices which mandate a progressive disciplinary procedure, beginning with Letters of Warning, progressed to short and then long suspensions, and

ultimately discharge.

The Union emphasizes that it does not challenge the merits of these "unprecedented changes" in the disciplinary procedure. In its brief, the Union states:

> "The Union does not argue that suspensions constitute in any way a superior, or inferior, method for disciplining employees, or that the PAC, N-DEM and the N-TOL programs constitute a worse or better method. Rather, the Union contends simply that the Postal Service has a duty to engage in collective bargaining with the Union over a modification of that procedure--regardless of its merit -- and that the Service has violated that duty in the present case by failing to bargain with the Union."

The Union maintains that these programs not only violate Article 5 of the National Agreement, which prohibits unilateral changes, but that these programs violate the provisions of Article 16 as well inasmuch as they change the established and agreed upon disciplinary procedure. Pointing to the history of negotiations and of Article 16 of the National Agreement, the Union asserts that suspensions have always been a topic of major concern to both the Service and the Union; and that changes in disciplinary procedures have been bargained over in each successive negotiation between the parties. Article 16, the Union asserts, contemplates that the progression from pre-disciplinary discussions to Letters of Warning, to suspensions of increasing duration and then to discharge is made "absolutely certain by the past practice of imposing discipline in precisely

these forms and in precisely this order," and that the PAC, N-DEM and N-TOL programs represent a major departure from the disciplinary procedures set forth in Article 16.

With respect to the reliance by the Service on Article 3 of the National Agreement (the reservation of management rights clause), the Union points out that Article 3 may grant the Service exclusive rights, but it makes these rights "subject to the provisions of this Agreement and consistent with applicable laws and regulations...." Therefore, Articles 5 and 16 limit the "exclusive rights" of the Service under Article 3.

The Union next argues that the exhibits submitted by the Service concerning alleged prior unilateral changes in the disciplinary procedures should not be given serious consideration. The Union maintains that these exhibits are internal memorandums, and that the Service produced no evidence regarding the decision-making process which brought them about, or that there is any evidence showing whether the Unions were notified of these memorandums or were consulted in advance; and that there was no evidence as to the Unions' responses, or whether the Unions requested bargaining or waived their rights to bargain.

Finally, the Union takes the position that the Service violated the National Labor Relations Act, arguing that a change

in disciplinary procedure is a change in "working conditions" as defined by the Act, pointing out that Article 5 of the National Agreement prohibits unilateral changes "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 Union points out that the NLRB and the Courts have ruled repeatedly that disciplinary procedures that affect a continuation of employment constitute mandatory subjects of bargaining. There is nothing in the National Agreement that contains any language waiving the Union's rights over disciplinary procedures, and there is no evidence in the bargaining history that would indicate that the Union ever waived its right to bargain over disciplinary procedures.

By way of remedy, the Union asks this Arbitrator to find that the Service violated the Agreement by implementing unilaterally new programs concerning discipline; and that the

Arbitrator order the Service to negotiate with the Union in this regard.

POSITION OF THE SERVICE

The Service contends that these three programs and the manner in which they were implemented do not violate the National Agreement, arguing that they do not change Article 16, nor does such implementation violate Article 16.

Preliminarily, the Service emphasizes that these programs are not intended to supplant traditional disciplinary methods, including suspensions and other disciplinary tools.

The Service maintains that these three programs do not, in any way, alter the provisions of Article 16, pointing out that the programs are intended to be corrective and not punitive. According to the Service, Article 16 does not require that any particular form of discipline be used in a particular situation; that by these programs, the Service has elected not to utilize certain disciplinary action; and that these programs are effective supplements to the traditional disciplinary concepts

currently in use in the Service, consistent with the corrective and non-punitive mandates of Article 16.

The Service asserts that Article 3 of the National Agreement gives it the right to implement these programs since, under Article 3, it has the exclusive right to "suspend, demote, discharge or take other disciplinary action," and that historically the Service has exercised its discretion to implement management policy with respect to discipline within the procedural constraints of Article 16.

The Service further argues that the implementation of these programs is consistent with past practice. At the hearing, the Service introduced several exhibits which it maintains is proof of such past practice. It points to Exhibit 23, a 1972 letter announcing the temporary elimination of Letters of Warning, and Exhibit 24, indicating a unilateral reinstatement of Letters of Warning and substituting them for suspensions of less than five days. The Service points to Exhibit 26, announcing a new policy of not imposing suspensions greater than 14 days, except in unusual circumstances.

The Service argues that these exhibits clearly show that the

parties intended that the Service have the discretion to implement unilaterally such programs.

FINDINGS AND CONCLUSIONS

After review of the record, this Arbitrator concludes that the unilateral implementation of these pilot programs violated the National Agreement between the parties, and that this grievance must be sustained.

Prior to the implementation of these three pilot programs, the parties have generally followed the progressive discipline procedures set forth in Article 16. Disciplinary measures have been imposed progressively, beginning with oral or written warnings, then progressing to short and long suspensions, and finally to discharge. While the number of warnings preceding suspension or the number of suspensions preceding discharge vary from case to case, this progressive pattern has been generally followed. These three new pilot programs alter this progressive pattern by utilizing special Letters of Warning or eliminating suspensions altogether. It is clear that these programs

represent a substantial departure from the traditional and established order of progressive and corrective discipline under Article 16.

It should be noted for the purposes of this dispute, the question of whether these changes are good or bad is of no relevance. Since the programs represent major changes, the essential question is whether these programs were properly implemented in accordance with the requirements of the National Agreement.

While Article 3 gives the Service the exclusive right "to suspend, demote, discharge or take other disciplinary action," such authority, as the Service concedes, is "subject to the [other] provisions of this Agreement." In this dispute, the rights of the Service in this regard are limited by the provisions of Article 5 and Article 16.

Article 5, the Prohibition of Unilateral Action clause, provides that the Service "will not take any actions altering wages, hours and other terms and conditions of employment." It is well established that discipline procedure is a term and condition of employment, and the unilateral implementation of programs which alter such procedure is an action that affects the

terms and conditions of employment in violation of Article 5. In Electri-Flex Co. vs. NLRB, 570 F. 2d 1327 (7th Cir 1978), cert. denied, 439 US 911, 99 LRRM 2743 (1978), the Court of Appeals held:

> "...the institution of a new system of discipline is a significant change in working conditions, and thus one of the mandatory subjects for bargaining under the provisions of Section 8(d) of the Act, included within the phrase 'other terms and conditions of employment.'"

The next area of inquiry is whether there was an established past practice in respect to similar changes in discipline procedure implemented unilaterally by the Service so as to constitute a waiver of the Union's right to demand that such changes be negotiated. In order to justify the unilateral implementation by the Service of these three programs on the basis of established past practice, it must be shown not only that there was acquiescence, either expressly or by implication, but that the prior unilateral changes were similar in magnitude and scope.

As indicated earlier, the Service presented exhibits indicating that during the 1970s numerous apparent unilateral changes were made in the disciplinary procedure. While the Union is correct in asserting that there is no evidence that these changes were not a result of previous or subsequent negotiation, or that there is any evidence that the Union ever acquiesced to

unilateral changes, the Union has not presented any evidence to the contrary. On the state of the record, it must be assumed that these prior changes were unilateral and that the Union waived its right to negotiate and acquiesced to the changes instituted by the Service.

The record, therefore, reveals the following: There was a unilateral change during the 1972 Agreement; a unilateral change during the 1973-75 Agreement; and a unilateral change during the 1978-81 Agreement. (No change was made during the 1975-78 Agreement.) The programs at the heart of this dispute represent an attempted change during the 1981-1984 Agreement.

Thus, at first glance, it would appear that the prior practice of unilateral changes made without objection gave the Service the right to unilaterally implement the programs in dispute. However, a closer analysis of the prior changes and a comparison with these disputed programs compel a different conclusion.

As evidenced by Exhibit 23, the use of Letters of Warning was temporarily suspended pending formulation of a standard national procedure. Exhibit 24 involves the implementation of using Letters of Warning in lieu of suspensions of less than five

days. Exhibit 26 established a policy of not imposing suspensions greater than 14 days except in unusual circumstances.

Each of these unilateral implementations involved a change at only one Step of the disciplinary process. However, the changes in the pilot programs involved in this dispute affect several Steps in the disciplinary process, so drastically alter the progressive nature of the disciplinary process, and are of such magnitude that the prior unilateral changes do not provide an established past practice justification for the unilateral implementation of the changes in these programs.

Both PAC and N-TOL eliminate two levels of suspension and replace them with Letters of Warning. The N-DEM program completely eliminates the progressive Steps set forth in Article 16. These changes have such a fundamental impact on employees' working conditions that they must be negotiated.

Further indication that these prior unilateral changes have little or no effect as binding past practice is the Memorandum of Understanding incorporated into and made part of the identical Article 16 provisions in the 1984-1987 National Agreement with the American Postal Workers Union and the National Association of

Letter Carriers.[1] The Memorandum of Understanding created a national-level "Task Force on Discipline," and reads, in pertinent part:

> "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 shall convene periodically but at least quarterly at such times and at such places as it deems appropriate during the term of the 1984 National Agreement. No action or recommendations may be taken by the Task Force except by a consensus of its parties." (underscoring added)

While this Union was not a party to this Memorandum of Understanding, the fact remains that its members and the members of the APWU and NALC are all part of the total work force and are all governed by identical Article 16 Discipline Procedure provisions in their respective collective bargaining agreements. It would be illogical in the extreme to allow the Service to

---

1. This Union was not a party to that Agreement, having elected in 1981 to negotiate separate collective bargaining agreements with the Service.

implement unilaterally disciplinary changes affecting the members of this Union while at the same time negotiate, by Agreement, any such changes with the APWU and NALC.

AWARD

Grievance sustained. The Service violated the National Agreement by unilaterally implementing the PAC, N-DEM and N-TOL pilot programs, by unilaterally terminating the N-DEM, and by failing and refusing to bargain with the Union over these programs. The Service is ordered to enter into collective bargaining with the Union over these programs.

Nicholas H. Zumas, Arbitrator

Date: May 11, 1987

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. Paul V. Hogrogian
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: See Attached

I recently met with your representative, Kevin Fletcher, to discuss the above captioned cases at the fourth step of our contractual grievance procedure.

The issues presented in these grievances concern whether management is required to follow the progressive disciplinary steps used for career Mail Handler employees when issuing discipline to Mail Handler Assistant employees (MHAs).

After reviewing the case files, the parties agree to the following:

Disciplinary procedures for MHAs are outlined in the *Memorandum of Understanding Re Mail Handler Assistant Employees*, Section 3.A. (Other Provisions, Article 15). That MOU provides that MHAs who have completed either 90 work days or a 120 calendar day period (whichever comes first) within the preceding six months may be disciplined only for just cause and that such discipline is subject to the grievance-arbitration procedure. The parties also agree that an MHA who has not completed a period of either 90 work days or 120 calendar days within the preceding six months does not have access to the grievance-arbitration procedure if disciplined. Furthermore, in the case of removal for cause within the term of an appointment, an MHA is entitled to advance written notice of the charges against him/her, in accordance with the Fishgold award.

Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.

Based on the above understanding, we agree to remand these grievances to Step 3 for further processing and/or regional arbitration if necessary.

475 L'Enfant Plaza SW
Washington DC 20260-4101
www.usps.com

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Michele Ditchey
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 2/8/2016

Paul V. Hogrogian
National President
National Postal Mail Handlers Union

Date: 2/8/2016

F11M-1F-C 14166312
Class Action
Sacramento, CA

F11M-1F-D 15006539
Robin Falls
Carson, CA

F11M-1F-C 15095101
Clark
Carson, CA

F11M-1F-C 15095176
Oatez
Carson CA

F11M-1F-D 15190470
Wilson
Santa Clarita

J11M-1J-D 14338311
Nicole Long
Pontiac, MI

J11M-1J-D 15053696
Joanna Martin
Allen Park, MI

F11M-1F-C 15113951
Bradley-Lyle
Carson, CA

B11M-1B-D 15242839
Johnson
Hartford, CT

F11M-1F-D 15299381
Chris Rodriguez
Santa Clarita, CA

B11M-1B-C 15371243
Class Action
Scarborough, ME

Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: P. Elliott
Greenwood, SC 29646
H4C-3P-D 1531

Dear Mr. Connors:

On June 27, 1985, and again on July 17, 1985, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.

The issue in this grievance is whether the 7-day suspension issued to the grievant was punitive rather than corrective in nature.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Article 16 of the National Agreement to the fact circumstances.

The parties at this level agree that while discussions for minor offenses may not be cited as an element of prior adverse record in any subsequent disciplinary action, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities. Any notation regarding prior discussions in the said letter of suspension shall be stricken.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

Muriel Aikens
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

bcc: Postmaster - Greenwood, SC
Southern Region
Article Code: 16-02-00 REMAND
NOTE TO REGION: Please ensure that the cited discussions are stricken from the letter of suspension at issue.

Subject, Chron, Reading, Art. file, Lerch
LR310:MAikens:G4YB00 :7/23/85

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

March 17, 1981

Mr. Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

AB-2-1438

Re: APWU - Local
Anaheim, CA 92803
HSC-5G-C-14672

Dear Mr. Anderson:

On March 10, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The instant dispute is settled in that discussion notations made by a supervisor are strictly personal and are not to be considered official Postal service documents. As such, they are not to be made a part of a central record system to which other individuals have access.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Howard R. Carter
Labor Relations Department

Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza SW
Washington, DC 20260

May 7, 1981

Mr. Wallace Baldwin, Sr.
Administrative Vice President
Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

MAY 1 3 1981

Re: Cheryl Palleja
Tampa, FL 33602
H8C-3W-C-25394

Dear Mr. Baldwin:

On April 23, 1981, we met with your representative to discuss the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we mutually agreed that there is no interpretive dispute between the parties at the National level as to the meaning and intent of the language set forth in Article XVI of the National Agreement as that language relates to supervisors conducting "discussions" with employees where minor offenses are concerned.

Based upon information contained in the file, the supervisor referred to in this grievance conducted a discussion with the grievant in accordance with the provisions of Article XVI. During the discussion, the supervisor indicated that improvement was needed insofar as the grievant's attendance was concerned. There is nothing in the file which establishes that the discussion was conducted to elicit information relative to the grievant's absence from duty (2 days sick) for the purpose of taking disciplinary action because of that absence. Under these circumstances, the grievant was not entitled to have a steward present. The discussion was properly held in private between the grievant and her supervisor. With this understanding, we mutually agreed to consider this grievance resolved.

Please sign a copy of this letter as your acknowledgment of agreement to consider this grievance resolved.

Sincerely,

George B. McDougald
Labor Relations Department

Wallace Baldwin, Sr.
Administrative Vice President
Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

NOV 16 1987

Re: Class Action
Indianapolis, IN 46206
H4C-4G-C 20241

Dear Mr. Connors:

On November 10, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether local management is making improper notations on Forms 3972.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Whether the notations being made on the forms are improper is a local dispute suitable for regional determination based on the particular circumstances.

The parties at this level agree that discussions shall not be noted on the reverse of Forms 3972.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

This replaces the decision dated October 22, 1987.

Sincerely,

Margaret H. Oliver
Grievance & Arbitration
Division

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

LR310:MHOliver:yb:3/24/86

MAINTAINING DISCUSSION FILES

DOCUMENT TYPE: STPFOUR
UNION: AMERICAN POSTAL WORKERS UNION CONTRACT
YEAR: 1984
ARTICLE: 16
SECTION: 1
CREATE DATE: 04/09/86

Mr. Jim Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Orlando, FL 32862
H4C-3W-C 12019

Dear Mr. Lingberg:

On March 11, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether illegal discussion files are being maintained by local management.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agreed that supervisors will not exchange written notes regarding discussions. Also, a supervisor of a former employee may orally exchange information, relative to discussions, with the employee's current supervisor. Any records that do not comply with the above and Article 16 of the National Agreement are to be destroyed.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing in accord with the above.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Jim Lingberg
National Representative-at-Large
Maintenance Craft Division

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

JUL 27 1988

Re: Local
Inglewood, CA 90311
~~H4C-5C-C 45726~~

Dear Mr. Connors:

On March 22, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management was proper in denying the union's request for copies of a supervisor's personal notes which were taken during a discussion.

During our discussion, we mutually agreed that when requested, the union will be given the date and subject of a discussion, providing that such discussion was relied upon by the supervisor in a disciplinary action to establish that the employee had been made aware of his/her obligations and responsibilities.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Joyce Ong
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

instance, the parties agree that a one day count and inspection may not be used as the sole basis to establish a standard against which a carrier's performance may be measured for disciplinary purposes.

Whether or not discipline is properly issued, i.e., just cause exists under given circumstances, is a factual dispute suitable for regional determination.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, if necessary.

Mr. Joseph H. Johnson, Jr. 2

Please sign and return a copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Thomas J. Lang
Labor Relations Department

Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter Carriers, AFL-CIO

bcc: Postmaster - Whittier, CA 90605
Western Region
Article Code ... 16-01-01 REMANDED

Subject, Chron, Reading, Art. File, Computer
LR310:TJLang:ht07:4/7/86
G6HT07.34

PROPER CONDUCT OF A SUPERVISOR AND AN EMPLOYEE DURING DISCUSSIONS.

DOCUMENT TYPE:	STPFOUR
UNION:	NATIONAL POST OFFICE MAIL HANDLERS UNION
CONTRACT YEAR:	1987
ARTICLE:	16
SECTION:	2
CREATE DATE:	03/07/88

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division
Suite 525
1 Thomas Circle, N.W.
Washington, DC 20005-5802

Re: C. Lee

BMC Jacksonville, FL 32099
H7M-3R-C 2128

Dear Mr. Amma:

On March 1, 1988, we met with your representative, Marcellus Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance involves the proper conduct of a supervisor and an employee during discussions.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

It was further agreed that, during a discussion held between a supervisor and an employee, both parties are expected to conduct themselves in a professional manner at all times.

The purpose of such discussions is to give a supervisor the opportunity to bring to the attention of an employee through non-disciplinary means, a minor offense committed by the employee. Clearly, the intent of a discussion is to provide the supervisor and the employee an informal setting in which both parties may address the minor offense.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Joseph N. Amma, Jr. 2

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Joyce Ong
Grievance and Arbitration Division

Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union of North America, Mail Handlers Division

bcc: Manager, BMC Jacksonville, FL 32099
Southern Region
Article Code ... 16-02-01 REMANDED
Subject, Chron, Reading, Art. File, Computer
LR410:JOng:3/07/88:revised:sw:05/18/88:OCA Computer Input
ALL-IN-ONE
Subject: Step 4
DOC# 148

Including of past element listings of disciplinary actions the original action

In the Matter of Arbitration Between:

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case No. NB-E-5724
Robert Kurtz
Phildelphia, PA

Issued: February 23, 1977

Background

This case involves an employer claim against Letter Carrier Robert Kurtz for his failure to deliver and account for registered article #3366397. There was no record taken of the hearing. The parties filed timely post-hearing briefs.

The Grievant, Robert Kurtz, was a part-time flexible letter carrier at the William Penn Station of the Philadelphia Pennsylvania Post Office. On April 23, 1974 he was assigned to route #639. Route #639 is essentially a business route which includes a number of jewelry establishments. The route is known in the William Penn Station as the "Jewel Route." The Grievant cased his mail that morning and picked up his registered articles

from the key table. Registered articles are handled in the following manner at the William Penn Station. When a carrier completes the casing of the mail for his route he calls his number to the Accountable Mail Clerk at the key table. If the clerk has prepared the accountable items for that route he calls the carrier to the table, gives the accountables to the carrier and requires that he acknowledge receipt of each accountable item by signing for it on an appropriate form (Form 3867). The carrier then returns to his case, prepares a receipt (Form 3849) for each accountable item and fuses it into his mail for delivery. In this way he can readily determine that an accountable item is destined for a particular customer when a receipt appears among that customer's mail. Accountables are placed in the bottom of the bag under the regular mail. As the receipts appear, the carrier delivers the accountable item to the appropriate customer and the customer acknowledges delivery by signing the receipt and returning the receipt to the carrier. When the carrier returns to the Post Office, he produces the receipts and reconciles them with the listing that he had signed out for earlier in the day. He does this in the presence of the Accountable Mail Clerk and if there is a complete reconciliation the clerk clears him of his liability for those accountables. In this case

Kurtz could not produce a receipt for one of the items listed on his Form 3867.

In this situation Kurtz had cased his mail and told the accountable mail clerk that he was prepared to receive his accountables. When the clerk was ready for Kurtz he called him. Kurtz picked up his accountables, signed out for them and returned to his case where he filled out and cased a receipt for each accountable item. He placed the accountables in the bottom of his satchel according to instructions and swept his case, bundled the mail, and put it in his satchel on top of the accountable items.

Having completed his work in the office he prepared to go out on the street. Before leaving he set his satchel on the floor near his case, threw his coat over it and went to the washroom. When he returned from the washroom he noticed nothing amiss, picked up his satchel and left for his route.

As the Grievant delivered his route he would finger the mail for each upcoming address. Approaching 111 South 8th Street he came across a receipt for registered parcel No. 3366397 addressed to the LaPais Jewelry Company. His procedure was to then look to his accountables in the bottom of his satchel for that parcel. Normally he would deliver the parcel and present the receipt to the addressee or his representative for signature. However, at this point

he discovered that parcel No. 3366397 was missing. He completed his deliveries and then retraced his route in an attempt to determine whether or not he had delivered the parcel to some other address in error. He was unsuccessful and he returned to his station.

Contentions

The Union claims that the Grievant exercised reasonable care in the handling of parcel No. 3366397 as required by Article XXVIII - Employer Claims which reads in pertinent part:

> ARTICLE XXVIII - EMPLOYER CLAIMS
>
> The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the U.S.P.S. property, postal funds, and the mails. In advance of any money demand upon an employee for any reason, he must be informed in writing and the demand must include the reasons therefor.
>
> x x x x x x x
>
> Section 2. Loss or Damage of the Mails. An employee is responsible for the protection of the mails entrusted to him. 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.

The parcel was stolen, says the Union, either when Kurtz left his case to sweep his mail from the center racks or when he went to the washroom. It insists that he

exercised reasonable care of the mail by delivering his route in a manner so as to keep his satchel in front of him as he walked. To establish proof of theft the Union points to the discharge of M. for pilfering the mail and established that M. was on the floor the morning of April 23, 1974. The Union claims that any carrier at the William Penn Station must leave his satchel unattended under certain circumstances in order to properly perform his duties. Therefore, it claims, it is unreasonable for Management to require the carrier to be responsible for the mail when he must leave the area without it.

The Union also claims that the failure of the Grievant to protest the 5-9-75 Letter of Warning was related to the Supervisor's remark "not to worry" when the loss was first reported. Further, it says, the letter was improper in that it was not in accordance with instructions issued by Senior Assistant Postmaster General Brown. The Union produced the following instruction from Brown:

November 7, 1973

MEMORANDUM TO: Assistant Regional Postmasters General Employee and Labor Relations
SUBJECT: Letters of Warning
FROM: Darrell Brown

Article XVI - Discipline Procedure of the 1973 National Agreement sets forth the basic principle that discipline must be

corrective in nature rather than punitive. Our objective is to correct employees, not to punish or harass them. During the negotiations, the Employer emphasized its commitment to this philosophy and made it clear that letters of warning would be used in appropriate circumstances since they are legitimate disciplinary tools. It is USPS policy, effective immediately, that letters of warning be used in lieu of suspensions of less than five (5) days. There will be circumstances, of course, in which the offense is so grave that suspension or even discharge will be required without any previous letter of warning.

Managers must remember that for minor offenses, counselling in private should be employed. If letters of warning are used, they should contain the following:

1. A statement identifying the letter as an official letter of warning, including sufficient detail (names, dates, times, occasions -- not generalities) as to the deficiency or misconduct that the recipient will know what he is being charged with;

2. A statement that further disciplinary action may result if correction is not achieved;

3. Previous discussion and/or counselling which has gone unheeded, if pertinent to the current infraction;

4. <u>Information as to the employee's right to appeal the issuance of the letter of warning through the grievance procedure</u>. (Underscoring added)

The Letter of Warning dated several months later is as follows:

DATE: May 9, 1974
SUBJECT: LETTER OF WARNING
TO: Mr. Robert K. Kurtz
P/T Flex Carrier
473 40 4399
William Penn Annex
Badge #7063

This official letter of warning is being issued for the express purpose of advising you of the following serious deficiency in your record which must be corrected immediately:

You failed to account for registered article #3366397 on Tuesday, April 23, 1974.

A copy of this letter of warning will be retained in your personnel folder for two years. If there is any repetition of the offense or you fail in any other manner to meet the requirements of your position more severe disciplinary action will be taken.

You are reminded that in accordance with present regulations employees who fail to meet the essential requirements of their position may have their periodic step increase withheld.

If you have any objection to the imposition of the above cited warning against your record, you may protest it in writing to the Postmaster within five days. Your protest will be reviewed on its merits by an authority different from the one that took the action and you will be advised of the decision reached.

BY: s/ John F. Lavello
SUPERVISOR'S SIGNATURE

5/14/74
DATE

s/ Robert K. Kurtz
SIGNATURE

s/
WITNESS

cc: Personnel, OPF
File
2/72

Management claims that Kurtz took responsibility for the parcel when he signed out for it at the key table. It maintains that he is constrained to handle the mail with care and the loss is his since the mail was entrusted to his care. The failure of the Grievant to protest the Letter of Warning, says Management, is proof that he recognized that he was responsible for the safe keeping of the accountable item. Management does not accuse the Grievant of stealing the parcel. It does not know how the parcel was lost but, in Management's view, the loss must be attributable to the Grievant's error and he is, therefore, liable for the monetary loss suffered by the Postal Service.

Findings

Article XXVII provides that a Carrier must exercise "reasonable care." It is not enough that a Carrier state that he exercised reasonable care since there is no manner in which the veracity of that statement can be substantiated. Under the present circumstances the Carrier must demonstrate that he was unable to exercise reasonable care due to factors outside his control.

In the case of Kurtz each of the possibilities raised by the Union must be explored. First, Kurtz demonstrated

that he delivered his route holding his satchel in front of him as he walked and fingered the mail. While this is a commendable and a useful precaution it serves only as self-protection for the carrier and does not relieve him from liability for loss on the basis of taking reasonable care. Carrying the satchel in front of him, then, does not demonstrate that the carrier was for some reason unable to exercise reasonable care.

Other possibilities brought forth by the Union bear more heavily on factors outside the control of the Grievant. The carrier is issued his accountables an hour before he leaves the office. During that time he is required to leave his case to go to mail racks in the center of a large room to sweep mail for his route from racks that are constantly being worked by clerks. If the carrier has already obtained his accountables, he must leave them unattended at his case while he sweeps mail from the central racks. There was no evidence that there is a procedure in effect enabling a carrier to protect his accountables during this time. On another point it was stated by the Union and not denied by Management that carriers are not permitted to take their satchels into the washroom. The normal practice is for a carrier to leave his satchel at his case or outside the washroom when he uses the washroom for a period of five or six minutes prior to his leaving for the street. Kurtz

claims that his satchel was left unattended on April 23, 1974 under these exact circumstances.

The Grievant testified that he and a Union Steward promptly discussed the matter with a Supervisor (now retired and unavailable to testify) who is alleged to have told them, "Don't worry about it" and, "I am not at liberty to tell you anything, just don't worry." Management made no attempt to deny the allegation nor did it confirm the Union's statement. Another carrier, M., was apprehended on June 8, 1974 and discharged on June 21, 1974 for theft of the mail. The Union maintains that since M. was on the floor at the time Kurtz's bag was unattended, it is reasonable to conclude that M. purloined the package. The Postal Service states that if M. would have gone near Kurtz's bag, other carriers working cases nearby would have noticed his presence. There is no evidence that M. was seen in the vicinity of Kurtz's case. In any event, says Management, M. was discharged because he stole mail that was entrusted to him.

The connection between the presence of M. on the day of the Grievant's loss and the loss is much too tenuous to reasonably assume that M. pilfered Item No. 3366397. According to reliable testimony of the Union witnesses, it is possible that the statement of the Supervisor "not to worry" was in error and subsequent events could not link M. to the loss of parcel No 3366397.

Management's contention that Kurtz's failure to grieve the Warning Letter of May 9, 1974 limits his defense concerning the Letter of Demand dated March 25, 1975 is without merit. The Warning Letter was not properly constructed as directed by Senior Assistant Postmaster General Brown and even if it were the Warning Letter must be considered a part of the total Management action against the Grievant. The Grievant, therefore, did not waive his right to grieve the Letter of Demand when he failed to protest the Warning Letter.

The practice of leaving the satchel when sweeping the clerk's racks or when using the washroom puts the carrier at risk. He must either entrust his satchel to another carrier or take it with him. It doesn't make sense to sweep the center racks carrying a satchel and taking the satchel into the washroom is against regulations. Certainly the integrity of fellow carriers is not generally open to question. However, M. was a fellow carrier and he was discharged for stealing mail. The carriers in the William Penn Station must gamble each time they leave their cases as they must do in order to perform their duties.

The ultimate issue in this case is by no means free from doubt. There are cogent arguments suggesting

that the Grievant should not be held liable for this specific loss. On the other hand there are even stronger factual considerations indicating a lack of due care on the part of Kurtz.

Thus, the hard fact is that he noticed nothing amiss with his satchel when he returned to his case on the morning of April 23. It is undenied that the other carriers noticed nothing unusual about, nor any stranger near, Kurtz's satchel while he was in the washroom. This indicated that the parcel was lost outside the Post Office. Finally, Kurtz could not demonstrate that some factor outside his control caused him to lose the parcel even though he claims that he exercised reasonable care. Given these critical facts, the conclusion is clear that Grievant Kurtz properly was held responsible for the loss in issue.

Award

The Grievance is denied.

Paul J. Fasser, Jr.
Associate Impartial Chairman

Approved:

Sylvester Garrett
Impartial Chairman

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

December 17, 1987

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO
1 Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Dear Mr. Amma:

This is in regard to our discussions concerning the MOU on Purging of Warning Letters agreed to during the 1987 National Negotiations.

As discussed, I agree that if a disciplinary action is modified by the parties or an arbitrator resulting in a letter of warning, such letters of warning will not be considered to have been issued in lieu of a suspension or a removal action pursuant to Item 3 of the MOU.

Sincerely,

William J. Downes

William J. Downes
Director
Office of Contract Administration

7937

SENIOR ASSISTANT POSTMASTER GENERAL
EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

February 15, 1974

MEMORANDUM FOR: Assistant Regional Postmasters General
Employee and Labor Relations

SUBJECT: Letters of Warning

By memorandum dated November 13, 1973, there was established as USPS policy the utilization of letters of warning in lieu of suspensions of less than five (5) days. This same policy is effective throughout the grievance process where consideration is being given to a reduction in discipline imposed. If a suspension of five (5) days or more is reduced administratively, the reduction should be to a letter of warning rather than a suspension of four (4) days or less, unless such short suspension constitutes an agreed upon settlement of the grievance.

Please review your existing discipline cases to insure that this policy is operative and take the necessary corrective action where necessary to insure compliance.

Sincerely,

Darrell F. Brown

LABOR RELATIONS

REISSUED--SUPERCEDE DECISION 5/17/96

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, D.C. 20005-5802

Re: D90M-1D-D 94049865
NEAL, D
CAPITOL HEIGHTS, MD 20790-9998

Dear Mr. Quinn:

Recently I met with your representative, T.J. Branch, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is what is the remedy when an employee serves a suspension of 14 days or less before receiving a written Step 2 decision from management.

During our discussion, we mutually agreed that where an employee begins serving a suspension before the issuance of a written Step 2 decision of a properly appealed grievance under Article 16.4 of the Agreement, the appropriate remedy is to rescind the suspension and make the grievant whole. This make whole remedy is without prejudice to the Postal Service position that it may reissue the suspension to correct an administrative error and without prejudice to the Union's position that the Postal Service may not reissue the suspension.

This case is to be remanded to Step 3 for application of this settlement.

Please and sign and return the enclosed copy of this decision as acknowledgement of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Gloria Gray
Contract Administration
(APWU-NPMHU)
Labor Relations

Date: 6/26/96

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 6/26/96

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union
AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: A90M-1A-D 96015486
(MH # 688)
WYCHE L
BROOKLYN, NY 11256-9511

Dear Mr. Quinn:

On July 10, 1996, I discussed with your representative Richard Collins the aforementioned grievance at the fourth step of the contractual grievance procedure.

Article 16.4 of the National Agreement states that no employee will begin to serve a suspension prior to the issuance of a Step 2 written decision. The issue in this case is what remedy shall be effectuated when an employee serves a suspension prior to this finding.

After reviewing this matter we mutually agreed that where an employee begins servings a suspension before the issuance of a written Step 2 decision of a properly appealed grievance under Article 16.4 of the National Agreement, the appropriate remedy will be to rescind the suspension and make the grievant whole.

This make whole remedy is without prejudice to the Postal Service's position that it may reissue the suspension to correct an administrative error and without prejudice to the Union's position that the Postal Service may not reissue the suspension.

Accordingly, we agreed to remand this case to Step 3 for application of this settlement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time Limits at this level were extended by mutual consent.

Thomas J. Valenu
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

Date: July 10 1996

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 7/31/96

475 L'Enfant Plaza SW
Washington DC 20260-4100

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union
AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: B90M-1B-D 94029660
(MH # 634)
MULHERN JR. R.
SHREWSBURY, MA 01546-7060

Dear Mr. Quinn:

On July 10, 1996, I discussed with your representative Richard Collins the aforementioned grievance at the fourth step of the contractual grievance procedure.

Article 16.4 of the National Agreement states that no employee will begin to serve a suspension prior to the issuance of a Step 2 written decision. The issue in this case is what remedy shall be effectuated when an employee serves a suspension prior to this finding.

After reviewing this matter we mutually agreed that where an employee begins servings a suspension before the issuance of a written Step 2 decision of a properly appealed grievance under Article 16.4 of the National Agreement, the appropriate remedy will be to rescind the suspension and make the grievant whole.

This make whole remedy is without prejudice to the Postal Service's position that it may reissue the suspension to correct an administrative error and without prejudice to the Union's position that the Postal Service may not reissue the suspension.

Accordingly, we agreed to remand this case to Step 3 for application of this settlement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time Limits at this level were extended by mutual consent.

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

Date: July 15, 1996

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 7/31/96

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

08377.pdf
D.EISCHEN:JANUARY9,2009
SUSTAINED:NPMHU/APWU
98072898:REGIOAL

USPS/NPMHU NATIONAL ARBITRATION PROCEEDINGS
Case No. 194M-11-C-98072898

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

- and -

NATIONAL POSTAL MAIL HANDLERS UNION

-and-

AMERICAN POSTAL WORKERS UNION, AFL-CIO (INTERVENOR)

Subject: Validity of Step 2 decision issued post proper progression to Step 3 under Article 15.3.C

National Arbitrator

Dana Edward Eischen

Appearances

For the NPMHU:	Bredhoff & Kaiser, P.L.L.C. by Andrew D. Roth, Esq.
For the Postal Service:	Teresa A. Gonsalves, Esq. Anthony M. Thuro, Esq. (at the hearing) Joseph R. Berezo, Esq. (on the brief)
For the APWU:	O'Donnell, Schwartz & Anderson, P.C. by Brenda C. Zwack, Esq. (at the hearing) Lee W. Jackson, Esq. (on the brief)

PROCEEDINGS

The United States Postal Service ("USPS", "Postal Service" or "Employer") and the National Postal Mail Handlers Union("NPMHU", "Mailhandlers" or "Union") designated me to arbitrate National-level disputes under Article 15. 5. D of their National Agreement. The terms of Article 15.3.C of that USPS/NPMHU National Agreement are dispositive of the matter in dispute but, in advancing their respective positions in this case, both the USPS and the NPMHU also cited and relied upon arbitration awards construing virtually identical language in Article 15.4.C of the National Agreement between USPS and the American Postal Workers Union, AFL-CIO ("APWU"). After being provided with third party notice of this arbitration proceeding, the APWU elected to participate as an Intervenor in this case by appearing and participating in the hearing and filing a post-hearing brief. [At the arbitration hearing on June 13, 2006, Counsel for the APWU stipulated as follows: "Since we have intervened in this case as a third party, then [the decision in this case] interpreting that language would bind the APWU"]. *See* Tr. p.81, lines 10-12.

The USPS, the NPMHU and the APWU each were represented by Counsel and afforded full opportunity to present documentary evidence, testimony subject to cross-examination and oral argument at the hearing of this matter. Following receipt of the transcribed stenographic record, the Parties deferred filing post-hearing briefs, pending the possibility of a resolution of the controversy in connection with ongoing national-level collective bargaining negotiations. The Parties subsequently advised me that their discussions had not resolved the matter and eventually filed and exchanged their respective post-hearing briefs in late March 2008. At my request, the Parties graciously allowed me an extension of the contractual time limits for the rendition of this Opinion and Award.

PERTINENT CONTRACT PROVISIONS

USPS/NPMHU 2002-2004 NATIONAL AGREEMENT
ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 15.1 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.

Section 15.2 Grievance Procedure-Steps

* * *

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 I representative.

(b) Any grievance initiated at Step 2, pursuant to Article 2 of this Agreement, must be filed within fourteen (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.

(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) Where grievances appealed to Step 2 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 2, the "representative" grievance may be appealed to Step 3 of the grievance procedure. 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 2 pending resolution of the "representative" grievance, provided they were timely filed at Step I and properly appealed to Step 2 in accordance with the grievance procedure.

(f) Following resolution of the "representative" grievance, the parties involved in that grievance shall meet at Step 2 within seven (7) days of their receipt of that resolution, unless the parties agree upon a later date, to identify the other pending grievances involving the

same, or substantially similar issues or facts, and to apply the resolution to those grievances. 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.

(g) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form and shall be furnished to the Union representative within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. Any such settlement or withdrawal 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.

(h) 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.

(i) 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.

(j) 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.

Step 3: (a) Any appeal from an adverse decision in Step 2 shall be in writing to the appropriate management official at 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 Step 3 level by the Union's Regional representative, or designee. The Step 3 meeting of the parties' representatives to discuss the grievance shall be held at the respective Postal Service office (former regional headquarters) 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 jointly 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 this Agreement or some supplement thereto which may be of general application is involved in the case.

(d) The Union, at the Regional level, may appeal an adverse decision directly to arbitration at the Regional level 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 this 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 this 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 (2 1) days after receipt of the Employer's decision and include copies of the standard grievance form, the Step 2 and Step 3 decisions and, if filed, any Union corrections and additions filed at Steps 2 or 3. The Union shall furnish a copy of the Union appeal to the appropriate management official at the Grievance/Arbitration Processing Center.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issues(s) to be decided. The Employer's notice shall be included in the Step 3 decision. The Union's written notice shall be automatically included as part of the grievance record in the case but the filing of such notice shall not affect the time limits for appeal.

[See Memos, pages 137, 138]

Step 4: (a) In any case properly appealed or referred 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 or referral 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 Union 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.

Article 15.3

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. Every effort shall be made to ensure timely compliance and payment of monetary grievance settlements and arbitration awards. The Employer agrees that upon receipt of necessary paperwork, from the grievant and/or union, concerning a grievance settlement of arbitration award, monetary remuneration will be made. The necessary paperwork is the documents and statements specified in Subchapter 436.4 of the ELM. The Employer

will provide the union copies of appropriate pay adjustment forms, including confirmation that such forms were submitted to the appropriate postal officials for compliance and that action has been taken to ensure that the affected employee(s) receives payment and/or other benefits. In the event that an employee is not paid within sixty (60) days after submission of all the necessary paperwork, such employee, upon request, will be granted authorization from management to receive a pay advance equal to seventy (70) percent of the payment owed the employee. In the event of a dispute between the parties concerning the correct amount to be paid, the advance required by this section will be the amount that is not in dispute.

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.

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.

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 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 he 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,

E The parties have agreed to jointly develop and implement a Contract Interpretation Manual (CIM) within six (6) months after the effective date of the 1998 National Agreement. The CIM will set forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of this Agreement. It is not intended to add to, modify, or replace, in any respect, the language in the current Agreement; nor is it intended to modify in any way the rights, responsibilities, or benefits of the parties under the Agreement. However, production of the CIM demonstrates the mutual intent of the parties at the National level to encourage their representatives at all levels to reach resolution regarding issues about which the parties are in agreement and to encourage consistency in the application of the terms of the Agreement. For these reasons, the positions of the parties as set forth in the CIM shall be binding on the representatives of both parties in the resolution of disputes at the Local and Regional levels, and in the processing of grievances through Steps 1, 2 and 3 of the grievance-arbitration procedure. In addition, the positions of the parties as set forth in the CIM are binding on the arbitrator, in accordance with the provisions of Article 15AA6, in any Regional level arbitration case in which the CIM is introduced. The CIM will be updated periodically to reflect any modifications to the parties' positions which may result from National level arbitration awards, Step 4 decisions, or other sources. The parties' representatives are encouraged to utilize the most recent version of the CIM at all times.

[See Memos, pages 140, 141, Letters, pages 141, 143, 156]

ARTICLE 16 DISCIPLINE PROCEDURE

Article 16.5

In the case of discipline involving suspensions of fourteen (14) days , 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 fourteen (14) 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. However, if the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered.

In the case of suspensions of more than fourteen (14) days, or 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. However, if the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered.

USPS/APWU 2002-2004 NATIONAL AGREEMENT

Article 15.2

* * *

(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...

* * *

(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...

* * *

Article 15.4

* * *

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.

* * * * * *

BACKGROUND

The decade-old facts giving rise to this National-level grievance are fairly straightforward and not much in material dispute. On December 30, 1997, Lewis J. Rothman, III was notified by Management of a proposed 14-day disciplinary suspension, for alleged attendance irregularity and excessive absenteeism from his job in the Des Moines, Iowa BMC. The timely filed Step 1 grievance challenge by NPMHU, claiming lack of just cause for that discipline, (Grievance No. 22-333-00698) was denied by Management on January 16, 1998 and appealed to Step 2 by the Union

on January 23, 1998. When the Employer thereafter failed to schedule any Step 2 meeting within the time limits set forth in Article 15.2 Step 2 (c), the NPMHU, on February 4, 1998, simultaneously invoked the "deemed to move" provision of Article 15.3.C and also filed a formal appeal of Grievance No. 22-333-00698 to Step 3.[1] After the Union declined a request by Management to "remand" the case back to a Step 2 meeting, Management responded with the following document, dated February 19, 1998, labeled "Step 2 Denial":

> The subject Step 2 grievance was not discussed with your representative, Tony Irvin in accordance with Article 15, Section 2 of the National Agreement. The Union appealed with out the benefit of a meeting; respectfully request the grievance be remanded to step 2.
>
> The union contends the grievant was issued a 14 day suspension and allege violation of article 16 of the National Agreement and ELM 5 15. The union requests the discipline be expunged from all files and records.
>
> The facts in this case are the grievant received a 14 day suspension for failing to meet the attendance requirements, after receiving a 5 day suspension and a letter of warning for failing to meet the attendance requirements of his position. There was a settlement on the five day suspension. One date cited on the notice of suspension, was outside of the review period, however there were a sufficient number of absences to establish just cause. Information provided by the union in their written appeal did not establish a violation of article 16 or ELM 15.
>
> Inasmuch as the union has failed to establish a contractual violation, a contractual basis for the requested remedy, or that just cause did not exist, this grievance is denied.

The Union thereafter perfected its appeal of Grievance No. 22-333-00698, which eventually resulted in a regional arbitration award, on October 26, 1998, by Arbitrator Roger L. Goldman, *infra.* In the meantime, after Management had directed Mr. Rathman to begin serving the 14-day suspension on February 21, 1998, the NPMHU also filed Grievance No. 98072898; invoking Article 15.3.C and claiming violations of Articles 3,5,and 16.4 of the National Agreement. The string of successive Management denials of that grievance leading to this arbitration read as follows:

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[1] As noted in my discussion of the Issue, *infra*, no opinion is expressed or implied in this decision on the countervailing positions of the Parties regarding whether filing a formal Step 3 appeal is a contractual necessity when a Step 2 grievance is"deemed to move" to the next Step of the grievance-arbitration procedure under the provisions of Article 15.3.C.

Step 2 Denial of March 30, 1998

The subject Step 2 grievance was discussed . . . on March 16, 1998, in accordance with Article 15, Section 2 of the National Agreement.

The union contends the grievant was placed on suspension and allege a violation of articles 3, 5, and 16, of the National Agreement. The union did not explain the relevance of articles 3 and or how they were violated. The union requests the grievant be made whole and the subject discipline be expunged from all files and records.

As claimed by the union, this grievance was appealed to step 3 without the benefit of a step 2 meeting. Management attempted to meet with the union at step 2 after their appeal, but the union refused.

In accordance with Article 16.4 of the National Agreement, the grievant did not begin his suspension until a step 2 decision had been issued prior.

In as much as the union has failed to establish a contractual violation, a contractual basis for the requested remedy or that just cause did not exist, this grievance is denied.

Step 3 Denial of June 2, 1998

Pursuant to the terms and obligations as set forth in Article 15 of the 1994 National Agreement, management and union designees met at Step 3 of the grievance procedure. The result of that meeting on the above referenced case is as follows:

The issue is whether management violated Articles 3, 5 and 16 of the National Agreement when the grievant was allegedly placed on suspension prior to management rendering its step two decision.

The record establishes that the grievant initiated a grievance concerning a notice of suspension received on January 6, 1998. The parties did not discuss that grievance at step two within the prescribed time limits. On February 4,1998 the union appealed that grievance to step three without holding a step two meeting. On February 19 management provided the local union with its written step two decision for the grievance at issue. On February 21 the grievant began serving the suspension period.

The local union's claim that management was prohibited from (ever) requiring the grievant to serve his suspension is totally baseless. The union has failed to present any evidence to support their allegation that management is barred from ever requiring an employee to serve a suspension when the grievance (protesting the suspension) is appealed to step three due to the failure to meet at step two in a timely manner. Indeed, the union's assertion would change the clear intent of the requirement to "delay" a suspension outlined In Article 16.4 of the Agreement. In any event, the step two decision n this case was "rendered" and provided to the union prior to the grievant beginning his suspension.

The union's attempt to disavow the step two decision is groundless as is their entire "position" in this matter. The union has failed to demonstrate a violation or the relevance of the cited Articles of the Agreement. Absent the union meeting their

burden in this contractual matter and absent the union providing a foundation for their requested remedy, this grievance is denied.

Step 4 Denial of November 9, 1998

On November 2. 1998, 1 met with your representative Dallas Jones to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement when management issued a Step 2 Decision without meeting with the Union at the Step 2 level of the grievance process.

The Union contends that this is an issue of due process in that management had to meet with the union before it could issue a Step 2 decision. The Union contends that if management failed to meet at Step 2, then it could not rightfully issue a Step 2 decision. The union further contends that if there is no Stop 2 decision, then management would be in violation of Article 16.4 of the National Agreement by forcing the Grievant to serve the fourteen (14) day suspension.

It is the position of the Postal Service that no interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. This is a local dispute suitable for regional determination by application of Article 16, Section 2 of the National Agreement to the particular circumstances. However, inasmuch as the Union did not agree, the following represents the decision of the Postal Service.

Article 15.2 Step 2: (c) of the National Postal Mail Handlers Union (NPMHU) National Agreement states in part; ' 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...

Article 15.3. C. off the National Agreement further states, in part; "Failure by the Employer to scheduled 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.

Management contends that the terms and conditions of Article 15 compel management to meet with the union as soon as possible after receipt of a timely Step 2 Appeal; likewise, Article 15 provides for the union to proceed to the next stop in the grievance process if management fails to meet within the required time period.

The evidence of record indicates that management did not to meet within the seven (7) day period after a grievance was initiated by the union. Although the seven (7) day time period had elapsed, the record indicates that management made good faith attempts to meet with the union to discuss the grievance. However, the terms of Article 15 state that the both parties have agree to any extension to meet beyond the seven (7) day period. The union's Step 2 Representative in this case did not agree to an extension; therefore, the union exercised its contractual rights and appealed the grievance to the Stop 3 level of the grievance process.

It is management's position that the grievance procedures outlined in Article 15 include provisions for the parties to take if the steps of the grievance process are not

properly adhered to. Management argues that the union did in fact exercise its contractual rights by forwarding the grievance to Step 3 which was the appropriate resolve if the parties did not meet at Step 2.

Furthermore, Article 15.2 Step 2: (h) of the National Agreement states in part: "Where agreement is not reached, the Employees decision shall be fumished 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..."

In accordance with Article 16 of the National Agreement regarding suspensions of 14 Days or less, Section 16.4 states in part: "...the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered." This provision outlined in the discipline procedure requires management to render a decision prior to a grievant serving the suspension. This provision does not dictate that managements decision hinges on whether or not a Step 2 meeting took place.

It is the Service's position that this is not a dispute for national interpretation. The terms and conditions of Article 15 dearly identify and plainly articulate the steps to process a grievance. There are no provisions at any level of the grievance process that prohibits management from issuing a Step 2 decision letter.

After careful review of the facts surrounding this grievance, it is managements position that this dispute does not rise to application for interpretive determination. In view of the above considerations, this grievance is denied.

When that matter remained unresolved, NPMHU made a timely appeal for final and binding determination of the confronting procedural issue in Case No. 194M-11-C-98072898 to National-level arbitration, under Article 15.4.D of the Mail Handlers National Agreement between NPMHU and USPS. While the appeals of that case were progressing to this National Arbitration, however, the underlying grievance protesting the merits of the 14 day suspension (No. 22-333-00698) was decided long ago, in expedited arbitration by Arbitrator Roger L. Goldman, whose Award of October 26, 1998 reads, in pertinent part, as follows:

FACTS: Grievant, Lewis J. Rothman III, was issued a Notice of Fourteen Day Suspension for being irregular in attendance. Grievant had previously received a Letter of Warning, dated December 31, 1996, and a five day suspension, dated May 27, 1997, both for failure To Maintain Regular Attendance.

UNION'S POSITION: Union contends that the Suspension was punitive, rather than corrective action and therefore lacked just cause; that it was procedurally defective; and that it should be rescinded and Grievant made whole.

MANAGEMENT'S POSITION: Management contends that there was just cause to issue the.,Notice of Suspension to Grievant; that the procedure was not defective; and therefore the grievance should be denied.

* * *

A. Jurisdiction of the Arbitrator

There is a serious question whether the Arbitrator has jurisdiction of the case since Union referred the case to Step 4 of the grievance procedure on August 12, 1998, Management Exhibit 5. Pursuant to Article 15, Sec. 15.4(b)51 either party may remove a case from regional arbitration and refer the case to Step 4 of the grievance procedure. In that event, the referring party pays the entire cost of the regional arbitrator, unless another scheduled case is heard on that date. No other case was heard. Although the August 12, 1998 referral by Union to Step 4 did state the case was withdrawn from regional arbitration, neither party renewed the request that the case be withdrawn from regional arbitration on October 20, 1998, the date of the arbitration. Management sought a decision on the merits while Union sought a decision on both the procedural issue and the merits.

No provision in the Agreement was cited to Arbitrator that directly addressed the question: Can an Arbitrator proceed to decide an issue (in this case, the merits) while another issue is pending at Step 4 (in this case, the procedural issue)?

Since both parties were willing to have the arbitrator proceed on the merits and since the Arbitrator did hear evidence on the merits, it would seem inconsistent with the purposes of arbitration to be expeditious and inexpensive for the Arbitrator to dismiss the entire grievance on jurisdictional grounds. Accordingly, the Arbitrator will render a decision on the merits but will stay implementation of the decision until completion of the Step 4 proceeding and its possible appeal to National Arbitration.

B. Issues to be Decided

The parties differ on the jurisdiction of the Arbitrator to render a decision-on the procedural matter which is now pending at Step 4 of the grievance procedure.

The procedural matter arises from the failure of the parties to meet within 7 days of the receipt of the Step 2 appeal. Union claims that such a failure to meet prohibits a Step 2 decision from being validly rendered, and without a Step 2 decision, there can be no discipline. (Management contends that there was a valid Step 2 decision rendered, and that a Step 2 meeting is not necessary to make the Step 2 decision valid).

The Arbitrator agrees with Management that he cannot decide this procedural issue which is now pending at Step 4 as an interpretative issue under the National Agreement. Article 15, Section 15.4(b)5, does not contemplate a regional arbitrator resolving the very same issue, in the same case, that is pending at Step 4.

Therefore, the Arbitrator will not address the procedural issue but will only decide the merits.

* * *

AWARD: Grievance denied but the 14 day suspension is not to take effect until after the Step IV decision and appeal to Arbitration, if any, in the case involving this same Grievant, Regional # 194M-II-C-98072898, dated August 12, 1998 (sic). If the ruling in that case sustains the Grievance concerning the lack of a Step 2 meeting, the suspension upheld in this case is not to take effect and shall be expunged from all records. If the ruling in that case denies the Grievance, the 14 day suspension in the case before this Arbitrator shall take effect and may be cited in later discipline.[2]

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[2] The record shows that Mr. Rathman left the employment of the Postal Service sometime during the 8-year hiatus between the November 1998 Step 4 denial of Grievance #194M-11-C-98072898 and the June 2006 hearing of that grievance in this National-level arbitration.

POSITIONS OF THE PARTIES

The following statements of position have been extrapolated and edited from the respective post hearing briefs:

NPMHU

Once a grievance properly has been "deemed . . . move[d]" to Step 3 of the grievance arbitration process pursuant to Article 15.3C, Step 2 of that process has, by definition, ended. By agreement of the parties, "jurisdiction" (as it were) has passed from Step 2 of the grievance-arbitration process to Step 3, and from that point forward the grievance is to be handled and ultimately resolved exclusively in accordance with the various provisions of Article 15 governing those steps of the grievance-arbitration process beyond Step 2. This being so, there is no basis whatsoever in the National Agreement or in common sense for the Postal Service's assertion of a contractual right belatedly to issue a Step 2 decision in these circumstances for any purpose—whether for the purpose of resurrecting a timeliness objection to the Union's processing of the grievance that has been "waived" under Article 15.3B of the National Agreement, see infra pp. 21-24, or for the purpose of requiring the grievant to serve a fourteen-day suspension that has been tolled pending a Step 2 decision under Article 16.5 of the National Agreement. Recognition of such a contractual right belatedly to issue a Step 2 decision in these circumstances would in effect excuse the Postal Service's "[f]ailure . . . to schedule a [timely Step 2] meeting," and there is no warrant in Article 15.3C or in any other provision of the National Agreement for excusing such a failure on the Postal Service's part.

The premise of that Postal Service response is that where a collective bargaining agreement does not set out the parties' agreement on a particular issue in express language, it is never appropriate for an arbitrator to imply an agreement between the parties on that issue. But that premise is a false one, as every experienced labor arbitrator knows. Given the realities of collective bargaining, labor arbitrators regularly are called upon—and properly so—to resolve interpretative disputes over the consequences that flow from an agreed-upon contractual provision that does not state those consequences in express language. And, a labor arbitrator who answers that call by reasonably concluding that the wording of contractual provision "X" necessarily implies consequence "Y" does not thereby commit the cardinal sin of "re-writing" the parties' agreement for them.

For the foregoing reasons, the NPMHU respectfully requests that the Arbitrator to find that when a grievance properly is "deemed . . . move[d]" to Step 3 of the grievance-arbitration process under Article 15.3C of the National Agreement, based on a "[f]ailure by the [Postal Service] to schedule a [timely Step 2] meeting," the Postal Service may not thereafter issue a Step 2 decision with respect to that grievance for any purpose, including specifically (i) for the purpose of resurrecting a timeliness objection to the Union's processing of the grievance that has been "waived" under Article15.3B of the National Agreement; and(ii) for the purpose of requiring the grievant to serve a fourteen-day suspension that has been tolled pending a Step 2 decision under Article 16.5 of the National Agreement.

U.S.P.S.

The NPMHU has failed to meet its burden of demonstrating that the Postal Service violated the contract by issuing a Step 2 decision after the NPMHU had appealed the grievance to Step 3. The clear and unambiguous language of the parties' agreement does not prohibit the Postal Service from issuing a Step 2 decision if there has been no Step 2 meeting. Rather, the agreement specifies the single consequence resulting from a failure to schedule a step 2 meeting or issue a timely step 2 decision–the only consequence of not scheduling or having a meeting is that the Union may, after the relevant time periods have expired, move

the grievance to the next step of the process. *See* Postal Service and APWU, No. Q94C-4Q-C 98117564 (National Award, April 29, 2003:Snow, Arb.)

There was no prejudice to the grievant or Union as a result of the issuance of the Step 2 decision after the NPMHU's appeal to Step 3. Indeed, the Union here had a double opportunity to evaluate and respond to the Postal Service's position, as it filed two related grievances. Therefore, the NPMHU has no plausible argument that any prejudice whatsoever was caused by the "belated" Step 2 decision. And notably, it is due to the NPMHU's own refusal to cooperate in remanding the grievance to Step 2 that this "interpretive" issue even arose.

The cases also do not support the proposition that if a Step 2 decision is issued after an appeal has been taken under Article 15.3C, the union is entitled to an automatic victory, as it is effectively seeking here. The NPMHU's invitation to add new consequences on top of negotiated contract language must be declined, for what it seeks is improper and contrary to both the CBA, which prohibits the arbitrator from legislating for the parties, and to customary rules of contract interpretation, which prohibit decision-makers from — under the guise of contract interpretation — rewriting or modifying the parties' negotiated agreement. In addition to the fact that adding these negative consequences would be tantamount to rewriting the parties' contract, it would also encourage games of "gotcha". In short, there would be less incentive to cooperate, which both the NPMHU and the APWU agree is an important part of the grievance-arbitration process. The proposal of the NPMHU to find that additional consequences outside the contract flow from the absence of a Step 2 decision prior to an appeal to Step 3 would therefore not only conflict with the contract itself, but would also be a disservice to the truth and to the mutual cooperation that underlies successful collective bargaining relationships.

In addition, to accept the NPMHU's proposal would be tantamount to granting the Union a default judgment in all discipline cases involving 14-day suspensions–a result the Union has attempted but failed to achieve in bargaining. By seeking in arbitration what it failed to achieve in bargaining, the NPMHU hopes to chip ts way closer to its unachieved bargaining demands from 1993 and 1998. This is improper. *See* Elkouri at 454 ("[A] party may not obtain 'through arbitration what it could not acquire through negotiation'" (quoting Postal Service v. APWU, 204 F.3d 523, 530 (4th Cir. 2000)). Accordingly, the NPMHU's improper, unjustified and contra-contractual request should be denied.

The NPMHU's due process claims are disingenuous and without merit, as the Grievant suffered no harm. Further, no due process violation arises in cases where no Step 2 meeting is held or timely Step 2 decision is issued. The parties anticipated that Step 2 may be bypassed in drafting their agreement and, therefore, the parties provided for a full opportunity to explain their versions of the facts and arguments — including new arguments not raised previously — at Step 3. Although Article 15.3C begins with the phrase, "[f]ailure by the Employer to schedule a meeting," many instances exist where, due to one intervening event or another, it is virtually impossible for the Postal Service to schedule a Step 2 meeting within seven days or for the parties to meet at Step 2 within seven days as required by Article 15.2.Step 2(c). And common experience teaches that from time to time events happen that hinder the scheduling of a Step 2 meeting or someone's attendance at a Step 2 meeting, and one party is unwilling to agree to an extension agreement. To namejust a few examples, the parties' scheduled days off, sick, personal, or annual leave usage, natural or human-caused disasters, traffic problems, business travel, grievance processing, and/or arbitration hearings may make scheduling, or attaining an extension, within seven days difficult, if not impossible. Although the NPMHU is under an obligation to act in good faith, sometimes the Union plays games, as it admittedly did here in refusing to remand the grievance to Step 2.

The NPMHU urges that the opportunity to issue a Step 2 decision is extinguished once the Union has taken an appeal to Step 3 in accordance with Article 15.3C. The NPMHU reasons that once such an appeal has been taken, "jurisdiction" over the grievance resides solely at

Step 3 and no longer resides at Step 2. This artful and hyper-technical argument may make sense in the context of a district court opinion that has been appealed under clearly written jurisdictional statutes and judicial precedent. But it is specious in this context where no provision of the CBA discusses the Union's concept of "jurisdiction," or whether a Step 2 decision can be rendered after an appeal to Step 3 has been taken. Since the parties are expressly permitted to present new facts and arguments at Step 3, it follows that the Postal Service may issue a Step 2 decision after an appeal to Step 3 as a way to provide additional facts and arguments. The NPMHU's "jurisdictional" view, however, would effectively create a forfeiture where no "timely" Step 2 decision is issued. This nonsensical result could not possibly have been what the parties intended and, indeed, the Postal Service rejected such views during the 1993 and 1998 negotiations. Moreover, because "the law abhors a forfeiture," Elkouri at 482, the Postal Service's interpretation, which avoids one, is preferable. *See id.* ("If any agreement is susceptible of two constructions, one of which would work a forfeiture and one of which would not, the arbitrator will be inclined to adopt the interpretation that will prevent the forfeiture").

APWU

The APWU supports the NALC's position that the contractual language is clear in providing that the only instance in which the Postal Service may issue a Step 2 decision is where the parties have mutually agreed to an extension of the contractual time limits set forth in Article 15.2 of the collective bargaining agreements. It makes little sense to ignore the parties' mutual agreement that the only instance in which the Postal Service may hold a Step 2 meeting or issue a Step 2 decision beyond the contractual time requirements is where the parties have mutually agreed to an extension of time. Absent such agreement to extend the time limits, if the Postal Service fails to timely respond, it has forfeited its opportunity to issue a decision on the grievance at Step 2.

The Postal Service claims that the contractual language permits it to issue an untimely Step 2 decision, even where there has been no Step 2 meeting, because the contract is silent regarding the result of the Postal Service's failure to schedule a Step 2 meeting. This argument stretches the imagination and ignores the plain language of Article 15. The contract is not at all silent about the required steps of the grievance procedure, which requires the Postal Service to meet with the Union representative within seven days of receiving the Step 2 appeal. The Step 2 decision does not exist independent of the Step 2 meeting, but must be issued within ten days of the Step 2 meeting. If the Postal Service fails to meet either time limit, then absent an agreement to extend the time limits, Step 2 is over and the grievance is "deemed to move ... to the next Step of the grievance-arbitration procedure."

According to the Postal Service, however, this particular consequence apparently does not preclude it from continuing to treat the grievance as if it remained at Step 2 and the applicable time limits no longer apply. This reading of the contract defies logic and renders the relevant contractual provisions meaningless. If the grievance has moved to the next step of the grievance procedure, then the Postal Service may not continue to treat the grievance as if it remained at Step 2 by issuing an untimely Step 2 decision.

There is no silence or ambiguity regarding the impact of the Postal Service's failure to comply with the contractual time lines. Absent agreement to extend those time lines, the Postal Service may not schedule an untimely Step 2 meeting or issue an untimely Step 2 decision. IV. Accordingly, for the reasons set forth above and at the hearing in this matter, the Arbitrator should sustain NPMHU's grievance and find that, in the absence of a mutually agreed upon extension of time, the Postal Service may not issue a Step 2 decision beyond the time limits prescribed in the parties' collective bargaining agreement.

OPINION OF THE NATIONAL ARBITRATOR

ISSUE

The Parties did not present a joint submission of the issue(s) to be determined in this National-level arbitration case of Case No. 194M-11-C 98072898. In Steps 2, 3 and 4 handling, *supra*, both Parties had framed the issue presented by Grievance No. 194M-11-C 98072898 in straight forward factual terms whether a "Step 2 denial" dated February 19, 1998, of a grievance "deemed moved" to Step 3 on February 4, 1998 because no Step 2 meeting had been timely scheduled by the Employer, was effective to initiate a 14-day suspension on February 21, 1998, under the last sentence of ¶2 of Article 16.5 (formerly Article 16.4) of the USPS/NPMHU National Agreement. However, during the hearing on June 13, 2006, and later in their respective posthearing briefs, Counsel advanced various revisions of the issue formulations customized by artful pleading to better fit preferred theories of the case. At the June 13, 2006 arbitration hearing, the NPMHU proposed the following alternative formulation of the issue: *If the Postal Service fails to schedule a Step 2 meeting on a grievance within the time provided by Article 15.2 of the NPMHU/USPS Agreement (including mutually agreed to extension periods) --thus triggering Article 15.3C, which states that such a failure "shall be deemed to move the grievance to the next Step [i.e., Step 3] of the grievance-arbitration procedure" -- can the Postal Service thereafter issue a Step 2 decision with respect to that grievance?* In its March 21, 2008, post-hearing brief, NPMHU again reformulated its statement of the issue, as follows: *When a grievance properly is "deemed . . .move[d]" to Step 3 of the grievance-arbitration process under Article 15.3C of the National Agreement, based on a "[f]ailure by the [Postal Service] to schedule a [timely Step 2] meeting," may the Postal Service thereafter issue a Step 2 decision with respect to that grievance?*

For its part, the Postal Service initially re-framed its suggested issue as follows: *Does the Collective Bargaining Agreement prohibit the Postal Service from issuing a Step 2 decision if there has been no Step 2 meeting?* In its post-hearing brief, dated March 21, 2008, the Postal Service again reformulated its earlier suggested statements of the issue, as follows: *Does the Collective Bargaining Agreement ("CBA") between the NPMHU and Postal Service prohibit the Postal Service*

from issuing a Step 2 decision if there has been no Step 2 meeting and the NPMHU has appealed the grievance to Step 3 in accordance with Article 15.3C of the CBA?

As the Intervenor, APWU suggested that the following articulation best describes its perspective on the issue presented for determination in this case: *In the absence of a mutually agreed upon extension of time, may the Postal Service issue a Step 2 decision beyond the time limits prescribed in Article 15, Section 2, Step 2.f of the National Agreement between the APWU and the Postal Service?*

After carefully considering the facts and circumstances of this record and the competing formulations, I conclude that none of the foregoing formulations accurately sets forth the only issue fairly presented by the factual record of this case. In that regard, it begs the question to ask whether the Agreement "prohibits" issuing or whether the Postal Service "can" or "may" issue a Step 2 decision after the grievance has already moved on to Step 3, by dint of Article 15.3.C. Rather, the real (and only) question presented by the facts of this particular is case is whether such a belatedly issued Step 2 decision has any contractual validity, force or effect for purposes of the last sentence of ¶2 of Article 16.5. Moreover, the various revised issue formulations proposed by Counsel all openly invite *dicta* and/or arbitral determination of related disputed issues which might or could arise under a different set of facts but which are not adequately presented for determination in this record.

Finally, it must also be noted that the record in the present case squarely presents for arbitral determination only the limited issue of contractual interplay between Articles 15.2 Step 2(c), 15.3.C and the last sentence of 16.5 (16.4 in the previous contract). This case does not properly present any issue concerning the last sentence of Article 15.3.B-- a matter raised *de novo* by the NPMHU at the arbitration hearing. In the present case, the Postal Service asserted no timeliness objections below and the NPMHU never raised any Article 15.3.B waiver argument in any of the moving papers. Black letter law in labor arbitration holds that when written grievances and grievance procedure discussions clearly limit the issues in dispute, arbitrators should foreclose introduction of new claims at the time of the hearing (other than fundamental jurisdictional challenges). *See*, International Paper, 105 LA 970, 974 (Duda, 1996); Mason & Dixon Tank Lines, 94 LA 1225, 1228 (Byars, 1990);

City of Cadillac, 88 LA 924, 925 (Huston, 1987); NLRB Union, 76 LA 450, 456 (Gentile, 1981); Ralston Purina Co., 71 LA 519, 523-24 (Andrews, 1978). Were the rule otherwise, the most basic purpose of the Parties' grievance resolution mechanism--prompt discussion and consideration of issues at informal and earlier stages of the grievance procedure with the goal of resolution short of arbitration--would be frustrated.

Accordingly, I find that the only interpretive issue fairly presented by Case No. 194M-11-C-98072898 for determination in this National-level arbitration case is objectively framed as follows:

> Does a Step 2 decision issued by the Postal Service after the grievance has been progressed **properly** to Step 3 in accordance with the "deemed to move" provisions of Article 15.3.C, **because of** failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), have any validity, force or effect under the last sentence of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement?[3]

DECISION

The Postal Service quite correctly points out that the NPMHU bears the burden of proving its grievance claim in this case by a persuasive preponderance of record evidence. *See* Postal Service and Nat'l Rural Ltr. Carrier's Assoc., Case No. E95R-4E-C 99099528, at 19 (Nat'l Arb., Jan. 12, 2003: Eischen, Arb.) ("The charging party in a grievance over interpretation and application of a contract bears the burden of proving, by a preponderance of the record evidence, that the responding party violated the agreement in some fashion"; *see also* Postal Service andNat'l Rural Ltr. Carrier's Assoc., No. Q95R-4Q-C 02101253 (National Arb., May 15, 2006: Eischen, Arb.): "[I]t is well-established that the charging party in a nondisciplinary grievance bears the burden of proof, by a

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[3] My use of the emphasized conjunctive phrase *"**because of failure by the Employer to schedule a Step 2 meeting**"* tracks the literal language of Article 15.3.C and posits the undisputed fact that in this particular case no intervening event and no delay, default or dereliction by the employee or the Union caused or contributed in any way to the Employer's failure to schedule a Step 2 meeting within the time required by the Agreement. Similarly, my use of the emphasized adverb in *"**progressed properly to Step 3 in accordance with the 'deemed to move' provisions of Article 15.3.C**"* serves to skirt the significant dispute between the Parties (not fairly presented by the facts of this particular case) of how a grievance progresses contractually from Step 2 to Step 3 under the "deemed to move" provision of Article 15.3C (*"automatically"*, as the NPMHU would have it, or only through the filing of *"a formal appeal"*, as the Postal Service would have it). Thus, determination of the of the issue set forth in the foregoing formulation resolves the specific controversy presented in this case but preserves for possible arbitral resolution at a later date, hopefully in an appropriate case with an adequately informed record, the respective positions of the Parties on these various other potential but currently inchoate issues.

preponderance of the record evidence, that the responding party violated the parties' agreement as alleged in the grievance(s)" (citing cases).

The arbitrator's primary goal must be to effectuate the intent of the parties, which ordinarily is best ascertained from the plain words used in their collective bargaining agreement to express their bargain. Even when the parties to an agreement disagree on what was intended by disputed contract language, an arbitrator who finds the language to be unambiguous will enforce its plain meaning. *See* Safeway Stores, 85 LA 472, 476 (1985) (Thorp); Metropolitan Warehouse, 76 LA 14, 17-18 (1981) (Darrow). Arbitrators and courts alike presume that understandable language means what it says, despite the contentions of one of the parties that something other than the apparent meaning was intended. Independent School Dist. No. 47, 86 LA 97, 103 (1985) (Gallagher). Thus, it is a maxim of contract construction that an arbitrator cannot properly eviscerate the contract by ignoring clear-cut contractual language nor usurp the role of the labor organization and employer by legislating new language under the guise of interpretation. Clean Coverall Supply Company, 47 LA 272, 277 (Fred Witney, 1966). *See also,* Continental Oil Company, 69 LA 399, 404 (A. J. Wann, 1977) and Andrew Williams Meat Company, 8 LA 518, 524 (A. J. Chaney, 1947).

The following language of Article 15.3.C first appeared in the 1978 National Agreement and has appeared *in haec verba* in every National Agreement since that time:

> 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.

In a National Arbitration award issued shortly after that contractual provision (in its current form) appeared in 1978, Arbitrator Richard Mittenthal construed the language of Article 15.3C, as follows (USPS and NALC Case N8-NAT-0006, p.7):

> [T]he parties wrote into the present grievance procedure that a grievance will automatically move to the next step where there is a "failure by the Employer to schedule a meeting . . . in any of the Steps . . . within the time herein provided. . ." **The Postal Service has an obligation to schedule a Step 3 meeting once a proper appeal has been taken from a Step 2 decision. But that obligation pertains strictly to time constraints**.(emphasis added).

The use of the disjunctive "or" in the grammatical construction of Article 15.3.C makes it clear that a procedural failure by the Employer to schedule a [timely Step 2] meeting carries the same consequence as a failure of the Employer to render a [timely Step 2] decision-- *i.e.*, a timeliness failure by the Postal Service of *either* specified kind "shall be deemed to move the grievance to [Step 3] of the grievance-arbitration procedure."[4] Further, under that express wording, it is also clear that the catalyst for an Article 15.3.C "deemed to move" progression of a grievance from the current step to the next step of the grievance-arbitration procedure is a "[f]ailure by the Employer" to fulfill its contractual obligation to initiate one or the other of those two specified procedural actions in a timely manner at the current step.[5]

The bottom line question presented by this grievance and this factual record is whether the Parties mutually intended that a Step 2 decision "rendered" belatedly by the Employer, some two weeks after the grievance was "deemed to move" properly from Step 2 to Step 3 under Article 15.3.C, because the Employer had failed to timely schedule the Step 2 meeting, has any validity, force or effect for the purpose of requiring the Grievant to begin serving a fourteen-day disciplinary suspension that had been tolled, pending rendition of the Step 2 decision, by the following express language in the last sentence of ¶2 Article 16.5 of the National Agreement: " [I]f the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered". The undisputed facts of record and the plain words of the Agreement language persuade me that the Union carried its initial burden of making out a *prima facie* showing that the contracting Parties mutually intended no such thing.

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[4] At the risk of redundancy, I reiterate previous disclaimers that no opinion is expressed or implied in this decision on the countervailing positions of the Parties regarding whether filing a formal Step 3 appeal is a contractual necessity when a Step 2 grievance is"deemed to move" to the next Step of the grievance-arbitration procedure under the provisions of Article 15.3.C.

[5] *See also* page 5, footnote 4 of the NPMHU brief, *viz.*, "the NPMHU readily acknowledges that 'if there has been no Step 2 meeting' on a grievance owing to a failure of some kind on the NPMHU's part—for example, the failure by a Union representative to attend a Step 2 meeting timely scheduled by the Postal Service—the Service would ***not*** on account of that NPMHU failure be precluded from issuing a Step 2 decision on the grievance". (Emphasis in original).

Those undisputed facts of record in this case show that the Union or employee timely initiated the grievance and timely appealed the grievance to Step 2, that the Employer failed to timely schedule the Step 2 meeting and that the Employer "rendered" the Step 2 decision long after the grievance had been properly progressed to Step 3. The Postal Service responds that an untimely Step 2 decision issued in the absence of a Step 2 meeting and after the grievance is at Step 3 has the same force and effect under Article 16.5 as a timely issued Step 2 decision rendered after a timely Step 2 meeting because neither Article 15.2 nor 15.3 expressly state that a Step 2 decision belatedly rendered after the grievance has been progressed to Step 3 has no force and effect under the last sentence of ¶2 of Article 16.5 and because the last sentence of ¶2 of Article 16.5 does not expressly state that to have force and effect for the purpose of that sentence the Step 2 decision referenced therein must have been timely rendered before the grievance was progressed to Step 3. The Employer's "lack of express language" theory is misplaced and unpersuasive because it stands logic, reason and the so-called "plain-meaning rule" on its head.

The lack of such express disclaimer(s) is not fatal to the Union's grievance because the necessary implication of the cited Agreement provisions is that a Step 2 decision must be timely rendered while the grievance is still at Step 2 to have contractual validity, force and effect for the purpose of the last sentence of ¶2 of Article 16.5. Courts and arbitrators routinely recognize that it is proper and fitting to give effect to the manifest intent of contracting parties plainly evidenced in the "necessary implications" of their express contract language.[6] Such judicious inference of mutual intent founded in the logical, reasonable, natural and necessary implications of express contract language is readily distinguishable from improper arbitral rewriting of the Agreement.[7]

---

[6] Indeed, discernment of mutual intent through necessary implication is particularly appropriate in the interpretation and application of a collective bargaining agreement, which is"more than a contract; it is a generalized code to govern the myriad of cases which the draftsmen cannot wholly anticipate. . .The collective agreement covers the whole employment relationship." United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578-82, 80 S.Ct. 1347, 46 LRRM 2416 1960, citing, at 363 U.S. 579 n.6, Cox, "Reflections Upon Labor Arbitration", 72 Harvard. L. Rev. 1482, 1498-99 (1959).

[7] *See* USPS and NALC/APWU (Intervenor) Case H4N-3U-C-58637/H4N-3A-C-59518, National Award, (Mittenthal, Arb., August 3, 1990) and USPS and NALC Case G9ON-4G-D93040395, National Award, (Mittenthal, Arb., August 18, 1994).

Experienced practitioners and arbitrators understand that a collective bargaining agreement is not (and cannot reasonably be expected to function as), an ersatz "Napoleonic Code"; addressing in express language every consequence and contingency that flows logically from agreed-upon contractual provisions. For example, it would be odd indeed if the parties to this collective bargaining agreement had found it necessary to specify expressly in Articles 15.3.C. or 16.5 that they did not mutually intend that the Employer could circle back unilaterally to Step 2, after the grievance was properly progressed to Step 3, to issue a belated Step 2 decision it had failed to render in a timely manner when the grievance was at Step 2 for the purpose of requiring a grievant to start serving a 14-day disciplinary suspension which had been tolled pending rendition of the Step 2 decision. To the contrary, the reasonable, logical and necessary implication of the plain language of Articles 15.3.C and 16.5 is that a Step 2 decision must be rendered in a timely manner and before the grievance is progressed properly to Step 3 to have any validity and contractual force or effect under the last sentence of ¶2 of Article 16.5.

Although obviously not binding in this National Arbitration, the decision of the United States Court of Appeals for the Second Circuit in Eastman Kodak Co. v. STWB, Inc., 452 F.3d 215 (2d Cir. 2006), which was rendered shortly after the hearing in this case, lends strong support to this common sense reading of Articles 15.3C and 16.5. The Eastman Kodak decision involved an ERISA regulation adopted by the United States Department of Labor ("DOL")—dubbed the "deemed exhausted" provision/regulation by the Second Circuit—which provides in full:

> In the case of the failure of a[n] [ERISA] plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

[*See id.* at 221 (quoting 29 C.F.R. § 2560.503-1(*l*)).]

The Second Circuit agreed with the DOL that the "deemed exhausted" regulation properly was interpreted to foreclose the defendant ERISA plan from "effectively 'undeem[ing]' exhaustion by enacting, for the first time, procedures that complied with the claims regulation after [plaintiff] filed suit and after failing to offer an appropriate procedure in the many months preceding

[plaintiff's] lawsuit." *Id.* at 222 (emphasis added). As the appellate court succinctly put it, "[g]iving retroactive effect to a plan amendment in these circumstances . . . *plainly conflicts with the 'deemed exhausted' regulation.*" *Id.* (emphasis added). And, as the appellate court added: "The 'deemed exhausted' provision was plainly designed to give claimants faced with inadequate claims procedures a fast track into court—*an end not compatible with allowing a 'do-over' to plans that failed to get it right the first time.*" *Id.* (emphasis added). Applying that reasoning to the facts of this case, to allow the Postal Service a unilateral "do-over" of Step 2, after a grievance properly has been progressed to Step 3 under the "deemed to move" provision of Article 15.3C of the National Agreement, because of the Postal Service's failure to get the contractually-required Step 2 procedures right the first time, would plainly conflict with the mutual intent of the Parties, as manifested in the plain language and the logical, reasonable and necessary implications of Articles 15.2, Step 2 (c), 15.3.C and the last sentence of ¶2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement.

In my considered judgement, the Union carried its ultimate burden of persuasion in this case that a Step 2 decision issued after the grievance has been "deemed to move" properly to Step 3, by dint of Article 15.3.C, lacks contractual validity, force or effect to implement a 14-day suspension under the last sentence of ¶2 of Article 16.5 (formerly 16.4) of the National Agreement.

USPS/NPMHU NATIONAL ARBITRATION PROCEEDINGS

Case No. 194M-11-C-98072898

AWARD OF THE IMPARTIAL ARBITRATOR

1) A Step 2 decision issued by the Postal Service after the grievance has been progressed **properly** to Step 3 in accordance with the "deemed to move" provisions of Article 15.3.C, **because of** failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), has no validity, force or effect under the last sentence of ¶ 2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement.

2) Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the meaning, application or implementation of this Award.

Dana Edward Eischen

Signed at Spencer, New York on January 9, 2009

STATE OF NEW YORK }
COUNTY OF TOMPKINS } SS:

On this 9th day of January 2009, I, DANA E. EISCHEN, hereby affirm and certify, upon my oath as Arbitrator, that I am the individual described herein, that I executed the foregoing instrument as my Award in this matter and acknowledge that I executed the same.

AWilkinson:km:01/23/90
bcc: Mr. Mahon
Mr. Downes
Mr. Furgeson
Mr. Evans
Mr. Vegliante
Mrs. Butler
Field Directors, HR
Regional Manager, LR
Distribution List
Postmaster
KM Doc. No. 4509

DOCUMENT TYPE: STPFOUR
UNION: AMERICAN POSTAL WORKERS UNION **CONTRACT YEAR:** 1984
ARTICLE: 16
SECTION: 05
01
CREATE DATE: 07/17/91

Mr. Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H4C-3S-D 44197
D. Dowd
Opa Locka FL 33054

Dear Mr. Tunstall:

On July 16, 1991, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance concerns the time limits an employee must meet in order to grieve a proposed removal action.

As a result of our discussion, we mutually agreed to close this case based on the following understanding:

1. For the purpose of grievance procedure appeals, the time limits of Section 2 of Article 15 of the National Agreement shall run from the proposed removal notice, not from any decision letter on the proposed notice.

2. Once a notice of proposed removal is grieved, it is not necessary to also file a grievance on the decision letter. Once a grievance on a notice of

proposed removal is filed, it is not necessary to also file a grievance on the decision letter.

3. Receipt of a notice of proposed removal starts the 30 day advance notice period of Section 5 of Article 16 of the National Agreement.

Tunstall 2

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to close this case.

Time limits were extended by mutual consent.

Sincerely,

Kathleen Sheehan
Grievance and Arbitration
Division

Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date:_____

bcc: Postmaster
Southern Region
Article Code ...16-05-01 CLOSE
Issue Code ...
Subject, Reading, Computer
LR410:KSheehan:rb:17-Jul-1991:OCA Computer Input
ALL-IN-ONE
RB Doc. No.1781

NEW DISCIPLINE PROGRAMS

DOCUMENT TYPE: PREARB
UNION: NATIONAL ASSOCIATION OF LETTER CARRIERS
CREATE DATE: 12/05/91

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7N-1F-C 17979
M. Herbert
Corona Del Mar, CA 92625

Dear Mr. Hutchins:

Recently we met to discuss the above-captioned grievance currently pending national level arbitration.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: B. Leszczynski
Des Plaines, IL 60018
H4N-4A-D 30730

Dear Mr. Hutchins:

On October 26, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the day of receipt of a notice of discipline should be included as part of the required minimum period of notice to the employee.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that for purposes of computing the period of notice required in advance of the imposition of various disciplinary measures, such notice period shall be deemed to commence on the day following the date upon which the letter of notification is received by the employee.

Accordingly, we agreed to remand this case to the parties at Step 3 for further consistent with the above, processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Arthur S. Wilkinson
Grievance & Arbitration
Division

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

Date 2/5/89

NC NA-8580
Garrett 9/29/78

UNITED STATES POSTAL SERVICE	CASE NO. NC-NAT-8580
and	INTERPRETATION OF ARTICLE XVI, Section 3, of the 1975 National Agreement
	ISSUED: September 29, 1978
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	

BACKGROUND

This national level grievance involves interpretation of the last sentence of Section 3 of Article XVI in the 1975 National Agreement. Relevant portions of Article XVI include: 1

"ARTICLE XVI
DISCIPLINE PROCEDURE

"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.

. . . . . .

"Section 3. Suspensions of More Than 30 Days or Discharge. In the case of suspensions of more than thirty (30) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him 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 his 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 his suspension of more than thirty (30) days or his discharge to the Civil Service Commission rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of his case has been had either by settlement or through exhaustion of his Civil Service appeal. When there is reasonable cause to believe an employee guilty of a crime for which a sentence of imprisonment can be imposed, the advance notice requirement shall not apply and such an employee may be immediately removed from pay status.

"Section 4. 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 himself or others. The employee shall remain on the rolls (non-pay status) until disposition of his case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge him, the emergency action taken under this Section may be made the subject of a separate grievance."

(Underscoring added.)

The basic problem here is whether, when (1) an employee has been suspended indefinitely because the USPS has reasonable cause to believe the individual is guilty of a crime for which imprisonment may result and (2) the criminal charge later is dropped or the employee found not guilty, the employee, upon reinstatement, properly can be made whole for earnings lost during the period of suspension. In order to define the problem more clearly, the parties have presented a specific grievance from Cleveland. There Grievant M-, a long service Carrier with an unblemished record, was 2

indicted for allegedly having had sexual relations with two young girls (ages 12 and 11). Upon learning of the indictment the Service sent M- a notice of removal on March 16, 1977 reading, in relevant part--

> "This is notice that it is proposed to remove you from the Postal Service no earlier than 72 hours from the time you receive this notice. There is reasonable cause to believe you are guilty of a crime for which a sentence of imprisonment can be imposed."

On March 17, 1977 M-'s attorney wrote the Service 3
stating that there was no actual evidence to indicate M- had committed any crime other than statements of the two young girls and attaching (1) results of a lie detector test which a professional polygrapher deemed to show M- to be innocent of the charges, and (2) other evidence calculated to establish M-'s innocence. M- nonetheless was removed from duty as of March 23 with the advice that he would remain on non-duty, non-pay, status pending disposition of his case. In subsequent processing of the grievance the Union unsuccessfully urged that M- should be assigned to temporary Clerk duties, on any shift, until his trial occurred. The June 10, 1977 USPS denial of the grievance in Step 2-B recited that the placing of M- in non-duty, non-pay, status had been for "just cause."

Meanwhile, M- had been found not guilty on May 21, 1977 and the USPS promptly advised of his acquittal. He was not returned to active duty until June 2, 1977, however, because the USPS insisted upon receiving formal notice of the verdict, signed by the Judge. The grievance accordingly protests the loss of pay during M-'s suspension up to June 2, 1977. The Union does not concede, however, that such suspension was for just cause and does not here seek any ruling on this aspect of the grievance. In other words, for purposes of shaping the issue in this case, the Union does not contest the USPS assertion that initially there was "just cause" for M-'s suspension, but reserves the right to continue to press that contention, if necessary, depending upon the outcome of the present case. 4

In urging that M- should be made whole for lost earnings for the entire period of his suspension, the NALC places great weight upon a May 31, 1977 decision of Associate Impartial Chairman Fasser in Grievance No. AC-S-9758 (herein called the Williams case) where (following arrest on a marijuana charge) the employee had been suspended for more than 11 months until he was found not guilty. The Associate Impartial Chairman granted a "make whole" remedy for earnings lost during the period of the suspension, stating that the last sentence of Article XVI, Section 3 served only to eliminate the advance 30-day notice requirement in such a situation, and that since there was no showing of "just cause" for the suspension, the Grievant should be made whole, as contemplated in the introductory paragraph of Article XVI. 5

On August 1, 1977 NALC President Vacca wrote the Senior Assistant Postmaster General, Employee and Labor Relations, stating: 6

> "It has come to my attention that the Postal Service has decided to ignore the agreed-upon precedential effect of Associate Impartial Chairman Paul J. Fasser's Award in Case No. AC-S-9758 (Curtiss Williams, Birmingham, Alabama), and that it continues to maintain that Article XVI, Section 3, last sentence, and Section 4, provide that the Postal Service is excused from all back pay liability stemming from indefinite and emergency suspension actions, notwithstanding the fact that the Postal Service cannot later establish that the discipline imposed was for 'just cause.'
>
> "NALC disagrees with that Postal Service interpretation of Article XVI, Sections 3 and 4, and contends instead, as Associate Impartial Chairman Fasser found (and as so approved by Impartial Chairman Garrett) that those sections of Article XVI deal only with the question of notice and thus do not insulate the Postal Service from back pay liability as a result of indefinite or emergency suspension actions where the Service cannot establish just cause

> for discipline imposed. Accordingly, based on the foregoing, I am forced to conclude that there exists 'a dispute between the union and the employer as to the interpretation of [the] Agreement' within the meaning of Article XV, Section 2, last paragraph. I, therefore, hereby institute that dispute as a grievance at the National Level and request an immediate Step 4 meeting to attempt to resolve the same."

After a meeting on September 6, the USPS replied to President Vacca by letter of September 15, 1977, stating in part: 7

> "It is our position that the award issued by Arbitrator Paul J. Fasser, Jr. under date of May 31, 1977, addressed itself to the particulars in the case before him in arbitration (AC-S-9758), and that the award set forth what he considered to be the appropriate remedy to be granted based on those particulars."

At the hearing herein, the parties briefly outlined the facts in another grievance (which is being held in abeyance in the grievance procedure) as a further aid in developing a practical context for interpreting Article XVI, Section 3. In this other grievance another long service Carrier was arrested for the rape-murder of a customer on his route, with 8

a great deal of resultant local publicity. The arrest occurred on September 27, 1977 and the Service advised him on September 29 that it planned to suspend him pending investigation. On October 3 the Carrier was suspended indefinitely effective October 8, 1977. Later he was indicted and was awaiting trial at the time of the arbitration hearing in the present case. Meanwhile the grievance had been filed protesting his suspension, and it ultimately was appealed to arbitration. The Union nonetheless would not agree to proceed with an arbitration hearing until disposition of the rape-murder charges. Its position on this matter was made clear in a March 18, 1978 letter to General Manager Frost of the USPS Arbitration Division (on still another case) reading:

> "This replies to your March 13, 1978 letter concerning the above-referenced grievance. In that letter you indicate that, in the opinion of the Postal Service, the Union's request not to have that case heard in arbitration on February 23, 1978 (because the grievant is under criminal indictment for charges identical to those cited in the removal) constitutes a termination of any possible financial liability of the Postal Service beyond that date.
>
> "NALC disagrees with that Postal Service position and will oppose the same if it is raised at any future arbitration hearing

> in the case. Furthermore, because the grievant is under criminal indictment for charges identical to those on which his removal is based, NALC will not agree to schedule that case for hearing prior to the resolution of the criminal charges. That refusal is based on what the Union considers is its duty to fairly represent the grievant and because exposing the grievant to an arbitration hearing prior to resolution of the criminal charges could have an adverse impact on his Constitutional rights associated with that process."

Article XVI, Section 3, appeared in its present form in the National Agreement between USPS and the Postal Worker Unions, effective July 20, 1971. This was the first collectively bargained agreement between the parties subsequent to enactment of the Postal Reorganization Act of 1969. 9

In the 1968 Agreement between the Post Office Department and the Unions, Article X had set forth detailed procedures governing "Adverse Action" against employees with right of appeal through Departmental procedures or to the Civil Service Commission. There was no provision for binding arbitration and the decision of the Department's Board of Appeals and Review was final (except for "appeal for a court ruling"). Article X, Section C stated: 10

"Whenever it is proposed to take adverse action against an employee the responsible official must determine that it is for such cause as will promote the efficiency of the service. The letter of proposed adverse action must state specifically and in detail the reasons for the action thereby affording the employee a fair opportunity of offering refutation to the charges."

(Underscoring added.)

Article X, Section D of the 1968 Agreement included the following under the caption "Duty Status During Notice Period": 11

"1. Employees against whom adverse action is proposed shall be retained in an active duty status during the notice period except when the circumstances are such that the retention of an employee in an active-duty status during the notice period may result in damage to Government property, or loss of mail or funds, or may be injurious to the employee, his fellow workers, or the general public. The employee may then be temporarily assigned to duties in which these conditions will

not exist or placed on leave with his consent. In an emergency case when because of the circumstances described in this paragraph the employee cannot be kept in an active-duty status during the advance notice period, the employee may be suspended without his consent.

"2. This is a separate adverse action and the employee is entitled to a letter informing him of the reasons for his suspension, his right of reply and the time limit. An employee may be placed in a nonduty status with pay for such time, not to exceed five working days, as is necessary to effect his suspension. In the emergency case, the employee must receive at least a 24-hour notice of his suspension."

(Underscoring added.)

A great deal of additional background material was presented at the hearing but need not be recited here, since adequately noted in the development of the parties' arguments. 12

THE USPS ANALYSIS

The basic USPS position here seems to be that the "reasonable cause" language in the last sentence of Article XVI, Section 3, had such a clearly established meaning in Federal personnel law, when it was embodied in the 1971 National Agreement, that the negotiators either knew or should have understood that they in effect were adopting that meaning. It thus should follow that whenever the Service has reasonable cause for such an indefinite suspension in a "crime case" there can be no back pay obligation even if the employee ultimately is found not guilty. 13

The USPS recitation of relevant background in support of this position starts with the Veterans' Preference Act of 1944. The Congress there provided that adverse actions--such as an indefinite suspension--could be taken against "preference eligibles" (as defined in the Act) only "for such cause as will promote the efficiency of the service" 5 U.S.C. §7512. Title 5 of the U.S. Code contemplates that rules and regulations promulgated by the Civil Service Commission thereunder would have the force of law, binding upon the heads of Federal agencies. 14

The 1944 Act includes a provision that-- 15

> "(b) A preference eligible employee against whom adverse action is proposed is entitled to--

> "(1) at least 30 days' advance written notice, except when there is reasonable cause to believe him guilty of a crime for which a sentence of imprisonment can be imposed, stating any and all reasons, specifically and in detail, for the proposed action." (5 U.S.C. § 7512)

From 1944 forward, this legislation covered all "preference eligible" Postal employees.

By Executive Order 11491, President Nixon extended these rights to all Federal employees effective January 1, 1970. This included the right of any employee "in the competitive service" to appeal an adverse action to the Civil Service Commission and required that any recommendation by the Commission resulting from such an appeal "be complied with by the head of the agency." As of January 1, 1970, therefore, the Civil Service Commission rulings and regulations in respect to adverse actions became applicable to all Postal employees in the competitive service. 16

The USPS evidence includes an excerpt from the Federal Personnel Manual (FPM) under date of November 18, 1963, which includes under "Exceptions to Notice Requirements": 17

"b. Criminal conduct. In cases where reasonable cause exists to believe that the employee is guilty of a crime for which a sentence of imprisonment can be imposed, the employee need not be given the full 30 days' advance written notice, but must be given such less number of days' advance notice and opportunity to answer as under the circumstances is reasonable and can be justified. If the adverse action is appealed, the agency action with respect to such shorter length of notice will also be reviewed."

The Service also cites excerpts from FPM Supplement 1P 752-1 dated February 14, 1968 which include the following passages:

" ... SEC. 752.202(c) Exceptions to notice period and opportunity to prepare answer. (1) Advance written notice and opportunity to answer are not necessary in cases of furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.

(2) When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be

imposed, the agency is not required to give the employee the full 30 days' advance written notice, but shall give him such less number of days' advance notice and opportunity to answer as under the circumstances is reasonable and can be justified. ...

"a. '... in cases of furlough without pay due to unforeseeable circumstances ...' This provision is intended for use in situations when the department or agency concerned is powerless to avoid a sudden and unexpected general work stoppage. If it is utilized, the agency should be prepared to show that the stoppage was brought about by conditions which could not be changed by any level of government management having responsibility for the activity concerned. While this provision waives the advance notice requirement, other provisions of the regulations, including the right of appeal, continue to apply.

"b. ' ... When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed ...' (1) This provision is concerned solely with what is required in the way of advance notice and opportunity to answer in cases in which the stated condition exists; it does not deal with the problem of the employee's work status during whatever advance notice period is determined to be appropriate.

"(2) The chief difficulty in construing and applying this provision is to know what the words 'a crime for which a sentence of imprisonment can be imposed' actually intend. (This is the language which appears in the statute.) The word 'crime' has sometimes been used to designate a gross violation of law, as distinguished from a relatively minor infraction. On the other hand, it has also been held to apply in its broadest sense to any violation of law which is punished by a criminal prosecution. Thus, in general, it appears that an agency would be technically correct in invoking the 'crime' provision in any case when there was reasonable cause to believe the employee guilty of some conduct for which he could be sentenced by appropriate civil authority (Federal, State, county or municipal) to be imprisoned for some period of time, however short. Nevertheless, if the agency has any doubt about whether a 'crime' for which a 'sentence of imprisonment' can be imposed is involved, it ordinarily would be the better practice to resolve this doubt in favor of the employee. (Agencies should keep in mind that there are other provisions for placing an employee in a nonduty status during an advance notice period of 30 days, and that it would probably be sounder to invoke the 'crime' provision on the basis of actual need rather than mere availability. This does not mean, of course, that an agency does not have the right to proceed on the latter basis if it so desires.)

"(3) If an agency determines that it should invoke this regulatory provision, the question remains about what 'less number of days' advance notice and opportunity to answer' should be given the employee. This can be decided only on the basis of all the facts and circumstances of each individual case. Some considerations which might well enter the picture are:

(a) The gravity of the alleged crime and the conclusiveness of the evidence that the employee committed it.

(b) The minimum time that actually will be needed to afford the employee a reasonable opportunity to answer both personally and in writing.

(c) The probable reaction of the press and the public to information that the alleged perpetrator is still being carried on the agency's rolls as an employee."

Reference is made by the Service, also, to an FPM excerpt dated October 26, 1970, but this seems not to add anything to the foregoing excerpts. Nothing in any Civil Service ruling or regulation as of 1970 or early 1971 has been cited in the present case to indicate, in specific. 19

language, that an employee suspended without pay under the "crime provision" either would or would not be entitled to be made whole for lost earnings if ultimately found not guilty or otherwise vindicated. The Service also cites FPM excerpts dated December 21, 1976, April 12, 1972, October 26, 1970, October 11, 1976, and February 4, 1972 providing detail as to Civil Service Commission policies up to the present.

Also in evidence are 4 recent decisions by the Federal Employee Appeals Authority (under the Civil Service Commission), 2 of which involve Postal Service employees. The Opinions in each case (January 12, 1977 and February 25, 1976) include substantially the same passages, reading: 20

> "In instances where the agency has reasonable cause to believe that an employee is guilty of an offense for which a penalty of imprisonment can be imposed, it can invoke the 'crime' provision which allows the agency to give an employee less than thirty days advance written notice of adverse action, and which also provides a basis for indefinitely suspending an employee pending investigation. In this connection, Section S5-3(b)(3) of the Federal Personnel Manual (FPM) Supplement 752-1 provides, in pertinent part, that an agency cannot invoke the 'crime' provision solely on evidence that the employee was arrested. However, if the agency has evidence

that the employee was arrested and was held for further action by a magistrate or was indicted by a grand jury, the agency would have reasonable cause for believing the employee guilty of a crime.

"In this case, the record reflects that the appellant was arrested on September 24, 1976, by the Pensacola Police Department and was charged with three (3) counts of forgery. In light of the fact that the appellant was arrested and held for further legal action, we find that the agency had reasonable cause to believe him guilty of a crime for which a penalty of imprisonment could be imposed; and that such belief provided a proper basis for the agency's decision to indefinitely suspend the appellant pending investigation. Therefore, we find the reasons stated for the proposed indefinite suspension to be sustained.

IV. DECISION

"In our view, the indefinite suspension, based on the sustained reasons, is neither arbitrary, capricious, or unreasonable; and is for such cause as will promote the efficiency of the service. Accordingly, the agency's decision is affirmed.

"Civil Service Regulation 772.309(b) provides that decisions of the Federal Employee Appeals Authority are final and that there is no further right of administrative appeal."

(Underscoring added.)

The USPS also cites a 1976 decision by the U.S. Court of Claims, Jankowitz vs. U.S. (533 F. (2d) 538). There an employee's indefinite suspension without pay by HUD was held proper when the employee was indicted for accepting payments to influence his official acts as an appraiser for HUD. More than 14 months after the suspension was imposed, the employee was acquitted of all charges. His claim for back pay for this period, on motion for summary judgment, was denied. The Court concluded, as to this aspect of the case: 21

> "In our estimation, plaintiff's employer followed the FPM scrupulously, including adopting an advance notice of proposed indefinite suspension almost identical to that set out as an example in FPM Supp. 752-1, sample form B-7. Since we find that the Government in fact followed applicable procedural recommendations and safeguards in the FPM, we do not agree that plaintiff's indefinite suspension without pay was either unjustified or unwarranted. This much of plaintiff's claim for back pay must fail."
>
> (Underscoring added.)

Finally, the USPS presented testimony by a witness who had served as Appeals Examiner and Supervisory Appeals Examiner for the Postal Service Board of Appeals and Review during 1969 through 1971. He confirmed that over the period 22

of his knowledge Postal employees frequently had been suspended indefinitely when there was reasonable cause to believe them guilty of a serious crime and that back pay was not awarded where an employee ultimately was found not guilty.

THE NALC ANALYSIS

The Union relies essentially on the precise language of Article XVI. The initial paragraph thereof permits discipline only for "just cause" and its last sentence leaves no doubt that, where a disciplinary suspension or discharge is found not to have been for "just cause," an award of back pay may result in arbitration. Thus, says the Union, the last sentence of Article XVI, Section 3 serves only to provide an exception to the 30-day notice requirement which otherwise would apply. Here it cites the May 31, 1977 Opinion of Associate Impartial Chairman Fasser in the Williams Case where the Opinion noted that the matter of remedial back pay was dealt with "clearly and completely" in the introductory paragraph of Article XVI. In the case before Associate Chairman Fasser the employee had been suspended indefinitely simply because he had been arrested on a marijuana charge. There had been no indictment nor had the Grievant been held for further proceedings after a magistrate's hearing. Given these facts, the Associate Chairman concluded that-- 23

" ... it is clear no proper cause for the grievant's discharge has been shown, so that he is presumptively entitled to be made whole for lost earnings in the absence of some cogent reason for denying him such back pay.

"The last sentence of Article XVI, Section 3 does not provide such a cogent reason, since it serves only to provide an exception to the 'advance notice requirement' established in the first sentence of Section 3."

The NALC urges that the history of the last sentence of Article XVI, Section 3 fully supports the interpretation embraced in the Williams case. The Postal Reorganization Act preserved for Postal Workers certain rights which they had as conventional government employees. In Section 1005(a)(2), indeed, Congress provided that "preference eligible" employees would retain their rights under the Veterans Preference Act and that those rights could not be changed by collectively bargained agreements. Those rights included procedural protections in "adverse actions," such as the 30 days' advance written notice requirement except "when there is reasonable cause to believe" the employee guilty of a crime "for which a sentence of imprisonment can be imposed." 24

This last exception, or proviso, under Section 7512(b)(1) of the Veterans Preference Act, says the NALC, was not intended to mean that the "adverse action" ipso facto 25

was for proper cause--its obvious and only purpose was to relieve the agency of the need to meet the procedural requirement of giving the full 30 days of advance notice. The NALC cites legislative history to support this view.

It was against this background that Article XVI, Section 3 was adopted in the 1971 National Agreement and continued unchanged in the 1973 and 1975 National Agreements. Indeed, by Executive Order 11491, the procedural protections afforded "preference eligibles" in adverse actions had become applicable to all Postal Workers as of January 1, 1970. When the Postal Reorganization Act was adopted early in 1971, therefore, it should have been reasonably apparent that similar protections might be embodied in any collective bargaining agreements which might ensue. Moreover, says the NALC, all Civil Service Commission Regulations since 1971 continue to make clear that the 30-day notice provision, and its exceptions, represent "procedural requirements" only. On this score it emphasizes a provision in the 1976 FPM Supplement dated October 11, 1976. This Subchapter 3 covers the subject "Merit of Adverse Action" and Part S3-2 thereof reads, under the heading "Insufficient Cause": 26

> "a. Pitfalls to avoid. Agencies should be alert to avoid such errors as the following:
>
> (1) Cause based on fact of arrest. Generally, the mere fact that an employee was arrested for a crime does not provide a cause for taking adverse action against

the employee, even though the evidence of the arrest is fully recited and established. The employee may be innocent of the crime for which he was arrested. The agency action should be based, not on the fact of the arrest, but on the misconduct that led to the arrest, if there is sufficient evidence to prove misconduct or warrant suspension pending further investigation.

"(2) Cause based on criminal indictment. Except when the agency suspends an employee indefinitely pending disposition of a criminal action, the agency should not base an adverse action on a criminal indictment or conviction. Instead, the agency should base the action on what the employee did that was wrong. If the cause relied on is a criminal indictment or conviction, then a subsequent acquittal of the employee or a dismissal of the criminal charge would, in effect, vacate the cause for action. However, if the cause relied on is the employee's acts of wrongdoing, generally the administrative action will not be affected by the subsequent court action on the criminal case (see S7-1c(2))."

(underscoring added.)

FINDINGS

This is the first case since negotiation of Article XVI in 1971 in which the parties have made complete presentations concerning the authority of an Arbitrator to award remedial back pay to an employee suspended in a "crimes case" and later found not guilty. The Opinion of Associate Impartial Chairman Fasser in the Williams case included the following pertinent paragraphs: 27

> "Article XVI, Section 3 deals with the giving of notice when an employee is discharged or suspended for more than 30 days. Any such employee is entitled to 30 days advance notice of the suspension and discharge, unless there is 'reasonable cause' to believe the employee is guilty of a crime 'for which a sentence of imprisonment can be imposed.'
>
> "Nothing in Article XVI, Section 3 (or Section 4) deals in any way with the matter of remedial back pay in a case where an employee has been suspended or discharged without proper cause. This matter is clearly and completely treated in the introductory paragraph of Article XVI, which declares:

> '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.'

"Under this paragraph it is entirely clear that when an employee is found to have been discharged wrongfully, such employee may be entitled to 'reinstatement and restitution, including back pay.' In the present case, it is clear that no proper cause for the grievant's discharge has been shown, so that he is presumptively entitled to be made whole for lost earnings in the absence of some cogent reason for denying him such back pay.

"The last sentence of Article XVI, Section 3 does not provide such a cogent reason, since it serves only to provide an exception to the 'advance notice requirement' established in the first sentence of

> Section 3. It is true that Article XVI, Section 4 also states that an employee may 'immediately be placed on an off-duty status (without pay)' in certain specified types of cases (none of which actually would seem to apply in the present case). But like Section 3, this Section in no way is addressed to the matter of remedial back pay--it deals only with emergency removal of an employee from active duty without advance notice. Because no 30-day advance notice is required, this Section (like Section 3) recognizes that the employee immediately goes onto off-duty status without pay. To repeat, however, this waiver of the notice requirement has nothing at all to do with the matter of remedial back pay when an employee subsequently has been found to have been discharged wrongfully."

As is clear from these passages, the Associate Impartial Chairman considered the interpretive problem in terms of the language of Article XVI, standing alone, without benefit of comprehensive presentations such as embodied in this record. Disposition of the present case thus requires close analysis both of the language in Article XVI and of the context in which it was negotiated in 1971. In a December 1, 1972 Opinion involving "Guarantee of Pay for Employees Called in Outside Regular Shift," this Arbitrator observed: 28

"The interpretation of particular language in a collective bargaining agreement, when the parties fall into dispute, normally requires determination of the objective meaning of the actual words used. The subjective intent or understanding of one or more of the negotiators, not actually disclosed in the negotiations, cannot be of controlling, or even dominant, significance for this purpose. It is no more than one element in all of the evidence which may be relevant in a given case. This principle indubitably applies in this case.

. . . . . .

" ... Parties in collective bargaining often fail to achieve clear understanding as to the meaning of provisions negotiated under difficult circumstances. An effort to define, mutually, all potentially broad or ambiguous terms used in dealing with difficult matters probably would bog down the negotiations completely. Thus it now is the difficult responsibility of the Arbitrator to find the reasonable meaning of the disputed language in the specific context in which the parties negotiated it. That context includes all other relevant terms of the 1971 Agreement, plus any relevant background of earlier agreements, regulations, and practices."

The parties' presentations here particularly stress two sentences in Article XVI: (1) The Union emphasizes that the last sentence in the introductory paragraph makes clear that all discipline must be for "just cause" and that any grievance protesting a suspension or discharge "could result in reinstatement and restitution, including back pay." (2) The USPS, in turn, emphasizes that the last sentence of Article XVI, Section 3 renders the 30-day advance notice requirement in major discipline cases inapplicable and says that the "employee may be immediately removed from pay status" where there is reasonable basis for believing the employee guilty of a crime for which a prison sentence may be imposed. Neither party suggests, of course, that either sentence can be read in isolation from the other--both parties appear to recognize that an indefinite suspension in a "crimes case" represents disciplinary action which must be for "just cause." 29

The last sentence in Section 3 includes language which traces back through various Civil Service Regulations to the 1944 Veteran's Preference Act and arguably represents some kind of projection into the 1971 Agreement of policies developed by the Civil Service Commission. Section 3 as a whole consists of four sentences which seem addressed primarily, if not entirely, to the requirement of advance notice in all cases of discharge or suspension for more than 30 days. The last sentence, however, is by no means unique in referring to a "non-pay" status for a suspended employee: both the second and third sentences include similar language. The third sentence recognizes the right of "preference eligible" employees to elect to appeal to the Civil Service Commission while remaining on the rolls in "non-pay status" 30

and this immediately precedes the last sentence dealing with "crimes cases." Since all of these provisions can be traced to earlier Civil Service Commission policies reaching back to 1944, it seems obvious that the parties' negotiators on July 20, 1971 either were aware, or should have been, of the existing policies of the Civil Service Commission in respect to USPS "adverse actions."

Given the history of Civil Service Commission Regulations and Post Office Department (and USPS) practices up to July 20, 1971, moreover, it also may be inferred that the Union negotiators were aware--or should have been--that in "crimes cases" it was not the USPS policy to award remedial back pay to a properly suspended employee who later was found innocent. 31

Thus there is no reason to doubt that up to July 20, 1971 the USPS (1) regarded its reasonable belief in a "crimes case" that the employee had committed an imprisonable crime as providing lawful reason for suspending the employee promptly without pay until guilt or innocence could be established, and deemed it clear that (2) there would be no right to retroactive remedial back pay if the employee's innocence later were established. 32

That is not the ultimate question to be decided here, however. The real issue is whether it can be found that the negotiators for all parties in July of 1971 reasonably could--or should--have understood that such existing USPS policies might continue without change under Article XVI. This key question must be evaluated in light of those dominant features of Article XVI which unmistakably and dramatically departed from the past: 33

First, an employee could be suspended or discharged prior to July 20, 1971 "for such cause as will promote the efficiency of the service" under Article X, Section C of the March 9, 1968 POD Agreement with the respective Postal Unions. The new Article XVI declared that discharge or suspension could be imposed only for "just cause." 34

Second, a USPS employee who was suspended or discharged prior to July 20, 1971 could not file a grievance through the Union. The avenues for possible redress were appeal either (1) to the Civil Service Commission, or (2) to the USPS Regional Director (and ultimately to the Department's Board of Appeals and Review) with Management's ultimate decision being "final" (save for the possibility of seeking a "court ruling"). The new Article XVI entitled the employee, through the Union, to press a grievance into arbitration where the Arbitrator's ruling concerning "just cause" for the disciplinary action would be "final and binding" under Article XV. 35

Third, there was no provision in the 1968 Agreement to authorize the awarding of remedial back pay in any "adverse action" in a "crimes case." In contrast, the new Article XVI spelled out that "reinstatement and restitution, including back pay" could result from use of the grievance/arbitration procedure. 36

Given these fundamental changes wrought through collective bargaining, obviously departing from traditional Civil Service policies and procedures, it is inconceivable that the sophisticated negotiators for the USPS in 1971 reasonably could have believed that the suspension of an employee because of alleged commission of a crime would not be subject to a full independent review in arbitration to deter- 37

mine whether the suspension was for "just cause" and whether remedial action, including back pay, might be appropriate. This conclusion seems unavoidable even under the language of the last sentence in Section 3, in itself, since it requires that there be "reasonable cause" to believe the employee "guilty" of the alleged crime. In any grievance involving "just cause" for suspension in a "crimes case" the presence or absence of "reasonable cause" to believe the employee guilty would be an unavoidable first question. It also seems apparent that some alleged crimes could have no material bearing on an employee's ability to perform his or her job without embarrassment to the Service or impairment of efficiency or safety. Yet, as the Service concedes, there must be a "nexus" in any such case between the alleged crime and the employee's job with USPS. Whether such a "nexus" exists also is an obvious question under the "just cause" test.

38 Given these circumstances there was no reasonable basis for the negotiators to have believed in 1971 that, under the last sentence of Section 3, a good faith belief that an employee was guilty of an imprisonable offense in itself would constitute "just cause" for suspending the employee without pay, so as to bar any retroactive remedial action. Those Opinions of some Regional USPS Arbitrators in recent years which might be read to imply otherwise seem, to this extent, to be in error.

39 This, however, by no means is an end of the matter. Given the authority of the Arbitrator in every "crimes case" to determine the presence--or absence--of "just cause" for a suspension or discharge, there remains the possibility that an Arbitrator in a given case still might find "just cause"

for the suspension--in whole or in part--in light of the policy considerations which underlay the pre-1971 Civil Service and USPS policy.

As earlier Civil Service rulings indicate, one prime 40
reason for imposing such a suspension lay in the unique nature of the Federal Service, and the fact that Federal employees may occupy sensitive positions in relation to the public, or appear as representatives of the Federal Service in the public mind. The Postal Service Manual in Part 442.12 reflects this aspect of employment in the USPS--

> "Postal employees are servants of the general public and their conduct, in many instances, must be subject to more restrictions and to higher standards than certain private employments. Employees are expected to conduct themselves during and outside of working hours in a manner which will reflect favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, and of good character and reputation."

Under Article XVI of the 1971 National Agreement, an 41
Arbitrator thus appropriately may consider and give appropriate weight to the special nature of USPS employment in deciding a

"just cause" issue in a "crimes case" in respect to (1) the propriety of the initial suspension, (2) the duration of the suspension, and (3) whether, and the extent to which, remedial back pay may be warranted under the particular facts of the given case.

Moreover, it is clearly possible that an Arbitrator in such a case might conclude that there was "just cause" for the suspension initially and that no back pay might be proper, in whole or in part, even though the criminal charge later was dropped. Such a possibility obviously would exist in any such case where the USPS presented convincing evidence in arbitration establishing an employee's guilt, even though the criminal charge may have been dropped in the meantime. It also seems possible that an Arbitrator might conclude, on the basis of the unique facts in a given case, that an indictment for a serious crime (such as rape or murder) in itself would make it unreasonable to continue an employee in a position requiring routine contact with the public, so as to deny remedial back pay in whole or in part. 42

In short, the following general conclusions now seem warranted in respect to the determination of "just cause" in a "crimes case" under Article XVI, as negotiated in 1971: 43

(1) Every suspension effected under the last sentence of Article XVI, Section 3 is reviewable in arbitration to the same extent as any other suspension to determine whether "just cause" for the disciplinary action has been shown; 44

(2) 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 as to warrant the suspension; 45

(3) An Arbitrator in any such case, when the employee has been acquitted or the prosecution dropped, also has discretion to award remedial back pay, in whole or in part, if deemed reasonable under the facts of the given case; and finally 46

(4) An Arbitrator may deem the evidence in a particular case to establish "just cause" for a suspension effected under the last sentence of Section 3, even though the charge against the employee later may have been dropped, and so withhold remedial back pay for some or all of the period of suspension. 47

In light of these basic principles, a few words may be in order concerning the ruling of the Associate Impartial Chairman in the Williams case, which involved a suspension of more than 11 months. The charge there involved an alleged sale of marijuana, where the Grievant from the beginning had asserted a defense of mistaken identity. His suspension was effected simply upon the basis of his arrest, without an indictment or preliminary hearing. Any "nexus" between the charge and his ZMT Operator job would have been attenuated at best. His suspension actually was 48

effected before a Postal Inspector had submitted an Investigative Memorandum which showed that the arrest of April 16, 1975 had been based on a warrant alleging a sale of marijuana to an undercover agent nearly 7 months earlier (on September 23, 1974) at an address which differed from the Grievant's home address (where he had been arrested). The Investigative Memorandum specifically noted that a preliminary hearing had not yet been held.

On these facts, the Associate Impartial Chairman had ample basis to find a lack of just cause for the precipitate suspension in that case. Nonetheless, the Williams decision and a number of Regional Arbitrators' decisions finding "just cause" for suspensions in "crimes cases," all were formulated without the benefit of comprehensive presentations by both parties, such as those now in hand. They accordingly are of only limited value, at best. 49

As for the grievance in Case NC-NAT-8580, it is impossible now to rule on the matter of "just cause" for the initial suspension under the general principles set forth above. This issue specifically has been reserved by the NALC for further consideration in the grievance procedure in the event that M-'s acquittal is not found to entitle him automatically to be made whole for lost earnings. Thus there appear to be at least three questions which the parties now may wish to consider fully in disposing of this grievance:

(1) Whether there in fact was a "reasonable basis" to believe M- guilty of the alleged crime; 51

(2) Whether there was a sufficient relationship between the alleged crime and M-'s job as a Carrier (or such other job to which he might have been assigned in accordance with his seniority) to warrant the initial suspension; and

(3) Whether in any event M- was returned to his job with reasonable dispatch following his acquittal.

Should the parties fail to achieve settlement of M-'s grievance in light of this Opinion, the case may be returned to the Arbitrator for final disposition.

AWARD

The specific grievance used by the parties to illustrate the interpretive problem in this case, as outlined in Marginal Paragraph 2, now should be settled in the grievance procedure in light of the Opinion herein.

Sylvester Garrett
Impartial Chairman

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS and AMERICAN POSTAL WORKERS UNION Intervenor	GRIEVANTS: John Burch Nederland, Texas, and John Ferrell Dallas, Texas CASE NOS.: H4N-3U-C 58637, and H4N-3A-C 59518

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service:	David A. Stanton Grievance & Arbitration Division Washington, D.C.
For the NALC:	Keith Secular Attorney (Cohen Weiss & Simon)
For the APWU:	Robert L. Tunstall Assistant Director Clerk Craft
Place of Hearing:	Washington, D.C.
Date of Hearing:	May 8, 1990
Date of Post-Hearing Briefs:	July 16 & 17, 1990

AWARD: The grievances are remanded to Step 3 of the grievance procedure for further consideration in light of the views expressed in this opinion.

Date of Award: August 3, 1990.

Richard Mittenthal,
Arbitrator

BACKGROUND

These grievances raise several questions with respect to the interpretation and application of Article 16, Section 7 (Emergency Procedure) of the National Agreement. The Unions believe that an employee placed on non-duty, non-pay status pursuant to 16.7 has been disciplined, that such discipline, if challenged, can be affirmed only through a Management showing of "just cause", that an employee cannot be suspended under 16.7 without first having been provided written notice of the charge made against him, and that an employee suspended in this manner must be paid for his lost time until he actually receives such written notice. The Postal Service disagrees with each of these propositions. It argues that placement of an employee on non-duty, non-pay status pursuant to 16.7 is an administrative action rather than discipline, that Management need only show "reasonable cause" rather than "just cause" to support its action, that no written notice of a 16.7 administrative action is required, and that therefore an employee placed on this non-duty, non-pay status is not entitled to be paid until written notice is given.

The key provision in this case is of course Article 16, Section 7. Because this section is part of Article 16 (Discipline Procedure) and because both the Unions and the Postal Service rely on other provisions of Article 16 as well, a substantial portion of the entire article should be quoted:

> Section 1. Principles
>
> 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...which could result in reinstatement and restitution, including back pay.
>
> Section 2. Discussion
>
> For minor offenses by an employee, management has a responsibility to discuss such matters with the employee... Such discussions are not considered discipline and are not grievable... However, no

notation or other information pertaining to such discussion shall be included in the employee's personnel folder...

Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing...which shall include an explanation of a deficiency or misconduct to be corrected.

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...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.

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 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...either by settlement with the Union or through exhaustion of the grievance procedure... 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... The employee is immediately removed from a pay status at the end of the notice period.

Section 6. Indefinite Suspension - 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... The employee is immediately removed from a pay status at the end of the notice period.

B. The just cause of an indefinite suspension is grievable. The arbitrator shall have the authority to reinstate and make the employee whole...

* * *

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...

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.

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...

* * *

(Emphasis added)

The essential facts are not in dispute. J. Burch was a part-time flexible letter carrier in the Nederland, Texas post office in 1987. Management placed him on non-duty, non-pay status on June 26, 1987, pursuant to Article 16.7. It believed that he had discarded deliverable mail and that his retention on duty "may result in...loss of mail..." It did not provide Burch with advance written notice of this removal. A grievance was filed in Step 1 on July 9, 1987, protesting his placement in non-pay status. Management advised him in writing on July 27, 1987, that he was being discharged for discarding deliverable mail. Another grievance was apparently filed protesting his discharge. Arbitrator P. M. Williams ruled on September 28, 1988, that the discharge was not for "just cause" and that Burch should be reinstated with full back pay.

J. Ferrell was a full-time regular letter carrier in the Dallas, Texas post office, Spring Valley station, in 1987. Management placed him on non-duty, non-pay status on June 16, 1987, pursuant to Article 16.7. It believed that he had committed a theft of mail and that his retention on duty "may result in...loss of mail..." It did not provide Ferrell with advance written notice of this removal. A grievance was filed in Step 1 on June 26, 1987, protesting his placement in non-pay status. Management advised him in writing on June 25, 1987, that he was being discharged for theft of mail. Ferrell protested the discharge through an appeal to the Merit Systems Protection Board (MSPB). His appeal was settled by an agreement with the Postal Service on October 26, 1987, his discharge being reduced to a disciplinary suspension from July 30 through October 26, 1987. He was then returned to work, evidently without back pay.

Neither the Williams award nor the MSPB settlement appear to have resolved the claim made in these grievances that Burch and Ferrell were, prior to their discharges, improperly placed on non-duty, non-pay status under Article 16.7. NALC asserts that this claim should be sustained and the two men made whole for their loss of pay attributable to the 16.7 "emergency procedure" on the ground that they "were not served with

written notice of the reasons for Management's action."[1] In the alternative, NALC urges that the grievances be remanded to the parties with instructions that Management "has the burden of proving that its action met the standard of just cause for discipline." APWU has intervened in this arbitration in support of NALC's claims. The Postal Service insists, on the other hand, that there is no merit in the Unions' argument.

DISCUSSION AND FINDINGS

Three distinct issues are raised by these grievances. The first concerns the nature of Management's action under Article 16.7, namely, whether placement of an employee on non-duty, non-pay status through this "emergency procedure" constitutes discipline. The second concerns the level of proof necessary to validate Management's action in invoking 16.7, namely, whether it must show "just cause" or whether a mere showing of "reasonable cause" (or "reasonable belief") will suffice. The third concerns the existence of a notice requirement, namely, whether an employee can properly be placed on non-duty, non-pay status under 16.7 without first being provided with written notice of the charge made against him.

I - Nature of Management's Action

The Unions assert that an employee placed on non-duty, non-pay status pursuant to Article 16.7 has been disciplined. The Postal Service insists that this action is essentially investigatory or administrative in nature and cannot properly be viewed as discipline.

Article 16 establishes a comprehensive discipline system for postal employees. Section 1 identifies some basic disciplinary principles, for instance, that discipline should be "corrective" rather than "punitive" and that discipline can be imposed only for "just cause." Section 2 states that when an employee commits a "minor offense", supervision may "discuss" the matter with him but that such "discussion" shall not be considered discipline. Sections 3, 4 and 5 are the typical levels of discipline - from a letter of warning (16.3) to a suspension of 14 days or less (16.4) to a suspension of more than 14 days or discharge (16.5). Section 6 contemplates an indefinite suspension in a crime situation and is plainly a

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[1] Arbitrator Williams, in granting Burch full back pay in the discharge case, may already have made him whole for the time he was on non-duty, non-pay status under 16.7.

permissible variation in the range of available discipline. Section 7, the subject of this dispute, is an "emergency procedure" which allows Management to place an employee "immediately" on non-duty, non-pay status in certain specified situations. Sections 8, 9 and 10 refer to a necessary internal managerial "review of discipline", a "veteran's preference" in the choice of a forum for contesting discipline, and a statute of limitations as to "employee discipline records."

Given this structure, the strong presumption must be that all of Article 16 relates to discipline. When the parties intended some procedure to be outside the scope of Article 16, to be beyond the disciplinary principles of Article 16, they said so. Thus, Section 2 expressly provides that supervisory "discussions" of the "minor offenses" of employees "are not considered discipline..." No such disclaimer is found in Section 7. Nowhere did the parties state that placement of an employee on non-duty, non-pay status pursuant to Section 7 "is not considered discipline..." Had that been their wish, it would have been a simple matter to write those words into the "emergency procedure."

The employee misconduct which may trigger Management's use of Section 7 is "intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules or regulations." The very same acts of misconduct are cited in Section 1 as constituting "just cause" for discipline. It is difficult to understand the Postal Service view that a suspension for such misconduct is discipline when Management invokes Section 4 or 5 but is not discipline when Management invokes Section 7. The impact on the employee is much the same in all three situations. The employee is taken off of the job against his will and placed on non-duty, non-pay status because of such misconduct. He is denied work and wages. He is punished, that is, suspended, because Management believes he is intoxicated or has stolen something or has ignored safety rules. Indeed, the suspension under Section 7 is more burdensome for the employee because its length is indeterminate and because he may not have been given written notice of the charge against him, conditions which can only serve to heighten his sense of concern.

The Postal Service sees Section 7, the "emergency procedure", as an independent provision unrelated to the typical suspension arrangements found in Sections 4 and 5. However, when one reviews the history of this provision and the overall structure of Article 16, it seems to me that Section 7 should more appropriately be construed as a broad exception to Sections 4 and 5. The "emergency procedure" is,

as those words indicate, a recognition that situations do arise where supervision must act "immediately" in suspending an employee because of immediate risks or dangers which do not allow the more time-consuming procedures of Sections 4 and 5. Thus, Section 7 is a permissible variation from the conventional suspensions contemplated by the parties. But it is a suspension nonetheless, one which must be considered an integral part of the Article 16 "discipline procedure."

My conclusion, accordingly, is that a Section 7 suspension should in appropriate circumstances be regarded as discipline. I emphasize "appropriate circumstances" because of one other significant factor. Not all of the Section 7 situations which prompt Management's use of the "emergency procedure" involve employee misconduct. Management can invoke Section 7 when the employee's retention on the job (1) "may result in damage to...property or loss of mail or funds" or (2) "may be injurious to self or others." These situations may or may not involve employee misconduct. Suppose, for example, an employee drives a postal vehicle on a delivery route and suffers from a physical ailment which is ordinarily kept under control through medication. Suppose further that, notwithstanding the medication, he suddenly loses control and can no longer drive the vehicle safely although he is unaware of this reality. No doubt Management would invoke Section 7 because the employee "may be injurious to self or others." But because there is no real misconduct, he is not subject to discipline. He is placed on non-duty, non-pay status in the interest of safety. The "emergency procedure", in other words, is broad enough to encompass displacement from the job for non-disciplinary reasons.

These observations suggest the answer to the first issue. When Management places an employee on non-duty, non-pay status because of misconduct covered by Section 7, the employee has been disciplined. That would be true of both grievants in this case, Burch and Ferrell. But when Management places an employee on such status for reasons stated in Section 7 which do not involve misconduct, the employee should not be regarded as having been disciplined. With this distinction in mind, I turn to the next issue.

II - Level of Proof Necessary

The Unions assert that any Management action taken pursuant to the Section 7 "emergency procedure" must be supported by "just cause." The Postal Service insists that "reasonable cause" (or "reasonable belief") is all that need be shown.

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.

By the same token, "just cause" may depend to some extent upon the nature of the particular disciplinary right being exercised. Section 7 grants Management a right to place an employee "immediately" on non-duty, non-pay status because of an "allegation" of certain misconduct (or because his retention "may" have certain harmful consequences). "Just cause" takes on a different cast in these circumstances. The level of proof required to justify this kind of "immediate..." action may be something less than would be required had Management suspended the employee under Section 4 or 5 where ten or thirty days' advance written notice of the suspension is given. To rule otherwise, to rule that the same level of proof is necessary in all suspension situations, would as a practical matter diminish Management's right to take "immediate..." action.

No generalization by the arbitrator can provide a final resolution to this kind of problem. It should be apparent that the facts of a given case are a good deal more important than any generalization in determining whether "just cause" for discipline has been established.

III - Existence of Notice Requirement

The Unions assert that an employee cannot properly be placed on non-duty, non-pay status under Section 7 without

first being provided written notice of the charge made against him.[2] They contend that because the grievants did not receive such written notice, Management had no right to displace them from their jobs pursuant to Section 7 and they should be paid for the time they were suspended. The Postal Service insists that there is no written notice requirement in Section 7 and that the absence of such notice in this case in no way undermined the propriety of Management's use of the "emergency procedure."

Any analysis of this issue must begin with the suspension rules in Sections 4 and 5. When Management intends to suspend an employee under either of these sections, it must provide him with "advance written notice" of the charge against him. A Section 4 suspension (14 days or less) requires 10 days' written notice during which time the employee remains "on the job or on the clock (in pay status) at the option of the Employer." A Section 5 suspension (more than 14 days) requires 30 days' written notice during which time the employee remains "on the job or on the clock at the option of the Employer." Any suspended employee, even one subject to an indeterminate suspension under Section 7, receives these benefits, according to the language of Section 5, "unless otherwise provided herein." These words acknowledge that a suspended employee could have these notice and pay protections taken away or modified by other provisions of Article 16. That is exactly what happened in Section 7.

When the "emergency procedure" in Section 7 is properly invoked, the employee is "immediately" placed on non-duty, non-pay status. He does not have a right to remain, for any period of time, "on the job or on the clock at the option of the Employer." He suffers an instant loss of pay. In short, the pay protection in Section 4 or 5 is negated by Section 7. The question here is whether the notice protection, the "advance written notice" requirement in Section 4 or 5, is likewise negated by Section 7. Or, to put the question in broader terms, is the employee suspended pursuant to the "emergency procedure" entitled to the "advance written notice" contemplated by Section 4 or 5?

There is no express mention of "advance written notice" in Section 7. Both parties rely on that silence to prove

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[2] The Unions concede that Management may properly displace an employee from his job in an "emergency" and put him on administrative leave. They object, however, to any such displacement pursuant to Section 7 without advance written notice.

their case. The Unions argue that the silence means that the notice requirement of Section 4 or 5 has not been negated by Section 7 and must therefore apply to an employee suspended under Section 7. The Postal Service argues that this silence, when contrasted with the specific notice requirement contained in Sections 4, 5 and 6, means that the parties had no intention of establishing a notice requirement in Section 7.

The critical factor, in my opinion, is that Management was given the right to place an employee "immediately" on non-duty, non-pay status on the basis of certain happenings. An "immediate..." action is one that occurs instantly, without any lapse of time. Nothing intervenes between the decision to act and the act itself. That is what the term "immediately" suggests. If Management were required to provide "advance written notice" of the displacement of an employee under Section 7, it would no longer have the right to respond "immediately." The very purpose of a Section 7 "emergency procedure" is to permit an "immediate..." response by Management. The language of Section 7, by necessary implication, means that no "advance written notice" can be required in a true Section 7 situation. The notice requirement in Section 4 or 5 has indeed been negated by Section 7. Hence, Management's failure to provide such notice to Burch and Ferrell was not a violation of Article 16.

Neither the history of Article 16 nor various Management publications regarding that article convince me that a different result is justified here. There has been a great deal of confusion for years about the meaning of Section 7. That confusion is reflected in the conflicting awards of regional arbitrators.

These findings, however, do not fully resolve the dispute. 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 a 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. Indeed, Section 7 speaks of the employee remaining on non-duty, non-pay status "until disposition of the case has been had." That "disposition" could hardly be possible without formal notice to the employee so that he has an opportunity to tell Management his side of the story. Fundamental fairness requires no less.

Whether Burch and Ferrell received formal notice of the charges against them is not really clear from the record in this case. Assuming they did, there is no evidence with respect to whether such notice was given within a reasonable period after they were displaced from their jobs. These are fact questions which can best be developed and argued at the regional level. These matters are therefore remanded to Step 3 of the grievance procedure for further consideration.

AWARD

The grievances are remanded to Step 3 of the grievance procedure for further consideration in light of the views expressed in this opinion.

Richard Mittenthal, Arbitrator

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01059241:NATIONAL

National Arbitration Panel

In the Matter of Arbitration	)	
	)	
between	)	
	)	
	)	
United States Postal Service	)	Case No.
	)	
and	)	Q98C-4Q-C 01059241
	)	
American Postal Workers Union	)	
	)	
and	)	
	)	
National Postal Mail Handlers Union - Intervenor	)	

Before: Shyam Das

Appearances:

For the Postal Service:	Peter J. Henry, Esquire Laura M. Taylor, Esquire
For the APWU:	Arthur M. Luby, Esquire Brenda C. Zwack, Esquire
For the NPMHU:	Bruce R. Lerner, Esquire Lauren McGarity, Esquire

Place of Hearing:	Washington, D.C.
Dates of Hearing:	December 14, 2004 April 26, 2005
Date of Award:	July 7, 2006

Relevant Contract Provisions:	Articles 3, 15.2 and 16, and MOU Re: Joint Contract Interpretation Manual
Contract Year:	2002-2003
Type of Grievance:	Contract Interpretation

Award Summary

The dispute in this case is resolved on the basis set forth in the above Findings.

Shyam Das, Arbitrator

On January 4, 2001, the Postal Service sent a letter to the American Postal Workers Union stating:

> In accordance with the provisions of Article 15, the Postal Service is initiating a dispute at Step 4 of the grievance procedure on the following interpretive issue:
>
> > Whether the National Agreement specifics [sic] that there is only one management official who may issue discipline to each employee.
>
> The facts giving rise to this dispute are:
>
> > The American Postal Workers at the local level, in Case E98C-1E-D 00036123, asserts that the Postal Service violated the National Agreement when a attendance coordinator supervisor, whose responsibility encompasses attendance control, issued discipline.
>
> The Postal Service's position is that the allocation of responsibility for issuing discipline is a management right pursuant to Article 3 of the National Agreement. Therefore, the assignment of authority to an attendance coordinator supervisor is consistent with the National Agreement.

After discussion at Step 4 failed to resolve this matter, the APWU appealed the dispute to National arbitration. The National Postal Mail Handlers Union, which has a similar dispute with the Postal Service, intervened in this case at arbitration.

At arbitration, the Unions made it clear that they are not contending that only the employee's immediate supervisor can

issue discipline in attendance related (or other) matters, but that the National Agreement contemplated that this responsibility "normally" would be exercised by this official.[1]

The key contractual provision relied on by the Unions is Article 16.8, but they stress that provision needs to be read in context of other provisions, particularly Article 16.1, Article 16.2 and Article 15.2 (Step 1). The Postal Service insists that it has never agreed to limit its explicit, statutory right, recognized in Article 3, to entrust supervisors and managers with the authority and responsibility to maintain efficiency, good order and discipline in the workplace. These provisions of the APWU National Agreement (the NPMHU National Agreement includes corresponding provisions) state as follows:

ARTICLE 3
MANAGEMENT RIGHTS

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> A. To direct employees of the Employer in the performance of official duties;
>
> B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

[1] The parties' respective articulations of the issue in this case are not precisely the same, but the gist of the dispute is clear enough and was fully addressed by all of the parties. No party has raised any procedural objection to the arbitrator deciding the dispute as it was presented at arbitration.

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;

* * *

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

* * *

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....

(b) In any such discussion the supervisor shall have authority to settle the grievance....

* * *

ARTICLE 16
DISCIPLINE PROCEDURE

Section 1. Principles

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.

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 a 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.

* * *

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 associate 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.
>
> * * *

The relevant contractual provisions essentially have been in effect since the first National Agreement was negotiated in 1971.

The APWU and the NPMHU each rely, in part, on contract interpretation manuals they have negotiated with the Postal Service. Both the APWU/USPS Joint Contract Interpretation Manual (JCIM), finalized in June 2004, and the NPMHU/USPS Contract Interpretation Manual (CIM), finalized in July 2003, in discussing Article 16.8 of the respective National Agreement, state: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action."[2] The Postal Service agrees that the Mail Handler CIM may be cited in this

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[2] The Mail Handlers CIM includes the following parenthetical statement: "(Note that, as of this writing, the parties at the National level have an ongoing dispute regarding whether discipline can be issued by other than the employee's immediate supervisor.)"

proceeding, but insists that the APWU JCIM may not be cited at National level arbitration.[3]

For at least 25 years, the Postal Service at some facilities has assigned supervisors to monitor employee attendance, and those supervisors typically are not the employees' floor supervisors. At the heart of the present dispute is whether these attendance control supervisors properly may issue discipline for attendance violations or whether, at least normally, such discipline has to be issued by the employee's "immediate supervisor" who oversees the employee's work performance on a day-to-day basis.

The Unions point out that the relevant contractual provisions, for the most part, reflect the practices that were in effect prior to Postal Reorganization, including supervisors' responsibilities for counseling employees and administering discipline. In 1982, the U.S. General Accounting Office issued a report entitled "Postal Service Needs Stricter Control Over Employee Absences." In commenting on a draft of this GAO report, the Postmaster General stated:

> The Postal Service has recognized the need for more effective absence controls, and plans are under way to develop a nationally directed attendance-control program. We will examine the feasibility of more extensive reporting and tracking procedures

[3] It was agreed that the Postal Service may cite the JCIM on the merits of the dispute without prejudice to its position that JCIM may not be cited in National arbitration, and that the arbitrator would rule on the latter issue in deciding this case.

> for unscheduled absences and have also begun discussions with the unions to explore possible areas for a joint approach to attendance-control matters.
>
> We believe the involvement of first-line supervision is critical in absence control and in determining appropriate disciplinary action based upon individual circumstances. We will do nothing to diminish the first-line supervisor's responsibility for controlling absences and will not issue a "cookbook" set of rules that will relieve him of the need to use good judgment in identifying and disciplining employees with attendance problems. However, we do envision a more structured and centrally managed program that will provide a facility-level review of attendance control, possible goal setting, and active assistance to first-line supervisors in exercising their responsibilities.

The final GAO report recommended that: "The control office should notify supervisors of employees with potential attendance problems and ensure that disciplinary actions are timely and progressively severe." The GAO report also stated: "The Service believes as we do that the involvement of firstline supervision is critical in absence control and in determining appropriate disciplinary action based upon individual circumstances."

A Management Instruction relating to Attendance Control issued soon after the GAO report on October 1, 1983 (EL-510-83-9) states: "Each supervisor continues to have direct responsibility for ensuring the regular and dependable attendance of his subordinate employees." A Supervisor's Guide

to Attendance Improvement issued in May 1984 (EL-501) states: "Effective control of attendance can only be accomplished at the individual employee level. Therefore, the direct responsibility for effective attendance improvement lies at the level of the immediate supervisor." The Unions assert, as the APWU's Director of Industrial Relations Greg Bell testified, that this is and has been the historical practice at the Postal Service. An August 1990 Supervisor's Guide to Handling Grievances (EL-921), the Unions add, implicitly recognizes that the employee's immediate supervisor who handles grievances at Step 1 is also the supervisor who issues discipline, when it states: "Just because the discipline was fully discussed at the time of issuance is no reason for the supervisor to breeze through Step 1 with a quick, 'Grievance Denied.'"

The Unions also point to a Step 4 settlement reached in March 2003 between the Postal Service and the APWU relating to implementation of the Postal Service Resource Management Database and its web-based enterprise Resource Management System, in which the parties agreed:

> RMD/eRMS enables local management to establish a set number of absences used to ensure that employee attendance records are being reviewed by their supervisor. However, it is the supervisor's review of the attendance record and the supervisor's determination on a case-by-case basis in light of all relevant evidence and circumstances, not any set number of absences, that determine whether corrective action is warranted. Any rule setting a fixed amount or percentage of sick leave usage after which an employee will be, as a

> matter of course, automatically disciplined is inconsistent with the National Agreement and applicable handbooks and manuals. Any corrective action that results from the attendance reviews must be in accordance with Article 16 of the National Agreement.

The Unions do not claim that this settlement was intended to resolve the present dispute -- which predates the settlement -- but they do contend that the stated goal is not consistent with the Postal Service's position that, at its sole discretion, it may bypass the immediate supervisor and delegate the responsibility to discipline employees for absenteeism to any management official.

The Postal Service presented testimony regarding an unwritten attendance control program in effect at the JFK Airport facility in New York City for at least the past 25 years. There is a leave administrator assigned on each tour (600+ employees) who monitors attendance and handles all aspects of leave administration. This leave administrator has the responsibility to administer discipline related to attendance and leave. The floor supervisors review their employees' attendance status with the leave administrators on average once every pay period. A management witness said it would be rare for a leave administrator to issue discipline without having first consulted with the employee's floor supervisor. The leave administrator also has access to the employee's personnel file, if needed. Step 1 grievances relating to discipline issued by the leave administrators to Mail Handler employees at JFK are handled by the leave administrators, whereas grievances from APWU employees are handled by the floor supervisors, based on

the APWU's choice. The Management witness estimated that 30-35% of the APWU grievances are resolved or settled at Step 1 by removing the discipline.

Sandra Savoie, a headquarters Labor Relations Specialist, testified to the assignment of attendance supervisors in Dayton, Ohio in the late 1970s and early 1980s when she worked there. Those supervisors discussed attendance issues with employees and issued discipline, when warranted. She also testified to a variety of other contexts in which supervisors other than an employee's immediate floor supervisor have imposed discipline for a variety of misconduct and noted there are situations where employees have multiple floor supervisors during the course of their work day.

APWU POSITION

The APWU contends that the parties have agreed that the immediate supervisor shall normally be responsible for the imposition of discipline. The key issue is the interpretation of the term "supervisor" used in Article 16.8. The APWU argues that the Postal Service's contention that the term "supervisor" refers to any management official, and therefore, any management official can impose discipline on a craft employee makes no sense either in the context of Article 16 or the parties' bargaining history and practice.

Prior to Postal Reorganization, postal regulations distinguished between Directors, Postmasters and Supervisors, and specifically assigned both the responsibility of giving

counsel and advice to employees and, then, imposing discipline, especially after counseling fails, only to supervisors. This allocation of responsibility, the APWU asserts, was carried forward into collective bargaining. Article 16 lays out the steps of progressive discipline. The first time the term "supervisor" is used in Article 16 is in Section 2, which assigns the specific task of discussing minor offenses with the employee to the supervisor. Obviously, the only official who normally would have enough day-to-day contact to observe and discuss minor offenses is the employee's immediate supervisor. Any lack of clarity on the matter is resolved by the further requirement that such discussions be held "in private between the employee and supervisor." In context, it is clear that the supervisor referred to in Section 2 is the immediate supervisor, the official with day-to-day working contact with the employee, not someone in another building or off-site computerized attendance control office.

The next time the term "supervisor" is used in Article 16 is in Section 8, which is the final point in the progressive discipline process. There is no reason to believe, the APWU maintains, that the term "supervisor" as used in Section 8 would have any different meaning than in Section 2. There also appears to be no reason why the official who is responsible for ensuring the employee has been given adequate private guidance on his responsibilities (and maybe the only official who knows this guidance has been given), would not also normally be responsible for determining that this guidance has not worked and that suspension or termination is called for. This is particularly so in the realm of absenteeism where the Postal

Service has repeatedly assured the Unions that the immediate supervisor will play the central role in attendance control and management has specifically assigned the immediate supervisor the task of responding to requests for scheduled and unscheduled absences (EL-510-83-9).

This application of the term "supervisor" also is consistent with the definition of that term in Section 113.2(b) of the Employee and Labor Relations Manual (ELM) which states that a "supervisor" is "one who has a direct responsibility for ensuring the accomplishment of work through the effort of others." The concept of "direct responsibility" obviously refers to officials with direct contact with craft employees in their work capacity, a matter confirmed by numerous other provisions of the ELM in which the "supervisor" is responsible for performance evaluations of employees. The APWU argues it is simply not plausible to believe that the term "supervisor" means one thing for the purposes of private, non-disciplinary discussions, performance evaluations, or handling scheduled and unscheduled absences, but something completely different for purposes of imposition of discipline.

The APWU insists that while the contract, as well as Postal Manuals, clearly support the Unions' interpretation of "supervisor", the terms of the JCIM definitely resolve the matter. The JCIM provides the following binding guidance with respect to Article 16.8: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action...."

The APWU freely concedes that "normally" does not mean "always", and that there may be "abnormal" circumstances which justify delegating imposition of discipline to someone other than the employee's immediate supervisor. Both Union and Postal Service witnesses provided a number of examples of such situations, all of which involved unusual operational circumstances, beyond the fact that an employee is being disciplined. The normal practice, however, is for discipline to be issued by the immediate supervisor.

The APWU rejects the Postal Service's contention that if the parties had intended to limit the imposition of discipline to "immediate supervisors" they would have used that term as they did in subparagraph (a) of Article 15.2 (Step 1). The APWU maintains this is not a tenable argument because it does not explain the binding guidance of the JCIM (or the Mail Handler's CIM) and it also ignores the purpose and structure of Article 15. It is crucial to define with precision exactly when and with whom grievances must be filed because rights are waived (and there is potential liability) if grievances are not timely filed. There is no agreement -- as there is with respect to Article 16 -- that the role of the immediate supervisor in handling the first step is only the "normal" practice. Moreover, the APWU asserts, this line of argument proves too much. If the Postal Service is correct that every time the parties fail to condition the term "supervisor" with "immediate" it, by default, refers to all levels of management, that would apply to the use of the term "supervisor" in subparagraph (b) and subsequent subparagraphs of Article 15.2 (Step 1). Yet, it

is clear from the context that those references to "supervisor" mean immediate supervisor.

The APWU insists that the failure to condition "supervisor" with "immediate" proves nothing, and that in order to surmise the intended application of the term both its context and history must be examined. These make it perfectly clear that "supervisor" means -- at least normally -- immediate supervisor. This context is further clarified by the admonition in Article 15.4 that: "The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement of substantially all grievances...at the lowest possible step and recognize their obligation to achieve that end." It simply defies logic and experience to suggest that reasonable settlements at the lowest level are likely when supervisors are reviewing -- not their own decisions -- but the decisions of someone labeled an attendance control expert or specialist whom the supervisor may or may not interact with or know.

The Postal Service has cited a decision of the Eleventh Circuit Court of Appeals, USPS v. NALC, 847 F.2d 775 (1988), in which the court stated that the "Collective Bargaining Agreement does not suggest that *only* the immediate supervisor can issue the disciplinary notice." The APWU points out that this decision, in which the court referenced, but then ignored the principles of the *Steelworkers Trilogy*, is not consistent with the applicable law in the District of Columbia Circuit. In any event, the APWU stresses, the Unions do not

contend that only the immediate supervisor may issue discipline, only that the contract contemplates that he or she "normally" will do so, and the Eleventh Circuit's opinion was issued long before the parties' binding agreement in the JCIM that this is in fact the correct application of Article 16.8.

The APWU stresses that the requirement that the official making the initial disciplinary decisions normally be the employee's immediate supervisor meets the Unions' concern that, particularly in attendance related matters, discipline will not be meted out based on a cookbook or mathematical formula, but rather will be leavened by human interaction with an official with direct contact and responsibility for the worker. The Unions also recognize that there are common sense exceptions to this rule. By contrast, the Postal Service has not articulated any interest or need supporting its interpretation, aside from its desire to preserve unfettered discretion wherever possible.

Finally, the APWU insists there is no agreement between the parties not to cite or reference the JCIM at the National level. The National Agreement not only contains no restriction on the citability of the JCIM, but the Memorandum of Understanding directing creation of the JCIM states that the parties "will be bound by these joint interpretations." There also is nothing in the JCIM itself which states that the parties are foreclosed from referencing it in National arbitration.

NPMHU POSITION

The NPMHU's position parallels that of the APWU. It points out, however, that there is no dispute that the Mail Handler CIM may be cited in National arbitration.

The NPMHU believes it is significant that Article 16.8 uses the specific term "supervisor" and not a more general term such as "manager", "management official" or "employer". The word "supervisor" suggests a specific individual who has direct, personal, and ongoing contact with the employee. The term plainly refers to a person who has the responsibility for overseeing employees' day-to-day activities. Any argument that because the parties could have used the term "immediate supervisor" the reference to "supervisor" should not be interpreted to mean immediate supervisor is completely undercut by the CIM jointly developed by the Postal Service and the Mail Handlers. The CIM specifically and unequivocally interprets the provisions of Article 16.8 to mean that "[i]t is normally the responsibility of the immediate supervisor to initiate disciplinary action." Therefore the only remaining question should be what constitutes an abnormal circumstance that would justify issuance of discipline by someone other than the immediate supervisor.

The NPMHU submits that poor attendance by an employee is not, in and of itself, an abnormal circumstance that makes it impossible or inappropriate for the employee's immediate supervisor to issue discipline. Rather, poor attendance is a routine type of misconduct and, by its very nature, generally

does not require emergency action or an immediate response in the absence of an immediate supervisor. A requirement that normally discipline be initiated by an employee's immediate supervisor is also consistent with other provisions of Section 16.1 of the National Agreement in which the parties have agreed that in administering discipline a basic principle shall be that discipline shall be corrective in nature, rather than punitive, and that there shall be just cause for any discipline that is issued. Because attendance control supervisors lack critical information about an employee's overall job performance, they cannot responsibly judge which sanctions will be corrective and which punitive. Similarly it is only the immediate supervisor, in contrast to an attendance control supervisor, who is in a direct supervisory relationship with the employee and therefore is in a position to balance the employee's alleged infraction against any mitigating factors to determine whether just cause for discipline exists.

The NPMHU points out that in 1995 the Postal Service and the National Rural Letter Carriers Association -- which was one of the parties to the 1971 National Agreement which first included the language now found in Article 16.8 of the NPMHU and APWU Agreements -- agreed with the Postal Service to change that provision in the NRLCA National Agreement. They agreed to remove any reference to a supervisor imposing discipline. Moreover, in a jointly prepared and published "analysis of changes" the parties explicitly acknowledged that this change "clarifies the parties' position that discipline may be imposed

by a manager other than the rural carrier's supervisor."[4] The NPMHU insists that the Postal Service may not seek to achieve by fiat against the NPMHU and the APWU what it has accomplished through negotiations with the NRLCA.

The NPMHU also asserts that the evidence in the record shows that the Postal Service's attendance control system, as initially conceived in the early 1980s, was not designed to remove the traditional disciplinary role of the immediate supervisor. Rather attendance control supervisors were to assist the immediate supervisor by flagging attendance related problems. The evidence in this case as to prior practice shows that discipline, including attendance related discipline, principally has been handled by the immediate supervisor. Even the management testimony regarding the practice at JFK shows that immediate supervisors are involved in the decisions to impose discipline and that it would be rare for a leave administrator to issue discipline without having consulted with the supervisor regarding the individual employee.

To the extent the Postal Service contends it can divide discipline into subject areas so that employees are subject to discipline by multiple "immediate supervisors" for one job, which implicitly concedes that only the immediate supervisor may issue discipline as set forth in the CIM, its position contradicts the clear language of the ELM. Section

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[4] The parties stipulated at this arbitration hearing that the Postal Service would have presented testimony that the NRLCA and the Postal Service bargaining representatives agreed at the bargaining table that this change was cosmetic in nature.

122(b) of the ELM provides that each position should be "subject to the line authority of only one higher position." Similarly, Section 143.21 states that "[s]ubordinate positions never report administratively to more than one higher level supervisor." As the ELM makes clear, the NPMHU argues, there is only one supervisor for each position. It is that supervisor who, under Section 16.8 of the National Agreement, normally must impose suspension or discharge. The NPMHU also maintains that if an individual employee has multiple immediate supervisors, as the Postal Service seems to argue is possible, then no individual supervisor will have the kind of direct knowledge about the employee that is necessary for discipline to meet the fundamental requirements of Article 16, namely that discipline be corrective in nature and imposed only for just cause.

EMPLOYER POSITION

The Postal Service insists it has not agreed to forego its managerial right and duty to select which supervisory or management officials have responsibility to discipline employees. A "supervisor", as that term is understood in labor relations, is one who is authorized by an employer to maintain discipline and order in the workplace. The term "supervisor" has that functional meaning in the National Labor Relations Act, which provides the foundation for postal labor relations. That definition likely informed the meaning of that term when the parties negotiated their initial contract in 1970. Because postal facilities typically have multiple layers of supervisors and managers, that definition includes all levels of supervisors and managers, as all have been invested with the responsibility

to maintain efficiency and order in the workplace. Only where there is some explicit limit as, for example, in Article 15.2 (Step 1) do the contracts refer to a particular level of supervision.

Article 3 says the Postal Service may discipline employees. Significantly, it does not say only an employee's immediate supervisor may impose discipline. Article 16 lists three levels of progressive discipline and discusses discipline at length, but includes no limitation on the Postal Service's right to entrust any particular level of supervisors with the authority and responsibility to maintain discipline. Neither Union, the Postal Service stresses, offered any evidence that the parties ever discussed such fundamental limits on the Postal Service's ability to manage the efficiency of its workers.

The Postal Service insists that Article 16.8 only provides a general rule that no supervisor may impose substantial discipline until after the discipline has been approved by the top managerial official in the facility (or designee). This provision reinforces the Postal Service's position, because there is no limitation on who may discipline employees, only who must review it in the first instance. In contrast, the use of the term "immediate supervisor" in Articles 15 and 17[5] shows the parties knew very well how to use that phrase when they wanted to limit or define which supervisors were to be involved in an activity.

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[5] Article 17.3 provides that a steward shall request permission from the "immediate supervisor" to leave his or her work area on specified Union business.

The Postal Service maintains that the predominant weight of postal and private arbitral awards demonstrate that employers retain discretion to entrust authority in persons and positions of their choice. Moreover, the Court of Appeals for the Eleventh Circuit has ruled on the issue in contention here (USPS v. NALC). In vacating a regular-level arbitral award that overturned the removal of an employee who had stolen mail because a higher level supervisor had terminated the employee, the court explained that the collective bargaining agreement "does not suggest that only the immediate supervisor can issue the disciplinary notice." Given that the parties have made no material changes to the relevant parts of the contract since that decision, the Postal Service submits it is binding in this case.

Testimony of Postal Service witnesses further demonstrates that the Postal Service retains discretion to assign responsibility to its supervisors and managers to maintain discipline and the Postal Service has exercised such authority for over three decades. Those witnesses testified without contradiction that at JFK in New York City and in Dayton the Postal Service has assigned responsibility for monitoring irregular attendance to supervisors who do not work directly with the employees, and those leave administrators administer discipline. The witnesses also testified without contradiction that an employee may work for multiple floor supervisors on any given day. Significantly there is no restriction in either Union's contract that prohibits the Postal Service from entrusting different types of supervisors to monitor different

kinds of employee activity, as the Service deems most efficient in carrying out its responsibility.

Provisions in Article 16.6 and 16.7 which state that "the Employer" may indefinitely suspend employees where the Employer has reasonable cause to believe the employee is guilty of certain crimes and may place employees off-duty under certain circumstances further erode the Unions' claim that only an employee's immediate supervisor may discipline an employee.

The Postal Service also contends that the phrase "immediate supervisor" does not have the restrictive meaning asserted by the Unions. In 1984 the APWU and the Postal Service agreed that the meaning of "immediate supervisor" for purposes of Article 15.2 (Step 1) must be determined locally. More recently, the National parties have varied that general rule as it applies to part-time flexible employees working outside their home office by establishing a presumption that Step 1 grievances will be handled at the facility where the grievance arose. Also, as testified to at arbitration, the Mail Handlers at the JFK facility have met with leave administrators at Step 1 to discuss attendance related discipline for over eight years. Accordingly, even if Article 16 were interpreted by reference to Article 15, which it should not be, the phrase "immediate supervisor" does not have the restricted meaning sought by the APWU.

The Postal Service argues that the joint interpretive manuals, the JCIM and the CIM, also do not support the Unions' position in this case. In the first place, each manual

specifically disclaims any intention to vary the terms of the contract. Accordingly, if the National Agreement does not contain a limitation on the right to assign responsibility to discipline, the interpretation manual cannot create it. Moreover, even if the manual were a commitment, it only states "normally the responsibility...," which plainly means such responsibilities are not exclusive. Rather than being a commitment or a restriction, that statement is no more than a description of a way the Postal Service traditionally has disciplined employees -- supervisors normally do so. Simply because in the run of cases "immediate supervisors" normally discipline their employees, however, does not reflect an agreement that only such supervisors may do so; nor is the statement in the manuals a waiver of the rights and responsibilities conferred by Congress upon the Postal Service in the Postal Reorganization Act.

The Postal Service also argues that there is a major difference between a description of what normally happens and an agreement that only that process is authorized. The Postal Service has never agreed that normally discipline has to be issued by the immediate supervisor, rather, the statement in the manuals means it is a normal responsibility of an immediate supervisor to discipline employees, not that other supervisors and managers are prohibited from maintaining good order and discipline, too.

The Postal Service states that the manuals describe the assignment by the Postal Service of the normal responsibility to initiate discipline to first level

supervisors. That responsibility is normally conferred on one or more "floor" supervisors with respect to employee productivity and upon other first level supervisors with respect to monitoring unscheduled absences. As such, the manuals describe normal practices, but they do not prohibit the Postal Service from also assigning or reassigning those responsibilities to other management representatives, for example, the next level of supervisor, or bar those supervisors and managers from exercising their own responsibilities to maintain order and discipline in the workplace.

The Postal Service insists there is no contractual requirement that supervisors with the authority to discipline must possess a certain level of knowledge of the employee to be disciplined. Information required to correct and to discipline employees is available to managers on an as needed basis.

The Postal Service contends that use of the term "immediate supervisor" in Article 15 does not support the Unions' view that the term must also apply elsewhere in the contracts. There is no reason an immediate supervisor who is authorized to adjust a grievance at Step 1 could not correct a mistake made by a colleague or even a superior. There also is no evidence that attendance control supervisors are higher level supervisors than the employee's floor level supervisor who may handle the Step 1 grievance.

The Postal Service argues that internal postal guidelines cited by the Unions do not reflect contractual obligations and are subject to change by the Postal Service.

The NPMHU has asserted that Section 113.2 of the ELM defines a supervisor as meaning a person who has no subordinates with managerial responsibility, thus indicating only first level supervisors meet that definition. The Postal Service maintains there is no evidence that the parties understood that particular definition of supervisor to apply whenever the term supervisor is used in the collective bargaining agreement. Indeed, the cited version of the ELM was written long after the parties negotiated their initial collective bargaining agreement, which included the provisions at issue here. Moreover, if the NPMHU were correct, there would be no reason to limit the breadth of positions covered by the parties' understandings of the term "supervisor" by inserting the modifier "immediate" before "supervisor" in Articles 15.2 and 17.3. Other sections of the ELM also use the term "supervisor" in a broader context. Finally, even assuming that the ELM and the guidelines cited by the APWU refer only to a first level supervisor, the Postal Service is free to change that restriction whenever it wishes because the right to designate the individuals in whom to repose authority and responsibility to maintain order and discipline in the workplace is not subject to compulsory bargaining.

the issue of whether the JCIM may be cited in this case, the Postal Service maintains that both the introductory language of the JCIM and the testimony presented at arbitration regarding the parties' adoption of that document establish that there was an agreement by the parties that it would not be cited at National arbitration. Moreover, if the parties decide to change that agreement they will also need to resolve how the JCIM may be cited.

FINDINGS

Citation of JCIM in National Arbitration

The 2000-2003 APWU National Agreement includes the following Memorandum of Understanding:

> Re: Joint Contract Interpretation Manual
>
> The United States Postal Service and the American Postal Workers Union have engaged in extensive discussion on ways to improve the parties' workplace relationship, as well as ways to improve the Grievance/Arbitration procedure. Accordingly, the parties have agreed to establish a joint contract manual that will contain the joint interpretation of contract provisions. The parties will be bound by these joint interpretations and grievances will not be filed asserting a position contrary to a joint interpretation. The parties agree to initiate the process of establishing a joint contract interpretation manual no later than 90 days from the signing of this agreement.

The parties finalized the JCIM in June 2004. The Introduction and Preface, in relevant part, state as follows:

> INTRODUCTION
>
> The United States Postal Service and the American Postal Workers Union have engaged in extensive discussion on ways to enhance the parties' workplace relationship, including methods to improve the Grievance/ Arbitration procedure. Consistent with that

goal, the parties agreed to jointly establish a manual which outlines areas of agreement on contract application.

This Joint Contract Interpretation Manual (JCIM) represents the mutual agreement of the national parties on the interpretation/ application of the issues discussed in this document and no inference should be drawn from the absence of national settlements, agreements or arbitration awards.

A primary purpose of this JCIM is to provide the local parties with guidance and to require consistency with contract compliance. The parties are bound by this manual and grievances should not be initiated which assert a position contrary to the JCIM.

PREFACE

The JCIM is self-explanatory and is not intended to, nor does it, increase or decrease the rights, responsibilities or benefits of the parties under the National Agreement and it shall be applied by the parties at the lower grievance steps in an effort to settle grievances at the lowest possible level.

If introduced in area/regional level arbitration, the JCIM will speak for itself and the parties' advocates will not seek testimony on its content.

* * *

The evidence shows that prior to mutual adoption of the above language, the APWU modified a Postal Service proposal by deleting the words "at all levels" following the reference to "[t]he parties" in the last sentence of the Introduction, and,

added the words "in area/regional level" before the reference to "arbitration" in the second paragraph of the Preface. Testimony as to communications between certain representatives of the parties regarding these APWU changes does not all march in one direction, but there is little question that the Postal Service believed the APWU position was that the JCIM could not be cited in National arbitration. APWU President William Burrus, who made the changes, denies this was the intent, although there is testimony that at least one high-ranking APWU official indicated the contrary to a high level Postal Service official.

In any event, there is no language in the JCIM or any other agreement that explicitly addresses citation of the JCIM in National arbitration. Moreover, in the present proceeding top officials of both parties stated it was their position that once the parties agreed on the substance of the JCIM the parties should live by it at all levels. This position is consistent with both the MOU in the National Agreement that led to adoption of the JCIM and statements in the JCIM Introduction that it "represents the agreement of the national parties on the interpretation/ application of the issues discussed in this document..." and that "[t]he parties are bound by this manual...."

The Postal Service legitimately raises the point that if it thought it would be permissible for the JCIM to be cited at National arbitration it would have insisted on some agreed to criteria. As I indicated in a sidebar at the hearing, that is something the parties need to address, but for purposes of this case I think it is significant that neither party has sought to

do anything but cite the agreed-to JCIM provision regarding Article 16.8 and let it speak for itself, which is precisely what the Postal Service originally proposed and conforms to the parties' agreement in the Preface that "[t]he JCIM is self-explanatory."

Furthermore, the explication of Article 16.8 in the JCIM is identical, insofar as relevant to this case, to that in the Mail Handler CIM, which there is no dispute may be cited in National arbitration. It also seems to make little sense that the parties would agree on an interpretation of a provision of their contract -- and agree that they are bound by that interpretation -- and then ask a National arbitrator to rule on an issue relating to that provision without the benefit of their agreed interpretation. One need only consider the consequences of a National arbitration decision written without awareness of a contradictory or inconsistent JCIM provision that the parties have agreed is binding on them and on all area/regional arbitrators.

Under all these circumstances, I conclude, at least for purposes of this case, that the provision of the JCIM relating to Article 16.8 may be cited in this National arbitration.

Article 16 Issue

Under Article 3 (Management Rights) the Postal Service has the right to determine which management personnel may initiate disciplinary action against employees, except as

otherwise restricted by the provisions of the applicable National Agreement or applicable laws and regulations.

In administering discipline, the Postal Service is, of course, bound to comply with the requirements set forth in Article 16.1 that:

> 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....

But it cannot be concluded as a general proposition that only an employee's immediate supervisor -- leaving aside for the moment who that is -- can initiate discipline or must normally initiate discipline for it to be consistent with Article 16.1. Nor is the Postal Service required to articulate a need or interest that is subject to arbitral scrutiny to support an exercise of its management rights that is not in conflict or inconsistent with its contractual obligations.

Article 16 contains no use of the term "immediate supervisor." That term is found, however, in two other provisions of the National Agreement, Articles 15.2 and 17.3. This shows that the parties, when drafting the National Agreement, had the concept of "immediate supervisor" in mind.[6]

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[6] The Postal Service has entered into Step 4 agreements with both the APWU and the NPMHU which provide that who is the "immediate supervisor" of an employee at a particular installation, for purposes of Article 15.2, is to be determined locally or regionally. (Postal Service Exhibits 20 and 22.)

Thus, under general principles of contract interpretation, it is reasonable to conclude that when the parties use the term "supervisor," rather than "immediate supervisor," in a particular provision the former is not confined to the latter, absent an indication to the contrary.[7]

Article 16.8, which the Unions principally rely on, states:

> 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 associate 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.
>
> (Emphasis added.)

Article 16.8 addresses the issuance of discipline (suspensions and discharges) for all offenses, not just those

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[7] Within the particular context of Article 15.2 (Step 1), for example, it seems clear that the reference to "the supervisor" in the subparagraphs following subparagraph (a) are to the "immediate supervisor" referred to in subparagraph (a).

relating to attendance issues. It seems inappropriate, however, to attempt in this case to provide a blanket determination regarding the interpretation and application of Article 16.8's reference to the imposition of disciplinary action by "a supervisor." The underlying grievances in this case referred to in the Step 4 documents relate to attendance control supervisors issuing discipline, and that was the focus of the arbitration hearing. This decision will be confined to that particular context; that is, whether the Postal Service's use of attendance control supervisors (whatever their particular title), not only to monitor employee attendance, but to issue discipline for attendance-related offenses is in conflict or inconsistent with Article 16.8.

Article 16.8 focuses not on which supervisor may initiate discipline, but on the need for review and concurrence by the appropriate higher authority. The regional arbitration cases cited by the Unions where discipline imposed by a higher authority than the employee's immediate supervisor was overturned, usually on "due process" grounds, either were based on the arbitrator's finding of a lack of the necessary separate review and concurrence or premised on the arbitrator's determination that the imposition of discipline by the higher authority deprived the employee of his rights under Article 15.2, because the immediate supervisor handling the grievance at

Step 1 did not have the authority to settle the grievance.[8] Other regional arbitration decisions cited by the Postal Service have dismissed grievances protesting that discipline was imposed by a supervisor other than the employee's immediate supervisor in a variety of contexts, including issuance of discipline by attendance control supervisors.

In the early 1980s when the GAO issued its report on Postal Service control of absenteeism, there is no question that the Postal Service emphasized the continuing role of first line supervisors in absence control and in determining appropriate disciplinary action. This is reflected in contemporaneous Postal Service documents which the Unions have cited. Those documents, which set forth Postal Service policy at that time, do not, however, establish a contractual commitment to the Unions that would bar the Postal Service, for example, from assigning a supervisor the responsibility not only to monitor attendance of all or some employees at a particular facility, but also to initiate attendance-related disciplinary action, provided this is done in a manner consistent with Articles 16.1 and 15.2.

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[8] The Eleventh Circuit Court of Appeals in a 1988 decision (USPS v. NALC) vacated a regional arbitration decision which overturned the removal of an employee who had stolen mail because the Post Master, rather than the employee's immediate supervisor, terminated the employee, which the arbitrator deemed to be a "due process" violation. On the facts of the case, the Court concluded that this determination was arbitrary or capricious, and that any procedural error was corrected and nonprejudicial. In its decision, the Court stated: "The Collective Bargaining Agreement does not suggest that *only* the immediate supervisor can issue the disciplinary notice."

Evidence was presented in this case regarding the attendance control program administered at the JFK facility in New York City for at least the past 25 years. Attendance control supervisors -- referred to as leave administrators -- are responsible for attendance and leave matters for all employees on their tour. These supervisors are not at a higher level of management than the supervisors who oversee work performance on the floor, and they regularly consult with the employees' floor supervisors, in particular before imposing discipline. As described in this record, I cannot conclude that this application of discipline is inherently inconsistent with Article 16.1 or with other Postal Service commitments, in particular, the March 2003 Step 4 settlement relating to implementation of the Postal Service RMD/eRMS. At the JFK facility, Mail Handler employees file Step 1 grievances protesting discipline issued by a leave administrator with the leave administrator, whereas APWU employees do so with their floor supervisors, apparently based on each local Union's determination. The testimony indicates that the floor supervisors are fully capable of exercising Article 15.2 authority to settle grievances over discipline issued to APWU employees by leave administrators.

It also is worth pointing out that an attendance control supervisor is not excluded from the definition of "supervisor" in Section 113.2 of the ELM: "--one who has a direct responsibility for ensuring the accomplishment of work through the efforts of others. Normally a supervisor has no subordinate employees with managerial responsibility for others." An employee who fails to meet his or her obligation to

report to work hinders the "accomplishment of work." The specific attendance control officers referred to in this record did not have subordinate employees with managerial responsibility for others; they were first line supervisors, albeit they specialized in attendance control. There also does not appear to be any reason why an attendance control supervisor cannot function consistent with the principles of "sound supervision" set forth in Section 372 of the ELM, provided they consult with an employee's floor supervisor, as was testified routinely is done at the JFK facility.[9]

There also is nothing in Article 16.2 that would preclude an attendance control supervisor from discussing attendance issues with an employee prior to imposition of any discipline. Nor does Article 16.3 limit who may issue a letter of warning. With appropriate access, as needed, to an employee's personnel file and consultation with an employee's work floor supervisor, an attendance control supervisor can take into account mitigating factors -- and the employee and the Union can always raise those in the grievance and arbitration procedure. An attendance control supervisor also may be in a better position to provide consistency in applying attendance-related discipline in a particular facility, so as to lessen the likelihood of uneven or disparate treatment, which is an important component of "just cause."

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[9] The observations in this paragraph are not intended to equate the term "supervisor" in Article 16.8 with any particular use of that term in the ELM.

While the practice at many, if not most, postal facilities may have been that employees' immediate supervisors who oversee other work performance issues also have been responsible for initiating discipline for attendance matters, that has not been uniform. In addition to the JFK facility in New York and Dayton, as to which testimony was presented in this proceeding -- and where the matter apparently was not grieved -- attendance control supervisors have issued discipline at other locations, including Atlanta, Baltimore, Harrisburg and Dallas, where grievances protesting such management action were denied by regional arbitrators.[10] Thus, there has not been a sufficiently uniform and consistent practice in the application of Article 16.8 to establish that the parties mutually understood that provision to preclude issuance of discipline by attendance control supervisors.

The evidence presented by the NPMHU regarding the modification of Article 16.8's counterpart in the NRLCA National Agreement in 1995 does not show that those parties agreed to a substantive change in the meaning of that provision, only that they agreed to "clarify" it. Moreover, according to a Postal Service witness, Postal Service and NRLCA representatives agreed at the bargaining table that the change in language was "cosmetic."

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[10] As the APWU points out, not all of these decisions squarely addressed the issue presented in this case. No regional arbitration case has been cited which held that issuance of discipline by an attendance control supervisor was contractually impermissible. One case cited by the NPMHU, Case No. N7M-1A-D 38367 (1992) may have some tangential bearing on this issue, but is difficult to decipher.

The APWU and NPMHU grievances underlying the present Step 4 disputes each involved a Union protest of the imposition of discipline by an attendance control supervisor on the basis that supervisor was not the employee's immediate supervisor. The preceding paragraphs basically describe the contractual and factual context at the time the present Step 4 disputes were initiated and discussed.

Subsequently, the respective parties reached agreement on the JCIM and CIM. In addressing Article 16.8, the Mail Handler CIM includes a note referring to the existence of a National level dispute "regarding whether discipline can be issued by other than the employee's immediate supervisor." This note is of some significance in that it seems to recognize that an attendance control supervisor is not the employee's "immediate supervisor." The Postal Service's acquiescence at the JFK facility in the local APWU's position that grievances protesting discipline issued by leave administrators are to be presented to the employee's floor supervisor in Step 1 also may reflect management's recognition that the leave administrators, while they may be supervisors, may not be the employee's "immediate supervisor," as that term is used in Article 15.2. Other evidence in this record further supports that conclusion

The Unions view the JCIM and CIM provisions interpreting Article 16.8 as conclusive on the matter in dispute in this case. Consistent with the parties' understandings, the interpretations in these interpretive manuals should be considered self-explanatory and binding on the parties. As the Postal Service stresses, however, both manuals explicitly state

they are not intended to alter in any way the parties' rights, responsibilities or benefits under the respective National Agreement. They are intended to provide guidance as to the agreed-to meaning of specific contractual provisions.

The pertinent language in the APWU JCIM states as follows:

> CONCURRENCE
>
> It is normally the responsibility of the immediate supervisor to initiate disciplinary action. Before a suspension or removal may be imposed, 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 discipline being issued.
>
> * * *

The Mail Handler CIM includes exactly the same language prefaced by the statement that: "Concurrence is a specific contract requirement to the issuance of a suspension or a discharge."[11]

The key sentence in the JCIM and CIM relied on by the Unions reads: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action." I conclude that the parties intended the term "immediate supervisor" in this sentence to have the same meaning as it does in Articles 15.2 and 17.3 of the National Agreement. For

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[11] The CIM and JCIM each also contain additional language regarding Article 16.8 that is not relevant here.

reasons already stated, I conclude that, unless otherwise locally agreed,[12] this term does not refer to a supervisor, such as an attendance control supervisor who does not oversee an employee's work performance on the floor of the facility.

The Unions agree that the wording of the JCIM and CIM allow for exceptions, but they argue from the use of the words "[i]t is normally the responsibility..." that such exceptions must be confined to abnormal circumstances, as, for example, where the immediate supervisor is unavailable or compromised in some way so as not to be able to appropriately issue the discipline. In context, this language does not support such a restrictive reading. Article 16.8, which does not use the term "immediate supervisor," broadly applies to discipline for all offenses, and focuses on the requirement for review and concurrence. Notably, the following two sentences in the JCIM and CIM which address review and concurrence both use mandatory ("must") language. The sentence on which the Unions rely here is not written in mandatory terms. It is more descriptive than prescriptive. It does not, in my view, connote that a supervisor other than the employee's immediate supervisor can initiate discipline only in circumstances where it would not be feasible or appropriate for the immediate supervisor to do so.

Accordingly, for purposes of this case, issuance of attendance-related discipline by an attendance control supervisor at a particular facility, when the Postal Service deems that to better meet the needs of the Service, does not

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[12] See footnote 6.

conflict with the interpretation of Article 16.8 set forth in the JCIM and CIM. Of course, the imposition of a suspension or discharge must not only be reviewed and concurred in by the appropriate higher authority, but it also must be consistent with Article 16.1 and any other applicable contract provision, and must not impair the application of Article 15.2.

The issue in this case does not lend itself to simplistic conclusions. The Unions have raised a number of legitimate concerns. The Postal Service seeks to preserve its management rights. Various provisions of the National Agreement address the Unions' concerns and impose requirements and limitations on the exercise of management rights. In the final analysis, however, the Unions have not established that issuance of discipline by attendance control supervisors is precluded by Article 16.8 or other sections of the National Agreement, provided such an exercise of management authority is administered consistent with other applicable contractual provisions, as discussed in this opinion.

AWARD

The dispute in this case is resolved on the basis set forth in the above Findings.

Shyam Das, Arbitrator

NATIONAL ARBITRATION
CASE NO. E95R-4E-D 01027978

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

- and -

NATIONAL RURAL LETTER CARRIER'S ASSOCIATION

Subject:- "Review and Concurrence for Discipline"

Article 16.6

Dana Edward Eischen, National Arbitrator

Appearances

For the NRLCA: Peer & Gan, LLP
by
Dennis D. Clark, Esq.
Michael Gan, Esq., of Counsel

For the U.S.P.S.: John W. Dockins, Esq.
William Daigneault, Lab. Rel. Specialist

Also Present

For the NRLCA

Gus Baffa, President
Randy Anderson, Dir. Labor Relations

For the U.S.P.S.

Olie Turner, Postmaster
Robert Horsdig, Lab. Rel. Spec.
John Ingram, Lab. Rel. Spec.
Jim Hellquist, Lab. Rel. Spec.
Charles Baker, Lab. Rel. Spec.
Frank Keenan, Lab. Rel. Spec. (ret.)
Marty Rothbaum, Lab. Rel. Spec.
Roy Shirkey, Lab. Rel. Spec.

PROCEEDINGS

Article 15, Section 5 of the National Agreement between the United States Postal Service ("USPS" or "Employer") and the National Rural Letter Carrier's Association ("NRLCA" or "Association") provides for two-tier grievance arbitration: Article 15.5.C "National Arbitration" of "certified cases involving national interpretations" and/or "other cases which the parties agree have substantial significance"; and, Article 15.5.D "area arbitration" of "removal cases and contract cases not involving national issues". In December 2001, these Parties designated me to serve as their National Arbitrator, to hear and decide unresolved national level interpretive grievances filed at Step 4, in accordance with Article 15, Section 3.D of the National Agreement.

The record before the National Arbitrator in this case presents a fundamental conflict between the NRLCA and the United States Postal Service concerning the proper interpretation of the "review and concurrence" provision contained in Article 16, Section 6 of their National Agreement. It is not disputed that this review and concurrence language has been a fertile source of controversy over the last thirty (30) years, resulting in scores of decisions by area arbitrators interpreting and applying its provisions. The ostensible vehicle for bringing certain generic issue(s) concerning the interpretation and application of Article 16.6 to this National Arbitration, at this time, was a grievance concerning the removal of rural carrier Ms. Julie DeWitt, from the Buhl, Idaho post office. However, the DeWitt grievance, *per se*, is not before the National Arbitrator for decision in this proceeding.

The Grievant in that case was issued a Notice of Removal dated October 6, 2000, for allegedly driving unsafely and failing to immediately report an accident. As a defense, the NRLCA asserted that there was improper review and concurrence as required by Article 16.6. The Postal

Service disagreed with the NRLCA's interpretation of Article 16.6 and the Association declared the issue to be interpretive.

After the Association referred the instant case to Step 4 of the parties' grievance procedure, the Postal Service referred to Step 4 a number of other removal grievances, which had been denied at Step 3 and were pending area arbitration. The Postal Service determined that each of those cases raised Article 16.6 issues likely be impacted by the national interpretive decision on the issues raised herein. [The record is not entirely clear whether the number of related cases held in abeyance is sixteen (16) or twenty-one (21). It is noted that Attachment H to the NRLCA post-hearing brief is a list of relevant information about sixteen (16) such cases). Each entry contains the name of the Grievant, the location where he or she was employed, the NRLCA case number, the Postal Service case number, subject of the grievance, date of the Step 3 denial, date the case was appealed to area arbitration, date (if any) the case had been scheduled for area arbitration, and the date when the case was referred to Step 4 by the Postal Service (if known).]

Some of these cases apparently involve grievances concerning both an emergency suspension and the subsequent removal of the Grievant, which were consolidated during the grievance procedure. Like the DeWitt case, these related cases have also been held at Step 4, awaiting the resolution of the national interpretive issues presented in this case. The Parties agree that these cases (some of which were appealed to area arbitration as far back as 2000) should be processed in area arbitration as expeditiously as possible. To that end, at the hearing in this case, the parties stipulated that the National Arbitrator should also decide in this proceeding "the issue of what to do with the pending Step 4 cases that have similar issues in them."

The broad, general interpretive issues concerning the "review and concurrence"provision of Article 16.6, as presented in the Step 4 appeal and answer, are decided herein, without reference to the specifics of the DeWitt case. Further, no opinion is expressed or implied by this National Arbitrator concerning the facts or merits of that specific grievance nor concerning the facts and merits of the other related cases which are also pending hearing in area arbitrations; held in abeyance by the Parties, pending the outcome of the national interpretation issue(s) appealed to Step 4 by the Union in the instant case, pursuant to Article 15, Section 3.D of the National Agreement.

A National Arbitration hearing was held at Washington, D.C., on June 4, 2002, at which both Parties were represented by Counsel and afforded full opportunity to present documentary evidence, testimony subject to cross-examination and oral argument. A transcribed certified stenographic record was made and the proceedings were closed with the filing and exchange of briefs and reply briefs. The Parties graciously granted an extension of the contractual time limits for rendition of the Opinion and Award.

PERTINENT NATIONAL AGREEMENT PROVISIONS

ARTICLE 15
GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. General Policy

Grievances which are filed pursuant to this Article are to be processed and adjudicated based on the principle of resolving such grievances at the lowest possible level in an expeditious manner, insuring that all facts and issues are identified and considered by both parties. In the event that a grievance is processed beyond Step 1, both parties are responsible to insure all facts, issues and documentation are provided to the appropriate union and management officials at the next higher level of the grievance procedure. The parties further agree that at any step in the grievance procedure, the Union representative shall have full authority to settle or withdraw the grievance in whole or in part. The Employer representative, likewise, shall have full authority to grant, settle or deny the grievance in whole or in part.

Section 2. 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.

* * *

Section 4. Grievance Procedure-General

A. Observance of Principles and Procedures

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. Failure to Meet Time Limits

The failure of the employee or the Union at 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.

C. Failure to Schedule Meetings

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.

D. National Level Grievance

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 at 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 at Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter.

* * *

Section 5. Arbitration

A. General

A request for arbitration must be submitted within the time limit for appeal as specified for the appropriate Step. The National President of the Union must give written authorization of approval to the Employer at the national level before the request for arbitration is submitted.

Grievances referred to arbitration will be placed on a pending arbitration list. Except for discharge cases, the Union will have sixty (60) days from the date of such referral to certify the case to be scheduled for arbitration at the earliest possible date. Cases which are not certified for arbitration within the sixty (60) day period shall be considered waived and removed from the pending arbitration list. Discharge cases referred to arbitration shall be placed on a separate pending arbitration list. The Union will have fifteen (15) days from the date of such referral to certify the case to be scheduled for arbitration at the earliest possible date. Cases which are not certified for arbitration within the fifteen

(15) day period shall be considered waived and removed from the pending arbitration list. If there are other certified disciplinary cases related to the employee's removal grievance, these cases shall be scheduled for hearing along with the removal cases.

The case with the lowest docket number pending before a panel will be scheduled to be heard first. However, the parties may mutually agree to assign such cases for hearing out of numerical sequence in order to fill a vacated hearing date, or to lessen the amount of the arbitrator's travel time and expense or for other valid reasons. Arbitration hearings shall be held during working hours. Employee witnesses 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.

Any dispute as to arbitrability may be submitted and determined by the arbitrator. The arbitrator's determination shall be final and binding. The arbitrator shall render his award within thirty (30) days of the close of the hearing, or if briefs are submitted, within thirty (30) days of the receipt of such briefs on cases which do not involve interpretation of the Agreement, or are not of a technical or policy making nature. On all other cases, the award shall be rendered within thirty (30) days if possible. All decisions of the arbitrator 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 the arbitrator. Unless otherwise provided in this Article, all costs, fees and expenses charged by an arbitrator will be borne by the party whose position is not sustained by the arbitrator. In those cases of compromise where neither party's position is clearly sustained, the arbitrator shall be responsible for assessing costs on an equitable basis.

B. Selection of Panels

National and Area Arbitration Panels are established as set forth below:

The members of these panels will be selected in accordance with the procedure set forth below and will serve for the term of this Agreement and shall continue to serve for six (6) months thereafter unless the parties otherwise mutually agree. To assure the expeditious processing of grievances, the parties by agreement may increase the size of these panels at any time. Should vacancies occur, or additional members be required on the National or Area panels, such vacancies shall be filled by mutual agreement. In the event the parties cannot agree on individuals to serve on these panels, or to fill any vacancies which may exist, a list of five (5) arbitrators will be supplied by the American Arbitration Association for each selection to be made. The parties shall then proceed by alternately striking names from the list until only one individual remains. Such individual shall be selected to remain on the panel.

C. National Arbitration

Effective August 3, 1996, a National Panel of not more than three (3) arbitrators will be established to hear certified cases involving national interpretations or other cases which the parties agree have substantial significance. Arbitrators on the National Panel will be assigned to hear cases on a rotating basis. Member(s) of the Area Panel may by mutual agreement be member(s) of the National Panel.

Prior to the scheduled hearing each party to the dispute may separately submit to the arbitrator who has been assigned the case, and to the other party to the dispute, a statement setting forth the following:

a. the facts relevant to the grievance;
b. the issue in the case;
c. the position(s) or contention(s) of the party submitting the statement.

The parties may by mutual agreement submit a joint statement to the arbitrator. A stenographic record will be taken if requested by either party to the dispute. In such case, the cost of such record shall be borne by the requesting party. The other party, upon request, will be furnished a copy of the record, in which case the cost of such record shall be borne equally by both parties to the dispute.

D. Area Arbitration

A geographically balanced Area Panel of arbitrators is established to hear removal cases and contract cases not involving national issues.

Normally, a stenographic record shall not be taken at these hearings, nor post hearing briefs filed. However, either party may make exception to this policy. The case with the lowest docket number pending before a panel will be scheduled to be heard first. However, the parties may mutually agree to assign such cases for hearing out of numerical sequence in order to fill a vacated hearing date, or to lessen the amount of the arbitrator's travel time and expense or for other valid reasons.

ARTICLE 16
DISCIPLINE PROCEDURE

Section 1. Statement of Principle

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.

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 a 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.

Section 2. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning which shall include explanation of a deficiency or misconduct to be corrected.

Section 3. Suspension 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 the employee will be suspended after two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer. For the term of the 1995 Agreement, the notice period shall be increased to ten (10) calendar days and if the employee initiates a grievance during that period, the

suspension will not be served until disposition of the grievance or issuance of the Step 2 decision, whichever comes first

Section 4. Suspension of More Than 14 Days or Discharge

In the case of suspension 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 the employee 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 employee's case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure.

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the advance notice requirement shall not apply and such an employee may be immediately removed from a pay status.

Section 5. 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 fourteen (14) days or discharge the employee, the emergency action taken under this section may be made the subject of a separate grievance.

Section 6. Review of Discipline

In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has first been reviewed and concurred in by a higher authority. Such concurrence shall be in writing. (Emphasis added)

In associate 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.

* * * * *

ISSUES

The Parties did not formulate a joint submission to arbitration nor did either Party elect to file individual pre-hearing statements of relevant facts, issues and contentions, as suggested by Article 15, Section 5.C. At the arbitration hearing, the Parties submitted differing articulations of the interpretive issues presented for determination in this matter. Before setting forth those respective statements of issues, however, it is instructive to review the process leading to the certification of this case to National Arbitration under Article 15.5.C.

The dispute concerning the proper interpretation of Article 16.6, now under consideration, crystallized during Step 3 discussions of the Dewitt discharge area grievance (E95R-4E-D 01027978). In that context, by letter dated May 11, 2001, Mr. Baffa submitted the matter to Step 4 in accordance with Article 15.4.D and requested national arbitration, as follows:

> The purpose of this letter is to appeal the subject-named grievance to Step 4. The union is appealing the above referenced case from Area Arbitration to Step 4 because the union believes it contains nationally interpretive issues.
>
> This appeal letter does not constitute a waiver by this Union of any issue or violation as it relates to this grievance; it is for the sole purpose of bringing this grievance to a Step 4 hearing.
>
> Please schedule this grievance for an early discussion.

The attached written grievance submitted to national handling at Step 4 by Mr. Baffa read as follows:

> The NRLCA position and interpretation of Article 16, Section 6, which many Area Arbitrators continue to conclude, if the facts of the particular case permit, that Article 16.6 of the National Agreement is violated if:
>
> 1) There is a "command decision" from above;
>
> 2) There is a joint decision to impose a suspension or discharge;
>
> 3) There is a failure of either the initiating or review and concurring official to make an independent substantive review of the evidence prior to the imposition of a suspension or discharge;

4) There is no evidence of written review and concurrence prior to the imposition of a suspension or discharge;

5) There is no showing of harm.

In recent Step 3 decisions, the USPS designee refers to the Association's position on review and concurrence as a "total bastardization of Article 16, Section 6." The Association strongly disagrees with the USPS designee's characterization as expressed in this and other Step 3 decisions involving Article 16.6. The Association's position is grounded in the language of Article 16.6 and the many arbitration awards between the Association and the USPS. Based on the above referenced Step 3 decisions, is it the position and interpretation of the USPS that Article 16.6, as agreed to in the 1995-99 National Agreement and Extension, bars the Association from citing as violations of Article 16.6 the following:

1) "Command decisions" from above;

2) Joint decisions;

3) Failure of either the initiating or review and concurring official to make an independent substantive review of the evidence, prior to the imposition of a suspension or discharge;

4) No evidence of written review and concurrence prior to the imposition of a suspension or discharge.

Following Step 4 discussions of these Article 16.6 national interpretive issues between USPS Labor Relations Specialist William Daigneault and NRLCA Director of Labor Relations Randy Anderson, Mr. Daigneault denied the national interpretive grievance at Step 4, by letter of September 27, 2001, as follows:

Re: E95R-4E-D 01027978 J. DeWitt Buhl, ID 83316-9998

On several occasions, the most recent being September 14, 2001, I discussed with the Union the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance concerns the interpretation of Article 16.6 of the National Agreement concerning review and concurrence of discipline.

It is the Union's position that a violation of Article 16.6, Review of Discipline has occurred in the following situations:

1. There is a command decision from higher authority that instructs the issuance of a suspension or discharge.

2. The decision by the in initiating official to suspend or discharge is reached jointly with the review and concurring official and was not an independent decision by the initiating official.

3. The initiating official or reviewing official failed to complete an independent substantive review of the evidence prior to the imposition of the suspension or discharge.

4. There is no evidence of written review and concurrence prior to the imposition of the suspension or discharge.

It is the Union's position that a showing of harmful error in relation to review and concurrence is not required to sustain the Union's grievance on the discipline. The Union also contends that their position is "grounded in the language of Article 16.6 and the many arbitration awards between the USPS and NRLCA."

It is the position of the Postal Service that Article 16.6 restricts a supervisor, manager or postmaster from imposing a suspension or discharge upon an employee in the rural carrier bargaining unit without review and concurrence by a higher authority. It protects carriers from a new, inexperienced supervisor that intends to suspend or remove the carrier without just cause. It provides for a higher authority to review the situation (either review of paperwork, discussion with proposing official or general knowledge of the situation giving rise to the charges) to determine whether, on the surface, it appears that the action being proposed is appropriate.. It requires that the higher authority document his/her concurrence with the action being proposed in writing.

Article 16.6 does not require that the concurring official conduct an independent investigation. It does not prohibit the concurring official from having previous knowledge of the charges, discussing the charges with the proposing official, being involved in the investigation with the proposing official or providing advice. It does not restrict management from having more than one concurring official.

In the case at hand, the Union alleges Management violated Article 16.6 claiming the review and concurrence was nothing more than a "rubber stamp." The Union contends that the review and concurrence official did not review anything except the proposing official's request for discipline.

It is Management's position that the concurring officials in the case at hand went above and beyond the requirements of Article 16.6. While the contract only requires review a nd concurrence by one higher authority, several managers in higher authority reviewed the evidence submitted by the proposing official in this case. All the managers agreed the action being proposed was appropriate.

In the absence of any contractual violation, this grievance is denied. Time limits were extended by mutual consent.

At the arbitration hearing in this matter, each Party submitted its own specific statement of national interpretive issues regarding violations and compliance with Article 16.6, upon which it seeks a decision in this case. Additionally, they submitted by joint stipulation two other "issues of national significance", regarding appropriate remedies for proven violations of Article 16.6 and post-National Arbitration administration of the pending area arbitration cases, now held in abeyance. Rather than rewording the issues advanced by the Parties into some form of synthesized issues, I will address in this Opinion and Award the following joint and several interpretive concerns expressed by the Parties, respectively, in their Step 4 correspondence and at the arbitration hearing, *viz.*:

1) Is Article 16.6 Review of Discipline of the Extension to the 1995-1999 USPS-NRLCA National Agreement violated if:

a) The lower level supervisor consults, discusses, communicates with or jointly confers with the higher reviewing authority before deciding to propose discipline;

b) There is a "command decision" from higher authority to impose a suspension or discharge;

c) There is a joint decision by the initiating and reviewing officials to impose a suspension or discharge;

d) The higher level authority does not conduct an independent investigation and relies upon the record submitted by the supervisor when reviewing and concurring with the proposed discipline;

e) There is a failure of either the initiating or reviewing official to make an independent substantive review of the evidence prior to the imposition of a suspension or discharge;

f) There is no evidence of written review and concurrence prior to the imposition of a suspension or discharge.

2) Does a proven violation of Article 16.6 automatically sustain the grievance and overturn any discipline, absent a showing of "actual harm", *i.e.*, "that the reviewing official would not have concurred with the proposing official and that the discipline would not have been issued in the first instance".

3) What should be done next with those pending Step 4 cases which have been held in abeyance for area arbitration, awaiting the outcome of this National Arbitration case?

POSITIONS OF THE PARTIES

The following statements of position have been edited from the respective posthearing briefs and reply briefs.

NRLCA

It is the Association's position that Article 16.6 requires two separate independent judgments on discipline -- the first by the initiating official who proposes discipline, and the second by a higher authority who reviews and concurs in that discipline before it is imposed. It is the Association's position that such requirement is violated: (1) when the initiating official does not possess the freedom to make his own independent determination on discipline free of command from higher authority, (2) when the initiating and concurring officials jointly make one decision, or (3) when the concurring official does not meaningfully review the record before concurring in the proposed discipline. In each such instance, there have not been two separate independent judgments on discipline, and the rural carrier who is facing the potential loss of his livelihood has been deprived of the due process protection -- the essential "check and balance" -- that Article 16.6 is intended to provide.

Compliance with Article 16.6 is required in every case before a suspension or discharge can be imposed. Failure by the Postal Service to comply with Article 16.6's dictates is fatal to the disciplinary action. Consequently, the appropriate remedy for such violation is reinstatement with full back pay, without consideration of the underlying merits of the disciplinary action. The Postal Service apparently contends that a "harmless error" rule should apply to Article 16.6 violations -- that the disciplinary action should stand notwithstanding such violation if it can be shown that the same action would have been taken even if Article 16.6 had been complied with. The Postal Service is wrong. Article 16.6 says nothing about a "harmful error" requirement but it does say is that "in no case" may discipline be imposed without compliance with Article 16.6's due process requirements. In addition, the Postal Service also offers the totally insupportable notion that in the case of a proven Article 16.6 violation, the aggrieved employee is not to be reinstated to his job but merely to receive backpay from the date of his removal to the date of a Step 2 decision in the grievance process. As in the case of Article 16.6's due process requirement -- two separate independent judgments on discipline -- the arbitral remedy for a violation of Article 16.6 -- reinstatement with full backpay -- has been incorporated into the parties' agreement. The universal arbitral remedy of reinstatement, and the almost universal arbitral remedy of full backpay, has never been addressed by the Postal Service in collective bargaining negotiations.

The language of Article 16.6 has been in the parties' agreements for more than 30 years. The language has been interpreted consistently by area arbitrators throughout this period. The Postal Service has never sought to renegotiate that language to undo any of the interpretations of those arbitrators, and this National Arbitrator should not do now for the Postal Service what it has failed to seek or achieve at the bargaining table.

USPS

Because the language at issue is so clear and unambiguous there is no need to search any further. If the NRLCA wants to impose more stringent standards and criteria of review then they should negotiate such changes at the bargaining table. To pretend that such criteria are present in the long standing

language of Article 16.6 is to ignore the plain meaning of the language itself. Absent any special meaning assigned by the parties to the words "review" and "concur", the Arbitrator is bound by the language of the bargain as expressed in Article 16.6. A careful reading of Article 16.6 reveals that the language does not call for overturning a removal action but states that "In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has *first* been reviewed and concurred in by a higher authority". (Emphasis added) Therefore, where a violation of Article 16.6 is found to have taken place the only appropriate remedy is to place the employee back into a pay status until review and concurrence takes place. Once review and concurrence takes place the discipline may then be imposed.

In summary, the ability to issue and impose discipline is an exclusive management right expressly incorporated into the Collective Bargaining Agreement at Article 3. Article 16.6 merely requires a procedure that two management officials concur before a suspension or discharge is imposed. It does not in any way alter the exclusive discretion that management has in issuing or imposing suspensions and removals. There is no violation of Article 16.6 if the proposing official consults, discusses, communicates with or jointly confers with the reviewing official before deciding to propose discipline. There is no violation of Article 16.6 if the reviewing official does not conduct an independent investigation and relies on the record submitted by the proposing official. As long as the reviewing official can articulate that a review has occurred and concurrence was given in writing, the Postal Service has met its obligation under Article 16.6. The standard of review required by Article 16.6 is simply and only that each of the management officials is satisfied that suspension or discharge be imposed.

Because the "review and concur" requirement does not factor into the "just cause" determination, any potential remedy should not disturb the final analysis regarding "just cause" in any particular case. Furthermore, any procedural defect of noncompliance with Article 16.6 will have been cured at Step 2 of the grievance procedure because a higher authority will have reviewed the file and issued a written concurrence in the form of a Step 2 denial. Even if a violation of Article 16.6 can be proven, the NRLCA still must demonstrate in each individual case how the grievant has been harmed. A violation of Article 16.6 does not automatically sustain the grievance, but rather the Association has the burden of showing that a harmful error has occurred. At the most, the appropriate remedy would be to delay imposition of the discipline until such written concurrence has occurred. Finally, all pending Step 4 grievances in which the NRLCA alleges a violation of Article 16.6 should be remanded to Step 3 for application of the award in this case.

OPINION OF THE NATIONAL ARBITRATOR

Bargaining History, Arbitral Authority and Mutual Intent

Certification of the instant case to Article 15.5.C National Arbitration marks the first occasion for a definitive resolution of the national interpretive issues presented, *supra*. However, the contract language under analysis in this case has been part of the collectively negotiated contracts between these parties for some thirty (30) years. Thus, a certain valuable perspective is gained by considering the bargaining history and administrative practice thereunder; especially since this very language has been so frequently interpreted and applied in final and binding decisions by scores of arbitrators in Article 15.5.D area arbitration of removal cases.

Turning first to bargaining history, the language which now appears as Article 16.6 of the current USPS/NRLCA National Agreement is essentially unchanged, dating from the 1971-73 Joint Collective Bargaining Agreement. Following passage of the Postal Reorganization Act of 1970, the major craft unions representing postal employees bargained jointly with the Postal Service and entered into a joint collective bargaining agreement covering all crafts. Those unions covered by the first agreement included the NRLCA, as well as the APWU (then known as the United Federation of Postal Clerks), the NALC, the Mail Handlers (and three others which have since been absorbed by the mentioned unions).

Article 16, Section 5 of that seminal agreement provided:

> SECTION 5. 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 his designee.
>
> In associate 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.

Over the intervening years, these unions have sometimes bargained in coalitions of differing combinations and sometimes negotiated separate contracts with the Postal Service, but the review and concur language has remained virtually constant throughout.

As for the NRLCA/Postal Service contracts, since the original language of Article 16.6 was adopted by the Parties in the 1971-73 joint Collective Bargaining Agreement, the language was re-adopted unchanged in the successive agreements negotiated in 1973, 1975, 1978, 1981, 1984, 1988, 1990, and 1993. In 1995, the NRLCA and the Postal Service amended the language of the first paragraph of Article 16.6 to provide as follows: (Emphasis in original, to denominate the changes.)

> In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has first been reviewed and concurred in by a higher authority. Such concurrence shall be in writing.

It is noted that the NRLCA and the Postal Service jointly prepare and publish an "Analysis of Changes" following renegotiation of their agreements. The 1995 Analysis stated with respect to the above changes in Article 16.6:

> The first change clarifies the parties' position that discipline may be imposed by a manager other than the rural carrier's supervisor. The second change makes it clear that the concurring official need not be the installation head, provided the official is a higher authority, *i.e.*, a higher organizational level or higher grade level. The third change requires that there be written evidence of such review and concurrence.

My focus in this case remains the language of Article 16.6 of the current Agreement, in a national interpretive context; with due regard for bargaining and arbitral history concerning the interpretation and application of that language since 1971, to the extent such evidence assists in determining the mutual intent of the contracting parties. In that connection, from the inception of the first collective bargaining agreement in 1971 to date, a period spanning some 30 years and 11 separately negotiated agreements, the NRLCA and the Postal Service have permitted area arbitrators to interpret and apply the provisions of Article 16.6, without resort to National Arbitration. Indeed,

over the last three decades, area arbitration decisions construing and applying the review and concur language of Article 16.6 have been stacking up like cordwood. [Parenthetically, area arbitrators in cases involving the other crafts likewise have consistently interpreted the meaning of the review and concurrence provision in the same manner].

It is worth re-emphasizing that, notwithstanding the Postal Service's ostensible opposition to the interpretation and application of that language rendered by virtually all of the area arbitrators in these Article 15.5.D removal cases, the substance of the "review and concur" language has been repeatedly re-adopted by the Parties, without material change, in every successive National Agreement since 1971-73. In short, during more than three decades of living with this language as interpreted and applied by the area arbitrators, with a remarkable degree of consistency, in nearly 100 decisions. In all that time, neither Party ever exercised its right to renegotiate the controlling language of Article 16.6. Nor, prior to the instant case, did either Party deem it necessary to submit the review and concurrence language of Article 16.6 for definitive interpretation in Article 15.5.C National Arbitration, as a certified "national interpretive issue".

The Postal Service quite properly points out that, under the two-tier arbitration system adopted by these Parties, National Arbitration decisions govern in matters of national interpretations and the area arbitration decisions therefore are not authoritative precedent in this case. But just because National Arbitration decisions pre-empt area decisions in certified cases of national interpretation does not mean that thirty (30) years' worth of arbitration decisions by scores of prominent arbitrators, consistently construing and applying the language of Article 16.6 in area arbitration cases, are irrelevant, immaterial or unpersuasive in this National Arbitration case.

This National Arbitrator has the power and authority, as the contractual "Court of Last Resort", to interpret Article 16.6 in a manner other than as consistently and uniformly interpreted by scores of distinguished area arbitrators. It is manifest that Article 15.5.C area arbitration decisions are not *res judicata*, *stare decisis*, or in any sense dispositive, in Article 15.5.D National Arbitration. My responsibility to function as the designated National Arbitrator is not fulfilled simply by taking an opinion poll of area arbitrators.

But, in the absence of a National Arbitration decision interpreting a particular provision of the National Agreement, area arbitrators are regularly called upon to interpret and apply the various provisions of that Agreement, including Article 16.6. Area arbitrators have interpreted and applied Article 16.6 for more than 20 years in scores of cases, because the Association and the Postal Service have permitted them to do so and there is no contractual prohibition on them doing so. Of course, the interpretation of Article 16.6 in this National Arbitration case will govern and apply in all future area arbitrations, because National Arbitration under the Agreement represents a ruling by the Parties' designated "Supreme Court". On the other hand, in this particular case, most of those area arbitration decisions do in fact comport with my own interpretation of the language at issue in this case, based upon my independent analysis of the record before me. In short, the great majority of those area arbitration decisions are correct and as the National Arbitrator I reach essentially the same conclusions concerning the meaning of the language of Article 16.6.

Area arbitration may not be the "Supreme Court" under the parties' Agreement, but it most certainly is the "Court of Appeals"and area arbitration decisions are as "final and binding" as National Arbitration awards. If either party disagrees with an interpretation of the Agreement made by one or more area arbitrators, it can initiate a national interpretive grievance at Step 4 and take it

on to national arbitration, to obtain a "Supreme Court" ruling. Unless and until that occurs, however, the area arbitration decisions construing and applying Article 16.6 represented the "law" of the Parties. More importantly, in my considered judgement, those accumulated decisions also constitute persuasive evidence of the mutual intent of the contracting Parties.

Those area arbitrations have laid on a persuasive interpretive gloss to Article 16.6 over a period of thirty(30) years, during which the Parties jointly re-negotiated the controlling National Agreement eleven (11) times, without even seeking, let alone achieving, any significant modification of the language of Article 16.6. When, as here, the area arbitration awards uniformly interpret a contract provision over a long period, and neither party seeks national arbitration or change in the contract language, but rather continually re-adopts the critical contract language time and time again in collective bargaining, it may well be concluded that the area arbitral interpretation has been incorporated into the Agreement. Elkouri & Elkouri, How Arbitration Works (5th edition) (BNA 1997), states the governing principle of incorporation or adoption, at page 615:

> [I]f the agreement is renegotiated without materially changing a provision that has been interpreted by arbitration, the parties may be held to have adopted the award as a part of the contract. Indeed, the binding force of an award may even be strengthened by such renegotiation without change.

The Postal Service may be technically correct, as a matter of logic, that incorporation/re-adoption theory should not be dispositive, because none of the myriad arbitration decisions construing and applying Article 16.6 was in the National Arbitration forum. However, to argue that the adoption theory should not even be considered seems to me an elevation of form over substance in this particular factual record. In my considered judgement, the arbitral gloss applied by the area arbitrators has in fact and in practice been largely accepted by both Parties and is reflective of their

mutual understanding and intent concerning the interpretation and application of Article 16.6 in removal cases.

Issues No. 1(a)-1(f): Article 16.6 Violation/Compliance

When the rhetorical excesses of ardent advocacy are stripped away, I do not perceive any meaningful disagreement between these Parties with the fundamental proposition that Article 16.6. requires two separate and independent managerial judgments, each based on substantive review of the record evidence, before a suspension or discharge disciplinary action may be imposed on an employee: the first by the initiating official who proposes discipline, and the second by a higher authority who must review and concur in the proposed discipline before it is imposed upon the employee.

It necessarily follows that the requirement of two separate and independent judgements, constitutes the very heart and core of Article 16.6, is violated when the reviewing/concurring official "commands" or "dictates" the disciplinary action to the proposing official, when the higher authority merely "rubber-stamps" the disciplinary action proposed by the employee's supervisor and/or when the sequential steps of a separate and independent supervisory initiation, followed by a separate and independent higher authority review/concurrence, are merged into a single consolidated joint decision by the two managers to suspend or discharge the employee.

Just as the area arbitration decisions rendered by a long line of prominent arbitrators have consistently held, I now hold that a violation of Article 16.6 occurs whenever: (1) the initiating official is deprived of freedom to make his own independent determination to discipline by a "command decision" dictated from higher authority to suspend or discharge; (2) the initiating and reviewing/concurring officials jointly make one consolidated disciplinary action decision, or (3) the

higher authority does not review the record and consider all of the available evidence before concurring in the supervisor's proposed discipline. In each such instance, because there have not been two separate and independent judgments on discipline, the employee is deprived of the essential due process check and balance protection that Article 16.6 is intended to provide.

However, so long as the *sine qua non* of Article 16.6, separateness and and independence of judgement in a two-stage process, is not violated by "command" decisions, joint decisions and/or "rubber-stamping", Article 16.6 does not bar the lower level supervisor from consulting, discussing, communicating with or jointly conferring with the higher reviewing authority before deciding to propose discipline. Indeed, it is common, and in many ways commendable and conducive to fulfillment of the intent of Article 16.6, for the lower level authority to communicate with higher management and discuss policies, options, and other factors to be considered, before determining whether, and to what extent, to propose suspension or discharge of an employee. In short, so long as the initiating official retains independence of judgment and is not commanded by higher authority to issue the discipline, such communications for advice and counsel between the initiating official and a higher authority are to be encouraged rather than chilled or prohibited. The determining factor under Article 16.6 is not whether the officer in charge seeks advice and counsel outside his office but whether, once having obtained such information, the initiating official acts independently or surrenders that independence completely to the person from whom he has sought such advice. In the former case, Article 16.6 is not violated but, in the latter case, Article 16.6 is violated.

By the same token, it is not *per se* a violation of Article 16.6 when the higher level authority relies in the reviewing/concurring step upon the record considered by the lower level official in proposing the discipline. The higher authority is not required by Article 16.6 to make an

"independent investigation". In my judgement, the requirements of Article 16.6 are met when the higher authority makes a substantive review of and bases the decision to concur on the record developed below.

Contrary to the position advanced by the Postal Service in this case, however, that process of review and concurrence contemplated by Article 16.6 is not a ministerial formality or a mere technical "laying on of hands" by the reviewing/concurring official. The requirement of a separate and independent second step of review and concurrence by the higher authority is not met by just a declaration of agreement with the first step supervisor's proposed disciplinary action. Compliance with Article 16.6 requires a substantive review of the matter by the higher authority in light of all the current information and the higher authority's concurrence with imposition of the disciplinary action proposed by the supervisor. Since the 1995 amendments, Article 16.6 specifies that this statement of concurrence by the higher authority must be set forth in writing.

Issue No. 1, *supra*, presents a subset of six (6) specific interrogatories concerning Article 16.6 compliance and violation, submitted by the Parties for determination in National Arbitration. Based on all of the foregoing, I conclude that Issues 1(a), and 1(d) are answered in the negative and Issues 1(b), 1(c), 1(e) and 1(f) are answered in the affirmative.

Issue No. 2- - The Remedy for Proven Violations of Article 16.6

The operative language of Article 16.6 provides (emphasis added):

> **In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has first been reviewed and concurred in by a higher authority.**

This language clearly and unambiguously mandates that compliance with the two-step, two-stage process set forth in Article 16.6 is a condition precedent to the imposition of a removal or suspension. Accordingly, I concur without equivocation with those many area arbitrators who have concluded that the substantive violations of Article 16.6 set forth in Issues 1(b), 1(c) and 1(e) invalidate the disciplinary action. Because these are substantive violations which effectively deny an employee the due process rights granted by Article 16.6, persuasive proof of such fatal violations requires arbitral reversal of the improperly imposed suspension or discharge, without consideration of the underlying merits of the disciplinary action, *i.e.*, reinstatement with "make whole" damages.

In my considered judgement, those relatively few area arbitration decisions which have engrafted onto the condition precedent language of Article 16.6 an additional requirement of proof of "actual harm", notwithstanding persuasive proof of a "command decision", a "joint decision" or that the reviewing/concurring official merely "rubber-stamped" the proposed disciplinary action, are just plain wrong. Under different contract language, arbitrators might properly overlook procedural defects in administration of discipline which do not unduly compromise the rights of an employee whose suspension or discharge is otherwise justified on the record. However, the precise terminology of Article 16.6 precludes recourse to that "harmless error" argument. If this plain language of Article 16.6 occasionally produces a manifestly unfair result, as undoubtedly it has in some cases, the proper recourse is renegotiation at the bargaining table, not arbitral legislation of "actual harm" or "harmless error" rules which are at odds with the express wording of Article 16.6.

The only *caveat* I would add concerns the procedural violation described in Issue 1(f), *i.e.*, failure of the Postal Service to produce evidence that the higher authority's concurrence was reduced to writing, as required by the 1995 amendment to Article 16.6. Such a failure to express concurrence in written form clearly is a procedural violation of Article 16.6, for which an arbitral remedy might well be appropriate. But it is not so clear that such a violation, standing alone, would invalidate the disciplinary action and require reversal and reinstatement in every case.

The record in this matter is insufficiently developed to make an informed judgement concerning bargaining history and mutual intent regarding the 1995 amendment. The facts and circumstances of each particular case determine whether a procedural failure to concur in writing adversely impacted substantive Article 16.6 rights of an individual suspended or discharged employee. For these reasons, I refrain from making a definitive generic ruling on that single remedial aspect of the submitted issues at this time. Area arbitrators remain free to exercise their own best judgement as to whether, in the facts and circumstances of the individual case, an Issue 1(f) type of violation requires reversal of the disciplinary action or some other remedy. For Issue 1(b), 1(c) and 1(e) violations, however, Article 16.6 requires reversal of the disciplinary action and reinstatement with remedial "make-whole" damages.

AWARD OF THE NATIONAL ARBITRATOR
CASE NO. E95R-4E-D 01027978

Having been designated National Arbitrator in accordance with Article 15, Section 5.C of the National Agreement between the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, I hereby AWARD as follows:

ISSUE NO.1

Article 16.6 Review of Discipline of the Extension to the 1995-1999 USPS-NRLCA National Agreement:

a) Is not violated if the lower level supervisor consults, discusses, communicates with or jointly confers with the higher reviewing authority before deciding to propose discipline;

b) Is violated if there is a "command decision" from higher authority to impose a suspension or discharge;

c) Is violated if there is a joint decision by the initiating and reviewing officials to impose a suspension or discharge;

d) Is not violated if the higher level authority does not conduct an independent investigation and relies upon the record submitted by the supervisor when reviewing and concurring with the proposed discipline;

e) Is violated if there is a failure of either the initiating or reviewing official to make an independent substantive review of the evidence prior to the imposition of a suspension or discharge;

f) Is violated if there is no evidence of written review and concurrence prior to the imposition of a suspension or discharge.

ISSUE No. 2

(a) Proven violations of Article 16.6 as set forth in Issues 1 (b), 1(c) or 1(e) are fatal. Such substantive violation invalidate the disciplinary action and require a remedy of reinstatement with "make-whole" damages.

(b) Whether a violation of Article 16.6 as set forth in Issue 1(f) is fatal, invalidates the disciplinary action and requires a remedy of reinstatement with "make-whole" damages is for the area arbitrator to determine based on the facts and circumstances if the individual case.

ISSUE No. 3

Case No. E95R-4E-D 01027978 and all other similar cases held in abeyance at Step 4, pending this National Arbitration interpretation of Article 16.6, are remanded to area arbitration, for priority scheduling consistent with Article 15, Section 5.A of the National Agreement.

Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the meaning, application or implementation of this National Arbitration Award.

Dana Edward Eischen

Signed at Spencer, New York on December 3, 2002

STATE OF NEW YORK }
COUNTY OF TOMPKINS } SS:

On this 3rd day of December, 2002, I, DANA E. EISCHEN, upon my oath as National Arbitrator, do hereby affirm and certify, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the foregoing instrument and I acknowledge that it is my Opinion and Award in Case No. E95R-4E-D 01027978.

In the Matter of Arbitration Between UNITED STATES POSTAL SERVICE And NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	OPINION AND AWARD Nicholas H. Zumas, Arbitrator Case No.: H1M-NA-C-99

BACKGROUND

This is a Step 4 appeal to National Level Arbitration pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO (hereinafter "Union"). Hearing was held in Washington, D.C. on February 26, 1986, at which time testimony was taken, exhibits offered and made part of the record and oral argument was heard. The hearing was stenographically reported resulting in a transcript of the proceedings numbering 107 pages. Post-hearing briefs were filed on April 29, 1986.

APPEARANCES

For the Service: D. James Shipman, Esq.

For the Union: Joseph N. Amma, Jr.
Ralph H. Goldstein, Esq.

STATEMENT OF THE CASE

In this grievance, the Union protests the unilateral implementation by the Service of three programs which the Union alleges fundamentally change the nature of the disciplinary process by eliminating suspensions (as well as Letters of Warning in one of the programs). The grievance also protests the unilateral termination by the Service of one of the programs. The Union asserts that these programs are violative of the provisions of successively collectively bargained National Agreements and long-established past practices relating to progressive discipline. By implementing these programs and by terminating one of them unilaterally, the Union charges that the Service violated its duty to bargain under the National Agreement and the National Labor Relations Act, and disregarded past practice.

The Service contends that the National Agreement does not prohibit the implementation of the these programs or preclude the types of discipline utilized in these programs. The Service

further contends that it has no obligation to negotiate over the provisions of these programs; and that the past practice between the parties clearly indicates a unilateral right to implement such programs.

The parties, unable to resolve the matter during the various Steps of the grievance procedure, referred the dispute to this Arbitrator for resolution.

ISSUES

The Union frames the issue as follows:

> "Whether the Service has a duty to bargain with the Union over changes in the employee discipline process, and whether the Service violated this duty under the National Agreement and the National Labor Relations Act by implementing unilaterally three new disciplinary programs, by terminating one of the programs unilaterally, and by failing to bargain with the Union over these programs; and if so, what should the remedy be."

The Service frames the issue as follows:

> "Whether the Service violated Article 16 of the 1981-84 National Agreement by implementing these pilot programs at certain sites within the Central Region."

RELEVANT CONTRACT PROVISIONS

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

3.1 To direct employees of the Employer in the performance of official duties;

3.2 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;

3.3 To maintain the efficiency of the operations entrusted to it;

3.4 To determine the methods, means, and personnel by which such operations are to be conducted;

3.5 To prescribe a uniform dress to be worn by designated employees; and

3.6 To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be of recurring nature.

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 and conditions of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 16

DISCIPLINE PROCEDURE

Section 16.1 - Statement of Principle

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.

Section 16.2 - Discussions

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 a 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.

Section 16.3 - Letter of Warning

A letter of warning is a disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

Section 16.4 - 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 two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

Section 16.5 - 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 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 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 given 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.

* * *

Section 16.8 - Review of Discipline

A. 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.

B. In associate 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.

Section 16.9 - 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.

Section 16.10 - 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, a 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.

STATEMENT OF FACTS

In late 1983 and early 1984, management in the Service's Central Region initiated three pilot employee motivational programs at three postal facilities. Lawrence G. Handy, a Central Region Labor Relations official, described their purpose as follows:

"...We developed three separate programs, pilot programs, if you will, which were designed to minimize the necessity for disciplining employees, and to approach the relationship between the employee and the supervisor in a more positive vein than had previously

been done."

The first of the three programs implemented was Positive Attendance Control (hereinafter "PAC"). PAC became effective on November 26, 1983 in the St. Louis Post Office. In this program, no time off discipline (suspension) was to be given with respect to any attendance-related deficiencies or infractions. In lieu of suspension, progressively more severe Letters of Warning were to be issued for any attendance-related deficiencies. A PAC 1 letter was similar to a Section 16.3 Letter of Warning. A PAC 2 letter would be issued in lieu of Section 16.4 supension (14 days or less). A PAC 3 letter would be issued in lieu of a Section 16.5 suspension (14 days or more). Both the PAC 2 and PAC 3 letters would include statements that the employee's offense was serious enough to merit a suspension of the appropriate length. The Service considered the PAC program a success. In the year prior to the implementation of the program, 172 Section 16.3 Letters of Warning had been issued, while in the following year only 51 PAC 1 letters were issued. There had been 33 Section 16.4 suspensions, but only 3 PAC 2 letters. There were 37 Section 16.5 suspensions issued the previous year, but no PAC 3 letters were issued the following year.

The second program established was No Discipline Employee Motivation (N-DEM). This program became effective on January 21, 1984 in the St. Paul, Minnesota Post Office. This program

eliminated the use of Letters of Warning and suspensions altogether, except that it allowed management to retain the right to discharge for serious offenses such as theft or assault. The basic thrust of the N-DEM was to allow management to discuss problems with employees and encourage employees to resolve them. This program was eventually terminated on July 1, 1985 because, according to Handy, there were "operational problems." When asked to amplify, Handy stated that, "The working management did not feel comfortable with the program, or I should say certain members of management didn't feel comfortable with the program...there are some supervisors even today that think that the only thing to solve a problem with an employee is to give them a suspension or suspensions."

The third program implemented was No Time Off Letter of Warning (N-TOL). This program was implemented on February 18, 1984 in the Louisville, Kentucky Post Office. The program eliminated time-off suspensions for work-related deficiencies and substituted progressively severe Letters of Warning. Employees were given the right to appeal the issuance of a Letter of Warning under the grievance arbitration procedure.

The program, like PAC, used three letters. A N-TOL 1 letter was similar to a Section 16.3 Letter of Warning. A N-TOL 2 letter would be issued in lieu of a Section 16.4 suspension. A N-TOL 3 letter would be the substitute for a Section 16.5

suspension. Both N-TOL 2 and N-TOL 3 letters would include statements that the employee's offense was serious enough to merit a suspension of the appropriate length.

The Service also considered this program a success. In the year before the establishment of the N-TOL program, 185 Section 16.3 Letters of Warning were issued, while only 16 N-TOL 1 letters were written. There had been 59 Section 16.4 suspensions, but only 10 N-TOL letters. A total of 32 suspensions under Section 16.5 was reduced to 4 N-TOL 3 letters.

Before each program was implemented, the Service advised all employees. They also presented a slide-show to all supervisors, explaining the program. This same slide-show was presented to the four major unions. It was also presented to the Regional representatives, the Local representatives and the Shop Stewards of the unions. The Service offered to make the presentation to employees at local union halls, but only the National Association of Letter Carriers accepted this offer.

There is some dispute as to the initial reaction to these programs. Handy, who was a Program Manager in the Central Region at the time, testified that the reaction was favorable. Marcellus Wilson, an Administrative Technical Assistant for the Union, testified that he attended a December 1983 meeting where PAC was explained. Wilson testified that the Union protested the

establishment of the program.

As indicated earlier, the Service issued a Memorandum dated July 2, 1985, stating that the N-DEM program would be terminated; and that the Service would "return to using the discipline procedures set forth in Article 16 of the National Agreement." (Underscoring added)

On March 21, 1984, the Union filed a Step 4 grievance protesting the Service's "unilateral action in altering the terms, conditions and past practice application of Article 16 of the National Agreement in several sites in the Central Region." It should be noted that the American Postal Workers Union filed a similar grievance, but there is no record that it had been progressed to National Arbitration.

POSITION OF THE UNION

The Union asserts that the Service violated the National Agreement when it unilaterally implemented these three programs and refused to engage in collective bargaining, contending that they are inconsistent with the successively negotiated National Agreements and long-established past practices which mandate a progressive disciplinary procedure, beginning with Letters of Warning, progressed to short and then long suspensions, and

ultimately discharge.

The Union emphasizes that it does not challenge the merits of these "unprecedented changes" in the disciplinary procedure. In its brief, the Union states:

> "The Union does not argue that suspensions constitute in any way a superior, or inferior, method for disciplining employees, or that the PAC, N-DEM and the N-TOL programs constitute a worse or better method. Rather, the Union contends simply that the Postal Service has a duty to engage in collective bargaining with the Union over a modification of that procedure--- regardless of its merit -- and that the Service has violated that duty in the present case by failing to bargain with the Union."

The Union maintains that these programs not only violate Article 5 of the National Agreement, which prohibits unilateral changes, but that these programs violate the provisions of Article 16 as well inasmuch as they change the established and agreed upon disciplinary procedure. Pointing to the history of negotiations and of Article 16 of the National Agreement, the Union asserts that suspensions have always been a topic of major concern to both the Service and the Union; and that changes in disciplinary procedures have been bargained over in each successive negotiation between the parties. Article 16, the Union asserts, contemplates that the progression from pre-disciplinary discussions to Letters of Warning, to suspensions of increasing duration and then to discharge is made "absolutely certain by the past practice of imposing discipline in precisely

these forms and in precisely this order," and that the PAC, N-DEM and N-TOL programs represent a major departure from the disciplinary procedures set forth in Article 16.

With respect to the reliance by the Service on Article 3 of the National Agreement (the reservation of management rights clause), the Union points out that Article 3 may grant the Service exclusive rights, but it makes these rights "subject to the provisions of this Agreement and consistent with applicable laws and regulations...." Therefore, Articles 5 and 16 limit the "exclusive rights" of the Service under Article 3.

The Union next argues that the exhibits submitted by the Service concerning alleged prior unilateral changes in the disciplinary procedures should not be given serious consideration. The Union maintains that these exhibits are internal memorandums, and that the Service produced no evidence regarding the decision-making process which brought them about, or that there is any evidence showing whether the Unions were notified of these memorandums or were consulted in advance; and that there was no evidence as to the Unions' responses, or whether the Unions requested bargaining or waived their rights to bargain.

Finally, the Union takes the position that the Service violated the National Labor Relations Act, arguing that a change

in disciplinary procedure is a change in "working conditions" as defined by the Act, pointing out that Article 5 of the National Agreement prohibits unilateral changes "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 Union points out that the NLRB and the Courts have ruled repeatedly that disciplinary procedures that affect a continuation of employment constitute mandatory subjects of bargaining. There is nothing in the National Agreement that contains any language waiving the Union's rights over disciplinary procedures, and there is no evidence in the bargaining history that would indicate that the Union ever waived its right to bargain over disciplinary procedures.

By way of remedy, the Union asks this Arbitrator to find that the Service violated the Agreement by implementing unilaterally new programs concerning discipline; and that the

Arbitrator order the Service to negotiate with the Union in this regard.

POSITION OF THE SERVICE

The Service contends that these three programs and the manner in which they were implemented do not violate the National Agreement, arguing that they do not change Article 16, nor does such implementation violate Article 16.

Preliminarily, the Service emphasizes that these programs are not intended to supplant traditional disciplinary methods, including suspensions and other disciplinary tools.

The Service maintains that these three programs do not, in any way, alter the provisions of Article 16, pointing out that the programs are intended to be corrective and not punitive. According to the Service, Article 16 does not require that any particular form of discipline be used in a particular situation; that by these programs, the Service has elected not to utilize certain disciplinary action; and that these programs are effective supplements to the traditional disciplinary concepts

currently in use in the Service, consistent with the corrective and non-punitive mandates of Article 16.

The Service asserts that Article 3 of the National Agreement gives it the right to implement these programs since, under Article 3, it has the exclusive right to "suspend, demote, discharge or take other disciplinary action," and that historically the Service has exercised its discretion to implement management policy with respect to discipline within the procedural constraints of Article 16.

The Service further argues that the implementation of these programs is consistent with past practice. At the hearing, the Service introduced several exhibits which it maintains is proof of such past practice. It points to Exhibit 23, a 1972 letter announcing the temporary elimination of Letters of Warning, and Exhibit 24, indicating a unilateral reinstatement of Letters of Warning and substituting them for suspensions of less than five days. The Service points to Exhibit 26, announcing a new policy of not imposing suspensions greater than 14 days, except in unusual circumstances.

The Service argues that these exhibits clearly show that the

parties intended that the Service have the discretion to implement unilaterally such programs.

FINDINGS AND CONCLUSIONS

After review of the record, this Arbitrator concludes that the unilateral implementation of these pilot programs violated the National Agreement between the parties, and that this grievance must be sustained.

Prior to the implementation of these three pilot programs, the parties have generally followed the progressive discipline procedures set forth in Article 16. Disciplinary measures have been imposed progressively, beginning with oral or written warnings, then progressing to short and long suspensions, and finally to discharge. While the number of warnings preceding suspension or the number of suspensions preceding discharge vary from case to case, this progressive pattern has been generally followed. These three new pilot programs alter this progressive pattern by utilizing special Letters of Warning or eliminating suspensions altogether. It is clear that these programs

represent a substantial departure from the traditional and established order of progressive and corrective discipline under Article 16.

It should be noted for the purposes of this dispute, the question of whether these changes are good or bad is of no relevance. Since the programs represent major changes, the essential question is whether these programs were properly implemented in accordance with the requirements of the National Agreement.

While Article 3 gives the Service the exclusive right "to suspend, demote, discharge or take other disciplinary action," such authority, as the Service concedes, is "subject to the [other] provisions of this Agreement." In this dispute, the rights of the Service in this regard are limited by the provisions of Article 5 and Article 16.

Article 5, the Prohibition of Unilateral Action clause, provides that the Service "will not take any actions altering wages, hours and other terms and conditions of employment." It is well established that discipline procedure is a term and condition of employment, and the unilateral implementation of programs which alter such procedure is an action that affects the

terms and conditions of employment in violation of Article 5. In Electri-Flex Co. vs. NLRB, 570 F. 2d 1327 (7th Cir 1978), cert. denied, 439 US 911, 99 LRRM 2743 (1978), the Court of Appeals held:

> "...the institution of a new system of discipline is a significant change in working conditions, and thus one of the mandatory subjects for bargaining under the provisions of Section 8(d) of the Act, included within the phrase 'other terms and conditions of employment.'"

The next area of inquiry is whether there was an established past practice in respect to similar changes in discipline procedure implemented unilaterally by the Service so as to constitute a waiver of the Union's right to demand that such changes be negotiated. In order to justify the unilateral implementation by the Service of these three programs on the basis of established past practice, it must be shown not only that there was acquiescence, either expressly or by implication, but that the prior unilateral changes were similar in magnitude and scope.

As indicated earlier, the Service presented exhibits indicating that during the 1970s numerous apparent unilateral changes were made in the disciplinary procedure. While the Union is correct in asserting that there is no evidence that these changes were not a result of previous or subsequent negotiation, or that there is any evidence that the Union ever acquiesced to

unilateral changes, the Union has not presented any evidence to the contrary. On the state of the record, it must be assumed that these prior changes were unilateral and that the Union waived its right to negotiate and acquiesced to the changes instituted by the Service.

The record, therefore, reveals the following: There was a unilateral change during the 1972 Agreement; a unilateral change during the 1973-75 Agreement; and a unilateral change during the 1978-81 Agreement. (No change was made during the 1975-78 Agreement.) The programs at the heart of this dispute represent an attempted change during the 1981-1984 Agreement.

Thus, at first glance, it would appear that the prior practice of unilateral changes made without objection gave the Service the right to unilaterally implement the programs in dispute. However, a closer analysis of the prior changes and a comparison with these disputed programs compel a different conclusion.

As evidenced by Exhibit 23, the use of Letters of Warning was temporarily suspended pending formulation of a standard national procedure. Exhibit 24 involves the implementation of using Letters of Warning in lieu of suspensions of less than five

days. Exhibit 26 established a policy of not imposing suspensions greater than 14 days except in unusual circumstances.

Each of these unilateral implementations involved a change at only one Step of the disciplinary process. However, the changes in the pilot programs involved in this dispute affect several Steps in the disciplinary process, so drastically alter the progressive nature of the disciplinary process, and are of such magnitude that the prior unilateral changes do not provide an established past practice justification for the unilateral implementation of the changes in these programs.

Both PAC and N-TOL eliminate two levels of suspension and replace them with Letters of Warning. The N-DEM program completely eliminates the progressive Steps set forth in Article 16. These changes have such a fundamental impact on employees' working conditions that they must be negotiated.

Further indication that these prior unilateral changes have little or no effect as binding past practice is the Memorandum of Understanding incorporated into and made part of the identical Article 16 provisions in the 1984-1987 National Agreement with the American Postal Workers Union and the National Association of

Letter Carriers.[1] The Memorandum of Understanding created a national-level "Task Force on Discipline," and reads, in pertinent part:

> "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 shall convene periodically but at least quarterly at such times and at such places as it deems appropriate during the term of the 1984 National Agreement. No action or recommendations may be taken by the Task Force except by a consensus of its parties." (underscoring added)

While this Union was not a party to this Memorandum of Understanding, the fact remains that its members and the members of the APWU and NALC are all part of the total work force and are all governed by identical Article 16 Discipline Procedure provisions in their respective collective bargaining agreements. It would be illogical in the extreme to allow the Service to

---

1. This Union was not a party to that Agreement, having elected in 1981 to negotiate separate collective bargaining agreements with the Service.

implement unilaterally disciplinary changes affecting the members of this Union while at the same time negotiate, by Agreement, any such changes with the APWU and NALC.

AWARD

Grievance sustained. The Service violated the National Agreement by unilaterally implementing the PAC, N-DEM and N-TOL pilot programs, by unilaterally terminating the N-DEM, and by failing and refusing to bargain with the Union over these programs. The Service is ordered to enter into collective bargaining with the Union over these programs.

Nicholas H. Zumas, Arbitrator

Date: May 11, 1987

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. Paul V. Hogrogian
National President
National Postal Mail Handlers Union,
1101 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4304

Re: See Attached

I recently met with your representative, Kevin Fletcher, to discuss the above captioned cases at the fourth step of our contractual grievance procedure.

The issues presented in these grievances concern whether management is required to follow the progressive disciplinary steps used for career Mail Handler employees when issuing discipline to Mail Handler Assistant employees (MHAs).

After reviewing the case files, the parties agree to the following:

Disciplinary procedures for MHAs are outlined in the *Memorandum of Understanding Re Mail Handler Assistant Employees*, Section 3.A. (Other Provisions, Article 15). That MOU provides that MHAs who have completed either 90 work days or a 120 calendar day period (whichever comes first) within the preceding six months may be disciplined only for just cause and that such discipline is subject to the grievance-arbitration procedure. The parties also agree that an MHA who has not completed a period of either 90 work days or 120 calendar days within the preceding six months does not have access to the grievance-arbitration procedure if disciplined. Furthermore, in the case of removal for cause within the term of an appointment, an MHA is entitled to advance written notice of the charges against him/her, in accordance with the Fishgold award.

Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.

Based on the above understanding, we agree to remand these grievances to Step 3 for further processing and/or regional arbitration if necessary.

475 L'Enfant Plaza SW
Washington DC 20260-4101
www.usps.com

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases to Step 3 of the grievance procedure.

Time limits at this level were extended by mutual consent.

Michele Ditchey
Labor Relations Specialist
Contract Administration (NPMHU)

Date: 2/8/2016

Paul V. Hogrogian
National President
National Postal Mail Handlers Union

Date: 2/8/2016

F11M-1F-C 14166312
Class Action
Sacramento, CA

F11M-1F-D 15006539
Robin Falls
Carson, CA

F11M-1F-C 15095101
Clark
Carson, CA

F11M-1F-C 15095176
Oatez
Carson CA

F11M-1F-D 15190470
Wilson
Santa Clarita

J11M-1J-D 14338311
Nicole Long
Pontiac, MI

J11M-1J-D 15053696
Joanna Martin
Allen Park, MI

F11M-1F-C 15113951
Bradley-Lyle
Carson, CA

B11M-1B-D 15242839
Johnson
Hartford, CT

F11M-1F-D 15299381
Chris Rodriguez
Santa Clarita, CA

B11M-1B-C 15371243
Class Action
Scarborough, ME

Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: P. Elliott
Greenwood, SC 29646
H4C-3P-D 1531

Dear Mr. Connors:

On June 27, 1985, and again on July 17, 1985, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.

The issue in this grievance is whether the 7-day suspension issued to the grievant was punitive rather than corrective in nature.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Article 16 of the National Agreement to the fact circumstances.

The parties at this level agree that while discussions for minor offenses may not be cited as an element of prior adverse record in any subsequent disciplinary action, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities. Any notation regarding prior discussions in the said letter of suspension shall be stricken.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

Muriel Aikens
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

bcc: Postmaster - Greenwood, SC
Southern Region
Article Code: 16-02-00 REMAND
NOTE TO REGION: Please ensure that the cited discussions are stricken from the letter of suspension at issue.

Subject, Chron, Reading, Art. file, Lerch
LR310:MAikens:G4YB00 :7/23/85

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

March 17, 1981

Mr. Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

A8-N-1438

Re: APWU - Local
Anaheim, CA 92803
H8C-5G-C-14672

Dear Mr. Anderson:

On March 10, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The instant dispute is settled in that discussion notations made by a supervisor are strictly personal and are not to be considered official Postal service documents. As such, they are not to be made a part of a central record system to which other individuals have access.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Howard R. Carter
Labor Relations Department

Gerald Anderson
Executive Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 7, 1981

Mr. Wallace Baldwin, Sr.
Administrative Vice President
Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

MAY 1 3 1981

Re: Cheryl Palleja
Tampa, FL 33602
H8C-3W-C-25394

Dear Mr. Baldwin:

On April 23, 1981, we met with your representative to discuss the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we mutually agreed that there is no interpretive dispute between the parties at the National level as to the meaning and intent of the language set forth in Article XVI of the National Agreement as that language relates to supervisors conducting "discussions" with employees where minor offenses are concerned.

Based upon information contained in the file, the supervisor referred to in this grievance conducted a discussion with the grievant in accordance with the provisions of Article XVI. During the discussion, the supervisor indicated that improvement was needed insofar as the grievant's attendance was concerned. There is nothing in the file which establishes that the discussion was conducted to elicit information relative to the grievant's absence from duty (2 days sick) for the purpose of taking disciplinary action because of that absence. Under these circumstances, the grievant was not entitled to have a steward present. The discussion was properly held in private between the grievant and her supervisor. With this understanding, we mutually agreed to consider this grievance resolved.

Please sign a copy of this letter as your acknowledgment of agreement to consider this grievance resolved.

Sincerely,

George B. McDougald
Labor Relations Department

Wallace Baldwin, Sr.
Administrative Vice President
Clerk Craft
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

NOV 16 1987

Re: Class Action
Indianapolis, IN 46206
B4C-4G-C 20241

Dear Mr. Connors:

On November 10, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether local management is making improper notations on Forms 3972.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Whether the notations being made on the forms are improper is a local dispute suitable for regional determination based on the particular circumstances.

The parties at this level agree that discussions shall not be noted on the reverse of Forms 3972.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

This replaces the decision dated October 22, 1987.

Sincerely,

Margaret H. Oliver
Grievance & Arbitration
Division

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

LR310:MHOliver:yb:3/24/86

MAINTAINING DISCUSSION FILES

DOCUMENT TYPE: STPFOUR
UNION: AMERICAN POSTAL WORKERS UNION CONTRACT
YEAR: 1984
ARTICLE: 16
SECTION: 1
CREATE DATE: 04/09/86

Mr. Jim Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Orlando, FL 32862
H4C-3W-C 12019

Dear Mr. Lingberg:

On March 11, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether illegal discussion files are being maintained by local management.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agreed that supervisors will not exchange written notes regarding discussions. Also, a supervisor of a former employee may orally exchange information, relative to discussions, with the employee's current supervisor. Any records that do not comply with the above and Article 16 of the National Agreement are to be destroyed.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing in accord with the above.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Jim Lingberg
National Representative-at-Large
Maintenance Craft Division

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

JUL 27 1988

Re: Local
Inglewood, CA 90311
H4C-5C-C 45726

Dear Mr. Connors:

On March 22, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management was proper in denying the union's request for copies of a supervisor's personal notes which were taken during a discussion.

During our discussion, we mutually agreed that when requested, the union will be given the date and subject of a discussion, providing that such discussion was relied upon by the supervisor in a disciplinary action to establish that the employee had been made aware of his/her obligations and responsibilities.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Joyce Ong
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

instance, the parties agree that a one day count and inspection may not be used as the sole basis to establish a standard against which a carrier's performance may be measured for disciplinary purposes.

Whether or not discipline is properly issued, i.e., just cause exists under given circumstances, is a factual dispute suitable for regional determination.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, if necessary.

Mr. Joseph H. Johnson, Jr. 2

Please sign and return a copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Thomas J. Lang
Labor Relations Department

Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter Carriers, AFL-CIO

bcc: Postmaster - Whittier, CA 90605
Western Region
Article Code ... 16-01-01 REMANDED

Subject, Chron, Reading, Art. File, Computer
LR310:TJLang:ht07:4/7/86
G6HT07.34

PROPER CONDUCT OF A SUPERVISOR AND AN EMPLOYEE DURING DISCUSSIONS.

DOCUMENT TYPE:	STPFOUR
UNION:	NATIONAL POST OFFICE MAIL HANDLERS UNION
CONTRACT YEAR:	1987
ARTICLE:	16
SECTION:	2
CREATE DATE:	03/07/88

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division
Suite 525
1 Thomas Circle, N.W.
Washington, DC 20005-5802

Re: C. Lee

BMC Jacksonville, FL 32099
H7M-3R-C 2128

Dear Mr. Amma:

On March 1, 1988, we met with your representative, Marcellus Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance involves the proper conduct of a supervisor and an employee during discussions.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

It was further agreed that, during a discussion held between a supervisor and an employee, both parties are expected to conduct themselves in a professional manner at all times.

The purpose of such discussions is to give a supervisor the opportunity to bring to the attention of an employee through non-disciplinary means, a minor offense committed by the employee. Clearly, the intent of a discussion is to provide the supervisor and the employee an informal setting in which both parties may address the minor offense.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Joseph N. Amma, Jr. 2

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Joyce Ong
Grievance and Arbitration Division

Joseph N. Amma, Jr.
Director, Contract Administration
Laborers' International Union of North America, Mail Handlers Division

bcc: Manager, BMC Jacksonville, FL 32099
Southern Region
Article Code ... 16-02-01 REMANDED
Subject, Chron, Reading, Art. File, Computer
LR410:JOng:3/07/88:revised:sw:05/18/88:OCA Computer Input
ALL-IN-ONE
Subject: Step 4
DOC# 148

Including of past element listings of disciplinary actions the original action

In the Matter of Arbitration Between:

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case No. NB-E-5724
Robert Kurtz
Phildelphia, PA

Issued: February 23, 1977

Background

This case involves an employer claim against Letter Carrier Robert Kurtz for his failure to deliver and account for registered article #3366397. There was no record taken of the hearing. The parties filed timely post-hearing briefs.

The Grievant, Robert Kurtz, was a part-time flexible letter carrier at the William Penn Station of the Philadelphia Pennsylvania Post Office. On April 23, 1974 he was assigned to route #639. Route #639 is essentially a business route which includes a number of jewelry establishments. The route is known in the William Penn Station as the "Jewel Route." The Grievant cased his mail that morning and picked up his registered articles

from the key table. Registered articles are handled in the following manner at the William Penn Station. When a carrier completes the casing of the mail for his route he calls his number to the Accountable Mail Clerk at the key table. If the clerk has prepared the accountable items for that route he calls the carrier to the table, gives the accountables to the carrier and requires that he acknowledge receipt of each accountable item by signing for it on an appropriate form (Form 3867). The carrier then returns to his case, prepares a receipt (Form 3849) for each accountable item and fuses it into his mail for delivery. In this way he can readily determine that an accountable item is destined for a particular customer when a receipt appears among that customer's mail. Accountables are placed in the bottom of the bag under the regular mail. As the receipts appear, the carrier delivers the accountable item to the appropriate customer and the customer acknowledges delivery by signing the receipt and returning the receipt to the carrier. When the carrier returns to the Post Office, he produces the receipts and reconciles them with the listing that he had signed out for earlier in the day. He does this in the presence of the Accountable Mail Clerk and if there is a complete reconciliation the clerk clears him of his liability for those accountables. In this case

Kurtz could not produce a receipt for one of the items listed on his Form 3867.

In this situation Kurtz had cased his mail and told the accountable mail clerk that he was prepared to receive his accountables. When the clerk was ready for Kurtz he called him. Kurtz picked up his accountables, signed out for them and returned to his case where he filled out and cased a receipt for each accountable item. He placed the accountables in the bottom of his satchel according to instructions and swept his case, bundled the mail, and put it in his satchel on top of the accountable items.

Having completed his work in the office he prepared to go out on the street. Before leaving he set his satchel on the floor near his case, threw his coat over it and went to the washroom. When he returned from the washroom he noticed nothing amiss, picked up his satchel and left for his route.

As the Grievant delivered his route he would finger the mail for each upcoming address. Approaching 111 South 8th Street he came across a receipt for registered parcel No. 3366397 addressed to the LaPais Jewelry Company. His procedure was to then look to his accountables in the bottom of his satchel for that parcel. Normally he would deliver the parcel and present the receipt to the addressee or his representative for signature. However, at this point

he discovered that parcel No. 3366397 was missing. He completed his deliveries and then retraced his route in an attempt to determine whether or not he had delivered the parcel to some other address in error. He was unsuccessful and he returned to his station.

Contentions

The Union claims that the Grievant exercised reasonable care in the handling of parcel No. 3366397 as required by Article XXVIII - Employer Claims which reads in pertinent part:

> ARTICLE XXVIII - EMPLOYER CLAIMS
>
> The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the U.S.P.S. property, postal funds, and the mails. In advance of any money demand upon an employee for any reason, he must be informed in writing and the demand must include the reasons therefor.
>
> x x x x x x x
>
> Section 2. Loss or Damage of the Mails. An employee is responsible for the protection of the mails entrusted to him. 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.

The parcel was stolen, says the Union, either when Kurtz left his case to sweep his mail from the center racks or when he went to the washroom. It insists that he

exercised reasonable care of the mail by delivering his route in a manner so as to keep his satchel in front of him as he walked. To establish proof of theft the Union points to the discharge of M. for pilfering the mail and established that M. was on the floor the morning of April 23, 1974. The Union claims that any carrier at the William Penn Station must leave his satchel unattended under certain circumstances in order to properly perform his duties. Therefore, it claims, it is unreasonable for Management to require the carrier to be responsible for the mail when he must leave the area without it.

The Union also claims that the failure of the Grievant to protest the 5-9-75 Letter of Warning was related to the Supervisor's remark "not to worry" when the loss was first reported. Further, it says, the letter was improper in that it was not in accordance with instructions issued by Senior Assistant Postmaster General Brown. The Union produced the following instruction from Brown:

November 7, 1973

MEMORANDUM TO: Assistant Regional Postmasters General Employee and Labor Relations
SUBJECT: Letters of Warning
FROM: Darrell Brown

Article XVI - Discipline Procedure of the 1973 National Agreement sets forth the basic principle that discipline must be

corrective in nature rather than punitive. Our objective is to correct employees, not to punish or harass them. During the negotiations, the Employer emphasized its commitment to this philosophy and made it clear that letters of warning would be used in appropriate circumstances since they are legitimate disciplinary tools. It is USPS policy, effective immediately, that letters of warning be used in lieu of suspensions of less than five (5) days. There will be circumstances, of course, in which the offense is so grave that suspension or even discharge will be required without any previous letter of warning.

Managers must remember that for minor offenses, counselling in private should be employed. If letters of warning are used, they should contain the following:

1. A statement identifying the letter as an official letter of warning, including sufficient detail (names, dates, times, occasions -- not generalities) as to the deficiency or misconduct that the recipient will know what he is being charged with;

2. A statement that further disciplinary action may result if correction is not achieved;

3. Previous discussion and/or counselling which has gone unheeded, if pertinent to the current infraction;

4. Information as to the employee's right to appeal the issuance of the letter of warning through the grievance procedure. (Underscoring added)

The Letter of Warning dated several months later is as follows:

DATE: May 9, 1974
SUBJECT: LETTER OF WARNING
TO: Mr. Robert K. Kurtz
P/T Flex Carrier
473 40 4399
William Penn Annex
Badge #7063

This official letter of warning is being issued for the express purpose of advising you of the following serious deficiency in your record which must be corrected immediately:

You failed to account for registered article #3366397 on Tuesday, April 23, 1974.

A copy of this letter of warning will be retained in your personnel folder for two years. If there is any repetition of the offense or you fail in any other manner to meet the requirements of your position more severe disciplinary action will be taken.

You are reminded that in accordance with present regulations employees who fail to meet the essential requirements of their position may have their periodic step increase withheld.

If you have any objection to the imposition of the above cited warning against your record, you may protest it in writing to the Postmaster within five days. Your protest will be reviewed on its merits by an authority different from the one that took the action and you will be advised of the decision reached.

BY: s/ John F. Lavello
SUPERVISOR'S SIGNATURE

5/14/74
DATE

s/ Robert K. Kurtz
SIGNATURE

s/
WITNESS

cc: Personnel, OPF
File
2/72

Management claims that Kurtz took responsibility for the parcel when he signed out for it at the key table. It maintains that he is constrained to handle the mail with care and the loss is his since the mail was entrusted to his care. The failure of the Grievant to protest the Letter of Warning, says Management, is proof that he recognized that he was responsible for the safe keeping of the accountable item. Management does not accuse the Grievant of stealing the parcel. It does not know how the parcel was lost but, in Management's view, the loss must be attributable to the Grievant's error and he is, therefore, liable for the monetary loss suffered by the Postal Service.

Findings

Article XXVII provides that a Carrier must exercise "reasonable care." It is not enough that a Carrier state that he exercised reasonable care since there is no manner in which the veracity of that statement can be substantiated. Under the present circumstances the Carrier must demonstrate that he was unable to exercise reasonable care due to factors outside his control.

In the case of Kurtz each of the possibilities raised by the Union must be explored. First, Kurtz demonstrated

that he delivered his route holding his satchel in front of him as he walked and fingered the mail. While this is a commendable and a useful precaution it serves only as self-protection for the carrier and does not relieve him from liability for loss on the basis of taking reasonable care. Carrying the satchel in front of him, then, does not demonstrate that the carrier was for some reason unable to exercise reasonable care.

Other possibilities brought forth by the Union bear more heavily on factors outside the control of the Grievant. The carrier is issued his accountables an hour before he leaves the office. During that time he is required to leave his case to go to mail racks in the center of a large room to sweep mail for his route from racks that are constantly being worked by clerks. If the carrier has already obtained his accountables, he must leave them unattended at his case while he sweeps mail from the central racks. There was no evidence that there is a procedure in effect enabling a carrier to protect his accountables during this time. On another point it was stated by the Union and not denied by Management that carriers are not permitted to take their satchels into the washroom. The normal practice is for a carrier to leave his satchel at his case or outside the washroom when he uses the washroom for a period of five or six minutes prior to his leaving for the street. Kurtz

claims that his satchel was left unattended on April 23, 1974 under these exact circumstances.

The Grievant testified that he and a Union Steward promptly discussed the matter with a Supervisor (now retired and unavailable to testify) who is alleged to have told them, "Don't worry about it" and, "I am not at liberty to tell you anything, just don't worry." Management made no attempt to deny the allegation nor did it confirm the Union's statement. Another carrier, M., was apprehended on June 8, 1974 and discharged on June 21, 1974 for theft of the mail. The Union maintains that since M. was on the floor at the time Kurtz's bag was unattended, it is reasonable to conclude that M. purloined the package. The Postal Service states that if M. would have gone near Kurtz's bag, other carriers working cases nearby would have noticed his presence. There is no evidence that M. was seen in the vicinity of Kurtz's case. In any event, says Management, M. was discharged because he stole mail that was entrusted to him.

The connection between the presence of M. on the day of the Grievant's loss and the loss is much too tenuous to reasonably assume that M. pilfered Item No. 3366397. According to reliable testimony of the Union witnesses, it is possible that the statement of the Supervisor "not to worry" was in error and subsequent events could not link M. to the loss of parcel No 3366397.

Management's contention that Kurtz's failure to grieve the Warning Letter of May 9, 1974 limits his defense concerning the Letter of Demand dated March 25, 1975 is without merit. The Warning Letter was not properly constructed as directed by Senior Assistant Postmaster General Brown and even if it were the Warning Letter must be considered a part of the total Management action against the Grievant. The Grievant, therefore, did not waive his right to grieve the Letter of Demand when he failed to protest the Warning Letter.

The practice of leaving the satchel when sweeping the clerk's racks or when using the washroom puts the carrier at risk. He must either entrust his satchel to another carrier or take it with him. It doesn't make sense to sweep the center racks carrying a satchel and taking the satchel into the washroom is against regulations. Certainly the integrity of fellow carriers is not generally open to question. However, M. was a fellow carrier and he was discharged for stealing mail. The carriers in the William Penn Station must gamble each time they leave their cases as they must do in order to perform their duties.

The ultimate issue in this case is by no means free from doubt. There are cogent arguments suggesting

that the Grievant should not be held liable for this specific loss. On the other hand there are even stronger factual considerations indicating a lack of due care on the part of Kurtz.

Thus, the hard fact is that he noticed nothing amiss with his satchel when he returned to his case on the morning of April 23. It is undenied that the other carriers noticed nothing unusual about, nor any stranger near, Kurtz's satchel while he was in the washroom. This indicated that the parcel was lost outside the Post Office. Finally, Kurtz could not demonstrate that some factor outside his control caused him to lose the parcel even though he claims that he exercised reasonable care. Given these critical facts, the conclusion is clear that Grievant Kurtz properly was held responsible for the loss in issue.

Award

The Grievance is denied.

Paul J. Fasser, Jr.
Associate Impartial Chairman

Approved:

Sylvester Garrett
Impartial Chairman

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

December 17, 1987

Mr. Joseph N. Amma, Jr.
Director, Contract Administration
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO
1 Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Dear Mr. Amma:

This is in regard to our discussions concerning the MOU on Purging of Warning Letters agreed to during the 1987 National Negotiations.

As discussed, I agree that if a disciplinary action is modified by the parties or an arbitrator resulting in a letter of warning, such letters of warning will not be considered to have been issued in lieu of a suspension or a removal action pursuant to Item 3 of the MOU.

Sincerely,

William J. Downes
Director
Office of Contract Administration

7937

SENIOR ASSISTANT POSTMASTER GENERAL
EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

February 15, 1974

MEMORANDUM FOR: Assistant Regional Postmasters General
Employee and Labor Relations

SUBJECT: Letters of Warning

By memorandum dated November 13, 1973, there was established as USPS policy the utilization of letters of warning in lieu of suspensions of less than five (5) days. This same policy is effective throughout the grievance process where consideration is being given to a reduction in discipline imposed. If a suspension of five (5) days or more is reduced administratively, the reduction should be to a letter of warning rather than a suspension of four (4) days or less, unless such short suspension constitutes an agreed upon settlement of the grievance.

Please review your existing discipline cases to insure that this policy is operative and take the necessary corrective action where necessary to insure compliance.

Sincerely,

Darrell F. Brown

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020**.

Either party can open negotiations with notification to the other party on or before **September 15, 2020**. The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020**. If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020**, presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021**.

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021**.

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before they may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2. the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5/27/20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

LABOR RELATIONS

REISSUED--SUPERCEDE DECISION 5/17/96

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, D.C. 20005-5802

Re: D90M-1D-D 94049865
NEAL, D
CAPITOL HEIGHTS, MD 20790-9998

Dear Mr. Quinn:

Recently I met with your representative, T.J. Branch, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is what is the remedy when an employee serves a suspension of 14 days or less before receiving a written Step 2 decision from management.

During our discussion, we mutually agreed that where an employee begins serving a suspension before the issuance of a written Step 2 decision of a properly appealed grievance under Article 16.4 of the Agreement, the appropriate remedy is to rescind the suspension and make the grievant whole. This make whole remedy is without prejudice to the Postal Service position that it may reissue the suspension to correct an administrative error and without prejudice to the Union's position that the Postal Service may not reissue the suspension.

This case is to be remanded to Step 3 for application of this settlement.

Please and sign and return the enclosed copy of this decision as acknowledgement of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Gloria Gray
Contract Administration
(APWU-NPMHU)
Labor Relations

Date: 6/26/96

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 6/26/96

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union
AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: A90M-1A-D 96015486
(MH # 688)
WYCHE L
BROOKLYN, NY 11256-9511

Dear Mr. Quinn:

On July 10, 1996, I discussed with your representative Richard Collins the aforementioned grievance at the fourth step of the contractual grievance procedure.

Article 16.4 of the National Agreement states that no employee will begin to serve a suspension prior to the issuance of a Step 2 written decision. The issue in this case is what remedy shall be effectuated when an employee serves a suspension prior to this finding.

After reviewing this matter we mutually agreed that where an employee begins servings a suspension before the issuance of a written Step 2 decision of a properly appealed grievance under Article 16.4 of the National Agreement, the appropriate remedy will be to rescind the suspension and make the grievant whole.

This make whole remedy is without prejudice to the Postal Service's position that it may reissue the suspension to correct an administrative error and without prejudice to the Union's position that the Postal Service may not reissue the suspension.

Accordingly, we agreed to remand this case to Step 3 for application of this settlement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time Limits at this level were extended by mutual consent.

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

Date: July 10 1996

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 7/31/96

475 L'Enfant Plaza SW
Washington DC 20260-4100

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

Mr. William H. Quinn
National President
National Postal Mail Handlers Union
AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, DC 20005-5802

Re: B90M-1B-D 94029660
(MH # 634)
MULHERN JR. R.
SHREWSBURY, MA 01546-7060

Dear Mr. Quinn:

On July 10, 1996, I discussed with your representative Richard Collins the aforementioned grievance at the fourth step of the contractual grievance procedure.

Article 16.4 of the National Agreement states that no employee will begin to serve a suspension prior to the issuance of a Step 2 written decision. The issue in this case is what remedy shall be effectuated when an employee serves a suspension prior to this finding.

After reviewing this matter we mutually agreed that where an employee begins servings a suspension before the issuance of a written Step 2 decision of a properly appealed grievance under Article 16.4 of the National Agreement, the appropriate remedy will be to rescind the suspension and make the grievant whole.

This make whole remedy is without prejudice to the Postal Service's position that it may reissue the suspension to correct an administrative error and without prejudice to the Union's position that the Postal Service may not reissue the suspension.

Accordingly, we agreed to remand this case to Step 3 for application of this settlement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time Limits at this level were extended by mutual consent.

Thomas J. Valenti
Labor Relations Specialist
Contract Administration
(APWU/NPMHU)
Labor Relations

Date: July 15, 1996

William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 7/31/96

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

08377.pdf
D.EISCHEN:JANUARY9,2009
SUSTAINED:NPMHU/APWU
98072898:REGIOAL

USPS/NPMHU NATIONAL ARBITRATION PROCEEDINGS
Case No. 194M-11-C-98072898

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

- and -

NATIONAL POSTAL MAIL HANDLERS UNION

-and-

AMERICAN POSTAL WORKERS UNION, AFL-CIO (INTERVENOR)

Subject: Validity of Step 2 decision issued post proper progression to Step 3 under Article 15.3.C

National Arbitrator

Dana Edward Eischen

Appearances

For the NPMHU:	Bredhoff & Kaiser, P.L.L.C. by Andrew D. Roth, Esq.
For the Postal Service:	Teresa A. Gonsalves, Esq. Anthony M. Thuro, Esq. (at the hearing) Joseph R. Berezo, Esq. (on the brief)
For the APWU:	O'Donnell, Schwartz & Anderson, P.C. by Brenda C. Zwack, Esq. (at the hearing) Lee W. Jackson, Esq. (on the brief)

PROCEEDINGS

The United States Postal Service ("USPS", "Postal Service" or "Employer") and the National Postal Mail Handlers Union("NPMHU", "Mailhandlers" or "Union") designated me to arbitrate National-level disputes under Article 15. 5. D of their National Agreement. The terms of Article 15.3.C of that USPS/NPMHU National Agreement are dispositive of the matter in dispute but, in advancing their respective positions in this case, both the USPS and the NPMHU also cited and relied upon arbitration awards construing virtually identical language in Article 15.4.C of the National Agreement between USPS and the American Postal Workers Union, AFL-CIO ("APWU"). After being provided with third party notice of this arbitration proceeding, the APWU elected to participate as an Intervenor in this case by appearing and participating in the hearing and filing a post-hearing brief. [At the arbitration hearing on June 13, 2006, Counsel for the APWU stipulated as follows: "Since we have intervened in this case as a third party, then [the decision in this case] interpreting that language would bind the APWU"]. *See* Tr. p.81, lines 10-12.

The USPS, the NPMHU and the APWU each were represented by Counsel and afforded full opportunity to present documentary evidence, testimony subject to cross-examination and oral argument at the hearing of this matter. Following receipt of the transcribed stenographic record, the Parties deferred filing post-hearing briefs, pending the possibility of a resolution of the controversy in connection with ongoing national-level collective bargaining negotiations. The Parties subsequently advised me that their discussions had not resolved the matter and eventually filed and exchanged their respective post-hearing briefs in late March 2008. At my request, the Parties graciously allowed me an extension of the contractual time limits for the rendition of this Opinion and Award.

PERTINENT CONTRACT PROVISIONS

USPS/NPMHU 2002-2004 NATIONAL AGREEMENT
ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 15.1 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.

Section 15.2 Grievance Procedure-Steps

* * *

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 I representative.

(b) Any grievance initiated at Step 2, pursuant to Article 2 of this Agreement, must be filed within fourteen (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.

(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) Where grievances appealed to Step 2 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 2, the "representative" grievance may be appealed to Step 3 of the grievance procedure. 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 2 pending resolution of the "representative" grievance, provided they were timely filed at Step I and properly appealed to Step 2 in accordance with the grievance procedure.

(f) Following resolution of the "representative" grievance, the parties involved in that grievance shall meet at Step 2 within seven (7) days of their receipt of that resolution, unless the parties agree upon a later date, to identify the other pending grievances involving the

same, or substantially similar issues or facts, and to apply the resolution to those grievances. 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.

(g) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form and shall be furnished to the Union representative within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. Any such settlement or withdrawal 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.

(h) 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.

(i) 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.

(j) 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.

Step 3: (a) Any appeal from an adverse decision in Step 2 shall be in writing to the appropriate management official at 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 Step 3 level by the Union's Regional representative, or designee. The Step 3 meeting of the parties' representatives to discuss the grievance shall be held at the respective Postal Service office (former regional headquarters) 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 jointly 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 this Agreement or some supplement thereto which may be of general application is involved in the case.

(d) The Union, at the Regional level, may appeal an adverse decision directly to arbitration at the Regional level 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 this 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 this 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 (2 1) days after receipt of the Employer's decision and include copies of the standard grievance form, the Step 2 and Step 3 decisions and, if filed, any Union corrections and additions filed at Steps 2 or 3. The Union shall furnish a copy of the Union appeal to the appropriate management official at the Grievance/Arbitration Processing Center.

The party whose representative maintains that the grievance involves an interpretive issue shall provide the other party a written notice specifying in detail the precise interpretive issues(s) to be decided. The Employer's notice shall be included in the Step 3 decision. The Union's written notice shall be automatically included as part of the grievance record in the case but the filing of such notice shall not affect the time limits for appeal.

[See Memos, pages 137, 138]

Step 4: (a) In any case properly appealed or referred 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 or referral 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 Union 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.

Article 15.3

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. Every effort shall be made to ensure timely compliance and payment of monetary grievance settlements and arbitration awards. The Employer agrees that upon receipt of necessary paperwork, from the grievant and/or union, concerning a grievance settlement of arbitration award, monetary remuneration will be made. The necessary paperwork is the documents and statements specified in Subchapter 436.4 of the ELM. The Employer

will provide the union copies of appropriate pay adjustment forms, including confirmation that such forms were submitted to the appropriate postal officials for compliance and that action has been taken to ensure that the affected employee(s) receives payment and/or other benefits. In the event that an employee is not paid within sixty (60) days after submission of all the necessary paperwork, such employee, upon request, will be granted authorization from management to receive a pay advance equal to seventy (70) percent of the payment owed the employee. In the event of a dispute between the parties concerning the correct amount to be paid, the advance required by this section will be the amount that is not in dispute.

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.

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.

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 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 he 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,

E The parties have agreed to jointly develop and implement a Contract Interpretation Manual (CIM) within six (6) months after the effective date of the 1998 National Agreement. The CIM will set forth the parties' mutual understanding regarding the proper interpretation and/or application of the provisions of this Agreement. It is not intended to add to, modify, or replace, in any respect, the language in the current Agreement; nor is it intended to modify in any way the rights, responsibilities, or benefits of the parties under the Agreement. However, production of the CIM demonstrates the mutual intent of the parties at the National level to encourage their representatives at all levels to reach resolution regarding issues about which the parties are in agreement and to encourage consistency in the application of the terms of the Agreement. For these reasons, the positions of the parties as set forth in the CIM shall be binding on the representatives of both parties in the resolution of disputes at the Local and Regional levels, and in the processing of grievances through Steps 1, 2 and 3 of the grievance-arbitration procedure. In addition, the positions of the parties as set forth in the CIM are binding on the arbitrator, in accordance with the provisions of Article 15AA6, in any Regional level arbitration case in which the CIM is introduced. The CIM will be updated periodically to reflect any modifications to the parties' positions which may result from National level arbitration awards, Step 4 decisions, or other sources. The parties' representatives are encouraged to utilize the most recent version of the CIM at all times.

[See Memos, pages 140, 141, Letters, pages 141, 143, 156]

ARTICLE 16 DISCIPLINE PROCEDURE

Article 16.5

In the case of discipline involving suspensions of fourteen (14) days , 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 fourteen (14) 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. However, if the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered.

In the case of suspensions of more than fourteen (14) days, or 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. However, if the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered.

USPS/APWU 2002-2004 NATIONAL AGREEMENT

Article 15.2

* * *

(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...

* * *

(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...

* * *

Article 15.4

* * *

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.

* * * * * *

BACKGROUND

The decade-old facts giving rise to this National-level grievance are fairly straightforward and not much in material dispute. On December 30, 1997, Lewis J. Rothman, III was notified by Management of a proposed 14-day disciplinary suspension, for alleged attendance irregularity and excessive absenteeism from his job in the Des Moines, Iowa BMC. The timely filed Step 1 grievance challenge by NPMHU, claiming lack of just cause for that discipline, (Grievance No. 22-333-00698) was denied by Management on January 16, 1998 and appealed to Step 2 by the Union

on January 23, 1998. When the Employer thereafter failed to schedule any Step 2 meeting within the time limits set forth in Article 15.2 Step 2 (c), the NPMHU, on February 4, 1998, simultaneously invoked the "deemed to move" provision of Article 15.3.C and also filed a formal appeal of Grievance No. 22-333-00698 to Step 3.[1] After the Union declined a request by Management to "remand" the case back to a Step 2 meeting, Management responded with the following document, dated February 19, 1998, labeled "Step 2 Denial":

> The subject Step 2 grievance was not discussed with your representative, Tony Irvin in accordance with Article 15, Section 2 of the National Agreement. The Union appealed with out the benefit of a meeting; respectfully request the grievance be remanded to step 2.
>
> The union contends the grievant was issued a 14 day suspension and allege violation of article 16 of the National Agreement and ELM 5 15. The union requests the discipline be expunged from all files and records.
>
> The facts in this case are the grievant received a 14 day suspension for failing to meet the attendance requirements, after receiving a 5 day suspension and a letter of warning for failing to meet the attendance requirements of his position. There was a settlement on the five day suspension. One date cited on the notice of suspension, was outside of the review period, however there were a sufficient number of absences to establish just cause. Information provided by the union in their written appeal did not establish a violation of article 16 or ELM 15.
>
> Inasmuch as the union has failed to establish a contractual violation, a contractual basis for the requested remedy, or that just cause did not exist, this grievance is denied.

The Union thereafter perfected its appeal of Grievance No. 22-333-00698, which eventually resulted in a regional arbitration award, on October 26, 1998, by Arbitrator Roger L. Goldman, *infra*. In the meantime, after Management had directed Mr. Rathman to begin serving the 14-day suspension on February 21, 1998, the NPMHU also filed Grievance No. 98072898; invoking Article 15.3.C and claiming violations of Articles 3,5,and 16.4 of the National Agreement. The string of successive Management denials of that grievance leading to this arbitration read as follows:

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[1] As noted in my discussion of the Issue, *infra*, no opinion is expressed or implied in this decision on the countervailing positions of the Parties regarding whether filing a formal Step 3 appeal is a contractual necessity when a Step 2 grievance is"deemed to move" to the next Step of the grievance-arbitration procedure under the provisions of Article 15.3.C.

Step 2 Denial of March 30, 1998

The subject Step 2 grievance was discussed . . . on March 16, 1998, in accordance with Article 15, Section 2 of the National Agreement.

The union contends the grievant was placed on suspension and allege a violation of articles 3, 5, and 16, of the National Agreement. The union did not explain the relevance of articles 3 and or how they were violated. The union requests the grievant be made whole and the subject discipline be expunged from all files and records.

As claimed by the union, this grievance was appealed to step 3 without the benefit of a step 2 meeting. Management attempted to meet with the union at step 2 after their appeal, but the union refused.

In accordance with Article 16.4 of the National Agreement, the grievant did not begin his suspension until a step 2 decision had been issued prior.

In as much as the union has failed to establish a contractual violation, a contractual basis for the requested remedy or that just cause did not exist, this grievance is denied.

Step 3 Denial of June 2, 1998

Pursuant to the terms and obligations as set forth in Article 15 of the 1994 National Agreement, management and union designees met at Step 3 of the grievance procedure. The result of that meeting on the above referenced case is as follows:

The issue is whether management violated Articles 3, 5 and 16 of the National Agreement when the grievant was allegedly placed on suspension prior to management rendering its step two decision.

The record establishes that the grievant initiated a grievance concerning a notice of suspension received on January 6, 1998. The parties did not discuss that grievance at step two within the prescribed time limits. On February 4,1998 the union appealed that grievance to step three without holding a step two meeting. On February 19 management provided the local union with its written step two decision for the grievance at issue. On February 21 the grievant began serving the suspension period.

The local union's claim that management was prohibited from (ever) requiring the grievant to serve his suspension is totally baseless. The union has failed to present any evidence to support their allegation that management is barred from ever requiring an employee to serve a suspension when the grievance (protesting the suspension) is appealed to step three due to the failure to meet at step two in a timely manner. Indeed, the union's assertion would change the clear intent of the requirement to "delay" a suspension outlined In Article 16.4 of the Agreement. In any event, the step two decision n this case was "rendered" and provided to the union prior to the grievant beginning his suspension.

The union's attempt to disavow the step two decision is groundless as is their entire "position" in this matter. The union has failed to demonstrate a violation or the relevance of the cited Articles of the Agreement. Absent the union meeting their

burden in this contractual matter and absent the union providing a foundation for their requested remedy, this grievance is denied.

Step 4 Denial of November 9, 1998

On November 2. 1998, I met with your representative Dallas Jones to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement when management issued a Step 2 Decision without meeting with the Union at the Step 2 level of the grievance process.

The Union contends that this is an issue of due process in that management had to meet with the union before it could issue a Step 2 decision. The Union contends that if management failed to meet at Step 2, then it could not rightfully issue a Step 2 decision. The union further contends that if there is no Stop 2 decision, then management would be in violation of Article 16.4 of the National Agreement by forcing the Grievant to serve the fourteen (14) day suspension.

It is the position of the Postal Service that no interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. This is a local dispute suitable for regional determination by application of Article 16, Section 2 of the National Agreement to the particular circumstances. However, inasmuch as the Union did not agree, the following represents the decision of the Postal Service.

Article 15.2 Step 2: (c) of the National Postal Mail Handlers Union (NPMHU) National Agreement states in part; ' 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...

Article 15.3. C. off the National Agreement further states, in part; "Failure by the Employer to scheduled 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.

Management contends that the terms and conditions of Article 15 compel management to meet with the union as soon as possible after receipt of a timely Step 2 Appeal; likewise, Article 15 provides for the union to proceed to the next stop in the grievance process if management fails to meet within the required time period.

The evidence of record indicates that management did not to meet within the seven (7) day period after a grievance was initiated by the union. Although the seven (7) day time period had elapsed, the record indicates that management made good faith attempts to meet with the union to discuss the grievance. However, the terms of Article 15 state that the both parties have agree to any extension to meet beyond the seven (7) day period. The union's Step 2 Representative in this case did not agree to an extension; therefore, the union exercised its contractual rights and appealed the grievance to the Stop 3 level of the grievance process.

It is management's position that the grievance procedures outlined in Article 15 include provisions for the parties to take if the steps of the grievance process are not

properly adhered to. Management argues that the union did in fact exercise its contractual rights by forwarding the grievance to Step 3 which was the appropriate resolve if the parties did not meet at Step 2.

Furthermore, Article 15.2 Step 2: (h) of the National Agreement states in part: "Where agreement is not reached, the Employees decision shall be fumished 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..."

In accordance with Article 16 of the National Agreement regarding suspensions of 14 Days or less, Section 16.4 states in part: "...the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered." This provision outlined in the discipline procedure requires management to render a decision prior to a grievant serving the suspension. This provision does not dictate that managements decision hinges on whether or not a Step 2 meeting took place.

It is the Service's position that this is not a dispute for national interpretation. The terms and conditions of Article 15 dearly identify and plainly articulate the steps to process a grievance. There are no provisions at any level of the grievance process that prohibits management from issuing a Step 2 decision letter.

After careful review of the facts surrounding this grievance, it is managements position that this dispute does not rise to application for interpretive determination. In view of the above considerations, this grievance is denied.

When that matter remained unresolved, NPMHU made a timely appeal for final and binding determination of the confronting procedural issue in Case No. 194M-11-C-98072898 to National-level arbitration, under Article 15.4.D of the Mail Handlers National Agreement between NPMHU and USPS. While the appeals of that case were progressing to this National Arbitration, however, the underlying grievance protesting the merits of the 14 day suspension (No. 22-333-00698) was decided long ago, in expedited arbitration by Arbitrator Roger L. Goldman, whose Award of October 26, 1998 reads, in pertinent part, as follows:

FACTS: Grievant, Lewis J. Rothman III, was issued a Notice of Fourteen Day Suspension for being irregular in attendance. Grievant had previously received a Letter of Warning, dated December 31, 1996, and a five day suspension, dated May 27, 1997, both for failure To Maintain Regular Attendance.

UNION'S POSITION: Union contends that the Suspension was punitive, rather than corrective action and therefore lacked just cause; that it was procedurally defective; and that it should be rescinded and Grievant made whole.

MANAGEMENT'S POSITION: Management contends that there was just cause to issue the.,Notice of Suspension to Grievant; that the procedure was not defective; and therefore the grievance should be denied.

* * *

A. Jurisdiction of the Arbitrator

There is a serious question whether the Arbitrator has jurisdiction of the case since Union referred the case to Step 4 of the grievance procedure on August 12, 1998, Management Exhibit 5. Pursuant to Article 15, Sec. 15.4(b)51 either party may remove a case from regional arbitration and refer the case to Step 4 of the grievance procedure. In that event, the referring party pays the entire cost of the regional arbitrator, unless another scheduled case is heard on that date. No other case was heard. Although the August 12, 1998 referral by Union to Step 4 did state the case was withdrawn from regional arbitration, neither party renewed the request that the case be withdrawn from regional arbitration on October 20, 1998, the date of the arbitration. Management sought a decision on the merits while Union sought a decision on both the procedural issue and the merits.

No provision in the Agreement was cited to Arbitrator that directly addressed the question: Can an Arbitrator proceed to decide an issue (in this case, the merits) while another issue is pending at Step 4 (in this case, the procedural issue)?

Since both parties were willing to have the arbitrator proceed on the merits and since the Arbitrator did hear evidence on the merits, it would seem inconsistent with the purposes of arbitration to be expeditious and inexpensive for the Arbitrator to dismiss the entire grievance on jurisdictional grounds. Accordingly, the Arbitrator will render a decision on the merits but will stay implementation of the decision until completion of the Step 4 proceeding and its possible appeal to National Arbitration.

B. Issues to be Decided

The parties differ on the jurisdiction of the Arbitrator to render a decision-on the procedural matter which is now pending at Step 4 of the grievance procedure.

The procedural matter arises from the failure of the parties to meet within 7 days of the receipt of the Step 2 appeal. Union claims that such a failure to meet prohibits a Step 2 decision from being validly rendered, and without a Step 2 decision, there can be no discipline. (Management contends that there was a valid Step 2 decision rendered, and that a Step 2 meeting is not necessary to make the Step 2 decision valid).

The Arbitrator agrees with Management that he cannot decide this procedural issue which is now pending at Step 4 as an interpretative issue under the National Agreement. Article 15, Section 15.4(b)5, does not contemplate a regional arbitrator resolving the very same issue, in the same case, that is pending at Step 4.

Therefore, the Arbitrator will not address the procedural issue but will only decide the merits.

* * *

AWARD: Grievance denied but the 14 day suspension is not to take effect until after the Step IV decision and appeal to Arbitration, if any, in the case involving this same Grievant, Regional # 194M-II-C-98072898, dated August 12, 1998 (sic). If the ruling in that case sustains the Grievance concerning the lack of a Step 2 meeting, the suspension upheld in this case is not to take effect and shall be expunged from all records. If the ruling in that case denies the Grievance, the 14 day suspension in the case before this Arbitrator shall take effect and may be cited in later discipline.[2]

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[2] The record shows that Mr. Rathman left the employment of the Postal Service sometime during the 8-year hiatus between the November 1998 Step 4 denial of Grievance #194M-11-C-98072898 and the June 2006 hearing of that grievance in this National-level arbitration.

POSITIONS OF THE PARTIES

The following statements of position have been extrapolated and edited from the respective post hearing briefs:

NPMHU

Once a grievance properly has been "deemed . . . move[d]" to Step 3 of the grievance arbitration process pursuant to Article 15.3C, Step 2 of that process has, by definition, ended. By agreement of the parties, "jurisdiction" (as it were) has passed from Step 2 of the grievance-arbitration process to Step 3, and from that point forward the grievance is to be handled and ultimately resolved exclusively in accordance with the various provisions of Article 15 governing those steps of the grievance-arbitration process beyond Step 2. This being so, there is no basis whatsoever in the National Agreement or in common sense for the Postal Service's assertion of a contractual right belatedly to issue a Step 2 decision in these circumstances for any purpose—whether for the purpose of resurrecting a timeliness objection to the Union's processing of the grievance that has been "waived" under Article 15.3B of the National Agreement, see infra pp. 21-24, or for the purpose of requiring the grievant to serve a fourteen-day suspension that has been tolled pending a Step 2 decision under Article 16.5 of the National Agreement. Recognition of such a contractual right belatedly to issue a Step 2 decision in these circumstances would in effect excuse the Postal Service's "[f]ailure . . . to schedule a [timely Step 2] meeting," and there is no warrant in Article 15.3C or in any other provision of the National Agreement for excusing such a failure on the Postal Service's part.

The premise of that Postal Service response is that where a collective bargaining agreement does not set out the parties' agreement on a particular issue in express language, it is never appropriate for an arbitrator to imply an agreement between the parties on that issue. But that premise is a false one, as every experienced labor arbitrator knows. Given the realities of collective bargaining, labor arbitrators regularly are called upon—and properly so—to resolve interpretative disputes over the consequences that flow from an agreed-upon contractual provision that does not state those consequences in express language. And, a labor arbitrator who answers that call by reasonably concluding that the wording of contractual provision "X" necessarily implies consequence "Y" does not thereby commit the cardinal sin of "re-writing" the parties' agreement for them.

For the foregoing reasons, the NPMHU respectfully requests that the Arbitrator to find that when a grievance properly is "deemed . . . move[d]" to Step 3 of the grievance-arbitration process under Article 15.3C of the National Agreement, based on a "[f]ailure by the [Postal Service] to schedule a [timely Step 2] meeting," the Postal Service may not thereafter issue a Step 2 decision with respect to that grievance for any purpose, including specifically (i) for the purpose of resurrecting a timeliness objection to the Union's processing of the grievance that has been "waived" under Article15.3B of the National Agreement; and(ii) for the purpose of requiring the grievant to serve a fourteen-day suspension that has been tolled pending a Step 2 decision under Article 16.5 of the National Agreement.

U.S.P.S.

The NPMHU has failed to meet its burden of demonstrating that the Postal Service violated the contract by issuing a Step 2 decision after the NPMHU had appealed the grievance to Step 3. The clear and unambiguous language of the parties' agreement does not prohibit the Postal Service from issuing a Step 2 decision if there has been no Step 2 meeting. Rather, the agreement specifies the single consequence resulting from a failure to schedule a step 2 meeting or issue a timely step 2 decision–the only consequence of not scheduling or having a meeting is that the Union may, after the relevant time periods have expired, move

the grievance to the next step of the process. *See* Postal Service and APWU, No. Q94C-4Q-C 98117564 (National Award, April 29, 2003:Snow, Arb.)

There was no prejudice to the grievant or Union as a result of the issuance of the Step 2 decision after the NPMHU's appeal to Step 3. Indeed, the Union here had a double opportunity to evaluate and respond to the Postal Service's position, as it filed two related grievances. Therefore, the NPMHU has no plausible argument that any prejudice whatsoever was caused by the "belated" Step 2 decision. And notably, it is due to the NPMHU's own refusal to cooperate in remanding the grievance to Step 2 that this "interpretive" issue even arose.

The cases also do not support the proposition that if a Step 2 decision is issued after an appeal has been taken under Article 15.3C, the union is entitled to an automatic victory, as it is effectively seeking here. The NPMHU's invitation to add new consequences on top of negotiated contract language must be declined, for what it seeks is improper and contrary to both the CBA, which prohibits the arbitrator from legislating for the parties, and to customary rules of contract interpretation, which prohibit decision-makers from — under the guise of contract interpretation — rewriting or modifying the parties' negotiated agreement. In addition to the fact that adding these negative consequences would be tantamount to rewriting the parties' contract, it would also encourage games of "gotcha". In short, there would be less incentive to cooperate, which both the NPMHU and the APWU agree is an important part of the grievance-arbitration process. The proposal of the NPMHU to find that additional consequences outside the contract flow from the absence of a Step 2 decision prior to an appeal to Step 3 would therefore not only conflict with the contract itself, but would also be a disservice to the truth and to the mutual cooperation that underlies successful collective bargaining relationships.

In addition, to accept the NPMHU's proposal would be tantamount to granting the Union a default judgment in all discipline cases involving 14-day suspensions–a result the Union has attempted but failed to achieve in bargaining. By seeking in arbitration what it failed to achieve in bargaining, the NPMHU hopes to chip ts way closer to its unachieved bargaining demands from 1993 and 1998. This is improper. *See* Elkouri at 454 ("[A] party may not obtain 'through arbitration what it could not acquire through negotiation'" (quoting Postal Service v. APWU, 204 F.3d 523, 530 (4th Cir. 2000)). Accordingly, the NPMHU's improper, unjustified and contra-contractual request should be denied.

The NPMHU's due process claims are disingenuous and without merit, as the Grievant suffered no harm. Further, no due process violation arises in cases where no Step 2 meeting is held or timely Step 2 decision is issued. The parties anticipated that Step 2 may be bypassed in drafting their agreement and, therefore, the parties provided for a full opportunity to explain their versions of the facts and arguments — including new arguments not raised previously — at Step 3. Although Article 15.3C begins with the phrase, "[f]ailure by the Employer to schedule a meeting," many instances exist where, due to one intervening event or another, it is virtually impossible for the Postal Service to schedule a Step 2 meeting within seven days or for the parties to meet at Step 2 within seven days as required by Article 15.2.Step 2(c). And common experience teaches that from time to time events happen that hinder the scheduling of a Step 2 meeting or someone's attendance at a Step 2 meeting, and one party is unwilling to agree to an extension agreement. To namejust a few examples, the parties' scheduled days off, sick, personal, or annual leave usage, natural or human-caused disasters, traffic problems, business travel, grievance processing, and/or arbitration hearings may make scheduling, or attaining an extension, within seven days difficult, if not impossible. Although the NPMHU is under an obligation to act in good faith, sometimes the Union plays games, as it admittedly did here in refusing to remand the grievance to Step 2.

The NPMHU urges that the opportunity to issue a Step 2 decision is extinguished once the Union has taken an appeal to Step 3 in accordance with Article 15.3C. The NPMHU reasons that once such an appeal has been taken, "jurisdiction" over the grievance resides solely at

Step 3 and no longer resides at Step 2. This artful and hyper-technical argument may make sense in the context of a district court opinion that has been appealed under clearly written jurisdictional statutes and judicial precedent. But it is specious in this context where no provision of the CBA discusses the Union's concept of "jurisdiction," or whether a Step 2 decision can be rendered after an appeal to Step 3 has been taken. Since the parties are expressly permitted to present new facts and arguments at Step 3, it follows that the Postal Service may issue a Step 2 decision after an appeal to Step 3 as a way to provide additional facts and arguments. The NPMHU's "jurisdictional" view, however, would effectively create a forfeiture where no "timely" Step 2 decision is issued. This nonsensical result could not possibly have been what the parties intended and, indeed, the Postal Service rejected such views during the 1993 and 1998 negotiations. Moreover, because "the law abhors a forfeiture," Elkouri at 482, the Postal Service's interpretation, which avoids one, is preferable. *See id.* ("If any agreement is susceptible of two constructions, one of which would work a forfeiture and one of which would not, the arbitrator will be inclined to adopt the interpretation that will prevent the forfeiture").

APWU

The APWU supports the NALC's position that the contractual language is clear in providing that the only instance in which the Postal Service may issue a Step 2 decision is where the parties have mutually agreed to an extension of the contractual time limits set forth in Article 15.2 of the collective bargaining agreements. It makes little sense to ignore the parties' mutual agreement that the only instance in which the Postal Service may hold a Step 2 meeting or issue a Step 2 decision beyond the contractual time requirements is where the parties have mutually agreed to an extension of time. Absent such agreement to extend the time limits, if the Postal Service fails to timely respond, it has forfeited its opportunity to issue a decision on the grievance at Step 2.

The Postal Service claims that the contractual language permits it to issue an untimely Step 2 decision, even where there has been no Step 2 meeting, because the contract is silent regarding the result of the Postal Service's failure to schedule a Step 2 meeting. This argument stretches the imagination and ignores the plain language of Article 15. The contract is not at all silent about the required steps of the grievance procedure, which requires the Postal Service to meet with the Union representative within seven days of receiving the Step 2 appeal. The Step 2 decision does not exist independent of the Step 2 meeting, but must be issued within ten days of the Step 2 meeting. If the Postal Service fails to meet either time limit, then absent an agreement to extend the time limits, Step 2 is over and the grievance is "deemed to move ... to the next Step of the grievance-arbitration procedure."

According to the Postal Service, however, this particular consequence apparently does not preclude it from continuing to treat the grievance as if it remained at Step 2 and the applicable time limits no longer apply. This reading of the contract defies logic and renders the relevant contractual provisions meaningless. If the grievance has moved to the next step of the grievance procedure, then the Postal Service may not continue to treat the grievance as if it remained at Step 2 by issuing an untimely Step 2 decision.

There is no silence or ambiguity regarding the impact of the Postal Service's failure to comply with the contractual time lines. Absent agreement to extend those time lines, the Postal Service may not schedule an untimely Step 2 meeting or issue an untimely Step 2 decision. IV. Accordingly, for the reasons set forth above and at the hearing in this matter, the Arbitrator should sustain NPMHU's grievance and find that, in the absence of a mutually agreed upon extension of time, the Postal Service may not issue a Step 2 decision beyond the time limits prescribed in the parties' collective bargaining agreement.

OPINION OF THE NATIONAL ARBITRATOR

ISSUE

The Parties did not present a joint submission of the issue(s) to be determined in this National-level arbitration case of Case No. 194M-11-C 98072898. In Steps 2, 3 and 4 handling, *supra*, both Parties had framed the issue presented by Grievance No. 194M-11-C 98072898 in straight forward factual terms whether a "Step 2 denial" dated February 19, 1998, of a grievance "deemed moved" to Step 3 on February 4, 1998 because no Step 2 meeting had been timely scheduled by the Employer, was effective to initiate a 14-day suspension on February 21, 1998, under the last sentence of ¶2 of Article 16.5 (formerly Article 16.4) of the USPS/NPMHU National Agreement. However, during the hearing on June 13, 2006, and later in their respective posthearing briefs, Counsel advanced various revisions of the issue formulations customized by artful pleading to better fit preferred theories of the case. At the June 13, 2006 arbitration hearing, the NPMHU proposed the following alternative formulation of the issue: *If the Postal Service fails to schedule a Step 2 meeting on a grievance within the time provided by Article 15.2 of the NPMHU/USPS Agreement (including mutually agreed to extension periods) --thus triggering Article 15.3C, which states that such a failure "shall be deemed to move the grievance to the next Step [i.e., Step 3] of the grievance-arbitration procedure" -- can the Postal Service thereafter issue a Step 2 decision with respect to that grievance?* In its March 21, 2008, post-hearing brief, NPMHU again reformulated its statement of the issue, as follows: *When a grievance properly is "deemed . . .move[d]" to Step 3 of the grievance-arbitration process under Article 15.3C of the National Agreement, based on a "[f]ailure by the [Postal Service] to schedule a [timely Step 2] meeting," may the Postal Service thereafter issue a Step 2 decision with respect to that grievance?*

For its part, the Postal Service initially re-framed its suggested issue as follows: *Does the Collective Bargaining Agreement prohibit the Postal Service from issuing a Step 2 decision if there has been no Step 2 meeting?* In its post-hearing brief, dated March 21, 2008, the Postal Service again reformulated its earlier suggested statements of the issue, as follows: *Does the Collective Bargaining Agreement ("CBA") between the NPMHU and Postal Service prohibit the Postal Service*

from issuing a Step 2 decision if there has been no Step 2 meeting and the NPMHU has appealed the grievance to Step 3 in accordance with Article 15.3C of the CBA?

As the Intervenor, APWU suggested that the following articulation best describes its perspective on the issue presented for determination in this case: *In the absence of a mutually agreed upon extension of time, may the Postal Service issue a Step 2 decision beyond the time limits prescribed in Article 15, Section 2, Step 2.f of the National Agreement between the APWU and the Postal Service?*

After carefully considering the facts and circumstances of this record and the competing formulations, I conclude that none of the foregoing formulations accurately sets forth the only issue fairly presented by the factual record of this case. In that regard, it begs the question to ask whether the Agreement "prohibits" issuing or whether the Postal Service "can" or "may" issue a Step 2 decision after the grievance has already moved on to Step 3, by dint of Article 15.3.C. Rather, the real (and only) question presented by the facts of this particular is case is whether such a belatedly issued Step 2 decision has any contractual validity, force or effect for purposes of the last sentence of ¶2 of Article 16.5. Moreover, the various revised issue formulations proposed by Counsel all openly invite *dicta* and/or arbitral determination of related disputed issues which might or could arise under a different set of facts but which are not adequately presented for determination in this record.

Finally, it must also be noted that the record in the present case squarely presents for arbitral determination only the limited issue of contractual interplay between Articles 15.2 Step 2(c), 15.3.C and the last sentence of 16.5 (16.4 in the previous contract). This case does not properly present any issue concerning the last sentence of Article 15.3.B-- a matter raised *de novo* by the NPMHU at the arbitration hearing. In the present case, the Postal Service asserted no timeliness objections below and the NPMHU never raised any Article 15.3.B waiver argument in any of the moving papers. Black letter law in labor arbitration holds that when written grievances and grievance procedure discussions clearly limit the issues in dispute, arbitrators should foreclose introduction of new claims at the time of the hearing (other than fundamental jurisdictional challenges). *See*, International Paper, 105 LA 970, 974 (Duda, 1996); Mason & Dixon Tank Lines, 94 LA 1225, 1228 (Byars, 1990);

City of Cadillac, 88 LA 924, 925 (Huston, 1987); NLRB Union, 76 LA 450, 456 (Gentile, 1981); Ralston Purina Co., 71 LA 519, 523-24 (Andrews, 1978). Were the rule otherwise, the most basic purpose of the Parties' grievance resolution mechanism--prompt discussion and consideration of issues at informal and earlier stages of the grievance procedure with the goal of resolution short of arbitration--would be frustrated.

Accordingly, I find that the only interpretive issue fairly presented by Case No. 194M-11-C-98072898 for determination in this National-level arbitration case is objectively framed as follows:

> Does a Step 2 decision issued by the Postal Service after the grievance has been progressed **properly** to Step 3 in accordance with the "deemed to move" provisions of Article 15.3.C, **because of** failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), have any validity, force or effect under the last sentence of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement?[3]

DECISION

The Postal Service quite correctly points out that the NPMHU bears the burden of proving its grievance claim in this case by a persuasive preponderance of record evidence. *See* Postal Service and Nat'l Rural Ltr. Carrier's Assoc., Case No. E95R-4E-C 99099528, at 19 (Nat'l Arb., Jan. 12, 2003: Eischen, Arb.) ("The charging party in a grievance over interpretation and application of a contract bears the burden of proving, by a preponderance of the record evidence, that the responding party violated the agreement in some fashion"; *see also* Postal Service andNat'l Rural Ltr. Carrier's Assoc., No. Q95R-4Q-C 02101253 (National Arb., May 15, 2006: Eischen, Arb.): "[I]t is well-established that the charging party in a nondisciplinary grievance bears the burden of proof, by a

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[3] My use of the emphasized conjunctive phrase *"because of failure by the Employer to schedule a Step 2 meeting"* tracks the literal language of Article 15.3.C and posits the undisputed fact that in this particular case no intervening event and no delay, default or dereliction by the employee or the Union caused or contributed in any way to the Employer's failure to schedule a Step 2 meeting within the time required by the Agreement. Similarly, my use of the emphasized adverb in *"progressed properly to Step 3 in accordance with the 'deemed to move' provisions of Article 15.3.C"* serves to skirt the significant dispute between the Parties (not fairly presented by the facts of this particular case) of how a grievance progresses contractually from Step 2 to Step 3 under the "deemed to move" provision of Article 15.3C (*"automatically"*, as the NPMHU would have it, or only through the filing of *"a formal appeal"*, as the Postal Service would have it). Thus, determination of the of the issue set forth in the foregoing formulation resolves the specific controversy presented in this case but preserves for possible arbitral resolution at a later date, hopefully in an appropriate case with an adequately informed record, the respective positions of the Parties on these various other potential but currently inchoate issues.

preponderance of the record evidence, that the responding party violated the parties' agreement as alleged in the grievance(s)" (citing cases).

The arbitrator's primary goal must be to effectuate the intent of the parties, which ordinarily is best ascertained from the plain words used in their collective bargaining agreement to express their bargain. Even when the parties to an agreement disagree on what was intended by disputed contract language, an arbitrator who finds the language to be unambiguous will enforce its plain meaning. *See* Safeway Stores, 85 LA 472, 476 (1985) (Thorp); Metropolitan Warehouse, 76 LA 14, 17-18 (1981) (Darrow). Arbitrators and courts alike presume that understandable language means what it says, despite the contentions of one of the parties that something other than the apparent meaning was intended. Independent School Dist. No. 47, 86 LA 97, 103 (1985) (Gallagher). Thus, it is a maxim of contract construction that an arbitrator cannot properly eviscerate the contract by ignoring clear-cut contractual language nor usurp the role of the labor organization and employer by legislating new language under the guise of interpretation. Clean Coverall Supply Company, 47 LA 272, 277 (Fred Witney, 1966). *See also,* Continental Oil Company, 69 LA 399, 404 (A. J. Wann, 1977) and Andrew Williams Meat Company, 8 LA 518, 524 (A. J. Chaney, 1947).

The following language of Article 15.3.C first appeared in the 1978 National Agreement and has appeared *in haec verba* in every National Agreement since that time:

> 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.

In a National Arbitration award issued shortly after that contractual provision (in its current form) appeared in 1978, Arbitrator Richard Mittenthal construed the language of Article 15.3C, as follows (USPS and NALC Case N8-NAT-0006, p.7):

> [T]he parties wrote into the present grievance procedure that a grievance will automatically move to the next step where there is a "failure by the Employer to schedule a meeting . . . in any of the Steps . . . within the time herein provided. . ." **The Postal Service has an obligation to schedule a Step 3 meeting once a proper appeal has been taken from a Step 2 decision. But that obligation pertains strictly to time constraints**.(emphasis added).

The use of the disjunctive "or" in the grammatical construction of Article 15.3.C makes it clear that a procedural failure by the Employer to schedule a [timely Step 2] meeting carries the same consequence as a failure of the Employer to render a [timely Step 2] decision-- *i.e.*, a timeliness failure by the Postal Service of *either* specified kind "shall be deemed to move the grievance to [Step 3] of the grievance-arbitration procedure."[4] Further, under that express wording, it is also clear that the catalyst for an Article 15.3.C "deemed to move" progression of a grievance from the current step to the next step of the grievance-arbitration procedure is a "[f]ailure by the Employer" to fulfill its contractual obligation to initiate one or the other of those two specified procedural actions in a timely manner at the current step.[5]

The bottom line question presented by this grievance and this factual record is whether the Parties mutually intended that a Step 2 decision "rendered" belatedly by the Employer, some two weeks after the grievance was "deemed to move" properly from Step 2 to Step 3 under Article 15.3.C, because the Employer had failed to timely schedule the Step 2 meeting, has any validity, force or effect for the purpose of requiring the Grievant to begin serving a fourteen-day disciplinary suspension that had been tolled, pending rendition of the Step 2 decision, by the following express language in the last sentence of ¶2 Article 16.5 of the National Agreement: " [I]f the Union or the employee initiates a timely grievance prior to the effective date of the action and if the grievance is timely appealed to Step 2, the grievant shall not begin to serve the suspension until after the Step 2 decision has been rendered". The undisputed facts of record and the plain words of the Agreement language persuade me that the Union carried its initial burden of making out a *prima facie* showing that the contracting Parties mutually intended no such thing.

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[4] At the risk of redundancy, I reiterate previous disclaimers that no opinion is expressed or implied in this decision on the countervailing positions of the Parties regarding whether filing a formal Step 3 appeal is a contractual necessity when a Step 2 grievance is"deemed to move" to the next Step of the grievance-arbitration procedure under the provisions of Article 15.3.C.

[5] *See also* page 5, footnote 4 of the NPMHU brief, *viz.*, "the NPMHU readily acknowledges that 'if there has been no Step 2 meeting' on a grievance owing to a failure of some kind on the NPMHU's part—for example, the failure by a Union representative to attend a Step 2 meeting timely scheduled by the Postal Service—the Service would ***not*** on account of that NPMHU failure be precluded from issuing a Step 2 decision on the grievance". (Emphasis in original).

Those undisputed facts of record in this case show that the Union or employee timely initiated the grievance and timely appealed the grievance to Step 2, that the Employer failed to timely schedule the Step 2 meeting and that the Employer "rendered" the Step 2 decision long after the grievance had been properly progressed to Step 3. The Postal Service responds that an untimely Step 2 decision issued in the absence of a Step 2 meeting and after the grievance is at Step 3 has the same force and effect under Article 16.5 as a timely issued Step 2 decision rendered after a timely Step 2 meeting because neither Article 15.2 nor 15.3 expressly state that a Step 2 decision belatedly rendered after the grievance has been progressed to Step 3 has no force and effect under the last sentence of ¶2 of Article 16.5 and because the last sentence of ¶2 of Article 16.5 does not expressly state that to have force and effect for the purpose of that sentence the Step 2 decision referenced therein must have been timely rendered before the grievance was progressed to Step 3. The Employer's "lack of express language" theory is misplaced and unpersuasive because it stands logic, reason and the so-called "plain-meaning rule" on its head.

The lack of such express disclaimer(s) is not fatal to the Union's grievance because the necessary implication of the cited Agreement provisions is that a Step 2 decision must be timely rendered while the grievance is still at Step 2 to have contractual validity, force and effect for the purpose of the last sentence of ¶2 of Article 16.5. Courts and arbitrators routinely recognize that it is proper and fitting to give effect to the manifest intent of contracting parties plainly evidenced in the "necessary implications" of their express contract language.[6] Such judicious inference of mutual intent founded in the logical, reasonable, natural and necessary implications of express contract language is readily distinguishable from improper arbitral rewriting of the Agreement.[7]

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[6] Indeed, discernment of mutual intent through necessary implication is particularly appropriate in the interpretation and application of a collective bargaining agreement, which is "more than a contract; it is a generalized code to govern the myriad of cases which the draftsmen cannot wholly anticipate. . .The collective agreement covers the whole employment relationship." United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578-82, 80 S.Ct. 1347, 46 LRRM 2416 1960, citing, at 363 U.S. 579 n.6, Cox, "Reflections Upon Labor Arbitration", 72 Harvard. L. Rev. 1482, 1498-99 (1959).

[7] *See* USPS and NALC/APWU (Intervenor) Case H4N-3U-C-58637/H4N-3A-C-59518, National Award, (Mittenthal, Arb., August 3, 1990) and USPS and NALC Case G9ON-4G-D93040395, National Award, (Mittenthal, Arb., August 18, 1994).

Experienced practitioners and arbitrators understand that a collective bargaining agreement is not (and cannot reasonably be expected to function as), an ersatz "Napoleonic Code"; addressing in express language every consequence and contingency that flows logically from agreed-upon contractual provisions. For example, it would be odd indeed if the parties to this collective bargaining agreement had found it necessary to specify expressly in Articles 15.3.C. or 16.5 that they did not mutually intend that the Employer could circle back unilaterally to Step 2, after the grievance was properly progressed to Step 3, to issue a belated Step 2 decision it had failed to render in a timely manner when the grievance was at Step 2 for the purpose of requiring a grievant to start serving a 14-day disciplinary suspension which had been tolled pending rendition of the Step 2 decision. To the contrary, the reasonable, logical and necessary implication of the plain language of Articles 15.3.C and 16.5 is that a Step 2 decision must be rendered in a timely manner and before the grievance is progressed properly to Step 3 to have any validity and contractual force or effect under the last sentence of ¶2 of Article 16.5.

Although obviously not binding in this National Arbitration, the decision of the United States Court of Appeals for the Second Circuit in Eastman Kodak Co. v. STWB, Inc., 452 F.3d 215 (2d Cir. 2006), which was rendered shortly after the hearing in this case, lends strong support to this common sense reading of Articles 15.3C and 16.5. The Eastman Kodak decision involved an ERISA regulation adopted by the United States Department of Labor ("DOL")—dubbed the "deemed exhausted" provision/regulation by the Second Circuit—which provides in full:

> In the case of the failure of a[n] [ERISA] plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

[*See id.* at 221 (quoting 29 C.F.R. § 2560.503-1(*l*)).]

The Second Circuit agreed with the DOL that the "deemed exhausted" regulation properly was interpreted to foreclose the defendant ERISA plan from "effectively 'undeem[ing]' exhaustion by enacting, for the first time, procedures that complied with the claims regulation after [plaintiff] filed suit and after failing to offer an appropriate procedure in the many months preceding

[plaintiff's] lawsuit." *Id.* at 222 (emphasis added). As the appellate court succinctly put it, "[g]iving retroactive effect to a plan amendment in these circumstances . . . *plainly conflicts with the 'deemed exhausted' regulation.*" *Id.* (emphasis added). And, as the appellate court added: "The 'deemed exhausted' provision was plainly designed to give claimants faced with inadequate claims procedures a fast track into court—*an end not compatible with allowing a 'do-over' to plans that failed to get it right the first time.*" *Id.* (emphasis added). Applying that reasoning to the facts of this case, to allow the Postal Service a unilateral "do-over" of Step 2, after a grievance properly has been progressed to Step 3 under the "deemed to move" provision of Article 15.3C of the National Agreement, because of the Postal Service's failure to get the contractually-required Step 2 procedures right the first time, would plainly conflict with the mutual intent of the Parties, as manifested in the plain language and the logical, reasonable and necessary implications of Articles 15.2, Step 2 (c), 15.3.C and the last sentence of ¶2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement.

In my considered judgement, the Union carried its ultimate burden of persuasion in this case that a Step 2 decision issued after the grievance has been "deemed to move" properly to Step 3, by dint of Article 15.3.C, lacks contractual validity, force or effect to implement a 14-day suspension under the last sentence of ¶2 of Article 16.5 (formerly 16.4) of the National Agreement.

USPS/NPMHU NATIONAL ARBITRATION PROCEEDINGS

Case No. 194M-11-C-98072898

AWARD OF THE IMPARTIAL ARBITRATOR

1) A Step 2 decision issued by the Postal Service after the grievance has been progressed **properly** to Step 3 in accordance with the "deemed to move" provisions of Article 15.3.C, **because of** failure by the Employer to schedule a Step 2 meeting within the time provided in Article 15.2 Step 2 (c) (including mutually agreed to extension periods), has no validity, force or effect under the last sentence of ¶ 2 of Article 16.5 (formerly 16.4) of the USPS/NPMHU National Agreement.

2) Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the meaning, application or implementation of this Award.

Dana Edward Eischen
Signed at Spencer, New York on January 9, 2009

STATE OF NEW YORK
COUNTY OF TOMPKINS } SS:

On this 9th day of January 2009, I, DANA E. EISCHEN, hereby affirm and certify, upon my oath as Arbitrator, that I am the individual described herein, that I executed the foregoing instrument as my Award in this matter and acknowledge that I executed the same.

AWilkinson:km:01/23/90
bcc: Mr. Mahon
Mr. Downes
Mr. Furgeson
Mr. Evans
Mr. Vegliante
Mrs. Butler
Field Directors, HR
Regional Manager, LR
Distribution List
Postmaster
KM Doc. No. 4509

DOCUMENT TYPE: STPFOUR
UNION: AMERICAN POSTAL WORKERS UNION **CONTRACT YEAR:** 1984
ARTICLE: 16
SECTION: 05
01
CREATE DATE: 07/17/91

Mr. Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H4C-3S-D 44197
D. Dowd
Opa Locka FL 33054

Dear Mr. Tunstall:

On July 16, 1991, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance concerns the time limits an employee must meet in order to grieve a proposed removal action:

As a result of our discussion, we mutually agreed to close this case based on the following understanding:

1. For the purpose of grievance procedure appeals, the time limits of Section 2 of Article 15 of the National Agreement shall run from the proposed removal notice, not from any decision letter on the proposed notice.

2. Once a notice of proposed removal is grieved, it is not necessary to also file a grievance on the decision letter. Once a grievance on a notice of

proposed removal is filed, it is not necessary to also file a grievance on the decision letter.

3. Receipt of a notice of proposed removal starts the 30 day advance notice period of Section 5 of Article 16 of the National Agreement.

Tunstall 2

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to close this case.

Time limits were extended by mutual consent.

Sincerely,

Kathleen Sheehan
Grievance and Arbitration
Division

Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date:_____

bcc: Postmaster
Southern Region
Article Code ...16-05-01 CLOSE
Issue Code ...
Subject, Reading, Computer
LR410:KSheehan:rb:17-Jul-1991:OCA Computer Input
ALL-IN-ONE
RB Doc. No.1781

NEW DISCIPLINE PROGRAMS

DOCUMENT TYPE: PREARB
UNION: NATIONAL ASSOCIATION OF LETTER CARRIERS
CREATE DATE: 12/05/91

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7N-1P-C 17979
M. Herbert
Corona Del Mar, CA 92625

Dear Mr. Hutchins:

Recently we met to discuss the above-captioned grievance currently pending national level arbitration.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: B. Leszczynski
Des Plaines, IL 60018
H4N-4A-D 30730

Dear Mr. Hutchins:

On October 26, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the day of receipt of a notice of discipline should be included as part of the required minimum period of notice to the employee.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that for purposes of computing the period of notice required in advance of the imposition of various disciplinary measures, such notice period shall be deemed to commence on the day following the date upon which the letter of notification is received by the employee.

Accordingly, we agreed to remand this case to the parties at Step 3 for further consistent with the above, processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Arthur S. Wilkinson
Grievance & Arbitration
Division

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
Date 2/5/89

NC NA-8580
Garrett 9/29/78

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

CASE NO. NC-NAT-8580

INTERPRETATION OF ARTICLE XVI, Section 3, of the 1975 National Agreement

ISSUED: September 29, 1978

BACKGROUND

This national level grievance involves interpretation of the last sentence of Section 3 of Article XVI in the 1975 National Agreement. Relevant portions of Article XVI include: 1

"ARTICLE XVI
DISCIPLINE PROCEDURE

"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.

. . . . . .

"Section 3. Suspensions of More Than 30 Days or Discharge. In the case of suspensions of more than thirty (30) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him 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 his 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 his suspension of more than thirty (30) days or his discharge to the Civil Service Commission rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of his case has been had either by settlement or through exhaustion of his Civil Service appeal. When there is reasonable cause to believe an employee guilty of a crime for which a sentence of imprisonment can be imposed, the advance notice requirement shall not apply and such an employee may be immediately removed from pay status.

"Section 4. 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 himself or others. The employee shall remain on the rolls (non-pay status) until disposition of his case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge him, the emergency action taken under this Section may be made the subject of a separate grievance."

(Underscoring added.)

The basic problem here is whether, when (1) an employee has been suspended indefinitely because the USPS has reasonable cause to believe the individual is guilty of a crime for which imprisonment may result and (2) the criminal charge later is dropped or the employee found not guilty, the employee, upon reinstatement, properly can be made whole for earnings lost during the period of suspension. In order to define the problem more clearly, the parties have presented a specific grievance from Cleveland. There Grievant M-, a long service Carrier with an unblemished record, was 2

indicted for allegedly having had sexual relations with two young girls (ages 12 and 11). Upon learning of the indictment the Service sent M- a notice of removal on March 16, 1977 reading, in relevant part--

> "This is notice that it is proposed to remove you from the Postal Service no earlier than 72 hours from the time you receive this notice. There is reasonable cause to believe you are guilty of a crime for which a sentence of imprisonment can be imposed."

On March 17, 1977 M-'s attorney wrote the Service 3
stating that there was no actual evidence to indicate M- had committed any crime other than statements of the two young girls and attaching (1) results of a lie detector test which a professional polygrapher deemed to show M- to be innocent of the charges, and (2) other evidence calculated to establish M-'s innocence. M- nonetheless was removed from duty as of March 23 with the advice that he would remain on non-duty, non-pay, status pending disposition of his case. In subsequent processing of the grievance the Union unsuccessfully urged that M- should be assigned to temporary Clerk duties, on any shift, until his trial occurred. The June 10, 1977 USPS denial of the grievance in Step 2-B recited that the placing of M- in non-duty, non-pay, status had been for "just cause."

Meanwhile, M- had been found not guilty on May 21, 1977 and the USPS promptly advised of his acquittal. He was not returned to active duty until June 2, 1977, however, because the USPS insisted upon receiving formal notice of the verdict, signed by the Judge. The grievance accordingly protests the loss of pay during M-'s suspension up to June 2, 1977. The Union does not concede, however, that such suspension was for just cause and does not here seek any ruling on this aspect of the grievance. In other words, for purposes of shaping the issue in this case, the Union does not contest the USPS assertion that initially there was "just cause" for M-'s suspension, but reserves the right to continue to press that contention, if necessary, depending upon the outcome of the present case. 4

In urging that M- should be made whole for lost earnings for the entire period of his suspension, the NALC places great weight upon a May 31, 1977 decision of Associate Impartial Chairman Fasser in Grievance No. AC-S-9758 (herein called the Williams case) where (following arrest on a marijuana charge) the employee had been suspended for more than 11 months until he was found not guilty. The Associate Impartial Chairman granted a "make whole" remedy for earnings lost during the period of the suspension, stating that the last sentence of Article XVI, Section 3 served only to eliminate the advance 30-day notice requirement in such a situation, and that since there was no showing of "just cause" for the suspension, the Grievant should be made whole, as contemplated in the introductory paragraph of Article XVI. 5

On August 1, 1977 NALC President Vacca wrote the Senior Assistant Postmaster General, Employee and Labor Relations, stating: 6

> "It has come to my attention that the Postal Service has decided to ignore the agreed-upon precedential effect of Associate Impartial Chairman Paul J. Fasser's Award in Case No. AC-S-9758 (Curtiss Williams, Birmingham, Alabama), and that it continues to maintain that Article XVI, Section 3, last sentence, and Section 4, provide that the Postal Service is excused from all back pay liability stemming from indefinite and emergency suspension actions, notwithstanding the fact that the Postal Service cannot later establish that the discipline imposed was for 'just cause.'
>
> "NALC disagrees with that Postal Service interpretation of Article XVI, Sections 3 and 4, and contends instead, as Associate Impartial Chairman Fasser found (and as so approved by Impartial Chairman Garrett) that those sections of Article XVI deal only with the question of notice and thus do not insulate the Postal Service from back pay liability as a result of indefinite or emergency suspension actions where the Service cannot establish just cause

> for discipline imposed. Accordingly, based on the foregoing, I am forced to conclude that there exists 'a dispute between the union and the employer as to the interpretation of [the] Agreement' within the meaning of Article XV, Section 2, last paragraph. I, therefore, hereby institute that dispute as a grievance at the National Level and request an immediate Step 4 meeting to attempt to resolve the same."

After a meeting on September 6, the USPS replied to President Vacca by letter of September 15, 1977, stating in part: 7

> "It is our position that the award issued by Arbitrator Paul J. Fasser, Jr. under date of May 31, 1977, addressed itself to the particulars in the case before him in arbitration (AC-S-9758), and that the award set forth what he considered to be the appropriate remedy to be granted based on those particulars."

At the hearing herein, the parties briefly outlined the facts in another grievance (which is being held in abeyance in the grievance procedure) as a further aid in developing a practical context for interpreting Article XVI, Section 3. In this other grievance another long service Carrier was arrested for the rape-murder of a customer on his route, with 8

a great deal of resultant local publicity. The arrest occurred on September 27, 1977 and the Service advised him on September 29 that it planned to suspend him pending investigation. On October 3 the Carrier was suspended indefinitely effective October 8, 1977. Later he was indicted and was awaiting trial at the time of the arbitration hearing in the present case. Meanwhile the grievance had been filed protesting his suspension, and it ultimately was appealed to arbitration. The Union nonetheless would not agree to proceed with an arbitration hearing until disposition of the rape-murder charges. Its position on this matter was made clear in a March 18, 1978 letter to General Manager Frost of the USPS Arbitration Division (on still another case) reading:

> "This replies to your March 13, 1978 letter concerning the above-referenced grievance. In that letter you indicate that, in the opinion of the Postal Service, the Union's request not to have that case heard in arbitration on February 23, 1978 (because the grievant is under criminal indictment for charges identical to those cited in the removal) constitutes a termination of any possible financial liability of the Postal Service beyond that date.
>
> "NALC disagrees with that Postal Service position and will oppose the same if it is raised at any future arbitration hearing

> in the case. Furthermore, because the grievant is under criminal indictment for charges identical to those on which his removal is based, NALC will not agree to schedule that case for hearing prior to the resolution of the criminal charges. That refusal is based on what the Union considers is its duty to fairly represent the grievant and because exposing the grievant to an arbitration hearing prior to resolution of the criminal charges could have an adverse impact on his Constitutional rights associated with that process."

Article XVI, Section 3, appeared in its present form in the National Agreement between USPS and the Postal Worker Unions, effective July 20, 1971. This was the first collectively bargained agreement between the parties subsequent to enactment of the Postal Reorganization Act of 1969. 9

In the 1968 Agreement between the Post Office Department and the Unions, Article X had set forth detailed procedures governing "Adverse Action" against employees with right of appeal through Departmental procedures or to the Civil Service Commission. There was no provision for binding arbitration and the decision of the Department's Board of Appeals and Review was final (except for "appeal for a court ruling"). Article X, Section C stated: 10

"Whenever it is proposed to take adverse action against an employee the responsible official must determine that it is for such cause as will promote the efficiency of the service. The letter of proposed adverse action must state specifically and in detail the reasons for the action thereby affording the employee a fair opportunity of offering refutation to the charges."

(Underscoring added.)

Article X, Section D of the 1968 Agreement included the following under the caption "Duty Status During Notice Period": 11

"1. Employees against whom adverse action is proposed shall be retained in an active duty status during the notice period except when the circumstances are such that the retention of an employee in an active-duty status during the notice period may result in damage to Government property, or loss of mail or funds, or may be injurious to the employee, his fellow workers, or the general public. The employee may then be temporarily assigned to duties in which these conditions will

not exist or placed on leave with his consent. In an emergency case when because of the circumstances described in this paragraph the employee cannot be kept in an active-duty status during the advance notice period, the employee may be suspended without his consent.

"2. This is a separate adverse action and the employee is entitled to a letter informing him of the reasons for his suspension, his right of reply and the time limit. An employee may be placed in a nonduty status with pay for such time, not to exceed five working days, as is necessary to effect his suspension. In the emergency case, the employee must receive at least a 24-hour notice of his suspension."

(Underscoring added.)

A great deal of additional background material was presented at the hearing but need not be recited here, since adequately noted in the development of the parties' arguments. 12

THE USPS ANALYSIS

The basic USPS position here seems to be that the "reasonable cause" language in the last sentence of Article XVI, Section 3, had such a clearly established meaning in Federal personnel law, when it was embodied in the 1971 National Agreement, that the negotiators either knew or should have understood that they in effect were adopting that meaning. It thus should follow that whenever the Service has reasonable cause for such an indefinite suspension in a "crime case" there can be no back pay obligation even if the employee ultimately is found not guilty. 13

The USPS recitation of relevant background in support of this position starts with the Veterans' Preference Act of 1944. The Congress there provided that adverse actions--such as an indefinite suspension--could be taken against "preference eligibles" (as defined in the Act) only "for such cause as will promote the efficiency of the service" 5 U.S.C. §7512. Title 5 of the U.S. Code contemplates that rules and regulations promulgated by the Civil Service Commission thereunder would have the force of law, binding upon the heads of Federal agencies. 14

The 1944 Act includes a provision that-- 15

> "(b) A preference eligible employee against whom adverse action is proposed is entitled to--

> "(1) at least 30 days' advance written notice, except when there is reasonable cause to believe him guilty of a crime for which a sentence of imprisonment can be imposed, stating any and all reasons, specifically and in detail, for the proposed action." (5 U.S.C. § 7512)

From 1944 forward, this legislation covered all "preference eligible" Postal employees.

By Executive Order 11491, President Nixon extended these rights to all Federal employees effective January 1, 1970. This included the right of any employee "in the competitive service" to appeal an adverse action to the Civil Service Commission and required that any recommendation by the Commission resulting from such an appeal "be complied with by the head of the agency." As of January 1, 1970, therefore, the Civil Service Commission rulings and regulations in respect to adverse actions became applicable to all Postal employees in the competitive service. 16

The USPS evidence includes an excerpt from the Federal Personnel Manual (FPM) under date of November 18, 1963, which includes under "Exceptions to Notice Requirements": 17

"b. Criminal conduct. In cases where reasonable cause exists to believe that the employee is guilty of a crime for which a sentence of imprisonment can be imposed, the employee need not be given the full 30 days' advance written notice, but must be given such less number of days' advance notice and opportunity to answer as under the circumstances is reasonable and can be justified. If the adverse action is appealed, the agency action with respect to such shorter length of notice will also be reviewed."

The Service also cites excerpts from FPM Supplement 1P 752-1 dated February 14, 1968 which include the following passages:

" ... SEC. 752.202(c) Exceptions to notice period and opportunity to prepare answer. (1) Advance written notice and opportunity to answer are not necessary in cases of furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.

(2) When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be

imposed, the agency is not required to give the employee the full 30 days' advance written notice, but shall give him such less number of days' advance notice and opportunity to answer as under the circumstances is reasonable and can be justified. ...

"a. '... in cases of furlough without pay due to unforeseeable circumstances ...' This provision is intended for use in situations when the department or agency concerned is powerless to avoid a sudden and unexpected general work stoppage. If it is utilized, the agency should be prepared to show that the stoppage was brought about by conditions which could not be changed by any level of government management having responsibility for the activity concerned. While this provision waives the advance notice requirement, other provisions of the regulations, including the right of appeal, continue to apply.

"b. ' ... When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed ...' (1) This provision is concerned solely with what is required in the way of advance notice and opportunity to answer in cases in which the stated condition exists; it does not deal with the problem of the employee's work status during whatever advance notice period is determined to be appropriate.

"(2) The chief difficulty in construing and applying this provision is to know what the words 'a crime for which a sentence of imprisonment can be imposed' actually intend. (This is the language which appears in the statute.) The word 'crime' has sometimes been used to designate a gross violation of law, as distinguished from a relatively minor infraction. On the other hand, it has also been held to apply in its broadest sense to any violation of law which is punished by a criminal prosecution. Thus, in general, it appears that an agency would be technically correct in invoking the 'crime' provision in any case when there was reasonable cause to believe the employee guilty of some conduct for which he could be sentenced by appropriate civil authority (Federal, State, county or municipal) to be imprisoned for some period of time, however short. Nevertheless, if the agency has any doubt about whether a 'crime' for which a 'sentence of imprisonment' can be imposed is involved, it ordinarily would be the better practice to resolve this doubt in favor of the employee. (Agencies should keep in mind that there are other provisions for placing an employee in a nonduty status during an advance notice period of 30 days, and that it would probably be sounder to invoke the 'crime' provision on the basis of actual need rather than mere availability. This does not mean, of course, that an agency does not have the right to proceed on the latter basis if it so desires.)

"(3) If an agency determines that it should invoke this regulatory provision, the question remains about what 'less number of days' advance notice and opportunity to answer' should be given the employee. This can be decided only on the basis of all the facts and circumstances of each individual case. Some considerations which might well enter the picture are:

(a) The gravity of the alleged crime and the conclusiveness of the evidence that the employee committed it.

(b) The minimum time that actually will be needed to afford the employee a reasonable opportunity to answer both personally and in writing.

(c) The probable reaction of the press and the public to information that the alleged perpetrator is still being carried on the agency's rolls as an employee."

Reference is made by the Service, also, to an FPM excerpt dated October 26, 1970, but this seems not to add anything to the foregoing excerpts. Nothing in any Civil Service ruling or regulation as of 1970 or early 1971 has been cited in the present case to indicate, in specific 19

language, that an employee suspended without pay under the "crime provision" either would or would not be entitled to be made whole for lost earnings if ultimately found not guilty or otherwise vindicated. The Service also cites FPM excerpts dated December 21, 1976, April 12, 1972, October 26, 1970, October 11, 1976, and February 4, 1972 providing detail as to Civil Service Commission policies up to the present.

Also in evidence are 4 recent decisions by the Federal Employee Appeals Authority (under the Civil Service Commission), 2 of which involve Postal Service employees. The Opinions in each case (January 12, 1977 and February 25, 1976) include substantially the same passages, reading: 20

> "In instances where the agency has reasonable cause to believe that an employee is guilty of an offense for which a penalty of imprisonment can be imposed, it can invoke the 'crime' provision which allows the agency to give an employee less than thirty days advance written notice of adverse action, and which also provides a basis for indefinitely suspending an employee pending investigation. In this connection, Section S5-3(b)(3) of the Federal Personnel Manual (FPM) Supplement 752-1 provides, in pertinent part, that an agency cannot invoke the 'crime' provision solely on evidence that the employee was arrested. However, if the agency has evidence

that the employee was arrested and was held for further action by a magistrate or was indicted by a grand jury, the agency would have reasonable cause for believing the employee guilty of a crime.

"In this case, the record reflects that the appellant was arrested on September 24, 1976, by the Pensacola Police Department and was charged with three (3) counts of forgery. In light of the fact that the appellant was arrested and held for further legal action, we find that the agency had reasonable cause to believe him guilty of a crime for which a penalty of imprisonment could be imposed; and that such belief provided a proper basis for the agency's decision to indefinitely suspend the appellant pending investigation. Therefore, we find the reasons stated for the proposed indefinite suspension to be sustained.

IV. DECISION

"In our view, the indefinite suspension, based on the sustained reasons, is neither arbitrary, capricious, or unreasonable; and is for such cause as will promote the efficiency of the service. Accordingly, the agency's decision is affirmed.

"Civil Service Regulation 772.309(b) provides that decisions of the Federal Employee Appeals Authority are final and that there is no further right of administrative appeal."

(Underscoring added.)

The USPS also cites a 1976 decision by the U.S. Court of Claims, Jankowitz vs. U.S. (533 F. (2d) 538). There an employee's indefinite suspension without pay by HUD was held proper when the employee was indicted for accepting payments to influence his official acts as an appraiser for HUD. More than 14 months after the suspension was imposed, the employee was acquitted of all charges. His claim for back pay for this period, on motion for summary judgment, was denied. The Court concluded, as to this aspect of the case: 21

> "In our estimation, plaintiff's employer followed the FPM scrupulously, including adopting an advance notice of proposed indefinite suspension almost identical to that set out as an example in FPM Supp. 752-1, sample form B-7. Since we find that the Government in fact followed applicable procedural recommendations and safeguards in the FPM, we do not agree that plaintiff's indefinite suspension without pay was either unjustified or unwarranted. This much of plaintiff's claim for back pay must fail."
>
> (Underscoring added.)

Finally, the USPS presented testimony by a witness who had served as Appeals Examiner and Supervisory Appeals Examiner for the Postal Service Board of Appeals and Review during 1969 through 1971. He confirmed that over the period 22

of his knowledge Postal employees frequently had been suspended indefinitely when there was reasonable cause to believe them guilty of a serious crime and that back pay was not awarded where an employee ultimately was found not guilty.

THE NALC ANALYSIS

The Union relies essentially on the precise language of Article XVI. The initial paragraph thereof permits discipline only for "just cause" and its last sentence leaves no doubt that, where a disciplinary suspension or discharge is found not to have been for "just cause," an award of back pay may result in arbitration. Thus, says the Union, the last sentence of Article XVI, Section 3 serves only to provide an exception to the 30-day notice requirement which otherwise would apply. Here it cites the May 31, 1977 Opinion of Associate Impartial Chairman Fasser in the Williams Case where the Opinion noted that the matter of remedial back pay was dealt with "clearly and completely" in the introductory paragraph of Article XVI. In the case before Associate Chairman Fasser the employee had been suspended indefinitely simply because he had been arrested on a marijuana charge. There had been no indictment nor had the Grievant been held for further proceedings after a magistrate's hearing. Given these facts, the Associate Chairman concluded that-- 23

" ... it is clear no proper cause for the grievant's discharge has been shown, so that he is presumptively entitled to be made whole for lost earnings in the absence of some cogent reason for denying him such back pay.

"The last sentence of Article XVI, Section 3 does not provide such a cogent reason, since it serves only to provide an exception to the 'advance notice requirement' established in the first sentence of Section 3."

The NALC urges that the history of the last sentence 24
of Article XVI, Section 3 fully supports the interpretation embraced in the Williams case. The Postal Reorganization Act preserved for Postal Workers certain rights which they had as conventional government employees. In Section 1005(a)(2), indeed, Congress provided that "preference eligible" employees would retain their rights under the Veterans Preference Act and that those rights could not be changed by collectively bargained agreements. Those rights included procedural protections in "adverse actions," such as the 30 days' advance written notice requirement except "when there is reasonable cause to believe" the employee guilty of a crime "for which a sentence of imprisonment can be imposed."

This last exception, or proviso, under Section 25
7512(b)(1) of the Veterans Preference Act, says the NALC, was not intended to mean that the "adverse action" ipso facto

was for proper cause--its obvious and only purpose was to relieve the agency of the need to meet the procedural requirement of giving the full 30 days of advance notice. The NALC cites legislative history to support this view.

It was against this background that Article XVI, Section 3 was adopted in the 1971 National Agreement and continued unchanged in the 1973 and 1975 National Agreements. Indeed, by Executive Order 11491, the procedural protections afforded "preference eligibles" in adverse actions had become applicable to all Postal Workers as of January 1, 1970. When the Postal Reorganization Act was adopted early in 1971, therefore, it should have been reasonably apparent that similar protections might be embodied in any collective bargaining agreements which might ensue. Moreover, says the NALC, all Civil Service Commission Regulations since 1971 continue to make clear that the 30-day notice provision, and its exceptions, represent "procedural requirements" only. On this score it emphasizes a provision in the 1976 FPM Supplement dated October 11, 1976. This Subchapter 3 covers the subject "Merit of Adverse Action" and Part S3-2 thereof reads, under the heading "Insufficient Cause": 26

> "a. Pitfalls to avoid. Agencies should be alert to avoid such errors as the following:
>
> (1) Cause based on fact of arrest. Generally, the mere fact that an employee was arrested for a crime does not provide a cause for taking adverse action against

the employee, even though the evidence of the arrest is fully recited and established. The employee may be innocent of the crime for which he was arrested. The agency action should be based, not on the fact of the arrest, but on the misconduct that led to the arrest, if there is sufficient evidence to prove misconduct or warrant suspension pending further investigation.

"(2) Cause based on criminal indictment. Except when the agency suspends an employee indefinitely pending disposition of a criminal action, the agency should not base an adverse action on a criminal indictment or conviction. Instead, the agency should base the action on what the employee did that was wrong. If the cause relied on is a criminal indictment or conviction, then a subsequent acquittal of the employee or a dismissal of the criminal charge would, in effect, vacate the cause for action. However, if the cause relied on is the employee's acts of wrongdoing, generally the administrative action will not be affected by the subsequent court action on the criminal case (see S7-1c(2))."

(underscoring added.)

FINDINGS

This is the first case since negotiation of Article XVI in 1971 in which the parties have made complete presentations concerning the authority of an Arbitrator to award remedial back pay to an employee suspended in a "crimes case" and later found not guilty. The Opinion of Associate Impartial Chairman Fasser in the Williams case included the following pertinent paragraphs: 27

> "Article XVI, Section 3 deals with the giving of notice when an employee is discharged or suspended for more than 30 days. Any such employee is entitled to 30 days advance notice of the suspension and discharge, unless there is 'reasonable cause' to believe the employee is guilty of a crime 'for which a sentence of imprisonment can be imposed.'
>
> "Nothing in Article XVI, Section 3 (or Section 4) deals in any way with the matter of remedial back pay in a case where an employee has been suspended or discharged without proper cause. This matter is clearly and completely treated in the introductory paragraph of Article XVI, which declares:

'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.'

"Under this paragraph it is entirely clear that when an employee is found to have been discharged wrongfully, such employee may be entitled to 'reinstatement and restitution, including back pay.' In the present case, it is clear that no proper cause for the grievant's discharge has been shown, so that he is presumptively entitled to be made whole for lost earnings in the absence of some cogent reason for denying him such back pay.

"The last sentence of Article XVI, Section 3 does not provide such a cogent reason, since it serves only to provide an exception to the 'advance notice requirement' established in the first sentence of

> Section 3. It is true that Article XVI, Section 4 also states that an employee may 'immediately be placed on an off-duty status (without pay)' in certain specified types of cases (none of which actually would seem to apply in the present case). But like Section 3, this Section in no way is addressed to the matter of remedial back pay--it deals only with emergency removal of an employee from active duty without advance notice. Because no 30-day advance notice is required, this Section (like Section 3) recognizes that the employee immediately goes onto off-duty status without pay. To repeat, however, this waiver of the notice requirement has nothing at all to do with the matter of remedial back pay when an employee subsequently has been found to have been discharged wrongfully."

As is clear from these passages, the Associate Impartial Chairman considered the interpretive problem in terms of the language of Article XVI, standing alone, without benefit of comprehensive presentations such as embodied in this record. Disposition of the present case thus requires close analysis both of the language in Article XVI and of the context in which it was negotiated in 1971. In a December 1, 1972 Opinion involving "Guarantee of Pay for Employees Called in Outside Regular Shift," this Arbitrator observed: 28

"The interpretation of particular language in a collective bargaining agreement, when the parties fall into dispute, normally requires determination of the objective meaning of the actual words used. The subjective intent or understanding of one or more of the negotiators, not actually disclosed in the negotiations, cannot be of controlling, or even dominant, significance for this purpose. It is no more than one element in all of the evidence which may be relevant in a given case. This principle indubitably applies in this case.

. . . . . .

" ... Parties in collective bargaining often fail to achieve clear understanding as to the meaning of provisions negotiated under difficult circumstances. An effort to define, mutually, all potentially broad or ambiguous terms used in dealing with difficult matters probably would bog down the negotiations completely. Thus it now is the difficult responsibility of the Arbitrator to find the reasonable meaning of the disputed language in the specific context in which the parties negotiated it. That context includes all other relevant terms of the 1971 Agreement, plus any relevant background of earlier agreements, regulations, and practices."

The parties' presentations here particularly stress two sentences in Article XVI: (1) The Union emphasizes that the last sentence in the introductory paragraph makes clear that all discipline must be for "just cause" and that any grievance protesting a suspension or discharge "could result in reinstatement and restitution, including back pay." (2) The USPS, in turn, emphasizes that the last sentence of Article XVI, Section 3 renders the 30-day advance notice requirement in major discipline cases inapplicable and says that the "employee may be immediately removed from pay status" where there is reasonable basis for believing the employee guilty of a crime for which a prison sentence may be imposed. Neither party suggests, of course, that either sentence can be read in isolation from the other--both parties appear to recognize that an indefinite suspension in a "crimes case" represents disciplinary action which must be for "just cause." 29

The last sentence in Section 3 includes language which traces back through various Civil Service Regulations to the 1944 Veteran's Preference Act and arguably represents some kind of projection into the 1971 Agreement of policies developed by the Civil Service Commission. Section 3 as a whole consists of four sentences which seem addressed primarily, if not entirely, to the requirement of advance notice in all cases of discharge or suspension for more than 30 days. The last sentence, however, is by no means unique in referring to a "non-pay" status for a suspended employee: both the second and third sentences include similar language. The third sentence recognizes the right of "preference eligible" employees to elect to appeal to the Civil Service Commission while remaining on the rolls in "non-pay status" 30

and this immediately precedes the last sentence dealing with "crimes cases." Since all of these provisions can be traced to earlier Civil Service Commission policies reaching back to 1944, it seems obvious that the parties' negotiators on July 20, 1971 either were aware, or should have been, of the existing policies of the Civil Service Commission in respect to USPS "adverse actions."

Given the history of Civil Service Commission Regulations and Post Office Department (and USPS) practices up to July 20, 1971, moreover, it also may be inferred that the Union negotiators were aware--or should have been--that in "crimes cases" it was not the USPS policy to award remedial back pay to a properly suspended employee who later was found innocent. 31

Thus there is no reason to doubt that up to July 20, 1971 the USPS (1) regarded its reasonable belief in a "crimes case" that the employee had committed an imprisonable crime as providing lawful reason for suspending the employee promptly without pay until guilt or innocence could be established, and deemed it clear that (2) there would be no right to retroactive remedial back pay if the employee's innocence later were established. 32

That is not the ultimate question to be decided here, however. The real issue is whether it can be found that the negotiators for all parties in July of 1971 reasonably could--or should--have understood that such existing USPS policies might continue without change under Article XVI. This key question must be evaluated in light of those dominant features of Article XVI which unmistakably and dramatically departed from the past: 33

First, an employee could be suspended or discharged prior to July 20, 1971 "for such cause as will promote the efficiency of the service" under Article X, Section C of the March 9, 1968 POD Agreement with the respective Postal Unions. The new Article XVI declared that discharge or suspension could be imposed only for "just cause." 34

Second, a USPS employee who was suspended or discharged prior to July 20, 1971 could not file a grievance through the Union. The avenues for possible redress were appeal either (1) to the Civil Service Commission, or (2) to the USPS Regional Director (and ultimately to the Department's Board of Appeals and Review) with Management's ultimate decision being "final" (save for the possibility of seeking a "court ruling"). The new Article XVI entitled the employee, through the Union, to press a grievance into arbitration where the Arbitrator's ruling concerning "just cause" for the disciplinary action would be "final and binding" under Article XV. 35

Third, there was no provision in the 1968 Agreement to authorize the awarding of remedial back pay in any "adverse action" in a "crimes case." In contrast, the new Article XVI spelled out that "reinstatement and restitution, including back pay" could result from use of the grievance/arbitration procedure. 36

Given these fundamental changes wrought through collective bargaining, obviously departing from traditional Civil Service policies and procedures, it is inconceivable that the sophisticated negotiators for the USPS in 1971 reasonably could have believed that the suspension of an employee because of alleged commission of a crime would not be subject to a full independent review in arbitration to deter- 37

mine whether the suspension was for "just cause" and whether remedial action, including back pay, might be appropriate. This conclusion seems unavoidable even under the language of the last sentence in Section 3, in itself, since it requires that there be "reasonable cause" to believe the employee "guilty" of the alleged crime. In any grievance involving "just cause" for suspension in a "crimes case" the presence or absence of "reasonable cause" to believe the employee guilty would be an unavoidable first question. It also seems apparent that some alleged crimes could have no material bearing on an employee's ability to perform his or her job without embarrassment to the Service or impairment of efficiency or safety. Yet, as the Service concedes, there must be a "nexus" in any such case between the alleged crime and the employee's job with USPS. Whether such a "nexus" exists also is an obvious question under the "just cause" test.

Given these circumstances there was no reasonable basis for the negotiators to have believed in 1971 that, under the last sentence of Section 3, a good faith belief that an employee was guilty of an imprisonable offense in itself would constitute "just cause" for suspending the employee without pay, so as to bar any retroactive remedial action. Those Opinions of some Regional USPS Arbitrators in recent years which might be read to imply otherwise seem, to this extent, to be in error. 38

This, however, by no means is an end of the matter. Given the authority of the Arbitrator in every "crimes case" to determine the presence--or absence--of "just cause" for a suspension or discharge, there remains the possibility that an Arbitrator in a given case still might find "just cause" 39

for the suspension--in whole or in part--in light of the policy considerations which underlay the pre-1971 Civil Service and USPS policy.

As earlier Civil Service rulings indicate, one prime reason for imposing such a suspension lay in the unique nature of the Federal Service, and the fact that Federal employees may occupy sensitive positions in relation to the public, or appear as representatives of the Federal Service in the public mind. The Postal Service Manual in Part 442.12 reflects this aspect of employment in the USPS-- 40

> "Postal employees are servants of the general public and their conduct, in many instances, must be subject to more restrictions and to higher standards than certain private employments. Employees are expected to conduct themselves during and outside of working hours in a manner which will reflect favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, and of good character and reputation."

Under Article XVI of the 1971 National Agreement, an Arbitrator thus appropriately may consider and give appropriate weight to the special nature of USPS employment in deciding a 41

"just cause" issue in a "crimes case" in respect to (1) the propriety of the initial suspension, (2) the duration of the suspension, and (3) whether, and the extent to which, remedial back pay may be warranted under the particular facts of the given case.

Moreover, it is clearly possible that an Arbitrator in such a case might conclude that there was "just cause" for the suspension initially and that no back pay might be proper, in whole or in part, even though the criminal charge later was dropped. Such a possibility obviously would exist in any such case where the USPS presented convincing evidence in arbitration establishing an employee's guilt, even though the criminal charge may have been dropped in the meantime. It also seems possible that an Arbitrator might conclude, on the basis of the unique facts in a given case, that an indictment for a serious crime (such as rape or murder) in itself would make it unreasonable to continue an employee in a position requiring routine contact with the public, so as to deny remedial back pay in whole or in part. 42

In short, the following general conclusions now seem warranted in respect to the determination of "just cause" in a "crimes case" under Article XVI, as negotiated in 1971: 43

(1) Every suspension effected under the last sentence of Article XVI, Section 3 is reviewable in arbitration to the same extent as any other suspension to determine whether "just cause" for the disciplinary action has been shown; 44

(2) 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 as to warrant the suspension; 45

(3) An Arbitrator in any such case, when the employee has been acquitted or the prosecution dropped, also has discretion to award remedial back pay, in whole or in part, if deemed reasonable under the facts of the given case; and finally 46

(4) An Arbitrator may deem the evidence in a particular case to establish "just cause" for a suspension effected under the last sentence of Section 3, even though the charge against the employee later may have been dropped, and so withhold remedial back pay for some or all of the period of suspension. 47

In light of these basic principles, a few words may be in order concerning the ruling of the Associate Impartial Chairman in the Williams case, which involved a suspension of more than 11 months. The charge there involved an alleged sale of marijuana, where the Grievant from the beginning had asserted a defense of mistaken identity. His suspension was effected simply upon the basis of his arrest, without an indictment or preliminary hearing. Any "nexus" between the charge and his ZMT Operator job would have been attenuated at best. His suspension actually was 48

effected before a Postal Inspector had submitted an Investigative Memorandum which showed that the arrest of April 16, 1975 had been based on a warrant alleging a sale of marijuana to an undercover agent nearly 7 months earlier (on September 23, 1974) at an address which differed from the Grievant's home address (where he had been arrested). The Investigative Memorandum specifically noted that a preliminary hearing had not yet been held.

On these facts, the Associate Impartial Chairman had ample basis to find a lack of just cause for the precipitate suspension in that case. Nonetheless, the Williams decision and a number of Regional Arbitrators' decisions finding "just cause" for suspensions in "crimes cases," all were formulated without the benefit of comprehensive presentations by both parties, such as those now in hand. They accordingly are of only limited value, at best. 49

As for the grievance in Case NC-NAT-8580, it is impossible now to rule on the matter of "just cause" for the initial suspension under the general principles set forth above. This issue specifically has been reserved by the NALC for further consideration in the grievance procedure in the event that M-'s acquittal is not found to entitle him automatically to be made whole for lost earnings. Thus there appear to be at least three questions which the parties now may wish to consider fully in disposing of this grievance:

(1) Whether there in fact was a "reasonable basis" to believe M- guilty of the alleged crime; 51

(2) Whether there was a sufficient relationship between the alleged crime and M-'s job as a Carrier (or such other job to which he might have been assigned in accordance with his seniority) to warrant the initial suspension; and

(3) Whether in any event M- was returned to his job with reasonable dispatch following his acquittal.

Should the parties fail to achieve settlement of M-'s grievance in light of this Opinion, the case may be returned to the Arbitrator for final disposition.

AWARD

The specific grievance used by the parties to illustrate the interpretive problem in this case, as outlined in Marginal Paragraph 2, now should be settled in the grievance procedure in light of the Opinion herein.

Sylvester Garrett
Impartial Chairman

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS and AMERICAN POSTAL WORKERS UNION Intervenor	GRIEVANTS: John Burch Nederland, Texas, and John Ferrell Dallas, Texas CASE NOS.: H4N-3U-C 58637, and H4N-3A-C 59518

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service:	David A. Stanton Grievance & Arbitration Division Washington, D.C.
For the NALC:	Keith Secular Attorney (Cohen Weiss & Simon)
For the APWU:	Robert L. Tunstall Assistant Director Clerk Craft
Place of Hearing:	Washington, D.C.
Date of Hearing:	May 8, 1990
Date of Post-Hearing Briefs:	July 16 & 17, 1990

AWARD: The grievances are remanded to Step 3 of the grievance procedure for further consideration in light of the views expressed in this opinion.

Date of Award: August 3, 1990.

Richard Mittenthal,
Arbitrator

BACKGROUND

These grievances raise several questions with respect to the interpretation and application of Article 16, Section 7 (Emergency Procedure) of the National Agreement. The Unions believe that an employee placed on non-duty, non-pay status pursuant to 16.7 has been disciplined, that such discipline, if challenged, can be affirmed only through a Management showing of "just cause", that an employee cannot be suspended under 16.7 without first having been provided written notice of the charge made against him, and that an employee suspended in this manner must be paid for his lost time until he actually receives such written notice. The Postal Service disagrees with each of these propositions. It argues that placement of an employee on non-duty, non-pay status pursuant to 16.7 is an administrative action rather than discipline, that Management need only show "reasonable cause" rather than "just cause" to support its action, that no written notice of a 16.7 administrative action is required, and that therefore an employee placed on this non-duty, non-pay status is not entitled to be paid until written notice is given.

The key provision in this case is of course Article 16, Section 7. Because this section is part of Article 16 (Discipline Procedure) and because both the Unions and the Postal Service rely on other provisions of Article 16 as well, a substantial portion of the entire article should be quoted:

> Section 1. Principles
>
> 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...which could result in reinstatement and restitution, including back pay.
>
> Section 2. Discussion
>
> For minor offenses by an employee, management has a responsibility to discuss such matters with the employee... Such discussions are not considered discipline and are not grievable... However, no

notation or other information pertaining to such discussion shall be included in the employee's personnel folder...

Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing...which shall include an explanation of a deficiency or misconduct to be corrected.

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...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.

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 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...either by settlement with the Union or through exhaustion of the grievance procedure... 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... The employee is immediately removed from a pay status at the end of the notice period.

Section 6. Indefinite Suspension - 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... The employee is immediately removed from a pay status at the end of the notice period.

B. The just cause of an indefinite suspension is grievable. The arbitrator shall have the authority to reinstate and make the employee whole...

* * *

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...

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.

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...

* * *

(Emphasis added)

The essential facts are not in dispute. J. Burch was a part-time flexible letter carrier in the Nederland, Texas post office in 1987. Management placed him on non-duty, non-pay status on June 26, 1987, pursuant to Article 16.7. It believed that he had discarded deliverable mail and that his retention on duty "may result in...loss of mail..." It did not provide Burch with advance written notice of this removal. A grievance was filed in Step 1 on July 9, 1987, protesting his placement in non-pay status. Management advised him in writing on July 27, 1987, that he was being discharged for discarding deliverable mail. Another grievance was apparently filed protesting his discharge. Arbitrator P. M. Williams ruled on September 28, 1988, that the discharge was not for "just cause" and that Burch should be reinstated with full back pay.

J. Ferrell was a full-time regular letter carrier in the Dallas, Texas post office, Spring Valley station, in 1987. Management placed him on non-duty, non-pay status on June 16, 1987, pursuant to Article 16.7. It believed that he had committed a theft of mail and that his retention on duty "may result in...loss of mail..." It did not provide Ferrell with advance written notice of this removal. A grievance was filed in Step 1 on June 26, 1987, protesting his placement in non-pay status. Management advised him in writing on June 25, 1987, that he was being discharged for theft of mail. Ferrell protested the discharge through an appeal to the Merit Systems Protection Board (MSPB). His appeal was settled by an agreement with the Postal Service on October 26, 1987, his discharge being reduced to a disciplinary suspension from July 30 through October 26, 1987. He was then returned to work, evidently without back pay.

Neither the Williams award nor the MSPB settlement appear to have resolved the claim made in these grievances that Burch and Ferrell were, prior to their discharges, improperly placed on non-duty, non-pay status under Article 16.7. NALC asserts that this claim should be sustained and the two men made whole for their loss of pay attributable to the 16.7 "emergency procedure" on the ground that they "were not served with

written notice of the reasons for Management's action."[1] In the alternative, NALC urges that the grievances be remanded to the parties with instructions that Management "has the burden of proving that its action met the standard of just cause for discipline." APWU has intervened in this arbitration in support of NALC's claims. The Postal Service insists, on the other hand, that there is no merit in the Unions' argument.

DISCUSSION AND FINDINGS

Three distinct issues are raised by these grievances. The first concerns the nature of Management's action under Article 16.7, namely, whether placement of an employee on non-duty, non-pay status through this "emergency procedure" constitutes discipline. The second concerns the level of proof necessary to validate Management's action in invoking 16.7, namely, whether it must show "just cause" or whether a mere showing of "reasonable cause" (or "reasonable belief") will suffice. The third concerns the existence of a notice requirement, namely, whether an employee can properly be placed on non-duty, non-pay status under 16.7 without first being provided with written notice of the charge made against him.

I - Nature of Management's Action

The Unions assert that an employee placed on non-duty, non-pay status pursuant to Article 16.7 has been disciplined. The Postal Service insists that this action is essentially investigatory or administrative in nature and cannot properly be viewed as discipline.

Article 16 establishes a comprehensive discipline system for postal employees. Section 1 identifies some basic disciplinary principles, for instance, that discipline should be "corrective" rather than "punitive" and that discipline can be imposed only for "just cause." Section 2 states that when an employee commits a "minor offense", supervision may "discuss" the matter with him but that such "discussion" shall not be considered discipline. Sections 3, 4 and 5 are the typical levels of discipline - from a letter of warning (16.3) to a suspension of 14 days or less (16.4) to a suspension of more than 14 days or discharge (16.5). Section 6 contemplates an indefinite suspension in a crime situation and is plainly a

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[1] Arbitrator Williams, in granting Burch full back pay in the discharge case, may already have made him whole for the time he was on non-duty, non-pay status under 16.7.

permissible variation in the range of available discipline. Section 7, the subject of this dispute, is an "emergency procedure" which allows Management to place an employee "immediately" on non-duty, non-pay status in certain specified situations. Sections 8, 9 and 10 refer to a necessary internal managerial "review of discipline", a "veteran's preference" in the choice of a forum for contesting discipline, and a statute of limitations as to "employee discipline records."

Given this structure, the strong presumption must be that all of Article 16 relates to discipline. When the parties intended some procedure to be outside the scope of Article 16, to be beyond the disciplinary principles of Article 16, they said so. Thus, Section 2 expressly provides that supervisory "discussions" of the "minor offenses" of employees "are not considered discipline..." No such disclaimer is found in Section 7. Nowhere did the parties state that placement of an employee on non-duty, non-pay status pursuant to Section 7 "is not considered discipline..." Had that been their wish, it would have been a simple matter to write those words into the "emergency procedure."

The employee misconduct which may trigger Management's use of Section 7 is "intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules or regulations." The very same acts of misconduct are cited in Section 1 as constituting "just cause" for discipline. It is difficult to understand the Postal Service view that a suspension for such misconduct is discipline when Management invokes Section 4 or 5 but is not discipline when Management invokes Section 7. The impact on the employee is much the same in all three situations. The employee is taken off of the job against his will and placed on non-duty, non-pay status because of such misconduct. He is denied work and wages. He is punished, that is, suspended, because Management believes he is intoxicated or has stolen something or has ignored safety rules. Indeed, the suspension under Section 7 is more burdensome for the employee because its length is indeterminate and because he may not have been given written notice of the charge against him, conditions which can only serve to heighten his sense of concern.

The Postal Service sees Section 7, the "emergency procedure", as an independant provision unrelated to the typical suspension arrangements found in Sections 4 and 5. However, when one reviews the history of this provision and the overall structure of Article 16, it seems to me that Section 7 should more appropriately be construed as a broad exception to Sections 4 and 5. The "emergency procedure" is,

as those words indicate, a recognition that situations do arise where supervision must act "immediately" in suspending an employee because of immediate risks or dangers which do not allow the more time-consuming procedures of Sections 4 and 5. Thus, Section 7 is a permissible variation from the conventional suspensions contemplated by the parties. But it is a suspension nonetheless, one which must be considered an integral part of the Article 16 "discipline procedure."

My conclusion, accordingly, is that a Section 7 suspension should in appropriate circumstances be regarded as discipline. I emphasize "appropriate circumstances" because of one other significant factor. Not all of the Section 7 situations which prompt Management's use of the "emergency procedure" involve employee misconduct. Management can invoke Section 7 when the employee's retention on the job (1) "may result in damage to...property or loss of mail or funds" or (2) "may be injurious to self or others." These situations may or may not involve employee misconduct. Suppose, for example, an employee drives a postal vehicle on a delivery route and suffers from a physical ailment which is ordinarily kept under control through medication. Suppose further that, notwithstanding the medication, he suddenly loses control and can no longer drive the vehicle safely although he is unaware of this reality. No doubt Management would invoke Section 7 because the employee "may be injurious to self or others." But because there is no real misconduct, he is not subject to discipline. He is placed on non-duty, non-pay status in the interest of safety. The "emergency procedure", in other words, is broad enough to encompass displacement from the job for non-disciplinary reasons.

These observations suggest the answer to the first issue. When Management places an employee on non-duty, non-pay status because of misconduct covered by Section 7, the employee has been disciplined. That would be true of both grievants in this case, Burch and Ferrell. But when Management places an employee on such status for reasons stated in Section 7 which do not involve misconduct, the employee should not be regarded as having been disciplined. With this distinction in mind, I turn to the next issue.

II - Level of Proof Necessary

The Unions assert that any Management action taken pursuant to the Section 7 "emergency procedure" must be supported by "just cause." The Postal Service insists that "reasonable cause" (or "reasonable belief") is all that need be shown.

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.

By the same token, "just cause" may depend to some extent upon the nature of the particular disciplinary right being exercised. Section 7 grants Management a right to place an employee "immediately" on non-duty, non-pay status because of an "allegation" of certain misconduct (or because his retention "may" have certain harmful consequences). "Just cause" takes on a different cast in these circumstances. The level of proof required to justify this kind of "immediate..." action may be something less than would be required had Management suspended the employee under Section 4 or 5 where ten or thirty days' advance written notice of the suspension is given. To rule otherwise, to rule that the same level of proof is necessary in all suspension situations, would as a practical matter diminish Management's right to take "immediate..." action.

No generalization by the arbitrator can provide a final resolution to this kind of problem. It should be apparent that the facts of a given case are a good deal more important than any generalization in determining whether "just cause" for discipline has been established.

III - Existence of Notice Requirement

The Unions assert that an employee cannot properly be placed on non-duty, non-pay status under Section 7 without

first being provided written notice of the charge made against him.[2] They contend that because the grievants did not receive such written notice, Management had no right to displace them from their jobs pursuant to Section 7 and they should be paid for the time they were suspended. The Postal Service insists that there is no written notice requirement in Section 7 and that the absence of such notice in this case in no way undermined the propriety of Management's use of the "emergency procedure."

Any analysis of this issue must begin with the suspension rules in Sections 4 and 5. When Management intends to suspend an employee under either of these sections, it must provide him with "advance written notice" of the charge against him. A Section 4 suspension (14 days or less) requires 10 days' written notice during which time the employee remains "on the job or on the clock (in pay status) at the option of the Employer." A Section 5 suspension (more than 14 days) requires 30 days' written notice during which time the employee remains "on the job or on the clock at the option of the Employer." Any suspended employee, even one subject to an indeterminate suspension under Section 7, receives these benefits, according to the language of Section 5, "unless otherwise provided herein." These words acknowledge that a suspended employee could have these notice and pay protections taken away or modified by other provisions of Article 16. That is exactly what happened in Section 7.

When the "emergency procedure" in Section 7 is properly invoked, the employee is "immediately" placed on non-duty, non-pay status. He does not have a right to remain, for any period of time, "on the job or on the clock at the option of the Employer." He suffers an instant loss of pay. In short, the pay protection in Section 4 or 5 is negated by Section 7. The question here is whether the notice protection, the "advance written notice" requirement in Section 4 or 5, is likewise negated by Section 7. Or, to put the question in broader terms, is the employee suspended pursuant to the "emergency procedure" entitled to the "advance written notice" contemplated by Section 4 or 5?

There is no express mention of "advance written notice" in Section 7. Both parties rely on that silence to prove

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[2] The Unions concede that Management may properly displace an employee from his job in an "emergency" and put him on administrative leave. They object, however, to any such displacement pursuant to Section 7 without advance written notice.

their case. The Unions argue that the silence means that the notice requirement of Section 4 or 5 has not been negated by Section 7 and must therefore apply to an employee suspended under Section 7. The Postal Service argues that this silence, when contrasted with the specific notice requirement contained in Sections 4, 5 and 6, means that the parties had no intention of establishing a notice requirement in Section 7.

The critical factor, in my opinion, is that Management was given the right to place an employee "immediately" on non-duty, non-pay status on the basis of certain happenings. An "immediate..." action is one that occurs instantly, without any lapse of time. Nothing intervenes between the decision to act and the act itself. That is what the term "immediately" suggests. If Management were required to provide "advance written notice" of the displacement of an employee under Section 7, it would no longer have the right to respond "immediately." The very purpose of a Section 7 "emergency procedure" is to permit an "immediate..." response by Management. The language of Section 7, by necessary implication, means that no "advance written notice" can be required in a true Section 7 situation. The notice requirement in Section 4 or 5 has indeed been negated by Section 7. Hence, Management's failure to provide such notice to Burch and Ferrell was not a violation of Article 16.

Neither the history of Article 16 nor various Management publications regarding that article convince me that a different result is justified here. There has been a great deal of confusion for years about the meaning of Section 7. That confusion is reflected in the conflicting awards of regional arbitrators.

These findings, however, do not fully resolve the dispute. 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 a 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. Indeed, Section 7 speaks of the employee remaining on non-duty, non-pay status "until disposition of the case has been had." That "disposition" could hardly be possible without formal notice to the employee so that he has an opportunity to tell Management his side of the story. Fundamental fairness requires no less.

Whether Burch and Ferrell received formal notice of the charges against them is not really clear from the record in this case. Assuming they did, there is no evidence with respect to whether such notice was given within a reasonable period after they were displaced from their jobs. These are fact questions which can best be developed and argued at the regional level. These matters are therefore remanded to Step 3 of the grievance procedure for further consideration.

AWARD

The grievances are remanded to Step 3 of the grievance procedure for further consideration in light of the views expressed in this opinion.

Richard Mittenthal, Arbitrator

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DENIED:APWU/NPMHU
01059241:NATIONAL

National Arbitration Panel

In the Matter of Arbitration	)	
	)	
between	)	
	)	
	)	
United States Postal Service	)	Case No.
	)	
and	)	Q98C-4Q-C 01059241
	)	
American Postal Workers Union	)	
	)	
and	)	
	)	
National Postal Mail Handlers Union - Intervenor	)	

Before: Shyam Das

Appearances:

For the Postal Service:	Peter J. Henry, Esquire Laura M. Taylor, Esquire
For the APWU:	Arthur M. Luby, Esquire Brenda C. Zwack, Esquire
For the NPMHU:	Bruce R. Lerner, Esquire Lauren McGarity, Esquire

Place of Hearing:	Washington, D.C.
Dates of Hearing:	December 14, 2004 April 26, 2005
Date of Award:	July 7, 2006

Relevant Contract Provisions:	Articles 3, 15.2 and 16, and MOU Re: Joint Contract Interpretation Manual
Contract Year:	2002-2003
Type of Grievance:	Contract Interpretation

Award Summary

The dispute in this case is resolved on the basis set forth in the above Findings.

Shyam Das, Arbitrator

On January 4, 2001, the Postal Service sent a letter to the American Postal Workers Union stating:

> In accordance with the provisions of Article 15, the Postal Service is initiating a dispute at Step 4 of the grievance procedure on the following interpretive issue:
>
> > Whether the National Agreement specifics [sic] that there is only one management official who may issue discipline to each employee.
>
> The facts giving rise to this dispute are:
>
> > The American Postal Workers at the local level, in Case E98C-1E-D 00036123, asserts that the Postal Service violated the National Agreement when a attendance coordinator supervisor, whose responsibility encompasses attendance control, issued discipline.
>
> The Postal Service's position is that the allocation of responsibility for issuing discipline is a management right pursuant to Article 3 of the National Agreement. Therefore, the assignment of authority to an attendance coordinator supervisor is consistent with the National Agreement.

After discussion at Step 4 failed to resolve this matter, the APWU appealed the dispute to National arbitration. The National Postal Mail Handlers Union, which has a similar dispute with the Postal Service, intervened in this case at arbitration.

At arbitration, the Unions made it clear that they are not contending that only the employee's immediate supervisor can

issue discipline in attendance related (or other) matters, but that the National Agreement contemplated that this responsibility "normally" would be exercised by this official.[1]

The key contractual provision relied on by the Unions is Article 16.8, but they stress that provision needs to be read in context of other provisions, particularly Article 16.1, Article 16.2 and Article 15.2 (Step 1). The Postal Service insists that it has never agreed to limit its explicit, statutory right, recognized in Article 3, to entrust supervisors and managers with the authority and responsibility to maintain efficiency, good order and discipline in the workplace. These provisions of the APWU National Agreement (the NPMHU National Agreement includes corresponding provisions) state as follows:

ARTICLE 3
MANAGEMENT RIGHTS

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> A. To direct employees of the Employer in the performance of official duties;
>
> B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

[1] The parties' respective articulations of the issue in this case are not precisely the same, but the gist of the dispute is clear enough and was fully addressed by all of the parties. No party has raised any procedural objection to the arbitrator deciding the dispute as it was presented at arbitration.

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;

* * *

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

* * *

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....

(b) In any such discussion the supervisor shall have authority to settle the grievance....

* * *

ARTICLE 16
DISCIPLINE PROCEDURE

Section 1. Principles

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.

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 a 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.

* * *

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 associate 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.

* * *

The relevant contractual provisions essentially have been in effect since the first National Agreement was negotiated in 1971.

The APWU and the NPMHU each rely, in part, on contract interpretation manuals they have negotiated with the Postal Service. Both the APWU/USPS Joint Contract Interpretation Manual (JCIM), finalized in June 2004, and the NPMHU/USPS Contract Interpretation Manual (CIM), finalized in July 2003, in discussing Article 16.8 of the respective National Agreement, state: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action."[2] The Postal Service agrees that the Mail Handler CIM may be cited in this

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[2] The Mail Handlers CIM includes the following parenthetical statement: "(Note that, as of this writing, the parties at the National level have an ongoing dispute regarding whether discipline can be issued by other than the employee's immediate supervisor.)"

proceeding, but insists that the APWU JCIM may not be cited at National level arbitration.[3]

For at least 25 years, the Postal Service at some facilities has assigned supervisors to monitor employee attendance, and those supervisors typically are not the employees' floor supervisors. At the heart of the present dispute is whether these attendance control supervisors properly may issue discipline for attendance violations or whether, at least normally, such discipline has to be issued by the employee's "immediate supervisor" who oversees the employee's work performance on a day-to-day basis.

The Unions point out that the relevant contractual provisions, for the most part, reflect the practices that were in effect prior to Postal Reorganization, including supervisors' responsibilities for counseling employees and administering discipline. In 1982, the U.S. General Accounting Office issued a report entitled "Postal Service Needs Stricter Control Over Employee Absences." In commenting on a draft of this GAO report, the Postmaster General stated:

> The Postal Service has recognized the need for more effective absence controls, and plans are under way to develop a nationally directed attendance-control program. We will examine the feasibility of more extensive reporting and tracking procedures

[3] It was agreed that the Postal Service may cite the JCIM on the merits of the dispute without prejudice to its position that JCIM may not be cited in National arbitration, and that the arbitrator would rule on the latter issue in deciding this case.

> for unscheduled absences and have also begun discussions with the unions to explore possible areas for a joint approach to attendance-control matters.
>
> We believe the involvement of first-line supervision is critical in absence control and in determining appropriate disciplinary action based upon individual circumstances. We will do nothing to diminish the first-line supervisor's responsibility for controlling absences and will not issue a "cookbook" set of rules that will relieve him of the need to use good judgment in identifying and disciplining employees with attendance problems. However, we do envision a more structured and centrally managed program that will provide a facility-level review of attendance control, possible goal setting, and active assistance to first-line supervisors in exercising their responsibilities.

The final GAO report recommended that: "The control office should notify supervisors of employees with potential attendance problems and ensure that disciplinary actions are timely and progressively severe." The GAO report also stated: "The Service believes as we do that the involvement of firstline supervision is critical in absence control and in determining appropriate disciplinary action based upon individual circumstances."

A Management Instruction relating to Attendance Control issued soon after the GAO report on October 1, 1983 (EL-510-83-9) states: "Each supervisor continues to have direct responsibility for ensuring the regular and dependable attendance of his subordinate employees." A Supervisor's Guide

to Attendance Improvement issued in May 1984 (EL-501) states: "Effective control of attendance can only be accomplished at the individual employee level. Therefore, the direct responsibility for effective attendance improvement lies at the level of the immediate supervisor." The Unions assert, as the APWU's Director of Industrial Relations Greg Bell testified, that this is and has been the historical practice at the Postal Service. An August 1990 Supervisor's Guide to Handling Grievances (EL-921), the Unions add, implicitly recognizes that the employee's immediate supervisor who handles grievances at Step 1 is also the supervisor who issues discipline, when it states: "Just because the discipline was fully discussed at the time of issuance is no reason for the supervisor to breeze through Step 1 with a quick, 'Grievance Denied.'"

The Unions also point to a Step 4 settlement reached in March 2003 between the Postal Service and the APWU relating to implementation of the Postal Service Resource Management Database and its web-based enterprise Resource Management System, in which the parties agreed:

> RMD/eRMS enables local management to establish a set number of absences used to ensure that employee attendance records are being reviewed by their supervisor. However, it is the supervisor's review of the attendance record and the supervisor's determination on a case-by-case basis in light of all relevant evidence and circumstances, not any set number of absences, that determine whether corrective action is warranted. Any rule setting a fixed amount or percentage of sick leave usage after which an employee will be, as a

> matter of course, automatically disciplined is inconsistent with the National Agreement and applicable handbooks and manuals. Any corrective action that results from the attendance reviews must be in accordance with Article 16 of the National Agreement.

The Unions do not claim that this settlement was intended to resolve the present dispute -- which predates the settlement -- but they do contend that the stated goal is not consistent with the Postal Service's position that, at its sole discretion, it may bypass the immediate supervisor and delegate the responsibility to discipline employees for absenteeism to any management official.

The Postal Service presented testimony regarding an unwritten attendance control program in effect at the JFK Airport facility in New York City for at least the past 25 years. There is a leave administrator assigned on each tour (600+ employees) who monitors attendance and handles all aspects of leave administration. This leave administrator has the responsibility to administer discipline related to attendance and leave. The floor supervisors review their employees' attendance status with the leave administrators on average once every pay period. A management witness said it would be rare for a leave administrator to issue discipline without having first consulted with the employee's floor supervisor. The leave administrator also has access to the employee's personnel file, if needed. Step 1 grievances relating to discipline issued by the leave administrators to Mail Handler employees at JFK are handled by the leave administrators, whereas grievances from APWU employees are handled by the floor supervisors, based on

the APWU's choice. The Management witness estimated that 30-35% of the APWU grievances are resolved or settled at Step 1 by removing the discipline.

Sandra Savoie, a headquarters Labor Relations Specialist, testified to the assignment of attendance supervisors in Dayton, Ohio in the late 1970s and early 1980s when she worked there. Those supervisors discussed attendance issues with employees and issued discipline, when warranted. She also testified to a variety of other contexts in which supervisors other than an employee's immediate floor supervisor have imposed discipline for a variety of misconduct and noted there are situations where employees have multiple floor supervisors during the course of their work day.

APWU POSITION

The APWU contends that the parties have agreed that the immediate supervisor shall normally be responsible for the imposition of discipline. The key issue is the interpretation of the term "supervisor" used in Article 16.8. The APWU argues that the Postal Service's contention that the term "supervisor" refers to any management official, and therefore, any management official can impose discipline on a craft employee makes no sense either in the context of Article 16 or the parties' bargaining history and practice.

Prior to Postal Reorganization, postal regulations distinguished between Directors, Postmasters and Supervisors, and specifically assigned both the responsibility of giving

counsel and advice to employees and, then, imposing discipline, especially after counseling fails, only to supervisors. This allocation of responsibility, the APWU asserts, was carried forward into collective bargaining. Article 16 lays out the steps of progressive discipline. The first time the term "supervisor" is used in Article 16 is in Section 2, which assigns the specific task of discussing minor offenses with the employee to the supervisor. Obviously, the only official who normally would have enough day-to-day contact to observe and discuss minor offenses is the employee's immediate supervisor. Any lack of clarity on the matter is resolved by the further requirement that such discussions be held "in private between the employee and supervisor." In context, it is clear that the supervisor referred to in Section 2 is the immediate supervisor, the official with day-to-day working contact with the employee, not someone in another building or off-site computerized attendance control office.

The next time the term "supervisor" is used in Article 16 is in Section 8, which is the final point in the progressive discipline process. There is no reason to believe, the APWU maintains, that the term "supervisor" as used in Section 8 would have any different meaning than in Section 2. There also appears to be no reason why the official who is responsible for ensuring the employee has been given adequate private guidance on his responsibilities (and maybe the only official who knows this guidance has been given), would not also normally be responsible for determining that this guidance has not worked and that suspension or termination is called for. This is particularly so in the realm of absenteeism where the Postal

Service has repeatedly assured the Unions that the immediate supervisor will play the central role in attendance control and management has specifically assigned the immediate supervisor the task of responding to requests for scheduled and unscheduled absences (EL-510-83-9).

This application of the term "supervisor" also is consistent with the definition of that term in Section 113.2(b) of the Employee and Labor Relations Manual (ELM) which states that a "supervisor" is "one who has a direct responsibility for ensuring the accomplishment of work through the effort of others." The concept of "direct responsibility" obviously refers to officials with direct contact with craft employees in their work capacity, a matter confirmed by numerous other provisions of the ELM in which the "supervisor" is responsible for performance evaluations of employees. The APWU argues it is simply not plausible to believe that the term "supervisor" means one thing for the purposes of private, non-disciplinary discussions, performance evaluations, or handling scheduled and unscheduled absences, but something completely different for purposes of imposition of discipline.

The APWU insists that while the contract, as well as Postal Manuals, clearly support the Unions' interpretation of "supervisor", the terms of the JCIM definitely resolve the matter. The JCIM provides the following binding guidance with respect to Article 16.8: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action...."

The APWU freely concedes that "normally" does not mean "always", and that there may be "abnormal" circumstances which justify delegating imposition of discipline to someone other than the employee's immediate supervisor. Both Union and Postal Service witnesses provided a number of examples of such situations, all of which involved unusual operational circumstances, beyond the fact that an employee is being disciplined. The normal practice, however, is for discipline to be issued by the immediate supervisor.

The APWU rejects the Postal Service's contention that if the parties had intended to limit the imposition of discipline to "immediate supervisors" they would have used that term as they did in subparagraph (a) of Article 15.2 (Step 1). The APWU maintains this is not a tenable argument because it does not explain the binding guidance of the JCIM (or the Mail Handler's CIM) and it also ignores the purpose and structure of Article 15. It is crucial to define with precision exactly when and with whom grievances must be filed because rights are waived (and there is potential liability) if grievances are not timely filed. There is no agreement -- as there is with respect to Article 16 -- that the role of the immediate supervisor in handling the first step is only the "normal" practice. Moreover, the APWU asserts, this line of argument proves too much. If the Postal Service is correct that every time the parties fail to condition the term "supervisor" with "immediate" it, by default, refers to all levels of management, that would apply to the use of the term "supervisor" in subparagraph (b) and subsequent subparagraphs of Article 15.2 (Step 1). Yet, it

is clear from the context that those references to "supervisor" mean immediate supervisor.

The APWU insists that the failure to condition "supervisor" with "immediate" proves nothing, and that in order to surmise the intended application of the term both its context and history must be examined. These make it perfectly clear that "supervisor" means -- at least normally -- immediate supervisor. This context is further clarified by the admonition in Article 15.4 that: "The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement of substantially all grievances...at the lowest possible step and recognize their obligation to achieve that end." It simply defies logic and experience to suggest that reasonable settlements at the lowest level are likely when supervisors are reviewing -- not their own decisions -- but the decisions of someone labeled an attendance control expert or specialist whom the supervisor may or may not interact with or know.

The Postal Service has cited a decision of the Eleventh Circuit Court of Appeals, USPS v. NALC, 847 F.2d 775 (1988), in which the court stated that the "Collective Bargaining Agreement does not suggest that *only* the immediate supervisor can issue the disciplinary notice." The APWU points out that this decision, in which the court referenced, but then ignored the principles of the *Steelworkers Trilogy*, is not consistent with the applicable law in the District of Columbia Circuit. In any event, the APWU stresses, the Unions do not

contend that only the immediate supervisor may issue discipline, only that the contract contemplates that he or she "normally" will do so, and the Eleventh Circuit's opinion was issued long before the parties' binding agreement in the JCIM that this is in fact the correct application of Article 16.8.

The APWU stresses that the requirement that the official making the initial disciplinary decisions normally be the employee's immediate supervisor meets the Unions' concern that, particularly in attendance related matters, discipline will not be meted out based on a cookbook or mathematical formula, but rather will be leavened by human interaction with an official with direct contact and responsibility for the worker. The Unions also recognize that there are common sense exceptions to this rule. By contrast, the Postal Service has not articulated any interest or need supporting its interpretation, aside from its desire to preserve unfettered discretion wherever possible.

Finally, the APWU insists there is no agreement between the parties not to cite or reference the JCIM at the National level. The National Agreement not only contains no restriction on the citability of the JCIM, but the Memorandum of Understanding directing creation of the JCIM states that the parties "will be bound by these joint interpretations." There also is nothing in the JCIM itself which states that the parties are foreclosed from referencing it in National arbitration.

NPMHU POSITION

The NPMHU's position parallels that of the APWU. It points out, however, that there is no dispute that the Mail Handler CIM may be cited in National arbitration.

The NPMHU believes it is significant that Article 16.8 uses the specific term "supervisor" and not a more general term such as "manager", "management official" or "employer". The word "supervisor" suggests a specific individual who has direct, personal, and ongoing contact with the employee. The term plainly refers to a person who has the responsibility for overseeing employees' day-to-day activities. Any argument that because the parties could have used the term "immediate supervisor" the reference to "supervisor" should not be interpreted to mean immediate supervisor is completely undercut by the CIM jointly developed by the Postal Service and the Mail Handlers. The CIM specifically and unequivocally interprets the provisions of Article 16.8 to mean that "[i]t is normally the responsibility of the immediate supervisor to initiate disciplinary action." Therefore the only remaining question should be what constitutes an abnormal circumstance that would justify issuance of discipline by someone other than the immediate supervisor.

The NPMHU submits that poor attendance by an employee is not, in and of itself, an abnormal circumstance that makes it impossible or inappropriate for the employee's immediate supervisor to issue discipline. Rather, poor attendance is a routine type of misconduct and, by its very nature, generally

does not require emergency action or an immediate response in the absence of an immediate supervisor. A requirement that normally discipline be initiated by an employee's immediate supervisor is also consistent with other provisions of Section 16.1 of the National Agreement in which the parties have agreed that in administering discipline a basic principle shall be that discipline shall be corrective in nature, rather than punitive, and that there shall be just cause for any discipline that is issued. Because attendance control supervisors lack critical information about an employee's overall job performance, they cannot responsibly judge which sanctions will be corrective and which punitive. Similarly it is only the immediate supervisor, in contrast to an attendance control supervisor, who is in a direct supervisory relationship with the employee and therefore is in a position to balance the employee's alleged infraction against any mitigating factors to determine whether just cause for discipline exists.

The NPMHU points out that in 1995 the Postal Service and the National Rural Letter Carriers Association -- which was one of the parties to the 1971 National Agreement which first included the language now found in Article 16.8 of the NPMHU and APWU Agreements -- agreed with the Postal Service to change that provision in the NRLCA National Agreement. They agreed to remove any reference to a supervisor imposing discipline. Moreover, in a jointly prepared and published "analysis of changes" the parties explicitly acknowledged that this change "clarifies the parties' position that discipline may be imposed

by a manager other than the rural carrier's supervisor."[4] The NPMHU insists that the Postal Service may not seek to achieve by fiat against the NPMHU and the APWU what it has accomplished through negotiations with the NRLCA.

The NPMHU also asserts that the evidence in the record shows that the Postal Service's attendance control system, as initially conceived in the early 1980s, was not designed to remove the traditional disciplinary role of the immediate supervisor. Rather attendance control supervisors were to assist the immediate supervisor by flagging attendance related problems. The evidence in this case as to prior practice shows that discipline, including attendance related discipline, principally has been handled by the immediate supervisor. Even the management testimony regarding the practice at JFK shows that immediate supervisors are involved in the decisions to impose discipline and that it would be rare for a leave administrator to issue discipline without having consulted with the supervisor regarding the individual employee.

To the extent the Postal Service contends it can divide discipline into subject areas so that employees are subject to discipline by multiple "immediate supervisors" for one job, which implicitly concedes that only the immediate supervisor may issue discipline as set forth in the CIM, its position contradicts the clear language of the ELM. Section

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[4] The parties stipulated at this arbitration hearing that the Postal Service would have presented testimony that the NRLCA and the Postal Service bargaining representatives agreed at the bargaining table that this change was cosmetic in nature.

122(b) of the ELM provides that each position should be "subject to the line authority of only one higher position." Similarly, Section 143.21 states that "[s]ubordinate positions never report administratively to more than one higher level supervisor." As the ELM makes clear, the NPMHU argues, there is only one supervisor for each position. It is that supervisor who, under Section 16.8 of the National Agreement, normally must impose suspension or discharge. The NPMHU also maintains that if an individual employee has multiple immediate supervisors, as the Postal Service seems to argue is possible, then no individual supervisor will have the kind of direct knowledge about the employee that is necessary for discipline to meet the fundamental requirements of Article 16, namely that discipline be corrective in nature and imposed only for just cause.

EMPLOYER POSITION

The Postal Service insists it has not agreed to forego its managerial right and duty to select which supervisory or management officials have responsibility to discipline employees. A "supervisor", as that term is understood in labor relations, is one who is authorized by an employer to maintain discipline and order in the workplace. The term "supervisor" has that functional meaning in the National Labor Relations Act, which provides the foundation for postal labor relations. That definition likely informed the meaning of that term when the parties negotiated their initial contract in 1970. Because postal facilities typically have multiple layers of supervisors and managers, that definition includes all levels of supervisors and managers, as all have been invested with the responsibility

to maintain efficiency and order in the workplace. Only where there is some explicit limit as, for example, in Article 15.2 (Step 1) do the contracts refer to a particular level of supervision.

Article 3 says the Postal Service may discipline employees. Significantly, it does not say only an employee's immediate supervisor may impose discipline. Article 16 lists three levels of progressive discipline and discusses discipline at length, but includes no limitation on the Postal Service's right to entrust any particular level of supervisors with the authority and responsibility to maintain discipline. Neither Union, the Postal Service stresses, offered any evidence that the parties ever discussed such fundamental limits on the Postal Service's ability to manage the efficiency of its workers.

The Postal Service insists that Article 16.8 only provides a general rule that no supervisor may impose substantial discipline until after the discipline has been approved by the top managerial official in the facility (or designee). This provision reinforces the Postal Service's position, because there is no limitation on who may discipline employees, only who must review it in the first instance. In contrast, the use of the term "immediate supervisor" in Articles 15 and 17[5] shows the parties knew very well how to use that phrase when they wanted to limit or define which supervisors were to be involved in an activity.

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[5] Article 17.3 provides that a steward shall request permission from the "immediate supervisor" to leave his or her work area on specified Union business.

The Postal Service maintains that the predominant weight of postal and private arbitral awards demonstrate that employers retain discretion to entrust authority in persons and positions of their choice. Moreover, the Court of Appeals for the Eleventh Circuit has ruled on the issue in contention here (USPS v. NALC). In vacating a regular-level arbitral award that overturned the removal of an employee who had stolen mail because a higher level supervisor had terminated the employee, the court explained that the collective bargaining agreement "does not suggest that only the immediate supervisor can issue the disciplinary notice." Given that the parties have made no material changes to the relevant parts of the contract since that decision, the Postal Service submits it is binding in this case.

Testimony of Postal Service witnesses further demonstrates that the Postal Service retains discretion to assign responsibility to its supervisors and managers to maintain discipline and the Postal Service has exercised such authority for over three decades. Those witnesses testified without contradiction that at JFK in New York City and in Dayton the Postal Service has assigned responsibility for monitoring irregular attendance to supervisors who do not work directly with the employees, and those leave administrators administer discipline. The witnesses also testified without contradiction that an employee may work for multiple floor supervisors on any given day. Significantly there is no restriction in either Union's contract that prohibits the Postal Service from entrusting different types of supervisors to monitor different

kinds of employee activity, as the Service deems most efficient in carrying out its responsibility.

Provisions in Article 16.6 and 16.7 which state that "the Employer" may indefinitely suspend employees where the Employer has reasonable cause to believe the employee is guilty of certain crimes and may place employees off-duty under certain circumstances further erode the Unions' claim that only an employee's immediate supervisor may discipline an employee.

The Postal Service also contends that the phrase "immediate supervisor" does not have the restrictive meaning asserted by the Unions. In 1984 the APWU and the Postal Service agreed that the meaning of "immediate supervisor" for purposes of Article 15.2 (Step 1) must be determined locally. More recently, the National parties have varied that general rule as it applies to part-time flexible employees working outside their home office by establishing a presumption that Step 1 grievances will be handled at the facility where the grievance arose. Also, as testified to at arbitration, the Mail Handlers at the JFK facility have met with leave administrators at Step 1 to discuss attendance related discipline for over eight years. Accordingly, even if Article 16 were interpreted by reference to Article 15, which it should not be, the phrase "immediate supervisor" does not have the restricted meaning sought by the APWU.

The Postal Service argues that the joint interpretive manuals, the JCIM and the CIM, also do not support the Unions' position in this case. In the first place, each manual

specifically disclaims any intention to vary the terms of the contract. Accordingly, if the National Agreement does not contain a limitation on the right to assign responsibility to discipline, the interpretation manual cannot create it. Moreover, even if the manual were a commitment, it only states "normally the responsibility...," which plainly means such responsibilities are not exclusive. Rather than being a commitment or a restriction, that statement is no more than a description of a way the Postal Service traditionally has disciplined employees -- supervisors normally do so. Simply because in the run of cases "immediate supervisors" normally discipline their employees, however, does not reflect an agreement that only such supervisors may do so; nor is the statement in the manuals a waiver of the rights and responsibilities conferred by Congress upon the Postal Service in the Postal Reorganization Act.

The Postal Service also argues that there is a major difference between a description of what normally happens and an agreement that only that process is authorized. The Postal Service has never agreed that normally discipline has to be issued by the immediate supervisor, rather, the statement in the manuals means it is a normal responsibility of an immediate supervisor to discipline employees, not that other supervisors and managers are prohibited from maintaining good order and discipline, too.

The Postal Service states that the manuals describe the assignment by the Postal Service of the normal responsibility to initiate discipline to first level

supervisors. That responsibility is normally conferred on one or more "floor" supervisors with respect to employee productivity and upon other first level supervisors with respect to monitoring unscheduled absences. As such, the manuals describe normal practices, but they do not prohibit the Postal Service from also assigning or reassigning those responsibilities to other management representatives, for example, the next level of supervisor, or bar those supervisors and managers from exercising their own responsibilities to maintain order and discipline in the workplace.

The Postal Service insists there is no contractual requirement that supervisors with the authority to discipline must possess a certain level of knowledge of the employee to be disciplined. Information required to correct and to discipline employees is available to managers on an as needed basis.

The Postal Service contends that use of the term "immediate supervisor" in Article 15 does not support the Unions' view that the term must also apply elsewhere in the contracts. There is no reason an immediate supervisor who is authorized to adjust a grievance at Step 1 could not correct a mistake made by a colleague or even a superior. There also is no evidence that attendance control supervisors are higher level supervisors than the employee's floor level supervisor who may handle the Step 1 grievance.

The Postal Service argues that internal postal guidelines cited by the Unions do not reflect contractual obligations and are subject to change by the Postal Service.

The NPMHU has asserted that Section 113.2 of the ELM defines a supervisor as meaning a person who has no subordinates with managerial responsibility, thus indicating only first level supervisors meet that definition. The Postal Service maintains there is no evidence that the parties understood that particular definition of supervisor to apply whenever the term supervisor is used in the collective bargaining agreement. Indeed, the cited version of the ELM was written long after the parties negotiated their initial collective bargaining agreement, which included the provisions at issue here. Moreover, if the NPMHU were correct, there would be no reason to limit the breadth of positions covered by the parties' understandings of the term "supervisor" by inserting the modifier "immediate" before "supervisor" in Articles 15.2 and 17.3. Other sections of the ELM also use the term "supervisor" in a broader context. Finally, even assuming that the ELM and the guidelines cited by the APWU refer only to a first level supervisor, the Postal Service is free to change that restriction whenever it wishes because the right to designate the individuals in whom to repose authority and responsibility to maintain order and discipline in the workplace is not subject to compulsory bargaining.

the issue of whether the JCIM may be cited in this case, the Postal Service maintains that both the introductory language of the JCIM and the testimony presented at arbitration regarding the parties' adoption of that document establish that there was an agreement by the parties that it would not be cited at National arbitration. Moreover, if the parties decide to change that agreement they will also need to resolve how the JCIM may be cited.

FINDINGS

Citation of JCIM in National Arbitration

The 2000-2003 APWU National Agreement includes the following Memorandum of Understanding:

> Re: Joint Contract Interpretation Manual
>
> The United States Postal Service and the American Postal Workers Union have engaged in extensive discussion on ways to improve the parties' workplace relationship, as well as ways to improve the Grievance/Arbitration procedure. Accordingly, the parties have agreed to establish a joint contract manual that will contain the joint interpretation of contract provisions. The parties will be bound by these joint interpretations and grievances will not be filed asserting a position contrary to a joint interpretation. The parties agree to initiate the process of establishing a joint contract interpretation manual no later than 90 days from the signing of this agreement.

The parties finalized the JCIM in June 2004. The Introduction and Preface, in relevant part, state as follows:

> INTRODUCTION
>
> The United States Postal Service and the American Postal Workers Union have engaged in extensive discussion on ways to enhance the parties' workplace relationship, including methods to improve the Grievance/ Arbitration procedure. Consistent with that

goal, the parties agreed to jointly establish a manual which outlines areas of agreement on contract application.

This Joint Contract Interpretation Manual (JCIM) represents the mutual agreement of the national parties on the interpretation/ application of the issues discussed in this document and no inference should be drawn from the absence of national settlements, agreements or arbitration awards.

A primary purpose of this JCIM is to provide the local parties with guidance and to require consistency with contract compliance. The parties are bound by this manual and grievances should not be initiated which assert a position contrary to the JCIM.

PREFACE

The JCIM is self-explanatory and is not intended to, nor does it, increase or decrease the rights, responsibilities or benefits of the parties under the National Agreement and it shall be applied by the parties at the lower grievance steps in an effort to settle grievances at the lowest possible level.

If introduced in area/regional level arbitration, the JCIM will speak for itself and the parties' advocates will not seek testimony on its content.

* * *

The evidence shows that prior to mutual adoption of the above language, the APWU modified a Postal Service proposal by deleting the words "at all levels" following the reference to "[t]he parties" in the last sentence of the Introduction, and,

added the words "in area/regional level" before the reference to "arbitration" in the second paragraph of the Preface. Testimony as to communications between certain representatives of the parties regarding these APWU changes does not all march in one direction, but there is little question that the Postal Service believed the APWU position was that the JCIM could not be cited in National arbitration. APWU President William Burrus, who made the changes, denies this was the intent, although there is testimony that at least one high-ranking APWU official indicated the contrary to a high level Postal Service official.

In any event, there is no language in the JCIM or any other agreement that explicitly addresses citation of the JCIM in National arbitration. Moreover, in the present proceeding top officials of both parties stated it was their position that once the parties agreed on the substance of the JCIM the parties should live by it at all levels. This position is consistent with both the MOU in the National Agreement that led to adoption of the JCIM and statements in the JCIM Introduction that it "represents the agreement of the national parties on the interpretation/ application of the issues discussed in this document..." and that "[t]he parties are bound by this manual...."

The Postal Service legitimately raises the point that if it thought it would be permissible for the JCIM to be cited at National arbitration it would have insisted on some agreed to criteria. As I indicated in a sidebar at the hearing, that is something the parties need to address, but for purposes of this case I think it is significant that neither party has sought to

do anything but cite the agreed-to JCIM provision regarding Article 16.8 and let it speak for itself, which is precisely what the Postal Service originally proposed and conforms to the parties' agreement in the Preface that "[t]he JCIM is self-explanatory."

Furthermore, the explication of Article 16.8 in the JCIM is identical, insofar as relevant to this case, to that in the Mail Handler CIM, which there is no dispute may be cited in National arbitration. It also seems to make little sense that the parties would agree on an interpretation of a provision of their contract -- and agree that they are bound by that interpretation -- and then ask a National arbitrator to rule on an issue relating to that provision without the benefit of their agreed interpretation. One need only consider the consequences of a National arbitration decision written without awareness of a contradictory or inconsistent JCIM provision that the parties have agreed is binding on them and on all area/regional arbitrators.

Under all these circumstances, I conclude, at least for purposes of this case, that the provision of the JCIM relating to Article 16.8 may be cited in this National arbitration.

Article 16 Issue

Under Article 3 (Management Rights) the Postal Service has the right to determine which management personnel may initiate disciplinary action against employees, except as

otherwise restricted by the provisions of the applicable National Agreement or applicable laws and regulations.

In administering discipline, the Postal Service is, of course, bound to comply with the requirements set forth in Article 16.1 that:

> 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....

But it cannot be concluded as a general proposition that only an employee's immediate supervisor -- leaving aside for the moment who that is -- can initiate discipline or must normally initiate discipline for it to be consistent with Article 16.1. Nor is the Postal Service required to articulate a need or interest that is subject to arbitral scrutiny to support an exercise of its management rights that is not in conflict or inconsistent with its contractual obligations.

Article 16 contains no use of the term "immediate supervisor." That term is found, however, in two other provisions of the National Agreement, Articles 15.2 and 17.3. This shows that the parties, when drafting the National Agreement, had the concept of "immediate supervisor" in mind.[6]

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[6] The Postal Service has entered into Step 4 agreements with both the APWU and the NPMHU which provide that who is the "immediate supervisor" of an employee at a particular installation, for purposes of Article 15.2, is to be determined locally or regionally. (Postal Service Exhibits 20 and 22.)

Thus, under general principles of contract interpretation, it is reasonable to conclude that when the parties use the term "supervisor," rather than "immediate supervisor," in a particular provision the former is not confined to the latter, absent an indication to the contrary.[7]

Article 16.8, which the Unions principally rely on, states:

> 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 associate 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.
>
> (Emphasis added.)

Article 16.8 addresses the issuance of discipline (suspensions and discharges) for all offenses, not just those

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[7] Within the particular context of Article 15.2 (Step 1), for example, it seems clear that the reference to "the supervisor" in the subparagraphs following subparagraph (a) are to the "immediate supervisor" referred to in subparagraph (a).

relating to attendance issues. It seems inappropriate, however, to attempt in this case to provide a blanket determination regarding the interpretation and application of Article 16.8's reference to the imposition of disciplinary action by "a supervisor." The underlying grievances in this case referred to in the Step 4 documents relate to attendance control supervisors issuing discipline, and that was the focus of the arbitration hearing. This decision will be confined to that particular context; that is, whether the Postal Service's use of attendance control supervisors (whatever their particular title), not only to monitor employee attendance, but to issue discipline for attendance-related offenses is in conflict or inconsistent with Article 16.8.

Article 16.8 focuses not on which supervisor may initiate discipline, but on the need for review and concurrence by the appropriate higher authority. The regional arbitration cases cited by the Unions where discipline imposed by a higher authority than the employee's immediate supervisor was overturned, usually on "due process" grounds, either were based on the arbitrator's finding of a lack of the necessary separate review and concurrence or premised on the arbitrator's determination that the imposition of discipline by the higher authority deprived the employee of his rights under Article 15.2, because the immediate supervisor handling the grievance at

Step 1 did not have the authority to settle the grievance.[8] Other regional arbitration decisions cited by the Postal Service have dismissed grievances protesting that discipline was imposed by a supervisor other than the employee's immediate supervisor in a variety of contexts, including issuance of discipline by attendance control supervisors.

In the early 1980s when the GAO issued its report on Postal Service control of absenteeism, there is no question that the Postal Service emphasized the continuing role of first line supervisors in absence control and in determining appropriate disciplinary action. This is reflected in contemporaneous Postal Service documents which the Unions have cited. Those documents, which set forth Postal Service policy at that time, do not, however, establish a contractual commitment to the Unions that would bar the Postal Service, for example, from assigning a supervisor the responsibility not only to monitor attendance of all or some employees at a particular facility, but also to initiate attendance-related disciplinary action, provided this is done in a manner consistent with Articles 16.1 and 15.2.

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[8] The Eleventh Circuit Court of Appeals in a 1988 decision (USPS v. NALC) vacated a regional arbitration decision which overturned the removal of an employee who had stolen mail because the Post Master, rather than the employee's immediate supervisor, terminated the employee, which the arbitrator deemed to be a "due process" violation. On the facts of the case, the Court concluded that this determination was arbitrary or capricious, and that any procedural error was corrected and nonprejudicial. In its decision, the Court stated: "The Collective Bargaining Agreement does not suggest that *only* the immediate supervisor can issue the disciplinary notice."

Evidence was presented in this case regarding the attendance control program administered at the JFK facility in New York City for at least the past 25 years. Attendance control supervisors -- referred to as leave administrators -- are responsible for attendance and leave matters for all employees on their tour. These supervisors are not at a higher level of management than the supervisors who oversee work performance on the floor, and they regularly consult with the employees' floor supervisors, in particular before imposing discipline. As described in this record, I cannot conclude that this application of discipline is inherently inconsistent with Article 16.1 or with other Postal Service commitments, in particular, the March 2003 Step 4 settlement relating to implementation of the Postal Service RMD/eRMS. At the JFK facility, Mail Handler employees file Step 1 grievances protesting discipline issued by a leave administrator with the leave administrator, whereas APWU employees do so with their floor supervisors, apparently based on each local Union's determination. The testimony indicates that the floor supervisors are fully capable of exercising Article 15.2 authority to settle grievances over discipline issued to APWU employees by leave administrators.

It also is worth pointing out that an attendance control supervisor is not excluded from the definition of "supervisor" in Section 113.2 of the ELM: "--one who has a direct responsibility for ensuring the accomplishment of work through the efforts of others. Normally a supervisor has no subordinate employees with managerial responsibility for others." An employee who fails to meet his or her obligation to

report to work hinders the "accomplishment of work." The specific attendance control officers referred to in this record did not have subordinate employees with managerial responsibility for others; they were first line supervisors, albeit they specialized in attendance control. There also does not appear to be any reason why an attendance control supervisor cannot function consistent with the principles of "sound supervision" set forth in Section 372 of the ELM, provided they consult with an employee's floor supervisor, as was testified routinely is done at the JFK facility.[9]

There also is nothing in Article 16.2 that would preclude an attendance control supervisor from discussing attendance issues with an employee prior to imposition of any discipline. Nor does Article 16.3 limit who may issue a letter of warning. With appropriate access, as needed, to an employee's personnel file and consultation with an employee's work floor supervisor, an attendance control supervisor can take into account mitigating factors -- and the employee and the Union can always raise those in the grievance and arbitration procedure. An attendance control supervisor also may be in a better position to provide consistency in applying attendance-related discipline in a particular facility, so as to lessen the likelihood of uneven or disparate treatment, which is an important component of "just cause."

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[9] The observations in this paragraph are not intended to equate the term "supervisor" in Article 16.8 with any particular use of that term in the ELM.

While the practice at many, if not most, postal facilities may have been that employees' immediate supervisors who oversee other work performance issues also have been responsible for initiating discipline for attendance matters, that has not been uniform. In addition to the JFK facility in New York and Dayton, as to which testimony was presented in this proceeding -- and where the matter apparently was not grieved -- attendance control supervisors have issued discipline at other locations, including Atlanta, Baltimore, Harrisburg and Dallas, where grievances protesting such management action were denied by regional arbitrators.[10] Thus, there has not been a sufficiently uniform and consistent practice in the application of Article 16.8 to establish that the parties mutually understood that provision to preclude issuance of discipline by attendance control supervisors.

The evidence presented by the NPMHU regarding the modification of Article 16.8's counterpart in the NRLCA National Agreement in 1995 does not show that those parties agreed to a substantive change in the meaning of that provision, only that they agreed to "clarify" it. Moreover, according to a Postal Service witness, Postal Service and NRLCA representatives agreed at the bargaining table that the change in language was "cosmetic."

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[10] As the APWU points out, not all of these decisions squarely addressed the issue presented in this case. No regional arbitration case has been cited which held that issuance of discipline by an attendance control supervisor was contractually impermissible. One case cited by the NPMHU, Case No. N7M-1A-D 38367 (1992) may have some tangential bearing on this issue, but is difficult to decipher.

The APWU and NPMHU grievances underlying the present Step 4 disputes each involved a Union protest of the imposition of discipline by an attendance control supervisor on the basis that supervisor was not the employee's immediate supervisor. The preceding paragraphs basically describe the contractual and factual context at the time the present Step 4 disputes were initiated and discussed.

Subsequently, the respective parties reached agreement on the JCIM and CIM. In addressing Article 16.8, the Mail Handler CIM includes a note referring to the existence of a National level dispute "regarding whether discipline can be issued by other than the employee's immediate supervisor." This note is of some significance in that it seems to recognize that an attendance control supervisor is not the employee's "immediate supervisor." The Postal Service's acquiescence at the JFK facility in the local APWU's position that grievances protesting discipline issued by leave administrators are to be presented to the employee's floor supervisor in Step 1 also may reflect management's recognition that the leave administrators, while they may be supervisors, may not be the employee's "immediate supervisor," as that term is used in Article 15.2. Other evidence in this record further supports that conclusion

The Unions view the JCIM and CIM provisions interpreting Article 16.8 as conclusive on the matter in dispute in this case. Consistent with the parties' understandings, the interpretations in these interpretive manuals should be considered self-explanatory and binding on the parties. As the Postal Service stresses, however, both manuals explicitly state

they are not intended to alter in any way the parties' rights, responsibilities or benefits under the respective National Agreement. They are intended to provide guidance as to the agreed-to meaning of specific contractual provisions.

The pertinent language in the APWU JCIM states as follows:

> CONCURRENCE
>
> It is normally the responsibility of the immediate supervisor to initiate disciplinary action. Before a suspension or removal may be imposed, 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 discipline being issued.

* * *

The Mail Handler CIM includes exactly the same language prefaced by the statement that: "Concurrence is a specific contract requirement to the issuance of a suspension or a discharge."[11]

The key sentence in the JCIM and CIM relied on by the Unions reads: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action." I conclude that the parties intended the term "immediate supervisor" in this sentence to have the same meaning as it does in Articles 15.2 and 17.3 of the National Agreement. For

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[11] The CIM and JCIM each also contain additional language regarding Article 16.8 that is not relevant here.

reasons already stated, I conclude that, unless otherwise locally agreed,[12] this term does not refer to a supervisor, such as an attendance control supervisor who does not oversee an employee's work performance on the floor of the facility.

The Unions agree that the wording of the JCIM and CIM allow for exceptions, but they argue from the use of the words "[i]t is normally the responsibility..." that such exceptions must be confined to abnormal circumstances, as, for example, where the immediate supervisor is unavailable or compromised in some way so as not to be able to appropriately issue the discipline. In context, this language does not support such a restrictive reading. Article 16.8, which does not use the term "immediate supervisor," broadly applies to discipline for all offenses, and focuses on the requirement for review and concurrence. Notably, the following two sentences in the JCIM and CIM which address review and concurrence both use mandatory ("must") language. The sentence on which the Unions rely here is not written in mandatory terms. It is more descriptive than prescriptive. It does not, in my view, connote that a supervisor other than the employee's immediate supervisor can initiate discipline only in circumstances where it would not be feasible or appropriate for the immediate supervisor to do so.

Accordingly, for purposes of this case, issuance of attendance-related discipline by an attendance control supervisor at a particular facility, when the Postal Service deems that to better meet the needs of the Service, does not

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[12] See footnote 6.

conflict with the interpretation of Article 16.8 set forth in the JCIM and CIM. Of course, the imposition of a suspension or discharge must not only be reviewed and concurred in by the appropriate higher authority, but it also must be consistent with Article 16.1 and any other applicable contract provision, and must not impair the application of Article 15.2.

The issue in this case does not lend itself to simplistic conclusions. The Unions have raised a number of legitimate concerns. The Postal Service seeks to preserve its management rights. Various provisions of the National Agreement address the Unions' concerns and impose requirements and limitations on the exercise of management rights. In the final analysis, however, the Unions have not established that issuance of discipline by attendance control supervisors is precluded by Article 16.8 or other sections of the National Agreement, provided such an exercise of management authority is administered consistent with other applicable contractual provisions, as discussed in this opinion.

AWARD

The dispute in this case is resolved on the basis set forth in the above Findings.

Shyam Das, Arbitrator

NATIONAL ARBITRATION
CASE NO. E95R-4E-D 01027978

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

- and -

NATIONAL RURAL LETTER CARRIER'S ASSOCIATION

Subject:- "Review and Concurrence for Discipline"

Article 16.6

Dana Edward Eischen, National Arbitrator

Appearances

For the NRLCA: Peer & Gan, LLP
by
Dennis D. Clark, Esq.
Michael Gan, Esq., of Counsel

For the U.S.P.S.: John W. Dockins, Esq.
William Daigneault, Lab. Rel. Specialist

Also Present

For the NRLCA

Gus Baffa, President
Randy Anderson, Dir. Labor Relations

For the U.S.P.S.

Olie Turner, Postmaster
Robert Horsdig, Lab. Rel. Spec.
John Ingram, Lab. Rel. Spec.
Jim Hellquist, Lab. Rel. Spec.
Charles Baker, Lab. Rel. Spec.
Frank Keenan, Lab. Rel. Spec. (ret.)
Marty Rothbaum, Lab. Rel. Spec.
Roy Shirkey, Lab. Rel. Spec.

PROCEEDINGS

Article 15, Section 5 of the National Agreement between the United States Postal Service ("USPS" or "Employer") and the National Rural Letter Carrier's Association ("NRLCA" or "Association") provides for two-tier grievance arbitration: Article 15.5.C "National Arbitration" of "certified cases involving national interpretations" and/or "other cases which the parties agree have substantial significance"; and, Article 15.5.D "area arbitration" of "removal cases and contract cases not involving national issues". In December 2001, these Parties designated me to serve as their National Arbitrator, to hear and decide unresolved national level interpretive grievances filed at Step 4, in accordance with Article 15, Section 3.D of the National Agreement.

The record before the National Arbitrator in this case presents a fundamental conflict between the NRLCA and the United States Postal Service concerning the proper interpretation of the "review and concurrence" provision contained in Article 16, Section 6 of their National Agreement. It is not disputed that this review and concurrence language has been a fertile source of controversy over the last thirty (30) years, resulting in scores of decisions by area arbitrators interpreting and applying its provisions. The ostensible vehicle for bringing certain generic issue(s) concerning the interpretation and application of Article 16.6 to this National Arbitration, at this time, was a grievance concerning the removal of rural carrier Ms. Julie DeWitt, from the Buhl, Idaho post office. However, the DeWitt grievance, *per se*, is not before the National Arbitrator for decision in this proceeding.

The Grievant in that case was issued a Notice of Removal dated October 6, 2000, for allegedly driving unsafely and failing to immediately report an accident. As a defense, the NRLCA asserted that there was improper review and concurrence as required by Article 16.6. The Postal

Service disagreed with the NRLCA's interpretation of Article 16.6 and the Association declared the issue to be interpretive.

After the Association referred the instant case to Step 4 of the parties' grievance procedure, the Postal Service referred to Step 4 a number of other removal grievances, which had been denied at Step 3 and were pending area arbitration. The Postal Service determined that each of those cases raised Article 16.6 issues likely be impacted by the national interpretive decision on the issues raised herein. [The record is not entirely clear whether the number of related cases held in abeyance is sixteen (16) or twenty-one (21). It is noted that Attachment H to the NRLCA post-hearing brief is a list of relevant information about sixteen (16) such cases). Each entry contains the name of the Grievant, the location where he or she was employed, the NRLCA case number, the Postal Service case number, subject of the grievance, date of the Step 3 denial, date the case was appealed to area arbitration, date (if any) the case had been scheduled for area arbitration, and the date when the case was referred to Step 4 by the Postal Service (if known).]

Some of these cases apparently involve grievances concerning both an emergency suspension and the subsequent removal of the Grievant, which were consolidated during the grievance procedure. Like the DeWitt case, these related cases have also been held at Step 4, awaiting the resolution of the national interpretive issues presented in this case. The Parties agree that these cases (some of which were appealed to area arbitration as far back as 2000) should be processed in area arbitration as expeditiously as possible. To that end, at the hearing in this case, the parties stipulated that the National Arbitrator should also decide in this proceeding "the issue of what to do with the pending Step 4 cases that have similar issues in them."

The broad, general interpretive issues concerning the "review and concurrence"provision of Article 16.6, as presented in the Step 4 appeal and answer, are decided herein, without reference to the specifics of the DeWitt case. Further, no opinion is expressed or implied by this National Arbitrator concerning the facts or merits of that specific grievance nor concerning the facts and merits of the other related cases which are also pending hearing in area arbitrations; held in abeyance by the Parties, pending the outcome of the national interpretation issue(s) appealed to Step 4 by the Union in the instant case, pursuant to Article 15, Section 3.D of the National Agreement.

A National Arbitration hearing was held at Washington, D.C., on June 4, 2002, at which both Parties were represented by Counsel and afforded full opportunity to present documentary evidence, testimony subject to cross-examination and oral argument. A transcribed certified stenographic record was made and the proceedings were closed with the filing and exchange of briefs and reply briefs. The Parties graciously granted an extension of the contractual time limits for rendition of the Opinion and Award.

PERTINENT NATIONAL AGREEMENT PROVISIONS

ARTICLE 15
GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. General Policy

Grievances which are filed pursuant to this Article are to be processed and adjudicated based on the principle of resolving such grievances at the lowest possible level in an expeditious manner, insuring that all facts and issues are identified and considered by both parties. In the event that a grievance is processed beyond Step 1, both parties are responsible to insure all facts, issues and documentation are provided to the appropriate union and management officials at the next higher level of the grievance procedure. The parties further agree that at any step in the grievance procedure, the Union representative shall have full authority to settle or withdraw the grievance in whole or in part. The Employer representative, likewise, shall have full authority to grant, settle or deny the grievance in whole or in part.

Section 2. 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.

* * *

Section 4. Grievance Procedure-General

A. Observance of Principles and Procedures

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. Failure to Meet Time Limits

The failure of the employee or the Union at 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.

C. Failure to Schedule Meetings

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.

D. National Level Grievance

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 at 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 at Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter.

* * *

Section 5. Arbitration

A. General

A request for arbitration must be submitted within the time limit for appeal as specified for the appropriate Step. The National President of the Union must give written authorization of approval to the Employer at the national level before the request for arbitration is submitted.

Grievances referred to arbitration will be placed on a pending arbitration list. Except for discharge cases, the Union will have sixty (60) days from the date of such referral to certify the case to be scheduled for arbitration at the earliest possible date. Cases which are not certified for arbitration within the sixty (60) day period shall be considered waived and removed from the pending arbitration list. Discharge cases referred to arbitration shall be placed on a separate pending arbitration list. The Union will have fifteen (15) days from the date of such referral to certify the case to be scheduled for arbitration at the earliest possible date. Cases which are not certified for arbitration within the fifteen

(15) day period shall be considered waived and removed from the pending arbitration list. If there are other certified disciplinary cases related to the employee's removal grievance, these cases shall be scheduled for hearing along with the removal cases.

The case with the lowest docket number pending before a panel will be scheduled to be heard first. However, the parties may mutually agree to assign such cases for hearing out of numerical sequence in order to fill a vacated hearing date, or to lessen the amount of the arbitrator's travel time and expense or for other valid reasons. Arbitration hearings shall be held during working hours. Employee witnesses 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.

Any dispute as to arbitrability may be submitted and determined by the arbitrator. The arbitrator's determination shall be final and binding. The arbitrator shall render his award within thirty (30) days of the close of the hearing, or if briefs are submitted, within thirty (30) days of the receipt of such briefs on cases which do not involve interpretation of the Agreement, or are not of a technical or policy making nature. On all other cases, the award shall be rendered within thirty (30) days if possible. All decisions of the arbitrator 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 the arbitrator. Unless otherwise provided in this Article, all costs, fees and expenses charged by an arbitrator will be borne by the party whose position is not sustained by the arbitrator. In those cases of compromise where neither party's position is clearly sustained, the arbitrator shall be responsible for assessing costs on an equitable basis.

B. Selection of Panels

National and Area Arbitration Panels are established as set forth below:

The members of these panels will be selected in accordance with the procedure set forth below and will serve for the term of this Agreement and shall continue to serve for six (6) months thereafter unless the parties otherwise mutually agree. To assure the expeditious processing of grievances, the parties by agreement may increase the size of these panels at any time. Should vacancies occur, or additional members be required on the National or Area panels, such vacancies shall be filled by mutual agreement. In the event the parties cannot agree on individuals to serve on these panels, or to fill any vacancies which may exist, a list of five (5) arbitrators will be supplied by the American Arbitration Association for each selection to be made. The parties shall then proceed by alternately striking names from the list until only one individual remains. Such individual shall be selected to remain on the panel.

C. National Arbitration

Effective August 3, 1996, a National Panel of not more than three (3) arbitrators will be established to hear certified cases involving national interpretations or other cases which the parties agree have substantial significance. Arbitrators on the National Panel will be assigned to hear cases on a rotating basis. Member(s) of the Area Panel may by mutual agreement be member(s) of the National Panel.

Prior to the scheduled hearing each party to the dispute may separately submit to the arbitrator who has been assigned the case, and to the other party to the dispute, a statement setting forth the following:

a. the facts relevant to the grievance;
b. the issue in the case;
c. the position(s) or contention(s) of the party submitting the statement.

The parties may by mutual agreement submit a joint statement to the arbitrator. A stenographic record will be taken if requested by either party to the dispute. In such case, the cost of such record shall be borne by the requesting party. The other party, upon request, will be furnished a copy of the record, in which case the cost of such record shall be borne equally by both parties to the dispute.

D. Area Arbitration

A geographically balanced Area Panel of arbitrators is established to hear removal cases and contract cases not involving national issues.

Normally, a stenographic record shall not be taken at these hearings, nor post hearing briefs filed. However, either party may make exception to this policy. The case with the lowest docket number pending before a panel will be scheduled to be heard first. However, the parties may mutually agree to assign such cases for hearing out of numerical sequence in order to fill a vacated hearing date, or to lessen the amount of the arbitrator's travel time and expense or for other valid reasons.

ARTICLE 16
DISCIPLINE PROCEDURE

Section 1. Statement of Principle

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.

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 a 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.

Section 2. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning which shall include explanation of a deficiency or misconduct to be corrected.

Section 3. Suspension 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 the employee will be suspended after two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer. For the term of the 1995 Agreement, the notice period shall be increased to ten (10) calendar days and if the employee initiates a grievance during that period, the

suspension will not be served until disposition of the grievance or issuance of the Step 2 decision, whichever comes first

Section 4. Suspension of More Than 14 Days or Discharge

In the case of suspension 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 the employee 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 employee's case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure.

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the advance notice requirement shall not apply and such an employee may be immediately removed from a pay status.

Section 5. 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 fourteen (14) days or discharge the employee, the emergency action taken under this section may be made the subject of a separate grievance.

Section 6. Review of Discipline

In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has first been reviewed and concurred in by a higher authority. Such concurrence shall be in writing. (Emphasis added)

In associate 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.

* * * * *

ISSUES

The Parties did not formulate a joint submission to arbitration nor did either Party elect to file individual pre-hearing statements of relevant facts, issues and contentions, as suggested by Article 15, Section 5.C. At the arbitration hearing, the Parties submitted differing articulations of the interpretive issues presented for determination in this matter. Before setting forth those respective statements of issues, however, it is instructive to review the process leading to the certification of this case to National Arbitration under Article 15.5.C.

The dispute concerning the proper interpretation of Article 16.6, now under consideration, crystallized during Step 3 discussions of the Dewitt discharge area grievance (E95R-4E-D 01027978). In that context, by letter dated May 11, 2001, Mr. Baffa submitted the matter to Step 4 in accordance with Article 15.4.D and requested national arbitration, as follows:

> The purpose of this letter is to appeal the subject-named grievance to Step 4. The union is appealing the above referenced case from Area Arbitration to Step 4 because the union believes it contains nationally interpretive issues.
>
> This appeal letter does not constitute a waiver by this Union of any issue or violation as it relates to this grievance; it is for the sole purpose of bringing this grievance to a Step 4 hearing.
>
> Please schedule this grievance for an early discussion.

The attached written grievance submitted to national handling at Step 4 by Mr. Baffa read as follows:

> The NRLCA position and interpretation of Article 16, Section 6, which many Area Arbitrators continue to conclude, if the facts of the particular case permit, that Article 16.6 of the National Agreement is violated if:
>
> 1) There is a "command decision" from above;
>
> 2) There is a joint decision to impose a suspension or discharge;
>
> 3) There is a failure of either the initiating or review and concurring official to make an independent substantive review of the evidence prior to the imposition of a suspension or discharge;

4) There is no evidence of written review and concurrence prior to the imposition of a suspension or discharge;

5) There is no showing of harm.

In recent Step 3 decisions, the USPS designee refers to the Association's position on review and concurrence as a "total bastardization of Article 16, Section 6." The Association strongly disagrees with the USPS designee's characterization as expressed in this and other Step 3 decisions involving Article 16.6. The Association's position is grounded in the language of Article 16.6 and the many arbitration awards between the Association and the USPS. Based on the above referenced Step 3 decisions, is it the position and interpretation of the USPS that Article 16.6, as agreed to in the 1995-99 National Agreement and Extension, bars the Association from citing as violations of Article 16.6 the following:

1) "Command decisions" from above;

2) Joint decisions;

3) Failure of either the initiating or review and concurring official to make an independent substantive review of the evidence, prior to the imposition of a suspension or discharge;

4) No evidence of written review and concurrence prior to the imposition of a suspension or discharge.

Following Step 4 discussions of these Article 16.6 national interpretive issues between USPS Labor Relations Specialist William Daigneault and NRLCA Director of Labor Relations Randy Anderson, Mr. Daigneault denied the national interpretive grievance at Step 4, by letter of September 27, 2001, as follows:

Re: E95R-4E-D 01027978 J. DeWitt Buhl, ID 83316-9998

On several occasions, the most recent being September 14, 2001, I discussed with the Union the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance concerns the interpretation of Article 16.6 of the National Agreement concerning review and concurrence of discipline.

It is the Union's position that a violation of Article 16.6, Review of Discipline has occurred in the following situations:

1. There is a command decision from higher authority that instructs the issuance of a suspension or discharge.

2. The decision by the in initiating official to suspend or discharge is reached jointly with the review and concurring official and was not an independent decision by the initiating official.

3. The initiating official or reviewing official failed to complete an independent substantive review of the evidence prior to the imposition of the suspension or discharge.

4. There is no evidence of written review and concurrence prior to the imposition of the suspension or discharge.

It is the Union's position that a showing of harmful error in relation to review and concurrence is not required to sustain the Union's grievance on the discipline. The Union also contends that their position is "grounded in the language of Article 16.6 and the many arbitration awards between the USPS and NRLCA."

It is the position of the Postal Service that Article 16.6 restricts a supervisor, manager or postmaster from imposing a suspension or discharge upon an employee in the rural carrier bargaining unit without review and concurrence by a higher authority. It protects carriers from a new, inexperienced supervisor that intends to suspend or remove the carrier without just cause. It provides for a higher authority to review the situation (either review of paperwork, discussion with proposing official or general knowledge of the situation giving rise to the charges) to determine whether, on the surface, it appears that the action being proposed is appropriate.. It requires that the higher authority document his/her concurrence with the action being proposed in writing.

Article 16.6 does not require that the concurring official conduct an independent investigation. It does not prohibit the concurring official from having previous knowledge of the charges, discussing the charges with the proposing official, being involved in the investigation with the proposing official or providing advice. It does not restrict management from having more than one concurring official.

In the case at hand, the Union alleges Management violated Article 16.6 claiming the review and concurrence was nothing more than a "rubber stamp." The Union contends that the review and concurrence official did not review anything except the proposing official's request for discipline.

It is Management's position that the concurring officials in the case at hand went above and beyond the requirements of Article 16.6. While the contract only requires review a nd concurrence by one higher authority, several managers in higher authority reviewed the evidence submitted by the proposing official in this case. All the managers agreed the action being proposed was appropriate.

In the absence of any contractual violation, this grievance is denied. Time limits were extended by mutual consent.

At the arbitration hearing in this matter, each Party submitted its own specific statement of national interpretive issues regarding violations and compliance with Article 16.6, upon which it seeks a decision in this case. Additionally, they submitted by joint stipulation two other "issues of national significance", regarding appropriate remedies for proven violations of Article 16.6 and post-National Arbitration administration of the pending area arbitration cases, now held in abeyance. Rather than rewording the issues advanced by the Parties into some form of synthesized issues, I will address in this Opinion and Award the following joint and several interpretive concerns expressed by the Parties, respectively, in their Step 4 correspondence and at the arbitration hearing, *viz.*:

1) Is Article 16.6 Review of Discipline of the Extension to the 1995-1999 USPS-NRLCA National Agreement violated if:

a) The lower level supervisor consults, discusses, communicates with or jointly confers with the higher reviewing authority before deciding to propose discipline;

b) There is a "command decision" from higher authority to impose a suspension or discharge;

c) There is a joint decision by the initiating and reviewing officials to impose a suspension or discharge;

d) The higher level authority does not conduct an independent investigation and relies upon the record submitted by the supervisor when reviewing and concurring with the proposed discipline;

e) There is a failure of either the initiating or reviewing official to make an independent substantive review of the evidence prior to the imposition of a suspension or discharge;

f) There is no evidence of written review and concurrence prior to the imposition of a suspension or discharge.

2) Does a proven violation of Article 16.6 automatically sustain the grievance and overturn any discipline, absent a showing of "actual harm", *i.e.*, "that the reviewing official would not have concurred with the proposing official and that the discipline would not have been issued in the first instance".

3) What should be done next with those pending Step 4 cases which have been held in abeyance for area arbitration, awaiting the outcome of this National Arbitration case?

POSITIONS OF THE PARTIES

The following statements of position have been edited from the respective posthearing briefs and reply briefs.

NRLCA

It is the Association's position that Article 16.6 requires two separate independent judgments on discipline -- the first by the initiating official who proposes discipline, and the second by a higher authority who reviews and concurs in that discipline before it is imposed. It is the Association's position that such requirement is violated: (1) when the initiating official does not possess the freedom to make his own independent determination on discipline free of command from higher authority, (2) when the initiating and concurring officials jointly make one decision, or (3) when the concurring official does not meaningfully review the record before concurring in the proposed discipline. In each such instance, there have not been two separate independent judgments on discipline, and the rural carrier who is facing the potential loss of his livelihood has been deprived of the due process protection -- the essential "check and balance" -- that Article 16.6 is intended to provide.

Compliance with Article 16.6 is required in every case before a suspension or discharge can be imposed. Failure by the Postal Service to comply with Article 16.6's dictates is fatal to the disciplinary action. Consequently, the appropriate remedy for such violation is reinstatement with full back pay, without consideration of the underlying merits of the disciplinary action. The Postal Service apparently contends that a "harmless error" rule should apply to Article 16.6 violations -- that the disciplinary action should stand notwithstanding such violation if it can be shown that the same action would have been taken even if Article 16.6 had been complied with. The Postal Service is wrong. Article 16.6 says nothing about a "harmful error" requirement but it does say is that "in no case" may discipline be imposed without compliance with Article 16.6's due process requirements. In addition, the Postal Service also offers the totally insupportable notion that in the case of a proven Article 16.6 violation, the aggrieved employee is not to be reinstated to his job but merely to receive backpay from the date of his removal to the date of a Step 2 decision in the grievance process. As in the case of Article 16.6's due process requirement -- two separate independent judgments on discipline -- the arbitral remedy for a violation of Article 16.6 -- reinstatement with full backpay -- has been incorporated into the parties' agreement. The universal arbitral remedy of reinstatement, and the almost universal arbitral remedy of full backpay, has never been addressed by the Postal Service in collective bargaining negotiations.

The language of Article 16.6 has been in the parties' agreements for more than 30 years. The language has been interpreted consistently by area arbitrators throughout this period. The Postal Service has never sought to renegotiate that language to undo any of the interpretations of those arbitrators, and this National Arbitrator should not do now for the Postal Service what it has failed to seek or achieve at the bargaining table.

USPS

Because the language at issue is so clear and unambiguous there is no need to search any further. If the NRLCA wants to impose more stringent standards and criteria of review then they should negotiate such changes at the bargaining table. To pretend that such criteria are present in the long standing

language of Article 16.6 is to ignore the plain meaning of the language itself. Absent any special meaning assigned by the parties to the words "review" and "concur", the Arbitrator is bound by the language of the bargain as expressed in Article 16.6. A careful reading of Article 16.6 reveals that the language does not call for overturning a removal action but states that "In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has *first* been reviewed and concurred in by a higher authority". (Emphasis added) Therefore, where a violation of Article 16.6 is found to have taken place the only appropriate remedy is to place the employee back into a pay status until review and concurrence takes place. Once review and concurrence takes place the discipline may then be imposed.

In summary, the ability to issue and impose discipline is an exclusive management right expressly incorporated into the Collective Bargaining Agreement at Article 3. Article 16.6 merely requires a procedure that two management officials concur before a suspension or discharge is imposed. It does not in any way alter the exclusive discretion that management has in issuing or imposing suspensions and removals. There is no violation of Article 16.6 if the proposing official consults, discusses, communicates with or jointly confers with the reviewing official before deciding to propose discipline. There is no violation of Article 16.6 if the reviewing official does not conduct an independent investigation and relies on the record submitted by the proposing official. As long as the reviewing official can articulate that a review has occurred and concurrence was given in writing, the Postal Service has met its obligation under Article 16.6. The standard of review required by Article 16.6 is simply and only that each of the management officials is satisfied that suspension or discharge be imposed.

Because the "review and concur" requirement does not factor into the "just cause" determination, any potential remedy should not disturb the final analysis regarding "just cause" in any particular case. Furthermore, any procedural defect of noncompliance with Article 16.6 will have been cured at Step 2 of the grievance procedure because a higher authority will have reviewed the file and issued a written concurrence in the form of a Step 2 denial. Even if a violation of Article 16.6 can be proven, the NRLCA still must demonstrate in each individual case how the grievant has been harmed. A violation of Article 16.6 does not automatically sustain the grievance, but rather the Association has the burden of showing that a harmful error has occurred. At the most, the appropriate remedy would be to delay imposition of the discipline until such written concurrence has occurred. Finally, all pending Step 4 grievances in which the NRLCA alleges a violation of Article 16.6 should be remanded to Step 3 for application of the award in this case.

OPINION OF THE NATIONAL ARBITRATOR

Bargaining History, Arbitral Authority and Mutual Intent

Certification of the instant case to Article 15.5.C National Arbitration marks the first occasion for a definitive resolution of the national interpretive issues presented, *supra*. However, the contract language under analysis in this case has been part of the collectively negotiated contracts between these parties for some thirty (30) years. Thus, a certain valuable perspective is gained by considering the bargaining history and administrative practice thereunder; especially since this very language has been so frequently interpreted and applied in final and binding decisions by scores of arbitrators in Article 15.5.D area arbitration of removal cases.

Turning first to bargaining history, the language which now appears as Article 16.6 of the current USPS/NRLCA National Agreement is essentially unchanged, dating from the 1971-73 Joint Collective Bargaining Agreement. Following passage of the Postal Reorganization Act of 1970, the major craft unions representing postal employees bargained jointly with the Postal Service and entered into a joint collective bargaining agreement covering all crafts. Those unions covered by the first agreement included the NRLCA, as well as the APWU (then known as the United Federation of Postal Clerks), the NALC, the Mail Handlers (and three others which have since been absorbed by the mentioned unions).

Article 16, Section 5 of that seminal agreement provided:

> SECTION 5. 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 his designee.
>
> In associate 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.

Over the intervening years, these unions have sometimes bargained in coalitions of differing combinations and sometimes negotiated separate contracts with the Postal Service, but the review and concur language has remained virtually constant throughout.

As for the NRLCA/Postal Service contracts, since the original language of Article 16.6 was adopted by the Parties in the 1971-73 joint Collective Bargaining Agreement, the language was re-adopted unchanged in the successive agreements negotiated in 1973, 1975, 1978, 1981, 1984, 1988, 1990, and 1993. In 1995, the NRLCA and the Postal Service amended the language of the first paragraph of Article 16.6 to provide as follows: (Emphasis in original, to denominate the changes.)

> In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has first been reviewed and concurred in by a higher authority. Such concurrence shall be in writing.

It is noted that the NRLCA and the Postal Service jointly prepare and publish an "Analysis of Changes" following renegotiation of their agreements. The 1995 Analysis stated with respect to the above changes in Article 16.6:

> The first change clarifies the parties' position that discipline may be imposed by a manager other than the rural carrier's supervisor. The second change makes it clear that the concurring official need not be the installation head, provided the official is a higher authority, *i.e.*, a higher organizational level or higher grade level. The third change requires that there be written evidence of such review and concurrence.

My focus in this case remains the language of Article 16.6 of the current Agreement, in a national interpretive context; with due regard for bargaining and arbitral history concerning the interpretation and application of that language since 1971, to the extent such evidence assists in determining the mutual intent of the contracting parties. In that connection, from the inception of the first collective bargaining agreement in 1971 to date, a period spanning some 30 years and 11 separately negotiated agreements, the NRLCA and the Postal Service have permitted area arbitrators to interpret and apply the provisions of Article 16.6, without resort to National Arbitration. Indeed,

over the last three decades, area arbitration decisions construing and applying the review and concur language of Article 16.6 have been stacking up like cordwood. [Parenthetically, area arbitrators in cases involving the other crafts likewise have consistently interpreted the meaning of the review and concurrence provision in the same manner].

It is worth re-emphasizing that, notwithstanding the Postal Service's ostensible opposition to the interpretation and application of that language rendered by virtually all of the area arbitrators in these Article 15.5.D removal cases, the substance of the "review and concur" language has been repeatedly re-adopted by the Parties, without material change, in every successive National Agreement since 1971-73. In short, during more than three decades of living with this language as interpreted and applied by the area arbitrators, with a remarkable degree of consistency, in nearly 100 decisions. In all that time, neither Party ever exercised its right to renegotiate the controlling language of Article 16.6. Nor, prior to the instant case, did either Party deem it necessary to submit the review and concurrence language of Article 16.6 for definitive interpretation in Article 15.5.C National Arbitration, as a certified "national interpretive issue".

The Postal Service quite properly points out that, under the two-tier arbitration system adopted by these Parties, National Arbitration decisions govern in matters of national interpretations and the area arbitration decisions therefore are not authoritative precedent in this case. But just because National Arbitration decisions pre-empt area decisions in certified cases of national interpretation does not mean that thirty (30) years' worth of arbitration decisions by scores of prominent arbitrators, consistently construing and applying the language of Article 16.6 in area arbitration cases, are irrelevant, immaterial or unpersuasive in this National Arbitration case.

This National Arbitrator has the power and authority, as the contractual "Court of Last Resort", to interpret Article 16.6 in a manner other than as consistently and uniformly interpreted by scores of distinguished area arbitrators. It is manifest that Article 15.5.C area arbitration decisions are not *res judicata*, *stare decisis*, or in any sense dispositive, in Article 15.5.D National Arbitration. My responsibility to function as the designated National Arbitrator is not fulfilled simply by taking an opinion poll of area arbitrators.

But, in the absence of a National Arbitration decision interpreting a particular provision of the National Agreement, area arbitrators are regularly called upon to interpret and apply the various provisions of that Agreement, including Article 16.6. Area arbitrators have interpreted and applied Article 16.6 for more than 20 years in scores of cases, because the Association and the Postal Service have permitted them to do so and there is no contractual prohibition on them doing so. Of course, the interpretation of Article 16.6 in this National Arbitration case will govern and apply in all future area arbitrations, because National Arbitration under the Agreement represents a ruling by the Parties' designated "Supreme Court". On the other hand, in this particular case, most of those area arbitration decisions do in fact comport with my own interpretation of the language at issue in this case, based upon my independent analysis of the record before me. In short, the great majority of those area arbitration decisions are correct and as the National Arbitrator I reach essentially the same conclusions concerning the meaning of the language of Article 16.6.

Area arbitration may not be the "Supreme Court" under the parties' Agreement, but it most certainly is the "Court of Appeals"and area arbitration decisions are as "final and binding" as National Arbitration awards. If either party disagrees with an interpretation of the Agreement made by one or more area arbitrators, it can initiate a national interpretive grievance at Step 4 and take it

on to national arbitration, to obtain a "Supreme Court" ruling. Unless and until that occurs, however, the area arbitration decisions construing and applying Article 16.6 represented the "law" of the Parties. More importantly, in my considered judgement, those accumulated decisions also constitute persuasive evidence of the mutual intent of the contracting Parties.

Those area arbitrations have laid on a persuasive interpretive gloss to Article 16.6 over a period of thirty(30) years, during which the Parties jointly re-negotiated the controlling National Agreement eleven (11) times, without even seeking, let alone achieving, any significant modification of the language of Article 16.6. When, as here, the area arbitration awards uniformly interpret a contract provision over a long period, and neither party seeks national arbitration or change in the contract language, but rather continually re-adopts the critical contract language time and time again in collective bargaining, it may well be concluded that the area arbitral interpretation has been incorporated into the Agreement. Elkouri & Elkouri, How Arbitration Works (5th edition) (BNA 1997), states the governing principle of incorporation or adoption, at page 615:

> [I]f the agreement is renegotiated without materially changing a provision that has been interpreted by arbitration, the parties may be held to have adopted the award as a part of the contract. Indeed, the binding force of an award may even be strengthened by such renegotiation without change.

The Postal Service may be technically correct, as a matter of logic, that incorporation/re-adoption theory should not be dispositive, because none of the myriad arbitration decisions construing and applying Article 16.6 was in the National Arbitration forum. However, to argue that the adoption theory should not even be considered seems to me an elevation of form over substance in this particular factual record. In my considered judgement, the arbitral gloss applied by the area arbitrators has in fact and in practice been largely accepted by both Parties and is reflective of their

mutual understanding and intent concerning the interpretation and application of Article 16.6 in removal cases.

Issues No. 1(a)-1(f): Article 16.6 Violation/Compliance

When the rhetorical excesses of ardent advocacy are stripped away, I do not perceive any meaningful disagreement between these Parties with the fundamental proposition that Article 16.6. requires two separate and independent managerial judgments, each based on substantive review of the record evidence, before a suspension or discharge disciplinary action may be imposed on an employee: the first by the initiating official who proposes discipline, and the second by a higher authority who must review and concur in the proposed discipline before it is imposed upon the employee.

It necessarily follows that the requirement of two separate and independent judgements, constitutes the very heart and core of Article 16.6, is violated when the reviewing/concurring official "commands" or "dictates" the disciplinary action to the proposing official, when the higher authority merely "rubber-stamps" the disciplinary action proposed by the employee's supervisor and/or when the sequential steps of a separate and independent supervisory initiation, followed by a separate and independent higher authority review/concurrence, are merged into a single consolidated joint decision by the two managers to suspend or discharge the employee.

Just as the area arbitration decisions rendered by a long line of prominent arbitrators have consistently held, I now hold that a violation of Article 16.6 occurs whenever: (1) the initiating official is deprived of freedom to make his own independent determination to discipline by a "command decision" dictated from higher authority to suspend or discharge; (2) the initiating and reviewing/concurring officials jointly make one consolidated disciplinary action decision, or (3) the

higher authority does not review the record and consider all of the available evidence before concurring in the supervisor's proposed discipline. In each such instance, because there have not been two separate and independent judgments on discipline, the employee is deprived of the essential due process check and balance protection that Article 16.6 is intended to provide.

However, so long as the *sine qua non* of Article 16.6, separateness and and independence of judgement in a two-stage process, is not violated by "command" decisions, joint decisions and/or "rubber-stamping", Article 16.6 does not bar the lower level supervisor from consulting, discussing, communicating with or jointly conferring with the higher reviewing authority before deciding to propose discipline. Indeed, it is common, and in many ways commendable and conducive to fulfillment of the intent of Article 16.6, for the lower level authority to communicate with higher management and discuss policies, options, and other factors to be considered, before determining whether, and to what extent, to propose suspension or discharge of an employee. In short, so long as the initiating official retains independence of judgment and is not commanded by higher authority to issue the discipline, such communications for advice and counsel between the initiating official and a higher authority are to be encouraged rather than chilled or prohibited. The determining factor under Article 16.6 is not whether the officer in charge seeks advice and counsel outside his office but whether, once having obtained such information, the initiating official acts independently or surrenders that independence completely to the person from whom he has sought such advice. In the former case, Article 16.6 is not violated but, in the latter case, Article 16.6 is violated.

By the same token, it is not *per se* a violation of Article 16.6 when the higher level authority relies in the reviewing/concurring step upon the record considered by the lower level official in proposing the discipline. The higher authority is not required by Article 16.6 to make an

"independent investigation". In my judgement, the requirements of Article 16.6 are met when the higher authority makes a substantive review of and bases the decision to concur on the record developed below.

Contrary to the position advanced by the Postal Service in this case, however, that process of review and concurrence contemplated by Article 16.6 is not a ministerial formality or a mere technical "laying on of hands" by the reviewing/concurring official. The requirement of a separate and independent second step of review and concurrence by the higher authority is not met by just a declaration of agreement with the first step supervisor's proposed disciplinary action. Compliance with Article 16.6 requires a substantive review of the matter by the higher authority in light of all the current information and the higher authority's concurrence with imposition of the disciplinary action proposed by the supervisor. Since the 1995 amendments, Article 16.6 specifies that this statement of concurrence by the higher authority must be set forth in writing.

Issue No. 1, *supra*, presents a subset of six (6) specific interrogatories concerning Article 16.6 compliance and violation, submitted by the Parties for determination in National Arbitration. Based on all of the foregoing, I conclude that Issues 1(a), and 1(d) are answered in the negative and Issues 1(b), 1(c), 1(e) and 1(f) are answered in the affirmative.

Issue No. 2- - The Remedy for Proven Violations of Article 16.6

The operative language of Article 16.6 provides (emphasis added):

> **In no case may a suspension or discharge be imposed upon an employee unless the proposed disciplinary action has first been reviewed and concurred in by a higher authority.**

This language clearly and unambiguously mandates that compliance with the two-step, two-stage process set forth in Article 16.6 is a condition precedent to the imposition of a removal or suspension. Accordingly, I concur without equivocation with those many area arbitrators who have concluded that the substantive violations of Article 16.6 set forth in Issues 1(b), 1(c) and 1(e) invalidate the disciplinary action. Because these are substantive violations which effectively deny an employee the due process rights granted by Article 16.6, persuasive proof of such fatal violations requires arbitral reversal of the improperly imposed suspension or discharge, without consideration of the underlying merits of the disciplinary action, *i.e.*, reinstatement with "make whole" damages.

In my considered judgement, those relatively few area arbitration decisions which have engrafted onto the condition precedent language of Article 16.6 an additional requirement of proof of "actual harm", notwithstanding persuasive proof of a "command decision", a "joint decision" or that the reviewing/concurring official merely "rubber-stamped" the proposed disciplinary action, are just plain wrong. Under different contract language, arbitrators might properly overlook procedural defects in administration of discipline which do not unduly compromise the rights of an employee whose suspension or discharge is otherwise justified on the record. However, the precise terminology of Article 16.6 precludes recourse to that "harmless error" argument. If this plain language of Article 16.6 occasionally produces a manifestly unfair result, as undoubtedly it has in some cases, the proper recourse is renegotiation at the bargaining table, not arbitral legislation of "actual harm" or "harmless error" rules which are at odds with the express wording of Article 16.6.

The only *caveat* I would add concerns the procedural violation described in Issue 1(f), *i.e.*, failure of the Postal Service to produce evidence that the higher authority's concurrence was reduced to writing, as required by the 1995 amendment to Article 16.6. Such a failure to express concurrence in written form clearly is a procedural violation of Article 16.6, for which an arbitral remedy might well be appropriate. But it is not so clear that such a violation, standing alone, would invalidate the disciplinary action and require reversal and reinstatement in every case.

The record in this matter is insufficiently developed to make an informed judgement concerning bargaining history and mutual intent regarding the 1995 amendment. The facts and circumstances of each particular case determine whether a procedural failure to concur in writing adversely impacted substantive Article 16.6 rights of an individual suspended or discharged employee. For these reasons, I refrain from making a definitive generic ruling on that single remedial aspect of the submitted issues at this time. Area arbitrators remain free to exercise their own best judgement as to whether, in the facts and circumstances of the individual case, an Issue 1(f) type of violation requires reversal of the disciplinary action or some other remedy. For Issue 1(b), 1(c) and 1(e) violations, however, Article 16.6 requires reversal of the disciplinary action and reinstatement with remedial "make-whole" damages.

AWARD OF THE NATIONAL ARBITRATOR
CASE NO. E95R-4E-D 01027978

Having been designated National Arbitrator in accordance with Article 15, Section 5.C of the National Agreement between the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, I hereby AWARD as follows:

ISSUE NO.1

Article 16.6 Review of Discipline of the Extension to the 1995-1999 USPS-NRLCA National Agreement:

a) Is not violated if the lower level supervisor consults, discusses, communicates with or jointly confers with the higher reviewing authority before deciding to propose discipline;

b) Is violated if there is a "command decision" from higher authority to impose a suspension or discharge;

c) Is violated if there is a joint decision by the initiating and reviewing officials to impose a suspension or discharge;

d) Is not violated if the higher level authority does not conduct an independent investigation and relies upon the record submitted by the supervisor when reviewing and concurring with the proposed discipline;

e) Is violated if there is a failure of either the initiating or reviewing official to make an independent substantive review of the evidence prior to the imposition of a suspension or discharge;

f) Is violated if there is no evidence of written review and concurrence prior to the imposition of a suspension or discharge.

ISSUE No. 2

(a) Proven violations of Article 16.6 as set forth in Issues 1 (b), 1(c) or 1(e) are fatal. Such substantive violation invalidate the disciplinary action and require a remedy of reinstatement with "make-whole" damages.

(b) Whether a violation of Article 16.6 as set forth in Issue 1(f) is fatal, invalidates the disciplinary action and requires a remedy of reinstatement with "make-whole" damages is for the area arbitrator to determine based on the facts and circumstances if the individual case.

ISSUE No. 3

Case No. E95R-4E-D 01027978 and all other similar cases held in abeyance at Step 4, pending this National Arbitration interpretation of Article 16.6, are remanded to area arbitration, for priority scheduling consistent with Article 15, Section 5.A of the National Agreement.

Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the meaning, application or implementation of this National Arbitration Award.

Dana Edward Eischen

Signed at Spencer, New York on December 3, 2002

STATE OF NEW YORK }
COUNTY OF TOMPKINS } SS:

On this 3rd day of December, 2002, I, DANA E. EISCHEN, upon my oath as National Arbitrator, do hereby affirm and certify, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the foregoing instrument and I acknowledge that it is my Opinion and Award in Case No. E95R-4E-D 01027978.

IN THE MATTER OF ARBITRATION BETWEEN UNITED STATES POSTAL SERVICE AND NATIONAL ASSOCIATION OF LETTER CARRIERS WITH AMERICAN POSTAL WORKERS UNION as Intervenor (J. Goode Grievance) (CASE NOS.: D90N-4D-D 95003945 D90N-4D-D 95003961)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. A hearing occurred on September 24, 1996 in a conference room of Postal Headquarters located at 955 L'Enfant Plaza, S.W. in Washington, D.C. Ms. Patricia A. Heath, Labor Relations Specialist, represented the United State Postal Service. Mr. Keith Secular of the Cohen, Weiss, & Simon law firm in New York City represented the National Association of Letter Carriers. Ms. Susan L. Catler of the O'Donnell, Schwartz & Anderson law firm in Washington, D.C. represented the American Postal Workers Union.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. A reporter from Diversified Reporting Services, Inc. reported the proceeding for the parties and submitted a transcript of 123 pages.

The parties stipulated that the issue before the arbitrator involves the matter of substantive arbitrability and that there are no other challenges to the arbitrator's jurisdiction. They agreed that, should be matter be adjudged substantively arbitrable, the dispute will be remanded to a regional arbitrator for a decision on the merits. The arbitrator officially closed the hearing on January 2, 1997 after receipt of all post-hearing briefs in the matter. Influenza delayed preparation of the report.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

- Is the grievance substantively arbitrable?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 ARBITRATION-GRIEVANCE PROCEDURE

Section 4. Arbitration

A. General Provisions

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 asrbitrator. The arbitrator's determination shall be final and binding.

ARTICLE 16 DISCIPLINE PROCEDURE

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.

IV. STATEMENT OF FACTS

In this case, the Employer challenged the substantive arbitrability of the dispute before the arbitrator. It is a narrow dispute before the arbitrator, and the question is whether a regional arbitrator had authority to assert subject matter jurisdiction over the underlying dispute in this case. Central to the case is the coalescence of several federal statutes with the parties' collective bargaining agreement,

and their impact on special circumstances of the dispute.

The grievant is a preference eligible, full-time regular letter carrier. He received a proposed Notice of Removal on January 3, 1994. After receiving the Notice, the grievant requested Equal Employment Opportunity counseling and alleged that racial discrimination actually was the case of his removal. On July 8, 1994, the Employer issued a Letter of Decision that upheld the proposed removal. In response, the National Association of Letter Carriers filed two grievances, one addressing the proposed Notice of Removal and the other addressing the Letter of Decision. After a final interview with an EEO Counselor on August 16, 1994, the grievant filed a formal complaint on August 25, 1994. The complaint was accepted for investigation on October 3, 1994.

While the administrative action was moving forward in the system, the grievances proceeded through Step 3; and arbitration was requested in both matters on December 19, 1994. On February 8, 1995, the Equal Employment Opportunities Commission completed its investigation. On May 18, 1995, the administrative agency issued a final decision indicating that neither racial nor reprisal discrimination had been a factor in the grievant's removal. This was an administrative determination made without a hearing. The decision rendered by the administrative agency informed the grievant of his right to appeal the decision to the Merit Systems Protection Board or to file a civil action in district court within 30 days.

On June 16, 1995, the grievant filed an appeal with the Merit Systems Protection Board concerning his EEO complaint. On June 30, 1995, the grievant's case was scheduled to be heard before a regional arbitrator. Subsequently, an administrative law judge for the Merit Systems Protection Board granted the grievant's request to dismiss the appeal without prejudice so that he might pursue his contractual rights in arbitration. The dispute, however, did not reach the regional arbitrator because the Employer challenged the substantive arbitrability of the dispute based on the grievant's appeal to the Merit Systems Protection Board. When the parties were unable to resolve the matter, it proceeded to arbitration at the national level.

V. POSITION OF THE PARTIES

A. The Employer

The Employer contends that the underlying grievances in this case are not arbitrable due to the parties' agreement as codified in Article 16.9 of the National Agreement. The Employer also relies on a Memorandum of Understanding dated March 3, 1988. It is the position of the Employer that, once the grievant appealed his EEO complaint to the Merit Systems Protection Board, he waived any right to proceed through the arbitration system set forth in the parties' collective bargaining agreement. It is the belief of the Employer that

Article 16.9 of the collective bargaining agreement clearly and unequivocally precludes "preference eligible" employes who exercise their right to appeal to the MSPB from seeking additional resolution within the contractually negotiated grievance procedure.

It is also the position of the Employer that circumstances of this case are not such that they create an exception to explicit language in the parties' agreement. Management argues that merely because the present dispute deals with an EEO claim does not justify deviation from the written agreement. According to the Employer, if such an exception was intended to become a part of the parties' agreement, it was the obligation of the Union at the bargaining table to have the exception expressly codified in the parties' agreement. The fact that it has not been expressly incorporated into the National Agreement allegedly proves that no such exception exists in the parties' labor contract.

Moreover, management rejects the Union's allegation that neither Article 16.9 nor the Memorandum of Understanding applies in this case. It is the contention of the Employer that legislation calling for EEO claims of "preference eligible" employes to be appealed through the Merit Systems Protection Board does not establish any additional rights for such employes. Rather, the legislation simply established a process that enables a "preference eligible" employe to exercise rights under the Veterans' Preference Act, according to the Employer. Finally, management alleges that arbitral

authority at the national level supports its position in this dispute and that any other conclusion would produce a harsh result.

B. The National Association of Letter Carriers

The National Association of Letter Carriers contends that the grievant did not waive access to arbitration by appealing the denial of his EEO complaint to the Merit Systems Protection Board. Previous arbitral awards allegedly have interpreted Article 16.9 of the parties' agreement in a way that suggests a strong presumption against waiver. To overcome the presumption against waiver, a party allegedly must clearly and unambiguously establish such a forfeiture. The National Association of Letter Carriers believes that the parties' agreement is far from clear and unambiguous with regard to the issue of EEO appeals to the Merit Systems Protection Board.

It is the contention of the National Association of Letter Carriers that, pursuant to Article 16.9, employes waive their right to arbitration only when appealing to the Merit Systems Protection Board pursuant to the Veterans' Preference Act. According to the Union's theory of the case, the grievant used EEO procedures to assert his right to be free from racial discrimination under Title VII of the Civil Rights Act. Regulations of the Equal Employment Opportunities Commission allegedly require "preference eligible" employes

to use this process, although they are not necessarily filing a claim under the Veterans' Prefernce Act. Hence, there allegedly was no waiver in this case.

The National Association of Letter Carriers also contends that the 1988 Memorandum of Understanding, although negotiated after the procedures for filing "mixed" cases had been established, failed specifically to address the issue of such "mixed case" appeals. Since the parties did not clearly express an intent to adopt the "waiver" procedure in the Memorandum of Understanding and to apply it to the type of dispute before the arbitrator, the Union argues that it does not have such an effect. Moreover, a regional arbitrator specifically addressed the issue and allegedly found in favor of the position of the National Association of Letter Carriers. Finally, the Union contends that three national arbitration decisions on which the Employer relies actually support the position of the Union.

C. The American Postal Workers Union

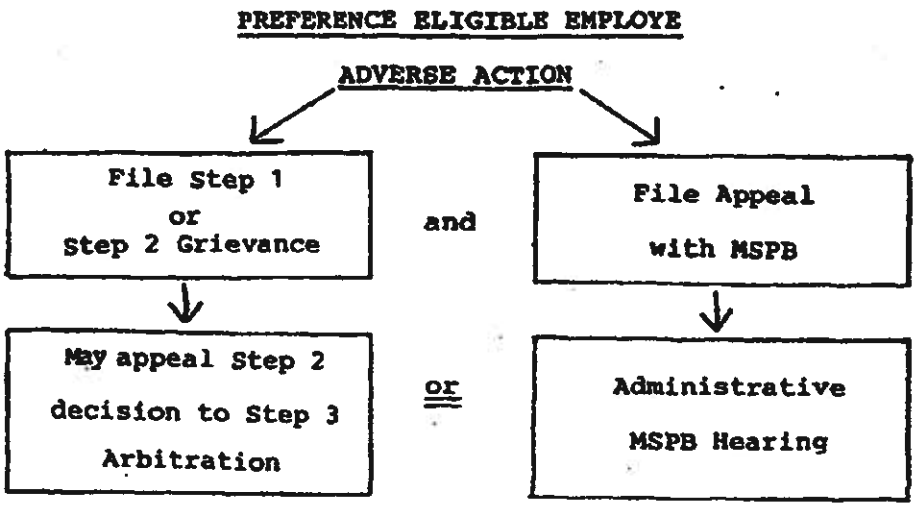
The American Postal Workers Union adopts the position of the National Association of Letter Carriers insofar as it addresses Article 16.9 of the parties' agreement. To the extent, however, that the position of the National Association of Letter Carriers is premised on the 1988 Memorandum of Understanding, tho American Postal Workers Union asserts that it is not bound by any obligations, since it was not a party to that agreement.

VI. ANALYSIS

Like Scylla and Charybdis of old, the modern concept of substantive arbitrability guards the gateway to arbitration; and an arbitrator's steering a correct course is as important to the parties. As a consequence of numerous prior decisions on the topic of substantive arbitrability, the parties possess an extensive institutional knowledge of issues involving subject matter jurisdiction. There is little utility in reviewing principles that are all too familiar to them. This case, however, is different in that the matter of substantive arbitrability at issue in the dispute hinges to a large extent on interplay between federally mandated procedures and the parties' negotiated agreement. There is a dearth of guidelines on this complex aspect of substantive arbitrability and little informative authority.

To gain a clearer understanding of the issue, it is useful to contrast "adverse action" procedures. An "adverse action" is defined as: removal, suspension for more than 14 days, reduction in grade, reduction in pay or a furlough of 30 days or less. (See, 5 U.S.C. 7512). Procedures exist for "preference eligible" employes and "nonpreference eligible" employes both in a non-EEO case. A "preference eligible" refers to a military veteran who may have rights under the Veterans' Preference Act.

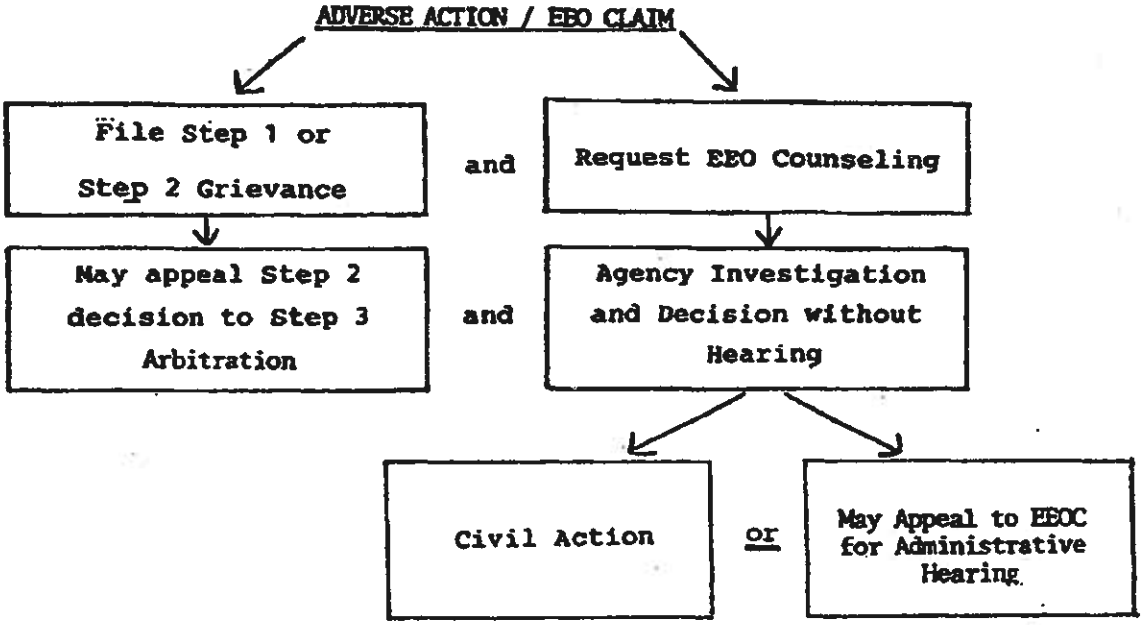
Rights of a "preference eligible" employe in a non-EEO case could be diagrammed as follows:



In a non-EEO situation, all employes receive only one chance for a full hearing on the merits concerning an adverse action. The Merit Systems Protection Board gives special consideration to "preference eligible" employes. An appeal, however, through this administrative process means that an employe waives rights to an arbitration hearing. The waiver constitutes a compromise between the special status of "preference eligible" employes and the impracticality of compelling the Employer to defend against two claims each in a different forum arising from the same event. Once, however, a Title VII complaint alleging employment discrimination has been filed, the process undergoes a significant change. This change is not mandated by the parties' agreement but by federal statutes. (See, 29 CFR § 1614 and 5 USC § 7702.)

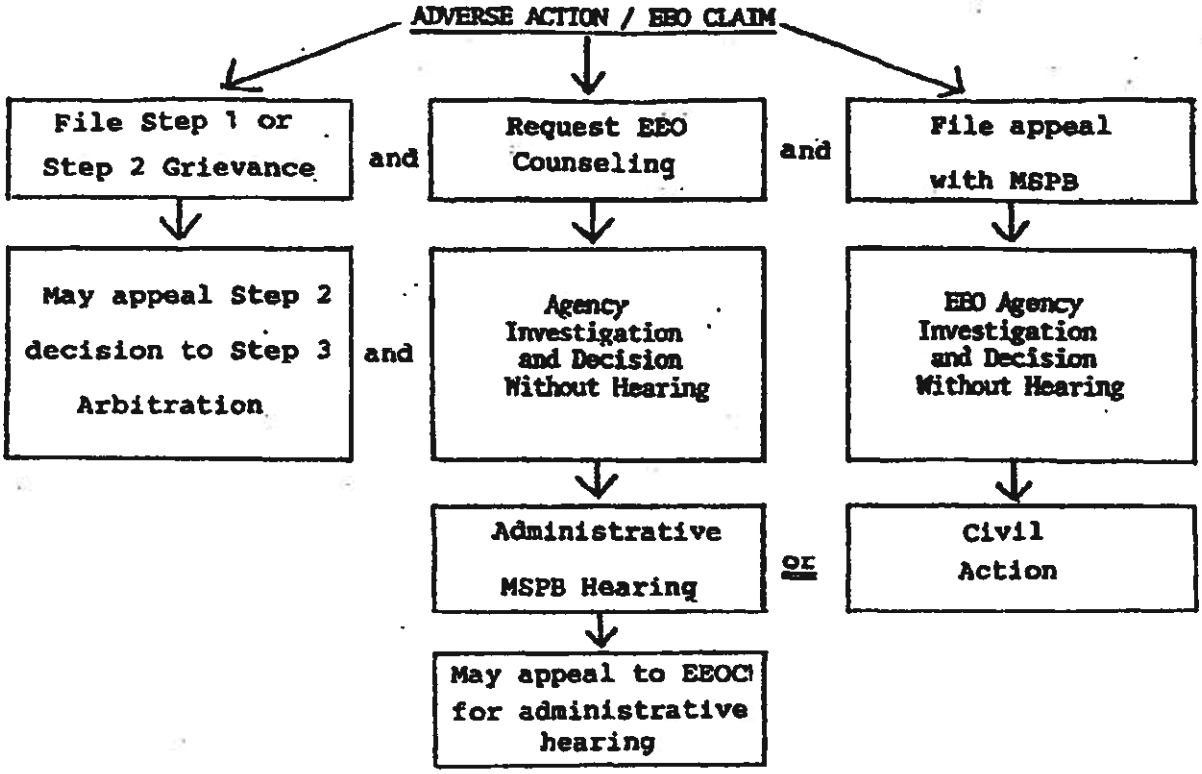
It is useful to contrast the difference between "nonpreference eligible" employes and "preference eligible" employes who pursue a complaint before the Equal Employment Opportunities Commission The system is designed as follows for a "nonpreference eligible" employe in an EEO case:

"NON-PREFERENCE ELIGIBLE" EMPLOYEE IN AN EEO CASE



An even more complicated system is available to "preference eligible" employes in an EEO case. The design is as follows:

"PREFERENCE ELIGIBLE" EMPLOYEES IN AN EEO CASE



In a "mixed" case (that is, one involving an EEO claim of a "preference eligible" employe), federal regulations require that "preference eligible" employes process any claim through the Merit Systems Protection Board if a "preference eligible" employe is to receive an administrative hearing on the merits of the EEO claim. (See, 5 USC § 7702 and 29 CFR 1614.303). Moreover, if such an individual is to have a claim heard at all by the Equal Employment Opportunities Commission, it is necessary, first, to proceed through the Merit Systems Protection Board. (For examples of mixed cases, see Werners v. Dept. of Navy, 7 MSPR 272, 7 MSPB 171 (1981), or Portlock v. VA, 14 MSPR 359 (1983), 16 MSPR 92 (1983), reaffirmed.) The right to an administrative hearing by the

Equal Employment Opportunities Commission is guaranteed to "preference eligible" employes regardless of their decision to grieve the matter to arbitration. (See, 29 CFR 1614.401.07). The purpose of federal regulations which route EEO claims through the Merit Systems Protection Board is to avoid inconsistent results in simultaneous EEOC and MSPB hearings. Accordingly, EEO claims and MSPB appeals are combined into one process. This results in a mandated MSPB hearing before an EEO claim may reach the Equal Employment Opportunities Commission.

The United States Supreme Court has held that all federal employes are entitled to such protection. (See, Brown v. General Services Administration, 42 U.S. 820, 96 S. Ct. 1961 (1976)). It is clear that "nonpreference eligible" employes with an EEO claim are entitled to an administrative hearing on the matter. Such a choice does not waive an individual's right to gain access to the arbitration procedure in the parties' agreement. Theoretically, it should be no different for "preference eligible" employes.

Since federal legislation mandates that "preference Eligible" employes must appeal EEO claims through the Merit Systems Protection Board, it is not reasonable to conclude that such employes have made a meaningful choice between the Merit Systems Protection Board and a negotiated arbitration system. Such an individual is merely pursuing an EEO claim by federally mandated procedures. This is a statutory process which should not affect an employe's rights under the parties'

collective bargaining agreement, unless the parties have expressly included such procedures in their agreement.

Such a design grants to "preference eligible" employes an opportunity for a full hearing in two forums, and it is conceivable that the Employer might be compelled to defend itself in two cases. Such inefficiency, however, is not unique to "preference eligible" employes. As observed in another arbitration case, "nonpreference eliglble" employes who pursue EEO claims get "two bites of the apple." (See, Case No. S4N-3U-D 13382, p. 7). It would be a highly curious result, if, due to the special status accorded "preference eligible" employes, they received fewer rights within their place of employment. Neither legislation nor labor contract supports such a result.

A regional arbitrator for the parties addressing the same basic problem offered these insightful comments:

> The basis of the prohibition in [Article 16], Section 9 is to prevent two "bites of the apple" and to prevent a burdensome procedure of both contesting the grievance and the appeal by the Employer. However, it must be noted that the removal of the right to arbitrate is limited to the holder of veteran's rights in exercising his rights under the Veteran's Preference Act. Section 5 defines the rights as a right to file under the provisions of the MSPB.
>
> In this case, grievant filed an action under his rights under the Equal Employment Opportunity Act. He ended up with the MSPB, not through exercise of his rights of the Veterans Preference Act, but by procedural requirements of the EEOC. There is no contractual prohibition of arbitration, or waiver of grievance procedure/arbitration rights for EEOC discrimination claims. There is also no contract prohibition of arbitration for filing before the MSPB.

> The only prohibition occurs if he files with the MSPB as an exercise of his Veterans Preference Act rights. It is the Employer's burden to demonstrate that this has occurred. In this it has failed. The evidence demonstrates that the MSPB proceeding resulted from exercise of grievant's rights under the EEOC, not the Veterans Preference Act. To proceed through the EEOC, a protected activity, grievant must first file with the MSPB and appeal a negative response to the EEOC. (See, Exhibit No. 23, pp. 7-8, emphasis added).

While recognizing it as an anomalous result, the Employer argued that this is precisely the design for which the parties bargained. A deeply rooted belief in freedom of contract in the United States honors even imprudent bargains between the parties as long as they are not unconscionable, and it is for the parties to negotiate their own bargain without the intrusion of an arbitrator into the validity of an agreement based on personal beliefs about equity. (See, e.g., Bliss v. Rhodes, 384 N.E.2d 512 (1978); and Black Industries, Inc. v. Bush, 110 F. Supp. 801 (1953)). For an arbitrator to conclude that a bargain has crossed the line and has become one that no person in his or her right senses would make, there must be compelling evidence. The question in this case is not whether the Union agreed to an improvident bargain it now wants to avoid but, rather, what was the intent of the parties in Article 16.9.

A general standard of preference in contract interpretation is the principle that express terms of the parties' agreement provide the best expression of their commitments to each other. (See, Restatement (Second) of Contracts, § 203, comment d, 94 (1981)). Express terms in the parties' National Agreement,

however, failed to establish the anomalous contractual interpretation for which the Employer argued. The relevant contractual provision is Article 16.9, and it states that:

> 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. (See, Joint Exhibit No. 1, emphasis added).

Article 16.9 of the agreement simply failed to address "mixed" cases or disputes involving EEO claims. Evidence presented at the arbitration hearing established that, at the time the article came into existence in 1971, "mixed case" procedures did not exist. (See, NALC Exhibit Nos. 16 and 18).

Nor did the 1988 Memorandum of Understanding, executed after the parties established the "mixed" case procedure, explore or even mention such disputes. There simply is nothing expressed in the Memorandum of Understanding to indicate that the Memorandum was or was not intended to apply in such circumstances. Evidence that the parties might have intended it to cover such situations came from Mr. Stephen Furgeson, Appeal Review Specialist with the Office of EEO Appeals and Compliance for the Employer. He testified as follows:

> Q Do you recall any discussion involving representatives of both the employer and the union with respect to mixed case complaints?
>
> A I don't recall the discussion in specific detail as far as this was concerned. I know it was an issue that had come up. It was certainly a problem in our minds, because that was one of the issues that was causing it.

Q Well, I -- let's be precise here, because there may or may not have been issues in both our minds. I'm asking you the very narrow question whether you can presently recall any discussion with any representative of the union in which there was explicit reference to mixed case complaints.

A I don't have crystal clear, verbatim recollection. I do have a strong impression that when we had originally discussed it --

MR. SECULAR: Well, Mr. Arbitrator, I would object to any impressions. I'm asking for a recollection as to a specific discussion.

ARBITRATOR SNOW: I think he was about to state a recollection, but it was a more vague recollection. But if that's not what you were about to do, perhaps you ought not. But you may state a recollection.

THE WITNESS: The vague -- recollection that I recall is, when we had these general meetings to set up the process to come up with such an agreement, that this was one of the troubling areas. The mixed case process was part of the troubling areas that we were trying to address.

I didn't have detailed discussion on it. It was just one of the general areas that came up when we discussed it with Larry and Bill Downes and myself. (See, Tr., pp. 63-64, emphasis added).

Beyond a vague recollection unsupported by any hinted of detail, the arbitrator received no evidence that "mixed case" appeals constituted a pervasive problem or a topic of mutual discussion at the time the parties negotiated the relevant Memorandum of Understanding. Such insubstantial evidence failed to support the sort of significant deviation for which management argued. As Justice Cardozo once observed, "The law will be slow to impute a purpose, in the silence of the parties, where the significance of the default is grievously out of proportion to the oppression of the forfeiture." (See, Jacob and Youngs v. Kent, 230 N.Y. 239 (1921)).

There is no express language in the parties' agreement addressing the issue before the arbitrator. Any conclusion that the parties' agreement forces a waiver of rights to arbitration on the part of "preference eligible" employes must be implied. While implications are "standard stuff in the process of contract reading," evidence is required to establish that the implied term is consistent with the reasonable expectations of the parties. (See, Mittenthal and Block, NAA Proceedings for the 42nd Annual Meeting, 65, 66 (1989)). Some implications in contract interpretation result from well-established default rules. If an ambiguity or a gap has been left in an agreement, an arbitrator might resolve an ensuing dispute based on implications flowing from a default rule.

Arbitrators, for example, have implied a "good faith" term in collective bargaining agreements because there is a well-established principle in the common law of the shop that there is a duty of good faith in the performance of labor contracts. But no such default rule provides a basis for concluding that a waiver occurred in this case, absent documentary or testamentary evidence to the contrary. Testimony from one witness provided relatively insubstantial evidence to support a conclusion that the parties intended the 1988 Memorandum of Understanding to cover the area in dispute. Arbitrators are slow to impute a contractual forfeiture without more substantial evidence.

As the parties know from an earlier decision, there is a

strong arbitral presumption against construing unclear contractual language as setting forth a waiver or forfeiture of rights. (See, Case No. H7C-3D-D 13422, p. 13). Apart from a clear contractual term, an intention of waiver is not easily presumed by arbitrators and needs considerable evidence to support it. The Employer in this case argued that clear and unambiguous language of Article 16.9 in the parties' agreement as well as the 1988 Memorandum of Understanding expressed an unassailable intent of the parties to waive arbitration rights of "preference eligible" employes with EEO claims, if they appealed their right through the Merit Systems Protection Board.

Yet, neither language of Article 16.9 in the parties' agreement nor the 1988 Memorandum of Understanding expressly examined the issue. There was no direct or indirect reference in either document to "mixed case" situations. Testamentary evidence was inconclusive. In view of a need for a clear and unmistakable expression of a waiver in this case, the process of implication ultimately is not helpful. There is no credible basis for implying that language in the parties' agreement precluded the grievant from pursuing the matter in arbitration.

The Employer also argued that prior national arbitration decisions support an implication of a waiver in this case. None of the cases cited by the Employer, however, addressed the issue of waiver when appealing an EEO claim. (See, Case Nos. AB-W-113 69 and NB-N 4980-D; Case No. AC-N-8662-D; Case No. H4C-3W-W 40195; and Case No. H7C-3D-D 13422.) Those

cases examined the timing of waivers and not a need for a clear and unmistakable implication of a waiver. While the cases were enlightening with regard to the scope and purpose of the "Veterans Preference waiver" provision of Article 16, they failed to analyze "mixed case" situations directly or by implication. It should be noted, however, all those cases highlighted the fact that the special status given to "preference eligible" employes was not intended to place them at a disadvantage with regard to their rights under the negotiated agreement. Accordingly, the decisions may not be used in this case to support an interpretation which almost certainly would accomplish such a result.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievance is substantively arbitrable and that there is arbitral jurisdiction to proceed to the merits of the case. The grievant did not waive his right to arbitration under the parties' collective bargaining agreement by appealing the denial of his EEO complaint to the Merit Systems Protection Board. The matter is remanded to a regional arbitrator for a hearing on the merits of the case. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 24, 1997

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case Nos. B11M-1B-C 16189293
	)	J11M-1J-D 16441426
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	)	
	)	
	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Lucy Coolidge, Esq. Brian M. Reimer, Esq.
For the NPMHU:	Matthew Clash-Drexler, Esq.

Place of Hearing:	Remote Video Conference
Date of Hearing:	June 2, 2020
Date of Award:	October 14, 2020
Relevant Contract Provisions:	Articles 15 and 16 and MOU Re: Mail Handler Assistant Employees
Contract Year:	2011 and 2016
Type of Grievance:	Contract Interpretation

Award Summary:

As set forth in the above Findings, discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may not be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status.

Shyam Das, Arbitrator

The issue in this national level interpretive dispute is whether discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status, or whether the noncareer employee's disciplinary record is eliminated and his or her record starts anew upon conversion and appointment to the career position.

The parties have consolidated two Step 4 appeals in which full-time career Mail Handlers faced disciplinary action -- in Nashua, New Hampshire and Milwaukee, Wisconsin, respectively -- and where the disciplinary action cited infractions and disciplines incurred during the employee's time as an MHA.

MHAs were established by an interest arbitration award issued by Arbitrator Herbert Fishgold in February 2013 and incorporated into the 2011-2016 National Agreement.[1] MHAs are noncareer bargaining unit employees who are hired for terms of 360 days with a break in service of five days if reappointed. When full-time career Mail Handler vacancies arise, MHAs are converted to fill the vacancy in the order of their relative standing on an MHA roster which they are placed on in the order of their initial appointment in the installation.

The parties' Memorandum of Understanding Re: Mail Handler Assistant Employees (MHA MOU), as set forth in the 2016-2019 National Agreement, includes the following provisions:

> 3. Other Provisions
>
> A. Article 15
>
> * * *
>
> 3. The separation of MHAs upon completion of their 360-day term and the decision to not reappoint MHAs to a new term are not grievable, except where it is alleged that the decision to not reappoint is pretextual....

[1] Earlier, in 2011, the Postal Service and the APWU negotiated the equivalent Postal Support Employee (PSE) noncareer position, and an NALC/Postal Service interest arbitration award created the equivalent City Carrier Assistant (CCA) position.

> MHAs may be disciplined or removed within the term of their appointment for just cause and any such discipline or removal will be subject to the grievance arbitration procedure, provided that within the immediately preceding six months, the employee has completed ninety (90) work days, or has been employed for 120 calendar days (whichever comes first) of their initial appointment.
>
> In the case of removal for cause within the term of an appointment, a MHA 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.
>
> 4. Discipline for an MHA who does have access to the grievance-arbitration procedure does not generally have to be issued in the same progressive manner as discipline issued to a career employee. However, an appropriate element of just cause is that discipline should be progressive and corrective in nature rather than punitive. When management removes or otherwise disciplines an MHA, determining whether the disciplinary action taken is appropriate must be based on the individual facts and circumstances of each case.

Bruce Lerner, General Counsel for the NPMHU, testified generally about the differences between MHAs and career employees. He pointed out:

> MHAs have a different pay scale. They really just have a pay rate. They get no retirement, little health insurance, very little leave. Their schedules are unfixed. They really basically are a separate category of employees in many, many ways. The ways have changed over the years and the negotiations have changed those ways, but coming out of the 2011 contract...there were all sorts of issues about how the MHAs would get implemented, and that led us to extensive bargaining over those issues in 2016 and '19.

In 2016 negotiations, one of the Union's proposals was to include in Article 16 (Discipline Procedure) the following provision:

> The disciplinary record of an MHA employee shall be removed from his/her file upon conversion to career status and may not be cited or considered in a subsequent disciplinary action against that employee.

Lerner testified that he "stated on the record that we were proposing this to clarify our understanding of what the national agreement already meant." He noted that by that time the issue had arisen in local grievances and that the NPMHU was "winning the issue in regional arbitration," as was the APWU.[2]

Patrick Devine, Manager of Contract Administration for the NPMHU contract, was the Postal Service's chief spokesperson in 2016 bargaining. He testified that he did not remember the Union claiming it already had the right to have MHA discipline expunged prior to its proposal or stating that the purpose of the proposal was to clarify existing contract language. (He added that there was no language to clarify.) He said he was aware there might have been some grievance activities, but there had been no request to move the issue to the national level as an interpretive issue.

The issue came up again in 2019 negotiations, but there is no dispute that by then the grievances in the present case had been appealed to arbitration at the national level.

Lerner stressed that the issue here is what happens if, after conversion to a career position, an employee engages in conduct that management determines justifies discipline and the Postal Service seeks to cite or rely on discipline issued to the employee prior to conversion. The Union concedes that if an MHA is issued a notice of removal, which the employee challenges, and then is up for conversion, the employee does not acquire career status prior to the removal action being resolved. Devine maintained, however, that the general practice in such circumstances has been to go ahead with the conversion.

In 2015 I issued a national level award in a grievance filed by the NALC involving the right of former CCAs to use annual leave following their conversion to full-time career status. The NPMHU and the APWU both intervened in that arbitration. Case No. Q11N-4Q-C 14239951, hereinafter referred to as "the 2015 arbitration." At issue in that case was the

[2] The Union cites an NPMHU regional arbitration award, Case No. B11M1BD15279427-N15084 (Thomas July 20, 2016).

requirement in ELM Section 512.313 that: "new employees are not credited with and may not take annual leave until they complete 90 days of continuous employment...." The Unions argued that CCAs (and MHAs and PSEs) are not "new employees." The Postal Service contended that this ELM provision applies only to new career employees. I upheld the Postal Service position.

UNION POSITION

The National Agreement is silent on whether the Postal Service may consider or cite to discipline of a noncareer MHA when determining whether to issue discipline to the employee after conversion to career status. The Union argues, however, that review of the National Agreement as a whole, confirms that the parties' did not intend MHA discipline to carry over to career employment.

ELM Section 421.41 recognizes that a "career appointment" is a "new hire for an appointment without time limit...that confers full employee benefits and privileges." The ELM's declaration that an MHA converted to a career appointment is a "new hire," the Union asserts, is confirmed by a review of the National Agreement. When an MHA is hired into a career position, the employee: has no seniority; receives no credit for any service as a noncareer MHA for placement on the salary schedule; is not permitted to carry over any annual leave -- but instead such leave must be paid out as terminal leave; and has no service credit for retirement purposes or for leave accrual. Moreover, as held in the 2015 arbitration, time as an MHA does not count for satisfying the 90-day qualifying period to utilize annual leave.

The Union also points to unchallenged testimony of its General Counsel, Bruce Lerner, that in both 2016 and 2019 bargaining the Postal Service repeatedly stressed the importance of maintaining the demarcation between noncareer and career to avoid legal challenges to their separate treatment for purposes such as participation in federal retirement and health insurance programs. Not surprisingly, the Union asserts, where the parties wanted

to depart from the general rule that career employees were "new hires" without a link to their noncareer appointment, they did so expressly.[3]

The Union contends that, consistent with the 2015 arbitration, it would be improper for the Postal Service to discipline a career employee by relying upon prior discipline imposed under a different set of rules and standards than those applicable to career employees, including the full protections of just cause and the disciplinary procedures set out in Article 16. The Union stresses that this is particularly true in the two grievances leading to this case, both of which involved attendance issues. MHAs have unfixed schedules and reduced leave, as well as lower standards for "just cause," which may well have contributed to the underlying attendance issues.

The Union adamantly rejects the Postal Service's claim that the NPMHU is attempting in this case to achieve in arbitration what it failed to achieve in bargaining. During bargaining for the 2016 and 2019 contracts, the NPMHU made, and later withdrew, proposals seeking to prohibit the carryover of MHA discipline. Notably, by the spring of 2016, when the parties were in negotiations, there was an ongoing dispute between the parties on this issue. Not only had the Union filed numerous grievances, including the two at issue here, but the NPMHU had prevailed in regional arbitration on this issue -- as had the APWU. Lerner credibly testified that in both rounds of bargaining he stated on the record that the purpose of the proposal was to clarify the National Agreement to conform to the Union's position as to what it already meant.

The Union also rejects the Postal Service's arguments that barring the Postal Service from considering discipline imposed while an employee was an MHA is impractical or

[3] The Union points to the following instances where linkage between noncareer and career appointments is set out in the National Agreement: (1) relative standing of MHAs hired as career employees on the same day is based on service as an MHA; (2) MHAs who have successfully completed a 360-day term are not required to serve a probationary period when hired for a career appointment; (3) dues deduction authorization forms stay in effect, subject to a proviso; (4) time as an MHA is counted for determining FMLA eligibility; and (5) MHA time is counted for the lock-in period for transfers from one postal installation to another.

unreasonable. In particular, the NPMHU conceded at arbitration that in the rare case where a removal is pending at the time of conversion, the MHA is not going to get a career position unless that removal is overturned.

POSTAL SERVICE POSITION

The Postal Service contends that, in the absence of specific contract language addressing the issue in this case, an arbitrator should apply the long-held principle of "just cause" to gauge the appropriateness of management's disciplinary actions. The concept of just cause has long been fundamental to contracts between the parties. As stated in Article 16.1 of the National Agreement, "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...."[4] Application of just cause necessarily must be highly fact-specific, and any deciding party must be able to consider the totality of the circumstances. See USPS and NALC, Case No. NC-NAT-16, 285 (Garrett 1979). The Postal Service insists that regional arbitrators are more than equipped to consider the facts and circumstances of each case and employee, and determine if consideration of that individual's MHA record is appropriate. Just cause, the Postal Service argues, demands that arbitrators have that flexibility. Automatically absolving an employee of their record taints not only the principle of just cause, but the purpose of progressive discipline.

The Postal Service maintains that the 2015 arbitration case can be distinguished from the present case because it dealt with the interpretation of very specific ELM handbook language -- not the absence of any language. A blanket application of the 2015 award misses the nuance that interpretation deserves.

The Postal Service also contends that the Union is attempting to gain rights through arbitration that it was unable to achieve in bargaining. In 2016, the NPMHU made a proposal to achieve what it is seeking in this arbitration -- expungement of records of an employee upon conversion from MHA to career. Postal Service negotiator Patrick Devine

[4] Likewise, the MHA MOU provides for application of just cause elements in discipline of MHAs.

testified he had no recollection of hearing the Union state that it considered its proposal to be a clarification proposal as Lerner testified. Moreover, Devine testified that at the time he received the 2016 proposal he had not previously been aware of any Union position, including in a local grievance, that mail handlers already had expungement rights. The Postal Service stresses that if the Union previously had understood that MHA records were to be expunged upon conversion to career, there would have been no need to make the changes it proposed.

The Postal Service argues that adopting the Union's position would lead to unworkable and absurd results. It stresses that when a career vacancy opens up, management is required to convert an MHA based on their relative standing. It might be that, as in one of the underlying grievances, an MHA is converted when on the brink of being issued a Notice of Removal. In that case, it makes no sense that the employee start with a clean slate. The Postal Service asserts:

> If the newly converted employee continues to have attendance issues, management would have to start at square one in implementing progressive discipline. This would be true even though the employee had actual notice and opportunity -- during his time as an MHA -- to correct the offending behavior. That is to say, he already knew that such absences were unacceptable, and management had already attempted to deter him from such behavior with gradual discipline.
>
> Additionally, while employees who do not improve their attendance work their way through the disciplinary process *for a second time*, management may be forced to make on-the-spot adjustments to preserve operational integrity and function, possibly placing additional burdens on the employee's coworkers.

The Postal Service also points to certain positive vestiges of employment that carry over upon conversion to career. For example on-the-job training which is not repeated upon an MHA's conversion to career. Similarly, when individuals are converted, they bring their relative standing, vis-à-vis others converted at the same time. It argues this only emphasizes that newly converted career employees are not "brand new persons."

FINDINGS

Article 16 of the National Agreement addresses Discipline Procedure. It provides:

> Section 16.1 Statement of Principle
>
> 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.... Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement....

The parties' Contract Interpretation Manual further elaborates:

> 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)....

MHAs who convert to career status are hired as "new employees." ELM Section 421.41 includes the following description:

> a. Career appointment -- a new hire for an appointment without time limit requiring the completion of a probationary period that confers full employee benefits and privileges. The term applies to (a) new employees, (b) former employees who are being reinstated, (c) employees transferring from federal agencies, and (d) current Postal Service employees who choose to transfer to or from the rural carrier craft.

As the Union points out, MHAs who are hired as new career employees do not receive service credit for seniority or retirement purposes or, as determined in the 2015 arbitration, for eligibility to start taking annual leave upon being hired as a career employee.

In Article 12.1.E of the National Agreement, the parties expressly provided:

> MHAs who successfully complete at least one 360-day term will not serve a probationary period when hired for a career appointment, provided such career appointment directly follows an MHA appointment.

The parties also expressly agreed in an MOU Re: Relative Standing of Mail Handler Assistants and Subsequent Seniority Upon Conversion to Career Mail Handlers that:

> MHAs will be converted to career positions in the Mail Handler craft in precisely the same order as the relative standing list. If more than one MHA is converted to career status on the same date in the same installation, seniority ranking will be based on their position on the MHA relative standing list.

The parties notably did not provide for carryover of the disciplinary record acquired as an MHA when an MHA is converted and hired as a new career employee.

The evidence does not show that the Union's 2016 (or 2019) bargaining proposal on this matter was an acknowledgement that -- absent agreement on such proposal -- the Postal Service contractually could consider MHA discipline. In addition to the testimony of its General Counsel that he stated during bargaining that the Union's proposal was to clarify its understanding that the existing contract did not permit such consideration, the Union had asserted that position in the grievance process. And while the issue had not yet been elevated to the national level -- which the Postal Service chose to do in this case -- the Union's position was successfully presented in regional arbitration cases by both the NPMHU and the APWU. Where an existing contract is ambiguous or open to different interpretations and the parties appear not to agree, a party may seek to obtain agreement on an explicit provision consistent with its position as to the meaning of the existing contract without detracting from that position.

The Postal Service argues that it makes more sense and better comports with the concept of just cause to take into account an employee's entire discipline record including discipline previously imposed when in a noncareer position. The Postal Service seems to recognize that the situations are not entirely the same, by arguing that the deciding party -- such as a regional arbitrator -- should and can consider the appropriate weight to accord to discipline imposed while the individual was employed as an MHA. It also does not dispute that MHAs not only are subject to different working conditions -- particularly as regards scheduling -- but do not have the full scope of just cause protection afforded to career employees.[5]

From a policy perspective, arguably there may be some appeal to the Postal Service's position -- just as in the 2015 arbitration I noted that the Union's position to credit service as a CCA (or MHA) for leave-taking status did not seem unjustifiable as a policy matter. But, on balance, the record supports a finding that when the parties to the National Agreement wanted to include or carry over experience while an MHA after conversion to new career employee status they did so expressly, as they did for probationary period and relative standing.[6]

In conclusion, consistent with their status as new hires, former MHAs who are converted to career positions start afresh for disciplinary purposes.[7]

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[5] It also is noteworthy that upon completion of each 360-day term the Postal Service is free not to reappoint an MHA to a new term without having to justify its decision, provided the decision is not pretextual.

[6] The Postal Service points out that employees who convert from MHA to career status, unlike other new hires, do not undergo on-the-job training although this is not spelled out in the contract. A decision by management not to provide redundant training, even if it could be subject to bargaining, hardly is comparable to the issue at hand, particularly as discipline of both career and MHA employees is addressed in some detail in the contract.

[7] The Union essentially has conceded that if an MHA is the subject of a notice of removal at the time the individual otherwise would be converted to a career position, that removal process -- including any challenge by the MHA -- is first to be completed.

AWARD

As set forth in the above Findings, discipline issued to an employee while employed as a noncareer Mail Handler Assistant (MHA) may not be considered or cited in determining whether to issue discipline to the employee after his or her conversion to full-time career status.

Shyam Das, Arbitrator

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

AUG 17 1988

Dear Mr. Burrus:

This is in response to the issues you raised in your letter of December 18, 1987, and Step 4 grievance (E7C-NA-C 21, dated June 29, 1988) concerning the maintenance of employee disciplinary records, as well as the Step 4 grievance (H4C-5R-C 43882) challenging the management practice of including in past element listings of disciplinary actions the original action issued and the final action resulting from modification of the original action.

In full and final settlement of all disputes on these issues it is agreed that:

1. All records of totally overturned disciplinary actions will be removed from the supervisor's personnel records as well as from the employee's Official Personnel Folder.

2. If a disciplinary action has been modified, the original action may be modified by pen and ink changes so as to obscure the original disciplinary action in the employee's Official Personnel Folder and supervisor's personnel records, or the original action may be deleted from the records and the discipline record reissued as modified.

3. In the past element listings in disciplinary actions, only the final action resulting from a modified disciplinary action will be included, except when modification is the result of a "last chance" settlement, or if discipline is to be reduced to a lesser penalty after an intervening period of time and/or certain conditions are met.

Please indicate your agreement by signing and returning a copy of this letter.

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration Division

DATE 8/17/86

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

DATE 8/17/86

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: C. Nietzel
Bakersfield, CA
H4N-5G-D 7167

Dear Mr. Hutchins:

On December 14, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is the extent to which prior discipline may be utilized under the terms of Article 16.10 of the National Agreement.

We agreed that 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, Section 10, and may not be cited or considered in any subsequent disciplinary action.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Arthur S. Wilkinson
Grievance & Arbitration
Division

Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

(Date) 1/5/89

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

Mr. Robert L. Tunstall
Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H4T-5D-D 15115
Local
Seattle WA 98134

Dear Mr. Tunstall:

Recently we met in a prearbitration discussion of the above-referenced case.

The issue in this case is whether management violated the National Agreement by listing disciplinary actions over two years old as aggravating factors on a notice of proposed removal, even though the employee had received no discipline for a period of two years.

After reviewing this matter, the parties mutually agreed that, in accordance with Article 16, Section 10, "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."

Therefore, such records of disciplinary action should not be cited in a notice of proposed removal. However, the Postal Service is not precluded from introducing such prior disciplinary action for purposes of rebuttal or impeachment in the grievance procedure, in arbitration, or in other forums of appeal.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to close case H4C-5D-D 15115 and remove it from the pending national arbitration listing.

Sincerely,

Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

Robert L. Tunstall
Robert L. Tunstall
Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date: 9-7-93

February 22, 1985

Mr. Houston Ford, Jr.
Executive Director
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO
1225 19th Street, N.W., Suite 450
Washington, D.C. 20036-2411

Dear Mr. Ford:

On February 20 you met with John Ingram in prearbitration discussion of H1M-3A-C 14019, Dallas, Texas. The issue in this grievance is whether outdated disciplinary action "cover sheets" should be removed from the supervisor's personnel records per section 314.53 of the Employee and Labor Relations Manual.

It was mutually agreed to fully settle this case as follows:

"Cover letters" or notations concerning outdated disciplinary notices or decision letters, and the requested removal of such from the employee's official personnel folder will be removed from and not maintained in the supervisor's personnel records.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle this case, withdrawing H1M-3A-C 14019 from the pending national arbitration listing.

Sincerely,

/s/
William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

/s/
Houston Ford, Jr. 2/25/86
Executive Director
National Post Office Mail
Handlers, Watchmen,
Messengers and Group
Leaders, AFL-CIO

Enclosure

LR320:FMDyer:jda:02/20/85

Mr. Lonnie L. Johnson
National President
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 450
1225 19th Street, N.W.
Washington, D.C. 20036-2411

AUG 21 1985

Re: Class Action - Mail Handlers
BMC, St. Louis, MO
H1M-4K-C 7453

Dear Mr. Johnson:

On several occasions, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether stewards designated by the Union are being denied the right to function on their assigned tours in accordance with provisions of Article 17, Section 2.A., of the National Agreement.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. There is no dispute between the parties as to the language set forth in the above-referenced section of the National Agreement which provides that the selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union and that stewards will be certified to represent employees in specific work locations on their tours. Moreover, we concurred in the view that Article 17, Section 2.A., specifically provides that no more than one steward may be certified to represent employees in a particular work location and requires that the number of stewards shall be in accordance with the formula negotiated between our respective organizations.

With the foregoing in mind, we further agreed to remand this grievance to the parties at Step 3 for return to the local level. The parties at the local level should take the steps necessary to resolve this matter, bearing in mind the contractual right of the Union to appoint stewards to represent employees in specific work locations on their tours and the contractual provision prohibiting the certification of more than one steward to represent employees in a particular work location. Any arrangement as to the number of stewards must be in strict accordance with the formula set forth in Article 17, Section 2.A., of the National Agreement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

George S. McDougald
George S. McDougald
Labor Relations Department

Lonnie L. Johnson 4/24/86
Lonnie L. Johnson
National President
National Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

MAY 24 1984

Re: R. Spiegler
Enfield, CT 06082
81N-1J-C 5026

Dear Mr. Overby:

On February 17, 1984, and again on May 2, 1984, we met to discuss the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1981 National Agreement.

The question raised in this grievance is whether management violated Article 17 of the National Agreement by not allowing the alternate steward time to process a grievance which he had initiated.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case.

> Once an alternate steward has initiated a grievance, the alternate steward may continue processing that grievance, as determined by the union. However, only one steward will be given time for processing the grievance.

Please sign and return the enclosed copy of this letter as your acknowledgment of the agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Leslie W. Bayliss
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

DEC 21 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: F. Givens
Houston, TX
NC-S-4915/NSSW-9420

Dear Mr. Riley:

On February 22, 1977 and subsequent dates, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

This letter will serve to clarify our letter of decision on the referenced grievance case dated April 14, 1977.

The policy statement of July 26, 1976, is in conformance with the formula contained in Article XVII, Section 2 of the National Agreement. Each steward will be certified to represent employees in a specific work location. If that steward is absent, an alternate may serve in his stead. All stewards need not be absent before an alternate is allowed to represent employees. In accordance with the above, this grievance is considered to be closed.

Sincerely,

Robert B. Rubbell
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

May 20, 1982

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: NALC Branch 540
Palmyra, New Jersey
H8N-2B-C-12054

Dear Mr. Sombrotto:

On May 20, 1982, we met in a pre-arbitration discussion on the above-captioned case. The issue presented in this case involves whether a union member actively employed at a post office can be designated as the Union representative for a Step 2 meeting at another post office under the provisions set forth in Article 17, Section 2.D.

The specific language in question states:

> "At the option of a Union, representatives not on the employer's payroll shall be identified to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the regional level and providing such representatives act in lieu of stewards designated under the provisions of 2A or 2B above." (Underscoring added)

In full settlement of the interpretive dispute presented in this case, the parties mutually agree to the following:

1. A Union member actively employed in a post office may be designated as a Union representative to process a grievance at another post office.

2. Such employee must be certified in writing, to the Employer at the regional level.

3. An employee so certified will not be on the Employer's official time and will be compensated by the Union.

4. An employee so certified will act in lieu of the steward designated under Article 17, Section 2.A and 2.B. at the facility where the grievance was initiated.

Please sign the copy of this letter as your acknowledgment of this mutually agreed settlement.

Sincerely,

W. E. Henry, Jr.
William E. Henry, Jr.
Director
Office of Grievance and Arbitration
Labor Relations Department
LR300:WEHenry:ltd:5/14/82

Vincent R Sombrotto
Vincent R. Sombrotto DATE
President
National Association of Letter Carriers, AFL-CIO
5/26/82

INTERPRETIVE AGREEMENT
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The issue presented to the parties in this instance involves whether a union member actively employed at a post office can be designated as the Union representative for a Step 2 meeting at another post office under the provisions in Article 17, Section 2.d.

The specific language at issue provides:

> "At the option of a Union, representatives not on the employer's payroll shall be identified to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the regional level and providing such representatives act in lieu of stewards designated under the provisions of 2A or 2B above." (Underscoring added)

In full settlement of the interpretive dispute presented in this case, the parties mutually agree to the following:

1. A Union member actively employed in a post office may be designated as a Union representative to process a grievance at another post office.

2. Such employee must be certified in writing, to the Employer at the regional level.

3. An employee so certified will not be on the Employer's official time.

4. An employee so certified will act in lieu of the steward designated under Article 17, Section 2.A and 2.B. at the facility where the grievance was initiated.

In witness whereof the parties hereto affix their signatures below this 2nd day of June 1982.

For the
United States Postal Service:

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

For the Union:

William Burrus

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

FEB 15 1985

Re: Class Action
West Palm Beach, FL 33401
H1C-3W-C 41731

Dear Mr. Connors:

On February 4, 1985, we met to discuss the above-captioned case at the fourth step of the contractual grievance procedure.

This question in this grievance is whether a steward has a right to be represented by another steward.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

A steward, just as any other employee, has a right to representation by another steward.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,

Daniel A. Kahn
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE	
and	Arbitration Cases Nos. MB-NAT-562 MB-NAT-936
NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	Inglewood, California
	ISSUED: January 19, 1977

BACKGROUND

This national level arbitration involves two grievances, which took form at the Inglewood, California, Post Office, wherein the Mail Handlers Union asserts that introduction of a new policy and procedure at Inglewood improperly restricts the rights of Union Stewards protected under Article XVII of the 1973 National Agreement and also violates Articles V and XIX. A hearing was held on September 8, 1976 and briefs thereafter filed as of November 18, 1976. 1

Article XVII, Sections 3 and 4, are particularly significant here. They read: 2

> "Section 3. Rights of Stewards. When it is necessary for a steward to leave his work area to investigate and adjust grievances, he shall request permission from his immediate supervisor and such request shall not be unreasonably denied. In the event his duties require he leave his work area and

enter another area within the installation or post office, he must also receive permission from the supervisor from the other area he wishes to enter and such request shall not be unreasonably denied.

"The steward or chief steward may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance, and shall have the right to interview the aggrieved employee, 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 shift or to another facility unless there is no job for which he is qualified on his shift or in his facility, provided that this paragraph shall not apply to rural carriers.

"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 2A) <u>for time actually spent in grievance handling</u>, including investigation and

meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance.

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 steward's (only as provided for under the formula in Section 2A) regular work day."

(Underscoring added.)

Late in 1974 Inglewood Post Office supervision became concerned that some Union Stewards might be taking excessive time to investigate and adjust grievances. On September 9, 1974 Acting Director of Mail Processing Ford sent a memorandum to all Inglewood Mail Processing Supervisors stating, in relevant part: 3

"It is Management's responsibility to determine amount of 'reasonable time' to be allowed steward to investigate and/or prepare grievance (Oper 560). When such time is requested, require from steward a specific time limit and necessary information to justify that time involvement.

"If you are satisfied time request is justified, approved [sic] request (using Form 7020, in duplicate) with the understanding with steward that steward will return to work no later than end of time approved. This will eliminate need for supervisor's harassing stewards to leave lunch room--which practice is demeaning to steward, distasteful to supervisor, and a waste of supervisor's time--which must stop. If a steward doesn't return by prescribed time, deal with that as a disciplinary problem. If steward needs more time, it is his responsibility to request same, which starts process over.

"If agreement can't be reached on appropriate amount of time, refer matter to Tour Supt for resolution."

(Underscoring added.)

The Form 7020, to which reference is made in the second paragraph, above quoted, was developed by the Postal Service for general use throughout its operations. The Form is referenced specifically in Part 431 of Methods Handbook M-65, reading:

> "431 Form 7020, Authorized Absence from Workroom Floor, will be used to record authorized absences from assigned duties on the workroom floor, e.g., scheme examination, visits to the medical unit, etc. At the time Form 7020 is issued, record the personnel change on Form 2345 to the closest six minute interval. Upon the employees return, collect Form 7020 and record the change to the closest six minute interval on Form 2345. The leaving and returning times on Form 7020 must coincide with time entries on Form 2345."
>
> (Underscoring added.)

Form 7020 includes the following: 4

NAME OF EMPLOYEE OR NO. OF EMPLOYEES		DATE
	SUPERVISOR'S INITIALS	TIME
LEAVE UNIT →		
ARRIVE →		
LEAVE →		
RETURN TO UNIT →		
REASON FOR ABSENCE		
SEE REVERSE SIDE FOR INSTRUCTIONS.		

PS Form 7020 Dec. 1970 *AUTHORIZED ABSENCE FROM WORKROOM FLOOR

6. MB-NAT-562,
MB-NAT-936

(Reverse Side)

INSTRUCTIONS

Use this form when employees leave for scheme examinations, medical unit, guide duty, civil defense, time devoted to grievances, consultations with personnel section and consulation with administrative officials.

The tour supervisor will insure the collection of this form from work center supervisors for transmittal to the Chief Accountant who will total time recorded on Forms 7020 and charge to appropriate operation number.

GPO : 1971 O—413-413

(Underscoring added.)

Following issuance of Acting Director Ford's September 9, 1974 Memorandum, the Inglewood Post Office discontinued using Form 7020 to record time away from work by Stewards on Union business, in early 1975, and substituted a locally developed form entitled "Request for Official Time to Conduct Union Business." This reads as follows: 5

MB-NAT-562,
MB-NAT-936

"REQUEST FOR OFFICIAL TIME TO CONDUCT UNION BUSINESS

DATE _____ APPROXIMATE TIME REQUESTED _____ HOURS _____ MINUTES
REQUESTED FOR WHAT PURPOSE _____

IF CONFERRING WITH ANOTHER EMPLOYEE - HIS/HER NAME _____

IF REVIEW OF RECORDS NEEDED, WHAT RECORD NEEDED _____

REQUEST TO MAKE LOCAL TELEPHONE CALLS RELATING TO UNION BUSINESS (NO MESSAGE UNITS, TOLL OR LONG DISTANCE CALLS.)

NUMBER CALLED _____

_____ BEGIN TIME
_____ END TIME

_____
SIGNATURE OF REQUESTING EMPLOYEE

_____
TITLE - UNION ORGANIZATION

REQUEST TO LEAVE WORK AREA

SUPERVISOR INITIALS		TIME
	LEAVE WORK AREA	
	ARRIVE OTHER AREA	
	LEAVE OTHER AREA	
	RETURN WORK AREA	

SIGNATURE OF APPROVING SUPERVISOR
DATE REQUEST GRANTED _____

IF REQUEST IS DENIED - STATE REASON AND DATE DENIED _____

USE OTHER SIDE IF NEEDED

IF REQUEST IS DELAYED BEYOND DATE OF REQUEST, STATE REASON. (DOCUMENT ON A DAILY BASIS WHY REQUEST CANNOT BE GRANTED.)

USE OTHER SIDE IF NEEDED ROUTE TO: Tour, Supt.

As a result of these developments the present grievances were filed directly in Step 4 on October 18, 1974 and February 26, 1975, as national level grievances. Local 303 of the Mail Handlers also filed unfair labor practice charges claiming violation of Sections 8-A-1 and 8-A-5 of the National Labor Relations Act. On March 18, 1975 the NLRB declined to issue a complaint pending completion of the present arbitration proceeding. 6

The Union now contends that the local policy enunciated in the September 9, 1974 Memorandum, and implemented through the new form introduced at Inglewood, violates not only Article XVII, Section 3 of the National Agreement, but also Article XIX, which provides: 7

> "Copies of all handbooks, manuals, and regulations of the Postal Service that contain sections that relate to wages, hours, and working conditions of employees covered by this Agreement shall be furnished to the Unions on or before January 20, 1974. Nothing in any such handbook, manual, or regulation shall conflict with this Agreement. Those parts of any such handbook, manual, or regulation that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, 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.

"Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least 30 days prior to issuance. The parties shall meet concerning such changes, and if the Unions believe that the proposed changes violate the National Agreement (including this Article), they may submit the issue to arbitration in accordance with Step 4 of the grievance-arbitration procedure within 30 days after receipt of the notice of proposed change."

(Underscoring added.)

The Union stresses that the September 9, 1974 Memorandum assumes that it is Management's responsibility to determine the "reasonable time" to investigate a grievance and seeks to limit a Steward, in advance, to a fixed amount of time for such activity. To require a prior determination of the amount of time to investigate a grievance, says the Union, is inconsistent with Article XVII, Section 3. It agrees that this Section requires the Steward to request permission to leave his work area, and gives the Supervisor the right to deny permission to leave the work area, but nowhere does it suggest that a Supervisor can impose a fixed time limit upon a Steward, requiring that the Steward return to work at some specific time. Violation of Article XIX also is seen, in that use of Form 7020 is specified for this purpose in Methods Handbook M-65, Part 431, but the Form in

this respect has been replaced by an entirely new local form. In the Union view Article XIX requires the USPS to continue to use Form 7020 as provided in Methods Handbook M-65 until such time as notice is given to the Union of a proposed change, for negotiations pursuant to Article XIX. Although the Service claims that the new local form was necessary because of alleged abuse by Stewards at Inglewood, this is precisely the kind of problem which should be explored in the negotiations between the parties under Article XIX.

The Postal Service does not agree that the September 9, 1974 Memorandum at Inglewood asserts a Management right to determine the amount of time a Steward properly may spend on Union business. The Service concedes that one sentence may be so interpreted, if read out of context, but suggests that in context it should be construed to mean "that management must determine whether the amount of time that is requested for investigation or preparation of a grievance can be reasonably accommodated with the needs of the Postal Service." Such a reading of the Memorandum, says the Service, reveals that Inglewood supervision is not concerned with the total time spent investigating a grievance but only with the "impact of the time requested on operational needs." Under this analysis, the approval of a request for an hour to investigate a grievance does not establish that no more than an hour should be spent on the investigation, but only that the Steward can be spared only for an hour at the time he wishes to be absent from his work area. Any such a determination, so the argument runs, necessarily is without prejudice to further requests for time to investigate the same grievance. Thus the Service stresses that the last sentence in the second paragraph of the Memorandum reads: 8

"If steward needs more time, it is his responsibility to request same, which starts process over."

Insofar as the local Memorandum relates to the writing of a grievance, it is equally inoffensive, according to the Service. Here it quotes from Article XVII, Section 4: 9

> "The Employer will also compensate a steward <u>for the time reasonably necessary to write a grievance.</u>"
>
> (Underscoring added.)

Indeed, the Service does not now claim that the local Memorandum instructs supervisors to determine that the time requested to prepare a grievance constitutes the amount necessary to complete the task. It urges:

> "Instead, the Memorandum simply requires supervisors to balance a request for time to prepare a grievance against operational needs. Nothing in the 1973 National Agreement limits management's right to do so."

Given the right of the Service under Article XVII, Section 3, to determine the reasonableness of a Steward's request for permission to leave his work area, there is nothing in the Agreement to prohibit the Service from requiring a Steward to fill out a form including a blank space labeled "Approximate Time Requested." There was no impropriety in discontinuing use of Form 7020 for this purpose, says the Service, since Form 7020 was not designed for use in requesting authorization to leave a work area. Thus the Service suggests that Form 7020 is simply a record of the movement of an employee from one work area to another, where a request for such movement already has been authorized. (It stresses that Part 431 of the M-65 Handbook states that Form 7020 will be used to record authorized absences.) 10

Form 7020 has no value as a source of information for a Supervisor in determining the reasonableness of a request by a Steward for permission to leave his work area. The new local form thus is not a substitute for Form 7020, but actually is a supplementary form seeking information that Management is entitled to have. Since the Service is fully authorized under Article XVII, Sections 3 and 4, to determine the reasonableness of requests to leave the work area, it follows that to assess the reasonableness of such a request, the Supervisor must know how much time away from the work area is being requested and to require that this be provided on a form. 11

FINDINGS

The two grievances here present separate but related issues: first, whether the local September 9, 1974 Memorandum is consistent with Article XVII, Sections 3 and 4; and, second, whether the local form instituted early in 1975 to effectuate the Memorandum conflicts with an established procedure under the M-65 Manual, and protected by Article XIX. 12

The September 9, 1974 Memorandum indicates on its face that it is Management's responsibility to determine what is a reasonable time to investigate or prepare a grievance. It includes no reference to Article XVII, Sections 3 or 4, nor does it state that a request by a Steward for time to investigate a grievance "shall not be unreasonably denied." The critical language quoted earlier in this Opinion from the September 9, 1974 Memorandum is preceded by an underlined assertion "B. Union Stewards taking too much time preparing Step 2A grievances." The Memorandum instructs a Supervisor that if you "are satisfied time request is justified" the request should be approved on condition that the Steward will return "no later than end of time approved." If the Steward does not return "by prescribed time," moreover, this is to be dealt with as a "disciplinary problem." Finally, the Memorandum advises that if agreement "can't be reached on appropriate amount of time" the matter should be referred to the Tour Superintendent. 13

Further light is shed upon the objective meaning of the September 9, 1974 Memorandum by reference to the form developed locally to implement it. This requires the Steward to (1) furnish in advance the names of other employees who may be interviewed, (2) indicate in advance what records may be needed, and (3) to identify (by number) any local telephone calls which may be made and the time to be involved in the call. It also includes a line captioned "If request is delayed beyond date of request, state reason. (Document on a Daily Basis why request cannot be granted.)" Lastly, the Form is routed to the Tour Superintendent. 14

These various restrictive provisions apparently were designed to combat abuses which were thought to have developed at Inglewood in taking excessive time for investigation and preparation of grievances. This surely is a proper Management objective, generally speaking, but the problem here is whether the Inglewood program is permissible under Articles XVII and XIX of the 1973 National Agreement. This is by no means only a local problem--if such a unilateral program is permissible at Inglewood, it is equally permissible throughout the entire Postal Service. 15

While the Postal Service brief includes an unusually skillful effort to depict the Memorandum as no more than an effort to require a Supervisor to determine whether a Steward "can be spared" from his job at the time he or she seeks permission to leave, there is nothing in the Memorandum itself which supports this narrow interpretation of its purpose. 16

The fact is that the Memorandum does not accurately state the substance of Article XVII, Section 3, particularly since it assumes that a Supervisor is entitled to determine in advance the amount of time necessary to investigate a grievance and requires the Steward to specify the time likely to be required and to provide detailed information in advance "to justify" such time requirement. The Memorandum implies that the decision as to whether any such request is "justified" lies within the discretion of the individual Supervisor, and provides no standards to guide the exercise of such discretion nor any reference to the controlling language of Article XVII, Section 3. 17

Thus it now should be made clear that Article XVII, Section 3, does not authorize the Service to determine in advance the amount of time which a Steward reasonably needs to investigate a grievance. Since the September 9, 1974 Memorandum is inaccurate in this and other significant respects, it should be withdrawn and given no effect. This is not to say, of course, that Management cannot (1) ask a Steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the Steward anticipates he or she will be away from his or her work station; or (2) that a Supervisor cannot decline to release a Steward from duty during a period of time when his or her absence during such period will unnecessarily delay essential work; or (3) that a Supervisor, in advance, may not specify a time period during which the Steward's absence will unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, consistent with the Agreement, in any case where it can be established that a Steward has improperly obtained 18

permission to leave his or her work station under the guise of investigating or preparing a grievance.

The special form developed at Inglewood early in 1975 was designed to implement the September 9, 1974 Memorandum and hardly can be used except to effectuate that Memorandum. In addition, Part 431 of Methods Handbook M-65 states that Form 7020 will be used to record authorized absences from assigned duties, and the instructions on Form 7020 make it applicable to "time devoted to grievances." The local form at Inglewood in fact has been substituted for Form 7020 when Stewards seek to leave their work stations. 19

It is well settled by now that employee representation by a Union Steward or Grievance Committeeman constitutes a significant working condition, or condition of employment. Thus the matter here in issue falls within the scope of Article XIX. The development of a new form locally to deal with Stewards' absences from assigned duties on Union business--as a substitute for a national form embodied in an existing Manual (and thus in conflict with that Manual)--thus falls within the second paragraph of Article XIX. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the Inglewood form must be withdrawn. 20

AWARD

The grievances are sustained as indicated in this Opinion. The September 9, 1974 Memorandum and the local form developed to implement that Memorandum must be withdrawn and given no effect. 21

Sylvester Garrett
Impartial Chairman

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

NOV 22 1978

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: C. Nelson
St. Louis, MO
NC-C-16045/By-Pass

Dear Mr. Riley:

On November 9, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

During our Step 4 meeting, we mutually agreed to consider this grievance resolved based on the following: If management must delay a steward from investigating or continuing to investigate a grievance, management should inform the steward involved of the reasons for the delay and should also inform the steward of when time should be available. Likewise, the steward has an obligation to request additional time and to state reasons why this additional time is needed. Requests for additional time to process grievances should be dealt with on an individual basis and not be unreasonably denied.

Please sign the attached copy of this letter as your acknowledgment of the agreed to settlement.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO

February 19, 1982

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005

Re: D. Pacolla
Amityville, NY 11701
B8C-1M-C 17945

Dear Mr. Wilson:

On February 17, 1982, you met with Margaret Oliver for a pre-arbitration discussion of the above-referenced case.

The issue raised in this case involved the grievant, a union steward, being asked how much time he would take to process a grievance.

During the discussion, it was mutually agreed to resolve this case based on an understanding that management may ask a steward who is seeking permission to investigate, adjust or write a grievance to estimate the length of time that the steward anticipates he or she will be away from the work station.

Please sign a copy of this letter as your acknowledgment of agreement to resolve the case and withdraw it from pending arbitration.

Sincerely,

(signed)

George S. McDougald
General Manager
Grievance Division
Labor Relations Division

(signed)

Kenneth D. Wilson
Administrative Aide, Clerk Craft
Clerk Craft
American Postal Workers Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Jacksonville BMC, FL 32099
H1C-3W-C 44345

Dear Mr. Connors:

On May 9, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated Article 17 by allowing the union steward to meet with affected grievants for a specified amount of time only.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

> Employees should be permitted, under normal circumstances, to have a reasonable amount of time to consult with their steward. Reasonable time cannot be measured by a predetermined factor.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Leslie Bayliss
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE

JUN 4

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: K. Lutze
Flint, MI 48502
H1C-4B-C 25906

R. Chandler
Flint, MI 48502
H1C-4B-C 25998

Dear Mr. Connors:

On April 12, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question raised in this grievance involved whether the grievants were granted ample time to discuss their grievance with a steward.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in these cases. Normally, the steward determines how much time the grievant needs to be present during the processing of a grievance. However, the immediate supervisor may set a specified time to begin and end a period of grievance handling activity due to service needs. If additional time is necessary, the steward should discuss the need with the supervisor. Additional time may be granted in conjunction with the previously specified time or at a later time or date. The parties agree that any request for grievance handling time or denial of that request is subject to the rule of reason based upon local fact circumstances.

Our respective files indicate that the grievants' grievances were ultimately processed. Therefore, based upon the above understanding, we agreed to close these cases.

Time limits were extended by mutual consent.

Sincerely,

A. J. Johnson
Labor Relations Department

James Conners
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

NOV 13 1978

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: G. Klein
Warren, MI
NC-C-12200/5DET-3986

Dear Mr. Riley:

On October 27, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed to consider this grievance closed, based on the following: If management must delay an employee's request for a steward, management should inform the employee involved of the reasons for the delay and should also inform the employee of when time should be available.

Sincerely,

Daniel A. Kahn

Daniel A. Kahn
Labor Relations Department

H1M-1J-C 10717

Dear Mr. Johnson:

On February 28, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance union's request to review a supervisor's Step 1 Grievance Summary form, PS-2608.

It was mutually agreed to full settlement to the case as follows:

1. The PS Form 2608 is not completed by the Postal Service at the time of the Step 1 discussion. Therefore, it is not available for the Union to revie until Step 2.

2. If at Step 2 or any subsequent step of the grievance procedure, the Union requests to review the complete PS Form 2608 it will be made available.

The time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Lonnie L. Johnson
National Director
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

b. The Postal Service must avoid the appearance of favoring any particular religion or religion itself.

c. Symbols identified with a particular religion, including but not limited to nativity scenes, crosses, or the Star of David, shall not be displayed on postal property. Examples of permissible displays include: stamps and stamp art, evergreen trees bearing nonreligious ornaments, menorahs (when displayed in conjunction with other seasonal matter), wreaths, holly, candy canes, Santa Claus, reindeer, dreidels, snowmen, stockings, candles, carolers, hearts, colored lights, and Kwanzaa symbols such as mkeka (a straw mat), kikombe cha umoja (unity cup), or mishumaa saba (a seven place candle holder with three red, three green, and one black candle).

d. Printed expressions "Season's Greetings" and "Happy Holidays" should be used in lieu of "Merry Christmas" or "Happy Hanukkah."

124.58 Photographs for News, Advertising, or Commercial Purposes

Photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings, except as prohibited by official signs, the directions of postal police officers, other authorized personnel, or a federal court order or rule. Other photographs may be taken only with the permission of the local postmaster or installation head.

124.59 Dogs, Other Animals, and Weapons and Explosives

a. Dogs and other animals: Dogs and other animals, except those used to assist persons with disabilities (service animals), may not be brought on postal property for other than official reasons. A "service animal" may be any species, breed, or size and may or may not be licensed, certified, or marked as a service animal. Service animals can assist persons with a wide range of disabilities, whether a disability is visible or not, including physical and mental disorders.

b. Weapons and explosives: No one on postal property may carry or store firearms, other dangerous or deadly weapons, or explosives, whether openly or concealed, for other than official reasons.

Note: All classified postal units must display in lobbies Poster 7, *Rules and Regulations Governing Conduct on Postal Property.* No other signage referring to dogs or service animals should be posted in lobbies or on entry doors. See 125.342.

124.6 Nondiscrimination

There must be no discrimination by segregation or otherwise against any person or persons because of race, color, religion, national origin, sex, age (persons 40 years of age or older are protected), reprisal (discrimination against a person for having filed or for having participated in the processing of an EEO complaint — 29 CFR 1613.261-262), or physical or mental handicap, in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on postal property.

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

APR 22 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20005

Re: W. Clark
Houston, TX
NC-S-5482/W5-SW-10379

Dear Mr. Riley:

On April 14, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The particular situation which gave rise to this grievance has been corrected. To this extent, the specific grievance has been resolved.

The judicious use of a camera to establish or refute a grievance may facilitate resolution of some problems. However, if the union desires to take photographs on the work room floor, permission must first be obtained from local management, and a supervisor must be present. If management deems it necessary to take evidential photographs, it would also be prudent to have a steward or union official present.

Sincerely,

Robert B. Hubbell
Labor Relations Department

February 19, 1982

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: K. Schroff
Jacksonville, FL 32203
H8C-3W-C-22224

Dear Mr. Wilson:

On February 17, 1982, you met with Margaret Oliver for a pre-arbitration discussion of the above-referenced case.

The issue raised in this case involved the use of camera equipment by union stewards to photograph mail processing operations on postal premises.

During the discussion, it was mutually agreed to resolve the case based on an understanding that the use of camera equipment by union stewards to photograph mail processing operations on postal premises is not within the purview of Article XVII.

Please sign a copy of this letter as your acknowledgment of agreement to resolve this case.

Sincerely,

(signed) George S. McDougald

George S. McDougald
General Manager
Grievance Division
Labor Relations Department

Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO

Mr. Louis D. Elesie
International Trustee
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 525
1 Thomas Circle, N.W.
Washington, D.C. 20005-5802

Re: V. Quinn
St. Louis, MO 63155
H4M-4K-C 9874

Dear Mr. Elesie:

This supersedes my letter dated April 7, 1986.

On March 14, 1986, we met with your representative, Judy Hoard, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether union stewards are entitled to conduct interviews at the steward's booth on the workroom floor.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that management may determine the location where Step 1 meetings or interviews are to be conducted. The parties at Step 3 are to apply the above understanding to this issue in order to resolve the grievance.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing including arbitration, if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Thomas J. Lang Louis D. Elesie

January 15, 1981

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005

Re: APWU - Local
San Diego, CA
H8C-5K-C 11884

Dear Mr. Wilson:

On October 27, 1980, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The issue in this grievance is whether or not management violates the intent of Article XVII of the National Agreement in this instant grievance for not providing enclosed cubicles with floor to ceiling walls and doors for privacy and space within the cubicle for reference materials, writing tablets, prior cases and other materials to investigate and process grievances.

After reviewing the file, it is my opinion that this grievance should not be interpretive. We acknowledge that the place designated by management for grievance activity should be reasonably private (not necessarily completely out of eyesight) and reasonably free from excessive noise. Whether or not the cubicle arrangement set up by local management failed to accomplish this cannot be determined at this level. Space limitations will be a factor in determining cubicle size.

Accordingly, this grievance is denied.

Time limits for further processing of this grievance have been extended to begin on receipt of the decision.

Sincerely,

(signed)

Robert L. Eugene
Labor Relations Department

In the Matter of Arbitration

between

Case No. N8-NA-0219

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

APPEARANCES: Barbara S. Fredericks and Nancy Forden, Attys., for the Postal Service; Cohen, Weiss & Simon, by Bruce H. Simon, Esq., for NALC

DECISION

This grievance arose under and is governed by the 1978-1981 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly appointed to serve as sole arbitrator, a hearing was held on 31 July 1980, in Washington, D. C. Both parties appeared and presented evidence and argument on the following agreed-upon issue (Tr. 10-11):

> May the Postal Service deny requests for investigation pursuant to Article XVII(3) of the 1978-1981 National Agreement by Shop Stewards requesting to leave the work area to investigate grievances or to investigate specific problems to determine whether to file a grievance and for access to documents, files, and other records necessary for processing the grievance or determining if a grievance exists; and for the right to interview grievants, supervisors and postal patron witnesses during working hours in connection with situations in which a letter carrier has made an initial determination in his judgment and in the exercise of his discretion that a particular customer would object

to his lawn being crossed and where a supervisor has over-ridden that determination and issued an order that such lawn be crossed? If not, what shall be the remedy?

A verbatim transcript was made of the arbitration proceeding. Each side filed a post-hearing brief. Upon receipt of both briefs on 19 September 1980, the arbitrator officially closed the record.

On the basis of the entire record in this case, the arbitrator makes the following

AWARD

The Postal Service may not deny requests for investigation pursuant to Article XVII(3) of the 1978-1981 National Agreement by Shop Stewards requesting to leave the work area to investigate grievances or to investigate specific problems to determine whether to file a grievance and for access to documents, files, and other records necessary for processing the grievance or determining if a grievance exists; and for the right to interview grievants, supervisors and postal patron witnesses during working hours in connection with situations in which a letter carrier has made an initial determination in his judgment and in the exercise of his discretion that a particular customer would object to his lawn being crossed and where a supervisor has over-ridden that determination and issued an order that such lawn be crossed.

Such future requests in the precise circumstances set forth in the preceding paragraph must be honored by the Postal Service, as provided in Article XVII.

Benjamin Aaron
Arbitrator

Los Angeles, California
10 November 1980

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case No. N8-NA-0219

OPINION

I

This "lawn-crossing" dispute has a long history with which both parties are now so familiar, if not weary, that no useful purpose would be served by detailing the background facts at length. Suffice it to say that it has figured in at least five previous arbitrations, extending back as far as 1976: NC-C-178, 23 Dec. 1976; NC-E-6501-D, 8 December 1978; NC-C-7851, 3 May 1978; and NC-C-15708-D and NC-NAT-13212, 20 August 1979. The decisions in all of these cases were either written or approved by Arbitrator Sylvester Garrett; none disposes of the problem raised in the instant case.

The present grievance, filed by Vincent R. Sombrotto, President of NALC, charges that the Postal Service has violated Article XVII (Representation), Section 3 (Rights of Stewards) of the National Agreement (JX-1). That section reads in pertinent part:

> 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 that the duties require the steward to leave the work area and enter another area within the installation or post office, the steward must 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 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. . . .

The Postal Service insists, however, that the real issue involved in the grievance is lawn-crossing, specifically addressed in Article XLI (Letter Carrier Craft), Section 3 (Miscellaneous Provisions), Paragraph N, which states in its entirety: "Letter carriers <u>may</u> cross lawns while making deliveries <u>if customers do not object</u> and there are no particular hazards to the carrier." (Underscoring added) As will appear shortly, there is truth to both contentions.

The Postal Service bases its present policy in respect of lawn-crossing by carriers on Article III (Management Rights) of the National Agreement, which, among other things, grants the "Employer. . .the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:"

A. To direct employees. . .in the performance

of official duties; . . .

C. To. . .maintain the efficiency of the operations entrusted to it; [and]

D. To determine the methods, means, and personnel by which such operations are to be conducted. . . .

The Postal Service also cites its obligation under the Postal Reorganization Act (39 U.S.C. §101(e)) to "give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of. . .mail." Furthermore, it accuses NALC of opposing and thwarting "the mandate" in Section 661.3 of Employee and Labor Relations Manual (PS Ex. 1) that "Employees must avoid any action, whether or not specifically prohibited by the Code [of Ethical Conduct], which might result in or create the appearance of. . .c. Impeding Postal Service efficiency or economy."

Finally, the Postal Service charges that NALC is trying to gain in arbitration what it failed to win in the 1978 negotiations, when, according to John S. Humphrey, Jr., General Manager, City Delivery Division of the Postal Service, NALC unsuccessfully sought to incorporate language in the National Agreement permitting letter carriers to make the initial determination whether or not to cross lawns, depending on "safety hazards or customer preference or whatever" (Tr. 70). No changes were made in Article XLI-3-N; instead, as Humphrey testified (Tr. 71):

Well, there was no language specifically addressed to that part of the article. In a Memorandum

> of Understanding. . .[it was agreed] that during the inspection process, if there was some problem as to what constituted a safety hazard between the examiner and the Carrier or whether there were [other relevant] factors [in dispute]. . .a process [would be] set up to handle that particular case. And that was that the route inspection process would be discontinued or deferred or cancelled and that the Carrier would be instructed in the proper method of shortcutting and following the line of travel and then the route would be reinspected. And that's all the language that was involved in the negotiation.

NALC's response to this last contention of the Postal Service, in the words of its counsel at the arbitration hearing, is that "[t]his is not a case that deals with Management ordering all lawns to be crossed. . . .This is not an Article XLI case. It's an Article XVII case" (Tr. 59).

Technically, NALC is correct. The specific situation to which the instant grievance relates is one in which a carrier has determined that a particular patron objects to having his lawn crossed; the carrier's supervisor has overruled the carrier's determination and has ordered the lawn to be crossed; the carrier's steward has filed a grievance; and the supervisor has denied the steward's request to "investigate" the grievance "on the clock," which investigation involves leaving the work area and interviewing the patron at the latter's residence. In the broader sense, however, the grievance implicates the entire lawn-crossing policy of the Postal Service, and thus Article XLI-3-N.

Unfortunately, a reading of Articles XLI-3-N and III does not automatically dispose of the issue raised by NALC.

As counsel for NALC stated in his opening remarks at the arbitration hearing,"Article XLI-3-N. . .is magnificent in its ambiguity" (Tr. 12); a statement that carriers "may" cross lawns "if" customers do not object and there are no particular hazards is hardly a definitive declaration of policy. Similarly, the management rights of the Postal Service set forth in Article III are subject in part to "the provisions of this Agreement," including, of course, Article XVII.

A colloquy between the arbitrator and the Postal Service's only witness, Humphrey, is instructive. The latter agreed that in case of a dispute between a carrier and a supervisor over a patron's wishes in respect of lawn-crossing, the final decision would have to be made by the patron. The colloquy continued (Tr. 80):

> MR. AARON: Inasmuch as it is the customer who makes the final decision in these matters, how would the customers intent be ascertained?
>
> THE WITNESS: I think in that case it would have to be ascertained by contact with the customer.
>
> MR. AARON: And who would make the contact?
>
> THE WITNESS: From Management's standpoint, I think the manager would or the supervisor.
>
> MR. AARON: And would the Union have the right to make the contact?
>
> THE WITNESS: I don't know. . . .How would Article XVII apply in that case? That's what I would answer.

The Postal Service takes the position that if it has no "hard data" -- e.g., a communication by a patron objecting

to having his lawn crossed, or a report by a carrier of some obvious physical barrier or hazardous condition that makes lawn-crossing infeasible--and is presented instead with a carrier's subjective conclusion that a lawn should not be crossed, the supervisor may properly order the carrier to cross the lawn. In that event, as Humphrey put it, "there is nothing to grieve about" (Tr. 79). That conclusion, however, seems to be contradicted by the following statement by Arbitrator Garrett in his most recent decision on the subject (NC-C-15708-D and NC-NAT-13212, p. 34):

> Where a Carrier does not use a shortcut which appears to be safe to the supervisor, and the supervisor concludes that there is no reason to believe that the customer might object, then the supervisor properly may order the Carrier to use that specific shortcut. The Carrier is obliged to comply with such a direct order, but may file a grievance protesting any apparent unreasonable supervisory action. . . .

It is true that the quoted statement referred specifically to procedures to be followed during a route check, but it seems equally applicable to the present case; and if the carrier may file a grievance against the supervisor's order, then it follows that Article XVII applies to the processing of that grievance. Accordingly, the specific issue presented in this case must be resolved in favor of the grievant.

It is at once apparent, however, that this decision could, and probably would, lead to increased expense for the Postal Service, impairment of its efficiency, and some exacerbation

of its relations with its patrons, who, regardless of how they feel about having their lawns crossed, are very likely to resent the necessity of explaining their feelings to Postal Service personnel. I have decided, therefore, to make a rare exception to my practice of never giving unsolicited advice to the arbitrating parties, and to submit for their consideration a modest proposal which, if adopted, would make it unnecessary to implement the decision in this case.

II

Obviously, the subject of lawn-crossing is one of intense concern to the Postal Service and the NALC; but I can find nothing in the voluminous record in this case to suggest that it is of an intricacy commensurate with its interest. Both sides agree that lawns need not be crossed if (1) the patron objects, for any reason or no reason; (2) if there are barriers that render such crossing infeasible; or (3) if lawn-crossing is otherwise rendered hazardous for some reason. The existence of conditions (2) and (3) may be objectively verified without bothering the patron; ascertaining whether or not the patron objects to having his lawn crossed presents the only real problem. Both parties quite sensibly dislike involving the patron unnecessarily in their disputes; but, both agree that if there is disagreement over the patron's desires, the issue can ultimately be resolved only by the patron. The Postal Service insists, however, that carriers have no right to raise that issue unless

the patron has first made known his objection to lawn-crossing.

My proposal is designed to remove any doubts about the patron's preference, without significantly increasing costs to the Postal Service, adversely affecting its efficiency, or involving the patron in disputes between the Postal Service and NALC. I propose that each patron be sent a simple form (return postage prepaid) in which he is asked to indicate if he objects to carriers crossing his lawn when they make mail deliveries. The patron should also be advised that if he does not so indicate his disapproval on the form, or if he fails to return the form, it will automatically be presumed that he has no objection to his lawn being crossed. I further propose an agreement between the parties that NALC will not communicate in any way with patrons about this matter, and that individual carriers will volunteer no statements or opinions about it to patrons.

Adoption of the foregoing proposals would, in my judgment, eliminate grievances arising from disagreements over a patron's preferences in respect of lawn-crossing. If, however, the proposals, or some variation thereof satisfactory to both sides, are not adopted, then the Postal Service must allow NALC stewards to investigate such grievances in the manner permitted by Article XVII.

Benjamin Aaron

Benjamin Aaron
Arbitrator

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL POST OFFICE MAIL HANDLERS,
WATCHMEN, MESSENGERS AND GROUP LEADERS
DIVISION OF THE LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO

The parties agree to recognize the following as nationally established policy regarding a steward's request to leave the work area while on-the-clock to interview a non-postal witness:

> In accordance with Article 17 of the 1981 National Agreement, a steward's request to leave his/her work area to investigate a grievance, shall not be unreasonably denied. Subsequent to determining that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock, to interview such witness, even if the interview is conducted away from the postal facility. However, each request to interview witnesses off postal premises must be reasonable and viewed on a case by case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale.

In witness whereof the parties hereto affix their signatures below this_____day of_____1982.

For the
United States Postal Service:

W. E. Henneff

For the Union:

Lonnie Moore

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

March 10, 1981

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D. C. 20001

Re: NALC Branch
Springfield, MA
NS-N-0224

Dear Mr. Sombrotto:

In settlement of the above-described grievance, the parties agree to the following:

1. The Postal Service agrees that a steward who is processing and investigating a grievance shall not be unreasonably denied the opportunity to interview Postal Inspectors on appropriate occasions, e.g., with respect to any events actually observed by said Inspectors and upon which 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 steward 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 the steward had requested an interview will also be withdrawn. Additionally, the employee in question will be granted the $25.00 assessed for the lost parcel. These withdrawals are non-precedential.

Sincerely,

William E. Henry, Jr.
Director
Office of Grievance
and Arbitration
Labor Relations Department

Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO

ARBITRATION AWARD

February 16, 1982

UNITED STATES POSTAL SERVICE
Sarasota, Florida

-and-

Case No. H8N-3W-C20711

NATIONAL ASSOCIATION OF LETTER CARRIERS

Subject: Representation - Steward's Right of Discovery - Access to Supervisor's Discussion Notes

Statement of the Issue: Whether the Postal Service's action in refusing to provide a steward with a supervisor's personal notes of discussions he'd had with an employee was, under the circumstances of this case, a violation of the National Agreement?

Contract Provisions Involved: Article XVI and Article XVII, Section 3 of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	August 26, 1980
Step 2 Meeting:	September 10, 1980
Step 3 Meeting:	October 1980
Step 4 Meeting:	April 28, 1981
Appeal to Arbitration:	May 12, 1981
Case Heard:	November 10, 1981
Briefs Submitted:	January 18, 1982

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in refusing to provide a steward with a supervisor's personal notes of discussions he'd had with a letter carrier. NALC insists that this refusal was a violation of the steward's right of discovery under Article XVII of the National Agreement. It asks that the Postal Service be required to disclose the "discussion records" for the carrier in question and "future grievants, when requested by an authorized Union representative in the investigation of possible grievances."

W. Barker is a letter carrier in the Sarasota, Florida post office. His absences became a source of concern to management in early 1980. His supervisor, E. Rainey, spoke to him on May 13 and July 24, 1980, about his attendance record. Rainey wrote down on a piece of paper, after each of these discussions, the date and subject matter covered. He retained these notes for his own use, probably in his desk or a file cabinet. He did not place these notes in Barker's personnel folder.

Rainey made another check on Barker's attendance several weeks later. He concluded that there had been no improvement. He therefore placed Barker on "restricted sick leave" on August 14, 1980. His letter to Barker stated that whenever he requests sick leave he must "submit a medical certificate for [sick] leave approval" and that his failure to do so "could result in [his] absence being charged to absent without leave." It added that his name would be removed from the "restricted sick leave" list when "a decided improvement in [his] sick leave record" had occurred.

The Employee & Labor Relations Manual (Section 513.371) describes the procedure which supervisors must follow in placing employees on "restricted sick leave". It reads in part:

> ".371 Reasons for Restriction. Supervisors ...who have evidence indicating that an employee is abusing sick leave privileges may place an employee on the restricted sick leave list. In addition, employees may be placed on the restricted sick leave list after their sick leave use has been reviewed on an individual basis and the following actions have been taken:

a. Establishment of an absence file as outlined in Handbook F-21...

b. Review of the absence file by the immediate supervisor and by higher levels of management.

c. Review of the quarterly listings, furnished by the PDC, of LWOP and sick leave used by employees...

d. Supervisor's discussion of absence record with the employee.

e. Review of the subsequent quarterly listing. If listing indicates no improvement, the supervisor is to discuss the matter with the employee to include advice that if next listing shows no improvement, employee will be placed on restricted sick leave." (Emphasis added)

Barker objected to being placed on "restricted sick leave." He apparently felt his absenteeism did not justify this action. He went to his steward, W. Vickers, with his complaint. Vickers made an investigation. He spoke with Supervisor Rainey who told him he'd had discussions with Barker on May 13 and July 24, 1980. He asked Rainey for his notes of these discussions. Rainey refused to provide them.

Rainey's refusal prompted the instant grievance which was filed by Steward Vickers on August 26, 1980. Vickers alleged that Rainey's refusal to allow him to examine the discussion notes was a violation of Article XVII, Section 3 (Representation - Rights of Stewards). That provision states:

"...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." (Emphasis added)

The other relevant provision of the National Agreement is Article XVI (Discipline Procedure):

> "...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 a 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." (Emphasis added)

It should be noted too that Barker filed a grievance on August 27, 1980. He alleged that he had been improperly placed on "restricted sick leave." His complaint was resolved in Step 2 of the grievance procedure with the understanding that he would "be removed from Restricted Sick ... list on October 15, 1980 provided he does not use any further sick leave by that date."

DISCUSSION AND FINDINGS

A steward has the right of discovery under Article XVII, Section 3. That right is expressed as follows: "The steward ...may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists..."

Steward Vickers made a "request" of Supervisor Rainey for certain papers. He asked Rainey for his personal notes of discussions he'd had with employee Barker about the latter's absences. Rainey refused. The Postal Sevice supported Rainey's refusal, arguing that he had no obligation to divulge his notes under the circumstances of this case. It

insists Article XVII, Section 3 is not applicable here. NALC disagrees.

This dispute turns on two questions of contract interpretation. The first is whether a supervisor's "personal notations" of an Article XVI discussion with an employee constitute "documents, files and other records" within the meaning of Article XVII, Section 3. NALC says they do; the Postal Service says they do not. I shall assume, without deciding the point, that NALC's view is correct. Hence, because Rainey's "personal notations" were "...other records", they could be subject to the steward's discovery.

The second and crucial question is more difficult to describe. It involves the problem of whether the right of discovery under Article XVII, Section 3 is conditional or absolute. The Postal Service contends that the steward must show that the records he seeks are "necessary" to his investigation before he can insist upon his right of discovery. It believes that absent such a showing, Management may properly refuse to disclose the records sought. NALC, however, maintains that "once the process of discovery is triggered by the steward's determination that the materials are 'necessary' to his investigation and [by his] request [for] such materials, Management must make them available to the Union." It states that the decision as to what is "necessary" for the steward's investigation is a matter reserved by Article XVII to the discretion of the Union. It alleges that the steward, having thus invoked his right of discovery, has an absolute right to the records he wishes.

I

The answer to this disagreement is found in the second paragraph of Article XVII, Section 3. The first sentence in this paragraph establishes the right of discovery. A steward "may request...documents, files and other records necessary..." to a grievance investigation; he "shall", upon such request, "obtain access" to these materials. Notwithstanding this broad language, the right of discovery is not unlimited. The second sentence in the paragraph makes that perfectly clear. It reads: "Such requests shall not be unreasonably denied." The parties thus contemplated that not all steward requests would be granted. Some would be denied. And those denials would be justified so long as they were not "unreasonabl[e]." This second sentence undermines NALC's argument because it plainly implies that steward requests may be denied where there is a reasonable basis for the denial.

The parties made no attempt in the National Agreement to define what would be a reasonable basis for a denial. But they did suggest what they had in mind by the manner in which they described the right of discovery. The steward is given access to "...other records necessary for processing a grievance or determining if a grievance exists."* His right is limited to what is "necessary." Hence, if he asks for materials which are unnecessary, Management would be within its rights in refusing to disclose such materials. Management would have a reasonable basis for its denial.

Necessity, of course, is not the only criterion. Any or all of the circumstances of this case might relate to the reasonableness of Management's action in denying the steward access to records.

For these reasons, my conclusion is that the right of discovery is not absolute. Management may deny a steward's request where its denial is not "unreasonabl[e]."** Given this interpretation of Article XVII, Section 3, we are left only with a question of fact. Did the Postal Service have a reasonable basis for denying Steward Vickers' request for Supervisor Rainey's discussion notes? Or, to put the matter in terms of the contract language, was the Postal Service's denial of the steward's request "unreasonabl[e]" on the facts presented? In resolving this question, I have made no judgment about the burden of proof. I have not assumed that NALC must show the denial was "unreasonabl[e]" or that the Postal Service must show its denial was reasonable.

I I

Before dealing with this question of fact, some brief observations about a supervisor's discussion notes are in order.

This subject is covered by Article XVI. Management is expected to discuss an employee's "minor offenses" with him. Those discussions involve the employee and the supervisor, no one else. They are not considered discipline. However, the supervisor (the employee as well) is free to make "a personal notation of the date and subject matter" of the discussion for his "personal record." No such "personal notation" is to be placed in the employee's personnel folder. Nor is it to be "cited as an element of a prior adverse record in any subsequent disciplinary action against an employee."

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* NALC reads this provision as if the word "necessary" were not present.

** This finding is not affected by the Article XVI bargaining history.

The "personal notation" nevertheless has some uses. According to Article XVI, it may be "relied upon to establish that employees have been made aware of their obligations and responsibilities." Suppose, for instance, that a supervisor and an employee discuss the latter's absenteeism and the supervisor prepares a "personal notation" of the discussion. Suppose too that the employee is later disciplined for absenteeism but denies ever being spoken to about his attendance record. Under these circumstances, the Postal Service could use the "personal notation" to prove that the employee had been made aware of his "obligations and responsibilities." Or, on a purely informal basis, the supervisor could always refer to a "personal notation" as a means of refreshing his recollection of the "subject matter" of a past discussion with an employee. It should be apparent, however, that the "personal notation" has a very limited usefulness.

I I I

With this background on "personal notations", I turn to the question of whether the Postal Service's denial of Steward Vickers' request for Supervisor Rainey's notes of discussions with Barker was "unreasonabl[e]".

The Employee & Labor Relations Manual describes two different procedures through which an employee can be placed on "restricted sick leave." Supervisor Rainey followed the lengthier procedure which demanded, among other things, discussing Barker's absence record with him, reviewing his record in the next quarterly listing, discussing his record with him again if there had been no improvement, and advising him at such time that he would be put on "restricted sick leave" if he showed no improvement on the next listing.

Rainey placed Barker on "restricted sick leave" on August 14, 1980. Barker grieved. His grievance was evidently written by the Chief Steward who made two arguments in Barker's behalf: (1) that "the Union does not know if the sup[ervisor] has discussed this with the grievant at least twice" and (2) that "the grievant's sick leave [record] has improved greatly since the end of May to Aug. 12, 1980."

Several points should be stressed. First, contrary to the statement in Barker's grievance, Steward Vickers knew that Rainey had two discussions with Barker about his absence record. Vickers had been told that by Rainey and apparently by Barker himself. There was never really a dispute on this matter. Hence, Vickers did not need Rainey's

"personal notations" to determine whether there had been the required number of discussions. Second, nothing in the evidence indicates that Vickers was denied Barker's absentee data. Barker's grievance specifically refers to the number of absences between December 1979 and August 1980 on a month-by-month basis. Clearly, the absentee data needed to determine whether there had been any improvement was available to Vickers at all times. Had Management refused to provide such data, Vickers could have obtained it through his right of discovery. Those absentee figures were the kind of Postal Service "...files and other records" contemplated by Article XVII, Section 3.

Third, neither Vickers nor NALC claimed that Rainey had failed to give Barker the required "advice" as to the consequences of his failure to improve. This was never an issue in this case. Presumably, Barker told Vickers he had been given such "advice." Vickers therefore did not need Rainey's "personal notations" to determine whether this phase of the "restricted sick leave" procedure had been followed. Fourth, nowhere is there any suggestion that Vickers and Barker had different accounts of their discussions. There was no credibility question. Vickers did not need Rainey's "personal notations" to resolve any doubts as to whom he should believe. Finally, Vickers had full access to Barker who had just as much knowledge of these discussions as Rainey.

Under these circumstances, my ruling must be that the Postal Service's denial of Steward Vickers' request was not "unreasonabl[e]" and that there has been no violation of Article XVII, Section 3. This finding has been influenced, to a large extent, by the fact that Vickers sought "personal notations" which were clearly not "necessary" to his "processing a grievance or determining if a grievance exists."

IV

One other NALC claim requires a brief answer. It asserts that Steward Vickers asked another supervisor for his "personal notations" of his Article XVI discussions with employee Hanewinckel in late August 1980 and that he was given the supervisor's discussion notes. It compares this response with Supervisor Rainey's response and complains that "selective disclosure is inherently unfair and discriminatory."

One of the difficulties with this argument is that there is no real evidence with respect to the Hanewinckel situation.

Perhaps the number of discussions between the supervisor and Hanewinckel was in dispute; perhaps there was a credibility issue; perhaps Vickers' request was "necessary" to his investigation of that complaint. In short, the Hanewinckel case may be distinguishable from the present Barker case. But even if it were not, the mere fact that one supervisor grants a steward's request for discovery while another does not is hardly a sufficient basis for ruling that Management is guilty of "discriminatory" actions forbidden by the National Agreement.

AWARD

The grievance is denied.

Richard Mittenthal

Richard Mittenthal, Arbitrator

This chapter, subchapter, part, or section...	titled...	was to...	in *Postal Bulletin* issue number...	with an issue/effective date of...
Chapter 7, Supply Management				
722.31	Prohibited Purchases	add two new categories to the list of purchases that you can't make using local buying procedures.	22061	10-18-2001
722.631	General	update the procedure for miscellaneous payments.	22136	9-2-2004
Chapter 8, Information Resources				
8	Information Resources	integrate information technology and information privacy policies under the broader heading of Information Resources; identify information technology–related services and responsibilities. (Completely revised)	22140	10-28-2004
87	Information Security	■ change the title from *Security Program* to *Information Security.* ■ include the new security policies and organizational responsibilities covering protection of Postal Service information resources.	22071	3-7-2002
Appendix, Privacy Act System of Records				
Appendix	Privacy Act System of Records	remove entire appendix to Handbook AS-353, *Guide to Privacy and the Freedom of Information Act.*	22110	9-4-2003

Appendix

Privacy Act Systems of Records

Section A. Explanation

This appendix includes Section A. - relating to systems of records under the Privacy Act.

Section B. contains an overview of the Privacy Act and its protections.

Section C. is a complete index of Postal Service systems of records.

Section D. describes disclosures authorized by statute and the standard routine uses that apply to all systems of records.

Section E. contains the complete text of Postal Service systems of records.

Section B. Privacy Act Protections

The Privacy Act of 1974, 5 U.S.C. 552a, applies to Federal agencies, including the Postal Service. The Privacy Act provides protections for personal information that an agency maintains in a system of records. A system of records describes a file, database, or program from which information is retrieved about an individual by name or other personal identifier.

The Privacy Act establishes recordkeeping, access, and nondisclosure requirements for information maintained in a system of records. The Privacy Act requires agencies to publish a description of each system of records to provide full information on how personal information within the system of records is treated. This description includes how information is collected, used, disclosed, stored, and disposed of. It also includes how individuals can obtain access to, correct, and amend information about them that is included in the system of records.

The Privacy Act places limitations and requirements on how information from within a system of records can be disclosed, as described in Section D.

Section C. Index of Systems of Records

Part I. General Systems

100.000	General Personnel Records
100.100	Recruiting, Examining, and Placement Records
100.200	Employee Performance Records
100.300	Employee Development and Training Records
100.400	Personnel Compensation and Payroll Records
100.450	User Profile Support Records Related to Digital Service
100.500	Personnel Resource Management Records
100.600	Personnel Research Records
100.700	Medical Records
100.800	Employee Accident Records
100.850	Office of Workers' Compensation Program (OWCP) Record Copies
100.900	Employee Inquiry, Complaint, and Investigative Records
100.950	Employee Assistance Program (EAP) Records
200.000	Labor Relations Records
300.000	Finance Records
400.000	Supplier and Tenant Records
500.000	Property Management Records
500.050	HSPD-12: Identity Management System
500.100	Carrier and Vehicle Operator Records
500.200	Controlled Correspondence, FOIA, and Privacy Act Disclosure Records
500.300	Emergency Management Records
600.000	Legal Records Related to Mail
600.100	General Legal Records
600.200	Privacy Act and FOIA Appeal and Litigation Records
600.300	Public and Confidential Financial Disclosure Reports
600.400	Administrative Litigation Records
600.500	Judicial Officer Records
700.000	Inspection Service Investigative File System
700.100	Mail Cover Program Records
700.200	Vehicular Violations Records Systems
700.300	Inspector General Investigative Records

Part II. Customer Systems

800.000	Address Change, Mail Forwarding, and Related Services
800.100	Address Matching for Mail Processing
800.200	Address Element Correction Enhanced Service AECES)
810.100	www.usps.com Registration
810.200	www.usps.com Ordering, Payment, and Fulfillment
810.300	Offline Registration, Payment, and Fulfillment
820.100	Mailer Services — Applications and Approvals
820.200	Mail Management and Tracking Activity
830.000	Customer Service and Correspondence
840.000	Customer Mailing and Delivery Instructions
850.000	Auction Files
860.000	Financial Transactions
870.100	Trust Funds and Transaction Records
870.200	Meter Postage and PC Postage Customer Data and Transaction Records
880.000	Post Office and Retail Services
890.000	Sales, Marketing, Events, and Publications
900.000	International Services
910.000	Identity and Document Verification Services

Section D. Authorized Disclosures and Routine Uses

Under the Privacy Act, information can only be disclosed from a system of records, internally or externally, under one of two conditions:

1. The individual has authorized the disclosure in writing.
2. The disclosure fits within one of twelve specified categories.

The following is a description of disclosures, including those authorized by the Privacy Act and USPS regulations and routine uses.

D.1. Disclosures Authorized by the Privacy Act

The Privacy Act authorizes disclosures in the following twelve circumstances:

1. To agency employees who need the information to perform their job.
2. As required by the Freedom of Information Act.
3. For routine uses for which the agency has provided proper notice.
4. To the Bureau of the Census for purposes related to census and survey activities.
5. To a recipient who provides advance written assurance that the information will only be used for statistical research or reporting, and the information provided does not identify individuals.
6. To the National Archives and Records Administration for historic preservation purposes.
7. To other domestic government agencies for a civil or criminal law enforcement activity if the activity is authorized by law. In such cases, the agency head must specify in writing both the law enforcement activity and the particular information needed.
8. To a person upon a showing of compelling circumstances affecting an individual's health or safety. The agency must send notice of the disclosure to the individual's last known address.
9. To Congress, or to the extent the matter is within their jurisdiction, to any of its committees or subcommittees.
10. To the Comptroller General in the performance of duties of the Government Accountability Office.
11. Pursuant to the order of a court of competent jurisdiction.
12. To a consumer reporting agency in order to collect claims owed to the Government.

The Privacy Act allows agencies to disclose information from a system of records if they establish a routine use describing the disclosure (see #3. above). Under the Privacy Act, routine uses are defined as disclosures that are compatible with the purpose for which the information was collected — in other words, disclosures that are appropriate and necessary for the efficient conduct of government business. Routine uses for each system of records are established by publishing them in a *Federal Register* notice that describes the system. They must also be disclosed in a notice given to an individual when information is collected directly from the individual. The Privacy Act also allows disclosures required by the Freedom of Information Act (FOIA) (see #2 above). USPS regulations implementing the Privacy Act and FOIA are contained in 39 CFR Parts 261-268.

D.2. Standard Routine Uses

The following standard routine uses apply to USPS systems of records. In general, standard routine uses 1. through 9. apply to general systems — systems relating to employees, finance, investigations, litigation, and other systems not primarily related to USPS customers. General systems are listed in Section C, Part I. In general, standard routine uses 1. through 7., 10., and 11. apply to customer systems. These systems, which contain information related to USPS customers, are listed in Section C, Part II. The specific standard routine uses applicable to each system of records, as well as any special routine uses, are described in each system of records in E.

1. *Disclosure Incident to Legal Proceedings.* When the Postal Service is a party to or has an interest in litigation or other legal proceedings before a federal, state, local, or foreign adjudicative or administrative body or before an arbitrator, arguably relevant records may be disclosed before that body, and/or to the Department of Justice or other legal counsel representing the Postal Service or its employees, and to actual or potential parties or their representatives in connection with settlement discussions or discovery. Arguably relevant records may also be disclosed to former Postal Service employees or suppliers when reasonably necessary to elicit information related to actual or potential litigation. Arguably relevant records may be disclosed to a bar association or similar federal, state, or local licensing or regulatory authority that relate to possible disciplinary action.
2. *Disclosure for Law Enforcement Purposes.* For information derived from general systems, when the Postal Service becomes aware of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, or in response to the appropriate agency's request on a reasonable belief that a violation has occurred, records may be referred to the appropriate agency, whether federal, state, local, or foreign, charged with enforcing or implementing the statute, rule, regulation, or relevant order. For records derived from customer systems, records may be disclosed to appropriate law enforcement agencies to investigate, prevent, or take action regarding suspected illegal activities against the Postal Service; and such customer records may only otherwise be disclosed to law enforcement agencies as required by law.
3. *Disclosure to Congressional Office.* Records about an individual may be disclosed to a congressional office in response to an inquiry from the congressional office made at the prompting of that individual.
4. *Disclosure to Agents or Contractors.* Records may be disclosed to entities or individuals under contract or agreement with the Postal Service when necessary to fulfill a Postal Service function, to provide Postal Service products or services to customers, or to provide the contractor with investigative or performance records about the contractor's employees.
5. *Disclosure to Auditors.* Records may be disclosed to government agencies and other entities authorized to perform audits, including financial and other audits, of the Postal Service and Postal Service activities.

6. *Disclosure to Labor Organizations.* As required by applicable law, records may be furnished to a labor organization when needed by that organization to perform its duties as the collective bargaining representative of Postal Service employees in an appropriate bargaining unit.
7. *Disclosure to Government Agencies.* Records may be disclosed to a federal, state, local, or foreign government agency when necessary in connection with decisions by the requesting agency or by the Postal Service regarding personnel matters, issuance of security clearances, letting of contracts, or decisions to issue licenses, grants, or other benefits. With respect to employee records, such matters include provision of parent locator services; enforcement of child support, tax, and debt obligations; and claims, investigations, and inspections related to occupational safety, injuries, illnesses, and accidents.
8. *Disclosure to Equal Employment Opportunity Commission.* Records may be disclosed to an authorized investigator, administrative judge, or complaints examiner appointed by the Equal Employment Opportunity Commission when requested in connection with the investigation of a formal complaint of discrimination filed against the Postal Service under 29 CFR Part 1614.
9. *Disclosure to Merit Systems Protection Board or Office of the Special Counsel.* Records may be disclosed to the Merit Systems Protection Board or Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies, investigations of alleged or possible prohibited personnel practices, and such other functions as may be authorized by law.
10. *Disclosure to Agencies and Entities for Financial Matters.* Records may be disclosed to credit bureaus, government agencies, and service providers that perform identity verification and credit risk assessment services; to financial institutions or payees to facilitate or resolve issues with payment services; or to government or collection agencies for the purposes of debt collection or responding to challenges to such collection.
11. *Disclosure for Customer Service Purposes.* Records may be disclosed to entities if the disclosure is part of the service to the customer. This includes disclosures to addressees of mail to process inquiries and claims; entities to which the customer wants to provide identity verification; the State Department for passport processing; international posts or agents to facilitate or process international services, claims, or inquiries; and mailers of sexually oriented advertisements to provide a list of customers who do not want to receive them.

D.3. Exempted Systems of Records

Certain categories of records contained in the systems of records below are exempt from the following Privacy Act provisions: to release records; to maintain only relevant and necessary information; to establish notification, access, and contest procedures or publish them in a *Federal Register* notice; and to release an accounting of disclosures.

100.100 Recruiting, Examining, and Placement Records
100.300 Employee Development and Training Records
100.600 Personnel Research Records
200.000 Labor Relations Records
500.300 Emergency Management Records
700.000 Inspection Service Investigative File System
700.100 Mail Cover Program Records
700.300 Inspector General Investigative Records
860.000 Financial Transactions

In addition to the above, certain categories of records contained in the systems of records below are exempt from the following Privacy Act provisions: to collect information directly from the individual; to provide notice to the individual when collecting information; to maintain accuracy, relevance, timeliness, and completeness of records; to provide notice of a correction or notation; to serve notice upon disclosure under compulsory legal process; to apply civil remedies; and to apply provisions to contractors.

500.300 Emergency Management Records
700.000 Inspection Service Investigative File System
700.100 Mail Cover Program Records
700.300 Inspector General Investigative Records

The legal authority and statutory references for all exemptions are contained in 39 CFR 266.9.

Section E. Complete Text of Systems of Records

Mr. Lonnie L. Johnson
National President
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO
Suite 450
1225 19th Street, N.W.
Washington, D.C. 20036-2411

Re: J. Gonzalez
General Post Of, NY 10018
H1M-1A-C 13294

Dear Mr. Johnson:

On February 28, 1984, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management violated Article 17 of the National Agreement by involuntarily transferring the grievant, a steward, upon his conversion to full-time regular status.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

> Under Article 17, Section 3, of the National Agreement, a certified steward "may not be involuntarily transferred to . . . another branch . . . unless . . ." As the grievant was a full-time regular employee upon his conversion, he should not have been transferred unless there was no job for which the employee was qualified on the grievant's tour, or in such station or branch, or post office. Accordingly, if the grievant is qualified for an assignment on GPO OM-Tour 2, he shall be returned to this tour. Management may, however, take whatever action is appropriate and necessary, e.g. excessing of the junior full-time employee, in order to provide the grievant with an assignment on GPO OM-Tour 2.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.,

The time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Lonnie L. Johnson
National President
National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders, AFL-CIO

ARBITRATION AWARD

January 18, 1982

UNITED STATES POSTAL SERVICE
Brooklyn, New York

HEN-1A-C 7812

-and-

Case No. NB-N-0221

NATIONAL ASSOCIATION OF LETTER CARRIERS

Subject: Payment of Grievant - Travel Time for Step 2 Meeting

Statement of the Issue: Whether the Postal Service's failure to pay a grievant for time spent traveling to and from the Step 2 meeting on his grievance was a violation of the National Agreement?

Contract Provisions Involved: Article XVII, Section 4 of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	September 17, 1979
Step 2 Meeting:	October 1979
Step 3 Meeting:	January 4, 1980
Step 4 Meeting:	February 28, 1980
Appeal to Arbitration:	March 7, 1980
Case Heard:	October 6, 1981
Transcript Received:	October 24, 1981
Briefs Submitted:	December 10, 1981

Statement of the Award: The grievance is denied.

BACKGROUND

This case involves the Postal Service's refusal to pay a grievant for time spent traveling to and from the Step 2 meeting on his grievance. NALC insists this refusal was a violation of Article XVII, Section 4 of the 1978 National Agreement. It asks that the Postal Service compensate this grievant "for on-the-clock travel time to and from [this] Step 2 meeting..."

The essential facts are not in dispute. J. Roventini, a letter carrier, was employed in mid-1979 at the Ryder Station in Brooklyn, New York. He was disciplined. He filed a grievance protesting the disciplinary action. The Step 2 meeting on his grievance was held, pursuant to Postal Service practice in Brooklyn, at the Main Post Office. NALC wanted the grievant to be present. Because the Ryder Station is a substantial distance from the Main Post Office, Roventini spent two hours traveling to and from the Main Post Office to attend his Step 2 meeting. Those hours fell during his regular work day.

The Postal Service paid Roventini only for the time he actually spent at the Step 2 meeting. It refused to pay him for his two hours' travel time. That refusal prompted the instant grievance.

Article XVII, Section 4 is the relevant contract provision. It reads:

> "The Employer will authorize payment only upon the following conditions:
>
> - Steps 1 and 2 - The aggrieved and one Union steward (only as permitted under the formula in Section 2A) 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 witness for 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 2A) regular work day." (Emphasis added)

The parties have entirely different interpretations of this language. The Postal Service insists "time actually spent in grievance handling..." simply does not include travel time. It believes this view is supported by bargaining history, by past practice, and by the terms of the witness compensation clause added to Article XVII, Section 4 in the 1978 negotiations.

NALC disagrees. It emphasizes that Brooklyn Management scheduled a Step 2 meeting at the Main Post Office for its own convenience and thereby required Roventini to spend two hours traveling to and from the grievance meeting. It claims his travel time "was thus devoted solely to the handling of his grievance." It urges his "sole purpose", whether traveling in connection with the Step 2 meeting or discussing his complaint with Management at this meeting, was to resolve his grievance. It contends therefore that all of this time must logically be characterized as "time actually spent in grievance handling." It says its broad view of this contract clause is justified not only by the plain meaning of its words but also by "common sense" and "equity."

DISCUSSION AND FINDINGS

A grievant can receive payment under Article XVII, Section 4 "only" if he satisfies certain express "conditions." He is paid for Steps 1 and 2 of his grievance "for time actually spent in grievance handling, including investigation and meetings with the Employer", providing the "time spent" is part of his "regular work day."

The issue, simply stated, is whether the grievant's travel time to and from a Step 2 meeting constitutes "time actually spent in grievance handling..."

The key words in this contract clause, it seems to me, are "grievance handling." They encompass a broad range of grievance activity. They include "investigation",

"meetings with the Employer", and other similar kinds of grievance action. But all of these activities, to be covered by Article XVII, Section 4, must have one essential characteristic. They must involve the "actual...handling..." of a grievance.

A grievant may occasionally have to travel to a Main Post Office to participate in his Step 2 meeting. That is what happened to Roventini. But such traveling cannot reasonably be said to involve the "actual...handling..." of a grievance. While the grievant is on a bus or train en route to the meeting, he is not engaged in the "actual... handling..." of his grievance. He is traveling, nothing more. His "grievance handling" begins only when he arrives at the meeting. It follows that he has not satisfied the express "conditions" of Article XVII, Section 4 and is not entitled to payment for his travel time.

This conclusion is consistent with the parties' negotiating history. Article XVII, Section 4 has had a provision for payment for "time actually spent in grievance handling..." since 1971. NALC (actually the Postal Labor Negotiating Committee) proposed adding the following language to the "grievance handling..." clause in the 1975 negotiations: "...including travel and transportation, investigation, preparation, and writing grievances" (Emphasis added). The Postal Service rejected this proposal. NALC proposed adding the following language to the "grievance handling..." clause in the 1978 negotiations: "The Employer shall also compensate Union representatives for time spent in and travelling to and from meetings called by the Employer..." (Emphasis added). Again the Postal Service rejected this proposal. Given this history, it would appear NALC recognized in 1975 and 1978 that "time actually spent in grievance handling..." did not include travel time.

Moreover, when the parties added a witness payment clause to Article XVII, Section 4 in the 1978 negotiations, they expressed the Postal Service's obligation in a much different way. They stated, "...the Employer will compensate any witnesses for the time required to attend a Step 2 meeting." Clearly, the "time required to attend..." includes travel time. The grievant payment clause, "time actually spent in grievance handling", says nothing whatever about "time required to attend..." meetings. It can hardly be interpreted to mean the same thing as the witness payment clause.

For these reasons, I find that the Postal Service was not obliged to pay Roventini for his travel time. There has been no violation of Article XVII, Section 4.

AWARD

The grievance is denied.

Richard Mittenthal, Arbitrator

SEP 2 6 1984

Mr. Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Neill:

On September 25 you met with Frank Dyer in prearbitration discussion of H8C-5D-C 6315, Seattle, Washington. The question in this grievance involves payment to a union steward for time spent traveling between two facilities to process grievances.

It was mutually agreed to full settlement of this case as follows:

> This issue was presented to Arbitrator Mittenthal in case number H8N-1A-C 7812. Based on his decision, this case is considered administratively closed.

Please sign and return the enclosed copy of this letter acknowledging your agreement to close this case, withdrawing H8C-5D-C 6315 from the pending national arbitration listing.

Sincerely,

(signed)

Sherry S. Barber
General Manager
Arbitration Division
Labor Relations Department

(signed)

Thomas A. Neill
Industrial Relations
Director
American Postal Workers
Union, AFL-CIO

SEP 2 5 1984
Date

Enclosure

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

DEC. 13 1978

Mr. Thomas D. Riley,
Assistant Secretary Treasurer
National Association of Letter Carriers,
AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: P. Mulcahy
Brockton, MA
NC-N-12792/V78-32002

Dear Mr. Riley:

On November 28, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Based on the facts presented and contained in the case file, we find no contractual violation. The National Agreement does not provide for the payment of a union steward who accompanies an employee to a medical facility for a fitness-for-duty examination. In the absence of a contractual violation, this grievance is denied.

Sincerely,

Viki Maddox
Labor Relations Department

ARBITRATION OT REQUESTED

ARBITRATION AWARD

December 10, 1979

UNITED STATES POSTAL SERVICE
Parkersburg, West Virginia

-and-

AMERICAN POSTAL WORKERS UNION

Case Nos. AS-E-021,
AS-E-022

Subject: Payment of Stewards - Grievance Procedure

Statement of the Issue: "Is the Postal Service required to pay Union Stewards for time spent in writing appeals to Step 3 of the grievance procedure, pursuant to Article XVII, Section 4 of the 1978 National Agreement?"

Contract Provisions Involved: Article XV, Section 2, Steps 2 and 3 and Article XVII, Sections 2 and 4 of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	March 1979
Step 2 Meeting:	March 19, 1979
Step 3 Meeting:	April 17, 1979
Step 4 Meeting:	June 8, 1979
Case Heard:	September 6, 1979
Transcript Received:	September 19, 1979
Briefs Submitted:	Nov. 21 & 23, 1979

Statement of the Award: Steward Romine should be paid for time spent in writing appeals to Step 3 of the grievance procedure. The Postal Service's failure to pay him for such time was a violation of Article XVII, Section 4. He should be compensated for these hours.

BACKGROUND

These grievances protest the Postal Service's refusal to pay a Steward for time spent writing appeals from Step 2 to Step 3 of the grievance procedure. The Union insists the Steward is entitled to be paid for such "grievance handling" pursuant to Article XVII, Section 4 of the National Agreement. The Postal Service disagrees.

T. Romine is a Distribution Clerk in the Parkersburg, West Virginia post office. He is a Steward as well. Sometime in 1979, supervision gave him a number of adverse Step 2 decisions on grievances he had processed. He chose to appeal those grievances to Step 3. He asked his supervisor to be relieved during his tour because "I have to appeal a couple of adverse Step 2 decisions." The supervisor refused to let him do this paper work "on the clock", i.e., on Postal Service time.

Romine wrote the appeals to Step 3 on his own time. He then grieved, urging that he had a right to appeal grievances from Step 2 to Step 3 during regular working hours and that he should be paid for this appeal work. His claim is based on Article XVII, Section 4 which reads in part:

> "The Employer will authorize payment only under the following conditions:
>
> "Steps 1 and 2 - The aggrieved and one Union steward...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 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..." (Emphasis added)

A brief summary of the parties' main arguments would be useful. The Union insists that the Steward's preparation of

appeals from Step 2 to Step 3 constituted a Step 2 "grievance handling" activity and that he hence should have been paid for his appeal work under Article XVII, Section 4. The Postal Service contends that pay is due only for certain specified "grievance handling" activities and that the Steward's appeal work was not an "investigation" or a "meeting with the Employer" or the "writ[ing of] a grievance." It alleges also that his appeal work was not a Step 2 activity but rather was the initial stage of Step 3. It believes the Steward's claim should be rejected on either of these grounds.

DISCUSSION AND FINDINGS

The problem in this case arises from the ambiguity in Article XVII, Section 4. That provision, to repeat, calls for payment to Stewards for time spent in "grievance handling, including investigation and meetings with the Employer [and] ...writ[ing] a grievance."

The Postal Service treats "including" as a word of strict limitation. Its position is that "grievance handling" covers only those tasks expressly "includ[ed]" in Article XVII, Section 4 and that the Steward's appeal from Step 2 to Step 3 is not one of them. Dictionary definitions provide no answer. For the term "including" can be used in more than one way. It is not necessarily a word of strict limitation. No one would deny that the whole is the sum of its parts. When one speaks of the whole "including" certain enumerated parts, the reference could be to all the parts. But it could just as well be to some of the parts. Thus, when the parties embraced the idea of paying for "grievance handling" which "includ[ed]" certain enumerated tasks, it is not clear whether they meant to cover only those listed tasks (as the Postal Service claims) or whether they meant to cover any task which fell within the rubric of "grievance handling" (as the Union claims).

The answer to this question must be found elsewhere. There are several considerations which favor the Union's position. First, if the Postal Service were correct, the parties need only have stated in Article XVII that Stewards would be paid for time spent in "investigation and meetings with the Employer [and]...writ[ing] a grievance." There would be no need whatever for the words "grievance handling." Those

words would be mere surplusage.* However, the parties do not idly write into their Agreement words intended to have no effect. The very presence of the term "grievance handling" suggests that the parties had something more in mind than the three enumerated tasks.

Second, it is impossible to overlook the breadth of the term "grievance handling." It is much larger than any of the enumerated tasks. It encompasses "investigation", "meetings...", "writ[ing] a grievance", and more. Had the parties intended these three tasks to serve as a limit on payments to Stewards, they could easily have said so. They could have stated that payment was for time spent on the following kinds of "grievance handling" and then enumerated the three tasks. But the words they chose suggest that "grievance handling" is not circumscribed by these tasks.

Third, essentially the same issue was arbitrated under the 1971 National Agreement. There, a Steward sought pay for time spent appealing from Step 1 to Step 2A, i.e., for time spent reducing the grievance to writing. The Postal Service apparently took the same position as it does here. It urged that the Agreement called for payment for "grievance handling, including investigation and meetings with the Employer" and that writing a grievance was neither "investigation" nor a "meeting." Arbitrator Fisher held for the Union, explaining that the term "grievance handling" was broad enough to encompass writing a grievance.** He asserted, "In the absence of any contractual language stating that the actual writing of a grievance does not constitute 'handling', it is held that such activity requires payment by the Employer." Notwithstanding this broad view of "grievance handling", the parties have continued to use the very same language in their National Agreements.

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* The Union position, on the other hand, creates no surplusage. For the test then would be "grievance handling" and the three enumerated tasks would be the most prominent examples of what the parties meant by "grievance handling."

** This award is dated January 1973 and is referred to in the Union's arbitration files as Case No. 389.

For these reasons, I find that the word "including" in Article XVII, Section 4 is not a term of limitation. It follows that the payment for "grievance handling" is not limited to the three enumerated tasks. Steward Romine's action in appealing cases from Step 2 to Step 3 was plainly "grievance handling." He is therefore entitled to be paid for that time provided the appeals are truly Step 2 work. That question is discussed below.

In reaching this conclusion, I have fully considered another Postal Service claim. It emphasizes the following sentence which was added to Article XVII, Section 4 in the 1973 National Agreement: "The Employer will also compensate a steward for the time reasonably necessary to write a grievance." It argues that express inclusion of this writing as a form of compensable "grievance handling" indicates that other kinds of writing (e.g., the appeal from Step 2 to Step 3) are not covered. This argument is not persuasive. The fact is that this sentence represents nothing more than the parties' adoption of Arbitrator Fisher's award. The parties also continued to use the term "grievance handling." By doing so, they appear to have adopted Arbitrator Fisher's rationale thatthis term was broad enough to include tasks other than those enumerated in Article XVII, Section 4.

One other crucial question must be resolved. Stewards are paid only for Step 1 and Step 2 "grievance handling." The Union maintains that preparation of the appeal from Step 2 to Step 3 is part of Step 2 and is hence covered by Article XVII, Section 4. The Postal Service says this appeal is a Step 3 activity.

Article XV, Section 2 describes the various steps of the grievance procedure. The final stage of Step 2 and the initial stage of Step 3 read as follows:

> Step 2 - "(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."

> Step 3 - "(a) Any appeal from an adverse decision in Step 2 shall be in writing to the Regional Director for Employee and Labor Relations, with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal."

These provisions offer little assistance. It is more useful to examine the Steward's function and the actual mechanics of moving a grievance from Step 2 to Step 3. The Steward meets with the Postal Service representative; he makes a detailed statement of the facts and contract clauses on which he relies; he introduces evidence if appropriate; he argues his case. This is of course the Step 2 meeting. Later, he receives the Postal Service's decision. If it is adverse, the Union may choose to appeal the grievance to Step 3. In that event, the Steward has other tasks to perform. He corrects the facts and contentions in the Step 2 decision if necessary; he puts together the required documents; and he writes out the reasons for the appeal. It seems to me that this is also a Step 2 activity. For not until the appeal is perfected, not until these papers are filed with the Postal Service Regional Director, does the dispute actually reach Step 3. Anything which precedes that filing is a Step 2 activity. This view is, I think, consistent with the language of the grievance procedure itself.

Thus, Steward Romine's appeals from Step 2 to Step 3 involved Step 2 "grievance handling" and the time he spent on this paper work was compensable under Article XVII, Section 4.

There is one final Postal Service claim which deserves brief mention. It points to a Union proposal in the 1978 contract negotiations which would have extended Article XVII, Section 4 to all steps of the grievance procedure and would have required payment of Stewards for time spent in "grievance handling, including investigation, writing the grievance, and all meetings with the Employer including arbitration hearings." It notes the proposal was rejected. And it alleges that the terms of the proposal demonstrate that the Union itself "did not believe that any activities beyond those specifically listed in Article XVII were reimbursible..." In my opinion, it demonstrates no such thing. The main thrust of the above proposal was to have Stewards paid by the Postal Service whenever they met with Management no matter what step of the grievance procedure was involved. That has nothing to do with the issue before me in this case.

AWARD

Steward Romine should be paid for time spent in writing appeals to Step 3 of the grievance procedure. The Postal Service's failure to pay him for such time was a violation of Article XVII, Section 4. He should be compensated for these hours.

Richard Mittenthal, Arbitrator

Mr. Jerry Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

FEB 26 1986

Re: See Enclosed List

Dear Mr. Connors:

On January 22, 1986, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether union stewards are entitled to continue working into an overtime status for the sole purpose of processing grievances.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. This is a local dispute suitable for regional determination by application of Article 17, Section 4, of the National Agreement which authorizes payment of stewards "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 2A) regular workday."

The parties at this level further agree, however, that a steward who is already working in an overtime status, is not precluded from processing grievances solely based on the fact that he/she is in an overtime status. In those situations, management will not unreasonably deny the steward time to perform union duties.

Accordingly, we agreed to remand these cases to the parties at Step B for further processing including arbitration, if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgement of agreement to remand these cases.

time limits were extended by mutual consent.

Sincerely,,

Muriel M. Atkins Labor Relations Department	James Connors Assistant Director Clerk Craft Division American Postal Workers Union, AFL-CIO

Enclosure

bcc: Postmaster - Little Rock, AR
Southern Region
Article Code ... 17-04-01 REMANDED

W. Green
Little Rock, AR
FIC-3F-C 43267

F. Covey
Little Rock, AR
FIC-3F-C 43605

A. Terry
Little Rock, AR
FIC-3F-C 46587

A. Terry
Little Rock, AR
FIC-3F-C 46698

A. Terry
Little Rock, AR
FIC-3F-C 46700

F. Sharp
Little Rock, AR
FIC-3F-C 46705

W. Woods
Little Rock, AR
FIC-3F-C 43316

Class Action
Little Rock, AR
FIC-3F-C 46112

A. Terry
Little Rock, AR
FIC-3F-C 46697

A. Terry
Little Rock, AR
FIC-3F-C 46699

A. Terry
Little Rock, AR
FIC-3F-C 46701

F. Sharp
Little Rock, AR
FIC-3F-C 46823

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Local
Fresno, CA 93706
H1C-5H-C 17671

Dear Mr. Connors:

On February 24, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee is entitled to overtime compensation for time spent at a grievance hearing outside of their regular work hours.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 17 of the National Agreement. This is a local dispute over the application of Article 17, Section 4 of the National Agreement. We agree that Article 17 contains no provisions for compensating employees whose attendance at grievance hearings extends beyond their normally scheduled work hours. The parties at Step 3 are to apply the above understanding in order to resolve this case.

Accordingly, we agreed to remand this case to Step 3 for further consideration by the parties.

Please sign and return the enclosed copy of this decision as acknowledgment of our agreement to remand this grievance.

Time limits were extended by mutual consent.

Sincerely,

Thomas J. Lang
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division

FEB 3 1987

Mr. Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: R. Parker
Orlando, FL 32862
H4C-3W-C 20157
H4C-3W-C 20158

Dear Mr. Tunstall:

On November 6, 1986, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether a shop steward on light duty should be authorized steward time.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. The parties agree that a shop steward on light duty may perform steward duties unless the steward's medical restriction precludes such activity.

With this in mind, we agreed to remand these cases to the parties at Step 3 for further processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Sincerely,

(signed)

James L. Rosenhauer
Labor Relations Department

(signed)

Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

Doug A. Tulino
Vice President, Labor Relations

UNITED STATES POSTAL SERVICE

November 25, 2019

AREA MANAGERS, HUMAN RESOURCES
AREA MANAGERS, LABOR RELATIONS

SUBJECT: Mail Handler Employee Orientations

During the course of employment orientation for new career or non-career Mail Handlers, a representative of the union will be provided ample opportunity to address the new employees during the orientations.

Please ensure these union representatives are given sufficient advance notice to attend the scheduled orientation(s).

Doug A. Tulino

12-16-2019

10/16/19

475 L'Enfant Plaza SW
Washington, DC 20260-4100

2019 National Agreement
Between the
United States Postal Service
and the
National Postal Mail Handlers Union
Questions and Answers

Effective Dates

1. What are the effective dates of implementation of the 2019 National Agreement?

Work Rules. All work rules revised by the 2019 National Agreement take effect on Saturday, April 25, 2020, unless the National Agreement specifies another date.

Wages. With regard to wage increases and new wage rates – which to this point include the November 2019 general wage increase and the COLA which was effective February 29, 2020 (paid on March 20, 2020) – these are implemented prospectively in Pay Period 10, which begins on April 25, 2020.

Night Differential. The new night differential rates begin in Pay Period 11, which begins on May 9, 2020.

MHA Overtime. The new rules on MHA overtime, providing overtime pay for hours over eight in a service day, begin on May 9, 2020.

MHA Conversions. The date for conversion of MHAs to career under the one-time conversion program for MHAs with 2.5 years of service is June 6, 2020.

Elimination of Casual Employees. The last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

MHA Relative Standing. The effective date for deeming all newly hired MHAs to be hired on a Saturday at the start of the pay period during which they begin work, solely for relative-standing-based-conversion to career, is May 9, 2020.

Starting Times. The effective date for measuring cumulative changes in starting time for a bid under revised Article 12.3B6 is the date of ratification, or April 7, 2020.

LMOUs. Because of the ongoing pandemic, the NPMHU and the Postal Service have agreed on a Memorandum of Understanding to delay the period during which the parties at each Installation will be authorized to conduct negotiations over the terms of their Local Memoranda of Understanding or LMOUs. In particular, the parties at the National level have reset the initial sixty-day period for local negotiations – which originally was set to occur in

May and June 2020 under Article 30 of the 2019 National Agreement – to the sixty-day period running from September 2, 2020 to October 31, 2020. The default bargaining period, if the parties cannot agree to the exact 30-day period, is **October 2, 2020** through **October 31, 2020.**

Either party can open negotiations with notification to the other party on or before **September 15, 2020.** The key dates to remember regarding Local negotiations are as follows:

1. The deadline for notification of intent to open negotiations is **September 15, 2020.** If neither party provides notification of its intent to invoke local implementation procedures by **September 15, 2020,** presently effective Memoranda of Understanding not inconsistent or in conflict with the 2019 National Agreement shall remain in effect during the term of this Agreement.

2. In the event that any issue(s) remain in dispute at the end of the thirty (30) consecutive day 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 shall be appealed within fifteen (15) days after **October 31, 2020** to all of the following addresses:

   LR Service Center
   Installation Head
   Local Union President
   NPMHU Regional Representative

3. The appropriate management official at the Area office and the Regional Union representative shall attempt to resolve the matters in dispute within seventy-five (75) days of the close of the implementation period. This seventy-five day period runs from **October 31, 2020** to **January 14, 2021.**

4. If the parties at the Area/Regional level are unable to reach agreement by the end of the 75-day period, the issues may be appealed to final and binding arbitration within twenty one (21) days of **January 14, 2021** or by **February 4, 2021.**

One-time MHA Conversions

1. Which MHAs are eligible for the one-time conversion?

   All MHAs in 200 or more man-year installations who have over 2.5 years of service as of the ratification date of the 2019 National Agreement (that is, April 7, 2020) will be converted to career status as full time employees.

2. When will these conversions be effective?

   These conversions will be completed as soon as administratively practicable but no later than June 6, 2020, which is 60 days after April 7, 2020, the ratification date for the 2019 National Agreement.

3. What date will be used to determine the 200 man-year office?

Normally September 21, 2019 would be the designated date and the office size would remain constant for the life of the September 21, 2019 – September 20, 2022 National Agreement. For purposes of the 2019 National Agreement only, the parties at the National level have agreed that the 200 man-year report will be calculated using the 26 pay periods that covered the period from September 16, 2017 to September 14, 2018 and the office size will remain constant for the remaining life of the 2019 National Agreement.

Casuals

1. The 2019 National Agreement eliminates use of casuals in the mail handler craft; when does this become effective?

   The parties have agreed to a transition period not to exceed 120 days from the date of the Union's ratification of the Agreement. Thus, the last date for casual employees on the rolls of the mail handler craft is July 31, 2020.

2. How will this transition period work?

   During the transition period, the number of casuals employed at any installation may be maintained at current levels or at 3.0%, whichever is lower. The current level on the rolls that may be maintained will be determined by the number on rolls on the AP Report AAW996 that includes the date of ratification of the 2019 National Agreement. An exception will be made for installations that have local agreements allowing temporary use of additional casuals: such agreements will remain enforceable, provided that after the local agreement expires (if within the 120 day period) the number of casuals will be limited to 3%. Any new non-career employee hired during this transition period will be an MHA. At no time during the transition period will the combination of casuals and MHAs exceed 21.5% in a district and 26.5% in any installation except as provided for in Article 7, Section 1B or due to the Temporary Exception Period MOU for COVID-19.

3. Can current casuals be converted to MHAs?

   Casuals are eligible to take the appropriate examination and if reached, during the competitive hiring process, are eligible to be hired as MHAs.

Other Items

1. How is the initial MHA appointment date determined for the purpose of relative standing?

   Effective on May 9, 2020 (the second full pay period after ratification of the 2019 National Agreement), all newly hired MHAs shall be deemed to have an initial MHA appointment date on a Saturday, at the start of the pay period during which they began work in the installation. This is solely for the purpose of relative standing.

2. When are MHAs paid at the overtime rate?

MHAs will be paid at the overtime rate for work performed in excess of eight (8) hours on duty in any one service day (effective May 9, 2020) or forty (40) hours in any one service week.

3. Can employees place their names on the Overtime Desired List at any time besides the two weeks prior to the start of a calendar quarter?

   Yes. Newly converted full-time employees and employees converted, transferred, or reassigned into an installation or into the Mail Handler craft within the installation or a mail handler who bids or is reassigned during the a calendar quarter to a duty assignment in a different facility, in a different section, or on a different tour may place their names on the "Overtime Desired" list within the two weeks (14 calendar days) following the date upon which they are converted, transferred, or reassigned to full time. It does not matter whether the mail handler was on the OTDL for the losing facility, section or tour. Placement on the list shall be effective on the next calendar day.

4. Can MHAs be offered part-time career positions?

   Yes, the 2019 National Agreement states that any newly established or vacant part-time career positions will be offered to all MHAs within fifty (50) miles of the position for conversion to career based on their relative standing.

5. How does the change made in Article 10.2C of the 2019 National Agreement relate to MHAs selecting annual leave during the choice vacation periods?

   This minor change is meant to ensure that, if either party properly raises the issue during local negotiations under Article 30, the parties' representatives are required to discuss whether MHAs are allowed to apply for annual leave during choice vacation periods. Neither party is allowed to argue that such local negotiations are unnecessary. In addition, the parties at the local level remain authorized to reach local agreements or accommodations on this subject, by mutual agreement.

6. Will the Union be provided copies of Seniority and Relative Standing lists?

   For Seniority lists, the installation head will post a seniority list of Mail Handlers on all official bulletin boards for that installation and provide an electronic or hard copy to the Union representative in that installation.

   For Relative Standing lists, the installation head or their designee shall provide a hard or electronic copy of the Relative Standing list to the local Union official upon request.

7. What is the seniority of a Mail Handler when they are involuntarily excessed outside of their installation?

   Effective with the ratification of the 2019 National Agreement, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have the seniority established as of the employee's time in the losing installation. Prior to the ratification date of the 2019 National Agreement, the seniority had included the Mail Handler's complete Mail Handler service time.

8. When an employee transfers into the Mail Handler craft, will the Union be provided time to address them in orientation?

   Yes. During the course of any employment orientation for new career or non-career employees or in the event a current postal employee is reassigned or transfers to the mail handler craft, a representative of the Union representing the craft to which the new or current employee is assigned shall be provided ample opportunity to address these employees.

9. Article 12.3B6 talks about a change in start time of an assignment exceeding four (4) hours of cumulative changes within the life of the Agreement; what does that mean?

   Cumulative changes are changes that move the starting time outside of a circle which has the starting time as its center and the agreed upon time as its radius. The 2019 National Agreement states that, to be offered to the incumbent employee, cumulative changes must be within four hours prior and four hours after the start time of an assignment. The start date for determining these cumulative changes begins on the ratification date of the 2019 National Agreement, which is April 7, 2020. When an assignment is posted for bid, the start time of the effective date of the bid will become the new point from which cumulative changes are measured.

   For example, if a start time on April 7, 2020 was 7:00 am, then a change to 9:00 am may be kept by the incumbent, but another change to 12:00 pm would be outside of the four (4) hour rule.

   Another example would be a change of three (3) hours from 7:00 am to 10:00 am, followed by a subsequent change of five (5) hours in the other direction to 5:00 am. In this example, the incumbent would again be allowed to stay in that position because the new start time of 5:00 am remains four (4) hours or less from the original start time of 7:00 am.

10. What happens when changes are made by either Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) that require a bid to be reposted while the number of bids in the section remains the same?

    An expedited selection process must be applied, similar to the expedited selection process used under Article 12.6C4d.

11. How would that expedited process work?

    The full-time employee whose bid is being reposted and all employees junior to that employee will be identified, and their duty assignments will be offered, in seniority order, to the employees remaining in the section beginning with the senior employee whose bid is reposted. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of the above action shall be effective at the beginning of the succeeding pay period.

12. Is the bid that is being reposted in accordance with Article 12.3B4 (change of fixed days of work), Article 12.3B5 (change in duties or change in principal assignment area), or Article 12.3B6 (change in starting time) part of the expedited selection process?

    No, the bid will be posted installation wide and will not be part of the expedited selection process.

13. Can a Mail Handler who is temporarily detailed to a supervisory position (204b) or detailed to an EAS position bid on a vacant mail handler duty assignment?

    No, a Mail Handler cannot bid on a vacant duty assignment while detailed. The Mail Handler must return to his or her craft position for one continuous pay period before they may exercise their right to bid on a vacant mail handler craft duty assignment. The one continuous pay period must be completed prior to submitting a bid.

14. Under the new agreement, when does an employee begin serving a 14-Day Suspension?

    If the Union or the employee initiates a timely grievance prior to the effective date of the suspension and if the grievance is timely appealed to Step 2, the effective date of the suspension will be delayed until disposition of the grievance, either by settlement or an arbitrator's final and binding decision.

5-27-20

Patrick M. Devine — Date
Manager, Contract Administration (NPMHU)
United States Postal Service

5-27-2020

Paul V. Hogrogian — Date
President
National Postal Mail Handlers Union
A Division of LIUNA, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

DEC 17 1984

Re: M. Stoddard
Spokane, WA 99210
H1C-5D-C 21764

Dear Mr. Connors:

On December 6, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question raised in this grievance involved whether management officials violated Article 17 by being present when the union addressed new employees during orientaiton.

During our discussion, we mutually agreed to resolve this case based on our understanding that Article 17 does not preclude management officials from being present when the union addresses new employees during orientation.

Please sign and return the enclosed copy of this letter as your acknowledgment of your agreement to resolve this case.

Sincerely,

Margaret H. Oliver
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Mr. Joseph N. Anna, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division
Suite 525
1 Thomas Circle, N.W.
Washington, DC 20005-5802

APR 8 1988

Re: Class Action
Atlanta, GA 30304
B7N-3E-C 2411

Dear Mr. Anna:

On March 1, 1988, we met with your representative, Marcellus Wilson, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether employees are permitted to fill out Standard Form 1187 (Authorization for Deduction of Union Dues) during employee orientation.

During our discussion, we mutually agreed that the following would represent a full settlement of this case:

> Completion of SF-1187 as identified in ELM 913.414 will be permitted during employee orientation in the areas designated by management.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

(signed)

Joyce Ong
Grievance and Arbitration
Division

(signed)

Joseph N. Anna, Jr.
Director, Contract Administration
Laborers' International Union
of North America, Mail Handlers
Division

In the Matter of the Arbitration	
between	OPINION AND DECISION
UNITED STATES POSTAL SERVICE	OF
and	PANEL OF SEVEN ARBITRATORS
AMERICAN POSTAL WORKERS UNION	

The undersigned panel of arbitrators are in accord with the conclusions contained in this Opinion and Decision. Collectively and individually we declare it to be our purpose to apply the principles and findings herein as provided in the Stipulation of the parties dated February 9, 1979. (The Stipulation, entitled "Agreement" but referred to herein as "Stipulation", is attached as Appendix A.)

I. THE AUTHORITY OF THE PANEL

On July 21, 1978, "alleged strike activities" by a number of employees of the Postal Service at the Bulk Mail Facility in Jersey City, New Jersey and at the North Jersey Facility gave rise to a series of summary terminations of the employee participants in the activities. The terminations were severally grieved by the respective labor organizations representing the affected employees and thereafter a number of these individual grievances reached hearing before one or another of the seven members constituting the panel of arbitrators designated by the parties to hear and determine such grievances arising in the Northeast Region. Some of these grievances have already resulted in consummated hearings before the given arbitrators who heard them; a great many others still await such hearings.

The Postal Service and the American Postal Workers Union ("APWU"), one of the two union protagonists of these individual grievances, mutually agreed (by their Stipulation cited above) to confer upon the members of the panel for the Northeast Region sitting en banc (initially five of their number but since amended to include all seven of its members) "to decide after consultation with each other, legal and factual questions underlying the pending arbitration cases in the Northeast Region which involve alleged strike activities".

The stipulation then goes on to provide:

> "2. The factual record to be placed before the Arbitrators will be agreed upon by the parties and will consist of specified portions of the testimony already

adduced in APWU cases, together with agreed upon documents and additional stipulations, if any. If the parties are unable to agree upon the admissibility of any evidence, such disagreement will be resolved by the en banc panel of Arbitrators."

The factual record, as well as the main briefs of the parties, were supplied to the arbitrators on February 28, 1979. Counsel for the Union submitted additional material on March 8, and the Postal Service raised objections to this additional material on March 14. On April 3, the Union asked to submit a supplementary brief and other materials. To consider this request the parties met with the arbitrators on April 13, and by letter to the parties dated April 19, 1979, the arbitrators denied the Union's request to submit a supplemental brief and its further request that the arbitrators hold a hearing on the arguments in such supplemental brief. The arbitrators granted, however, the request of the parties to submit by April 26, 1979, such additional exhibits as were mutually agreeable between the parties. No additional material has been received pursuant to that deadline.

The stipulation then provides:

"5. The panel will issue a decision (or majority decision) on the underlying questions presented.

"6. After the Arbitrators have rendered a majority decision on underlying questions, each Arbitrator will separately apply the majority decision to the specific facts of the APWU cases which that Arbitrator has already heard, based upon the actual record in each specific case, and shall issue an award in each case."

While the stipulation preserves "the right of the Union to have a separate hearing on each grievant's case", that right is made subject to the express condition that the en banc panel decision on the underlying issues "is controlling on all issues decided therein, and that the Arbitrators shall apply the decision to each APWU case coming before them."

The stipulation does not define the "underlying issues" but they are delineated in the briefs of the parties submitted to the panel. By and large they present and argue the salient features of the overall dispute common to each of the grievances; the nature of the activities, in fact and law, upon which the Postal Service predicated the dismissals in question; and the manner and method it implemented these disciplinary actions.

II. THE FACTS

The record establishes that in the days preceding July 21, 1978, there was uncertainty as to whether the negotiators in Washington, D.C., would achieve agreement by the deadline hour of midnight on July 20. Postmaster General Bolger had issued a letter to all Postal Service employees expressing his concern that a strike might be called and calling attention to the penalty consequences of participation in a strike. On July 18, 19 and 20 several bulletins and flyers in considerable quantities were distributed on the premises of the New York Bulk and Foreign Mail Center and made available to employees. They contained statements such as

> "If we have not ratified a contract . . . then no work";
>
> " . . . it looks like a strike midnight July 20";
>
> " . . . midnight July 20--No contract, no work--No extension, no sellouts";
>
> " . . . form picket line and strike preparation committee."

On July 20 a group calling itself "Good Contract Committee" issued a flyer to "All Tours" announcing a Rally and Informational Picket at the County Road Entrance to the facility for July 20 at 11:00 PM and for July 21 at 6:00 AM. It stated:

> "Our policy is, no contract, no work."

A tentative agreement (subject to ratification) was negotiated in Washington, D.C. at about 3:00 AM on the morning of July 21, 1978. This was widely reported in all of the media of

communication: press, radio and television. Nevertheless, approximately 90% of the 3700 bargaining unit employees represented by two unions[1] did not report for work on July 21, 1978.

During the hours when Postal Service employees were scheduled to report for work (and for periods of time before those hours) there were large numbers of employees lining the public roads at the access roads to the facility and the entrances to the roads leading to the parking lots. Many of these employees chanted various strike slogans and shouted at cars on the public roads with a view to discouraging the cars and their passengers from entering the facility.

Others spent variable amounts of time walking in an oval picket line on the entrance way where employees' cars normally leave the public road to enter the premises of the facility. Many of those marching on the picket line carried signs which, in a variety of ways, made it clear that a strike was in progress, that the terms of employment offered by the Postal Service were unacceptable and that a contract was demanded that was not a "sell-out" but which included terms the picketers were demanding. Most of these picketers, as they moved on the line, chanted

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[1]This proceeding involves only those employees in the unit represented by the American Postal Workers Union. The proportion of employees represented by that Union to the entire work force of the facility is unknown.

various conventional strike slogans in unison. As cars approached, indicating a purpose to enter the facility, picketers and others in a variety of ways sought to discourage the drivers from entering the facility and to persuade them to honor the picket line. So far as is evident, no illegal force or violence was resorted to. The area was also peopled by peace officers and Postal Service guards and inspectors. Television news cameramen were covering the event.

Observations by management personnel, as well as video tapes and still photographs made by Postal Inspectors, were used to identify employees in work stoppage activities. Postal Service management then checked work schedules to determine which of those identified were participating in activities during the periods they were scheduled to be at work.

According to the affidavit of Robert F. Condon, Director, Employee and Labor Relations, New York Bulk and Foreign Mail Center, letters of termination for non-preference eligible employees (and letters of proposed termination for preference eligible employees) were sent by the Postal Service to those "(a) positively identified as in the picket line or otherwise appeared to be participating in a work stoppage and (b) scheduled to be working at the NYB and FMC during the time of their participation in work stoppage activities."

The work stoppage ended on or about July 28, 1978. A number of grievances were filed protesting the terminations. Some were settled during the grievance procedure; others were appealed to arbitration and are accordingly before us.

III. CONTENTIONS OF THE PARTIES

Contentions of the U.S. Postal Service

The Postal Service contends that an unlawful strike occurred at the NYB and FMC and North Jersey facility in July 1978; since Title 5 USC 7311 prohibits strikes by employees of the U.S. Government and Title 18 USC 1918 establishes criminal penalties for such actions; and since Postal employees signed affidavits on hire pledging not to violate 5 USC 7311. It argues that the picketing and demonstrating at or near the time the grievants were scheduled to work is irrefutable evidence of engagement in a concerted stoppage of work and interruption of operations; that such activities were unprotected because engaged in for an illegal purpose; and that the evidence and prior arbitral hearings force the conclusion that a strike did in fact occur.

The Postal Service further contends that it complied with all procedural requirements of the contract; that its invocation of the "crime" provisions of Article XVI, Section 3 obviating the 30-day notice requirement, was appropriate because of the statutes involved, and was valid irrespective of whether criminal charges were or are brought. It also asserts the letters of removal were properly executed; and that the grievants were discharged for engaging in a strike rather than for commission of a crime.

The Postal Service cites a number of arbitration awards as sustaining the propriety of discharge for Postal employees who participate in strikes.

Finally, the Postal Service asserts that the termination penalty was appropriate; that the grievants' prior work records and the corrective discipline language of the contract are irrelevant in a situation where, as here, the applicable statute takes discretion from the arbitrator by barring the strikers from government employment; that its differential treatment as to termination, suspensions and letters of warning is justified by inadequate evidence to substantiate claims that all facility employees engaged in concerted activity; that it exercised its judgement as to proof in a most lenient fashion; and that the grievances should therefore be denied.

Contentions of the APWU

The American Postal Workers Union contends that there is no evidence to support the contention that a strike occurred; that there were spontaneous demonstrations due to lack of information as to the status of negotiations; that there was no mass picketing barring employees or trucks access to the facility, and that the demonstration does not establish the element of concerted action necessary to establish that a strike occurred.

It also contends that the Postal Service applied an impermissible statutory standard, rather than the contractual "just cause" standard in discharging the grievants; that only the

statutory standard of an "unlawful work stoppage" in violation of federal law is referred to in the notices of removal; that there was no consideration given to the employees work record or extent of active involvement in the picketing, and that the grievances should be sustained.

It cites Article XVI of the parties' agreement requiring just cause for discipline or discharge, noting that that standard was not invoked following the 1970 or 1974 strikes, or the 1976 sickout at Seattle, and arguing that the arbitrator is not in effect a private criminal court, but has discretion as to the treatment of the grievances including the weight to be attached to the alleged statutory violation.

The Union further asserts that even if the arbitrators examine into the just cause of the discharges, it is clear that it applied vague, shifting and arbitrary guidelines suited to its own convenience; that there was disparate and therefore arbitary treatment of the grievants and that the discharges were punitive, rather than corrective.

It also asserts that the failure to provide all grievants 30 days' notice of proposed termination was improper; that there was no criminal action taken to support such a suspension of notice; and that no action to prosecute for criminal violations. The Union alleges that there was no reasonable cause to believe a crime had been committed, and that even if there is no reinstatement ordered, the grievants are entitled to 30 days' back pay in any event.

In view of the foregoing, the Union urges the greivants be reinstated with full back pay.

IV. DISCUSSION

A. Did a Strike Occur?

On the Postal Service's theory of the case, it had "just cause" to discharge these grievants because they had participated in a "strike" against the Government of the United States. The Union argues that no strike occurred in which the grievants had participated and what took place was a "spontaneous demonstration" under circumstances that furnished no ground for discharge. In our judgement, on the basis of the record as stipulated, including the publications and "flyers" issued prior to July 21, 1978, all of the elements of a "strike" were manifested on and after July 21, 1978, and we so find.

The contention that what took place as no more than a "spontaneous demonstration" occurring when "employees coming to work were unable to get information as to what was happening in contract negotiations" and that "the lack of reliable information from the union or management as to what if any progress had been made in the negotiations was clearly the triggering cause of the demonstration"[1] is wholly unconvincing.

The facility is in an urban area and the facts concerning the status of the negotiations were readily available to anyone who wanted to know them. It was not ignorance in respect of the terms of the negotiated agreement that "triggered"

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[1]Union Brief, p. 8.

the activity described, but a determination to protest whatever it was that had been negotiated according to a programmed procedure designed to shut down operations. Regardless of the reasons, motivations and the nature and extent of participation of individuals who were "demonstrating" the conclusion that a "strike" occurred on July 21 at the facility is inevitable. Clearly, what was taking place was a general and widespread demonstration protesting whatever it may have been that the International Union and the Postal Service had agreed to or were agreeing to in Washington, a determination to characterize the negotiations as a "sell-out," and to create an impasse that would stop effective operations in the facility until the demands of the demonstrators were met. No one could deny that this was a "demonstration"; but it is equally clear that it was a "strike against an agency of the Government of the United States." The fact that the Union, as such, was not engaged in "demonstrating" or in violating the no-strike provision of the Agreement does not affect the finding that a strike was in progress. Similarly, the circumstance that there was dissatisfaction, by the demonstrators, with the conduct of their Union negotiators and that they did not resort to force or violence does not affect the validity of our finding that a "strike" took place, within the meaning of 5 USC 7311 (3), the Appointment Affidavit signed by all employees at the time of hiring, and the collective bargaining agreement.

We note that in the notices of removal, for reasons unexplained, the Postal Service (in Charge #1 of termination notices) characterized the events not as a "strike" but as a "work stoppage." A "work stoppage," depending on circumstances, may or may not furnish just cause for discharge. However the notices of removal also make pointed reference to violation of 5 USC 7311 (3); and in our opinion this reference is sufficient to make it clear that the terminations were based on the act of participating in a "strike" and not merely in a "work stoppage".

B. The Standards to Be Applied

One of the principal points of contention emerging from the briefs of the parties is the identification and the nature of the standard which governs the right and power of the Postal Service to discharge the grievants.

The "Notice of Charges - Removal - Crime" which had been served on each of the grievants recited that

> "Charge No. 1
>
> > "You are engaging in an unlawful work stoppage against the United States Postal Service. Specifically, you did not report to your assignment on July 21, 1978."[1]

There follows a statement that the grievant had engaged in activities in support of a work stoppage and had been observed participating in picketing. The Notice then states:

> "The foregoing conduct constitutes a violation of federal law set forth in Title 5 U.S. Code Section 7311(3) and Title 18 U.S. Code Section 1918(3) (Copies Attached)."[2]

5 USC §7311 provides, in part, that

> "an individual may not accept or hold a position in the Government of the United States . . . if he
>
> > "3) participates in a strike . . . against the Government of the United States . . . "[3]

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[1]We have taken the circumstances in the Girone Case as typical.

[2]Emphasis supplied.

[3]There is no challenge made to the claim that all of the grievants held positions "in the Government of the United States" prior to their discharge.

18 USC §1918 provides, in part, that

"Whoever violates the provision of section 7311 of Title 5 that individual may not accept or hold a position in the Government of the United States . . . if he

> "3) participates in a strike . . . against the Government of the United States . . .

"shall be fined not more than $1,000 or imprisoned not more than one year and a day, or both."

The Union contends in Part II of its Brief, that

a) "an impermissible statutory standard" rather than the contractual 'just cause' standard has been applied by the Service; (Brief page 9)

b) "the discharges were based wholly and exclusively on an alleged violation of statute"; (Brief page 11)

c) "no evaluation was made as to whether a particular employee picketed for a long time or a short time, whether the employee was a leader or a follower, whether he or she was aggressive or passive and similar matters"; (Brief pp. 12, 13)

d) "participation [was not] weighed against any other factors to determine whether 'just cause' under the contract existed"; (Brief page 13)

e) "Factors such as length of service, prior good record, prior commendations and special service, personal and family situation, military service record [and] supervisors' opinions were totally ignored"; (Brief page 13)

f) "All decisions of the arbitrator shall be limited to the terms and conditions of the Agreement . . . " and the standard being applied is found in a statute, not the agreement; (Brief pp. 13, 14; quoting from Article XV, Section 3 of the Agreement)

g) "the commission of a penal crime per se outside of the job is [not] just cause for discharge";[1]

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[1]This particular quotation is taken from the arbitrator's opinion in the "Delora Carter Case" annexed to the Union's Brief as Exhibit App. D.

h) in enacting the cited statutes the Congress exhibited an intention that discharge from the Service might be based on "contractual procedures for dispute resolution" (Brief, p. 19);

i) no criminal charges have been brought against the grievants as a result of their alleged misconduct; and, finally (Brief, p. 20)

j) "If the Postal Service does rely on that statute [18 USC 1918] to sustain discharges it, in effect, asks the arbitrators to act as private criminal courts without the protection of the Bill of Rights normally afforded to criminal defendants in the areas of burden of proof, presumption of innocence, right to remain silent, etc. and of the whole panoply of procedures made available to defendants in criminal cases." (Emphasis supplied.)

What has been set forth above in "a)" through "j)" represents our effort, in the words used in the Union's brief to list the most important contentions raised by the Union in "II" of that brief. Discussion of each of these allegations and contentions at length and in detail would render this Decision over-long and delay its issuance. It seems more practicable to deal with them, initially, in a broad and general introductory manner; and then to summarize our views below in remarks which will be keyed to each of those contentions.

* * *

1. As we perceive the problems presented, we have no occasion to decide whether the grievants were guilty of a crime. We are not public officials empowered to exercise criminal jurisdiction. Our duty and function is to determine only whether, in having discharged the grievants, the Service had violated the collective agreement; that is to say, whether the

Service did, indeed, have "just cause," under the Agreement, for their discharge.

2. In our analysis of the points raised by the Union on pages 9-20 of its brief, we place great importance on the provisions of 5 USC 7311. We find 18 USC 1918 (the "criminal statute") to be wholly supererogatory and to have no significance in these cases excepting as it may have relevance to the period of notice to which individual employees are entitled before removal.[1] To be sure, the notices of removal in these cases charged that the conduct described therein "constitutes a violation of federal law"--and in that connection, both statutes are cited and quoted in the Notices of Removal by the Postal Service. However, for the purposes of this portion of the decision we view the reference to the "criminal" statute (18 USC 1918) in the notices of removal as mere surplusage; and we consider 5 USC 7311 as being of critical importance in ascertaining whether under the contract, the conduct described constitutes "just cause" under the contract for discharge.

Conventionally, in the private industrial sector, arbitrators do not refer to a public statute to determine whether an employer had "just cause", under a collective agreement, to

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[1]We shall discuss the significance and impact of the "criminal statute" on the "notice" requirements in another portion of this decision.

impose the discharge penalty. Even proof of conviction under a penal law may not constitute "just cause" for discharge in the absence of proof that the employee had breached his employment duties and responsibilities in other critical and significant respects. Here, however, we are faced with a unique situation which compels a radical departure from that arbitral practice and usage.

When carefully examined and considered, 5 USC 7311 will be seen to be an enactment which creates legal duties and prohibitions which are as binding on the parties to the Agreement and on employees of the Postal Service as they would be, had its provisions been expressed in the very terms of the Agreement. It establishes a rule of law applicable, not only to employees (who are forbidden from holding a "position" if they participate in a strike against the Government) but, also, to agencies of the Government (which may not have in their employ such persons who participate in a strike against the Government). This makes the situation we face here special and distinctive. It distinguishes it from the arbitration, generally, of discharge cases in the private sector. When the parties signed their Agreement and when employees accepted Postal Service employment, they did so in reference to a state of law created by 5 USC 7311.

The effect of the enactment of 5 USC 7311 is two-fold: a) <u>to make it a job duty and a condition of continued employment</u> that an employee refrain from participating in such a strike; and b) to make it a "violation of federal law" for the

Postal Service to continue in a position of employment therein one who so participates in a strike.

When this is understood, it will be seen to follow that an employee who is found to have participated in such a strike has violated not only the federal law (with possible criminal consequences should 18 USC 1918 be invoked for prosecuting him) but he has violated also his job duties and responsibilites and the conditions of his continued employment in such a material respect as to require the Postal Service to discharge him. Congress having identified strike participation as activity precluding continuance in federal employment, the Postal Service is obliged by law to regard such participation (when found to have been engaged in) as "just cause" for discharge under the collective agreement.

The job duty of employees not to participate in a strike finds its provenance, not only in 5 USC 7311 but in the collective bargaining agreement itself and in the grievant's employment affidavit. Article XVIII Section 1 provides that "The Union in behalf of their members agree they will not call or sanction a strike or slowdown." [Emphasis supplied.] What the Union cannot do in behalf of their members, its members, surely, cannot do on their own initiative.

Moreover, each of the discharged grievants, on the occasion of his hiring, signed an "Appointment Affidavit" in which he swore that "I am not participating in any strike against the Government of the United States of any agency thereof, and I will

not so participate while an employee of the United States Government or any agency thereof" [Underscoring supplied].

Thus, the circumstances furnishing "just cause" for discharge of these grievants are referable to and grounded upon, not only the statute 5 USC 7311, but, also, to the collective agreement itself and to the sworn affidavits of the grievants which state that they will not participate in a strike against the Postal Service. Participation in a strike against the Postal Service, as an agency of the Federal Government, by a Postal Service employee, constitutes such a crucial and critical offense against his employment duties and conditions that, standing alone, it furnishes just cause for discharge under the Agreement.

The Congress, surely, has power to legislate that persons found to have committed particular identified acts of misconduct (regardless of whether they are "crimes") shall not be permitted to continue in federal employment. The legality of the power to do so, with respect to employees who participate in a strike against the Postal Service has not been challenged.

* * *

Our general discussion of the appropriate standard to be applied in these cases should dispose of the contentions set forth by the Union in "II" of its brief and which we have separately listed above. However, to avoid misunderstanding and at the risk of repetition we shall address ourselves to each of those contentions in the following summary statements which correspond with the lettering identification thereof set forth above.

a) An "impermissible statutory standard" has not been substituted for the contractual standard of "just cause". We do not ground our decision on any of the provisions of the "criminal" statute (18 USC 1918). The governing statutory enactment, 5 USC 7311, establishes it as a job duty of employees and a condition of their continued employment that they refrain from participating in a strike against the Postal Service; and it prohibits the Postal Service from continuing the employment of those who engage in that activity. When employees so participate, they furnish just cause (under the provisions of the Agreement) to the Postal Service to discharge them. Similarly, such just cause may exist when there has been a violation of the cited no-strike provision of the collective agreement and the terms of the Appointment Affidavit signed by each of the grievants.

b) It is not correct to claim that "the discharges were based wholly and exclusively on an alleged violation of statute" (Emphasis added). The discharges were based, exclusively, on violations of a job duty and a condition of employment (non-participation in a strke) imposed by statutory enactment which the employer is under a legal duty to observe and enforce; and on the provisions of the collective agreement and the "Appointment Affidavit" signed by each of the grievants. The bypassing of the normal grievance procedures did not deprive any employee of his/her contractual or statutory right and was justified by the unique nature of the Corporation.

c), d) and e). The Union is correct in stating that the personnel service records of the grievants and other factors normally and conventionally taken into consideration in de-

termining whether "just cause" for discharge exists, were not "evaluated" and "weighed" or were "ignored". However, there is nothing to prevent the parties from agreeing (or statutory law from prescribing) that a particular offense is of such magnitude, critical importance or significance, that, having been committed, regardless of other factors and considerations, the continued employment of the offender is proscribed.[1] This is the effect of 5 USC 7311, the no-strike provision of the Agreement[2] and the employees' "Appointment Affidavit". Considering the mission and function of the Postal Service as an agency of the Government of the United States and the national importance of its efficient operations in the public interest, surely it is within the powers of the Government to have singled out participation in a strike (by itself) as furnishing just cause for discharge without regard to mitigating factors such as are conventionally taken into consideration in determining the penalties for job misconduct or failure.

The contractual standard of just cause does not bar termination on first offense without regard to mitigating factors, even without regard to statutory mandate; for example, theft,

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[1]We find no merit in the argument that there was a fatal defect in that the principles of "progressive discipline" were not observed in discharging striking employees. We support progressive discipline in industrial relations; but manifestly it has no more relevance to participation in a strike in the special circumstances described in this Decision than it would have in a case of proved sabotage, larceny of the mails or similar serious offenses the mere commission of which give "just cause for discharge."

[2]Article XVIII, Section 1.

physical attack on a supervisor. Leadership in an impermissable work stoppage falls within the same category.

f) The decision that just cause to discharge exists does not transgress, as argued by the Union, the contractual direction that "All decisions of the arbitrator shall be limited to the terms and conditions of the Agreement." The statutory prohibition against participating in a strike is an integral part of and is merged into the "terms and conditions of the Agreement." Moreover, the Agreement itself and the "Appointment Affidavit" demonstrate that participating in a strike is forbidden activity for a Postal Service employee.

The fact that the Postal Service failed to exercise its authority under law and the collective bargaining agreement to terminate employees during prior work stoppages does not deprive it of the right to do so in this instance. The statutory provisions of 5 USC 7311 (3) remain extant and the employees in this instance had been given specific warning of the consequence of striking through the letter from Postmaster General Bolger just prior to July 21.

g) The discharges were <u>not</u> grounded on "the commission of a penal crime per se outside of the job." The offenses charged, clearly, were violations of employment-related duties. The picketing took place, not at some distant point in a context having nothing to do with employment by the Postal Service, but on or near the premises of the employer during periods when scheduled work was to be performed.

h) This point requires no comment inasmuch as the arbitrators believe that the contractual criterion of "just cause" governs the disposition of these cases.

i) Obviously, none of the grievants have been convicted of the "crime" of violating 18 USC 1918. They have been discharged, however, for just cause, in having engaged in impermissible conduct. Conviction of commission of a crime is not a precondition for exercising the power of discharge when just cause exists.

j) The arbitrators are not acting as though they were "private criminal courts". They are not exercising criminal jurisdiction. They are deciding only whether the grievants have committed such a violation of their employment conditions as furnishes the Postal Service with reason to conclude that it had just cause under the Agreement for their discharge from employment. No penalties, such as are imposed by courts with criminal jurisdiction, are involved in the action grieved or in the decision of the arbitrators.

Finally, our attention has been drawn but without particularity, to alleged denial of protections furnished by the Bill of Rights to these grievants. The allegation is made, but not supported by argument in any manner that would enable us to discuss it profitably. These proceedings are not criminal and the Union has not indicated the particular respects in which the grievants have been denied Constitutional rights.

C. Contractual Just Cause Standard and Difference of Treatment

Disparity. It is well established that participation in a wildcat strike creates a contractual just cause for discipline up to and including termination. Employers frequently impose varying penalties for participation depending on the extent of involvement and degree of leadership. This brings us to a discussion of the guidelines applied.

The Postal Service was mandated by law (5 USC 7311) not to continue in its employ employees who had participated in a strike. Depending on the scope which might be accorded to "participation" several courses of action were open to it. It might have taken the broadest possible view that all who were identified as picketers or any others making common cause with them were participating to an extent warranting their dismissal for just cause. It might have embraced a number of narrower views.

The evidence presented to us establishes that the standard which the Postal Service did adopt is that set forth in the October 25, 1978 affidavit of Robert F. Condon, Director, Employee and Labor Relations, New York Bulk and Foreign Mail Center in Civil Action No. 78-1693. U.S. Postal Service v. Richard P. DiCorcia, et al., reading in part as follows:

> 9. Letters of termination were to be sent only to those non-preference eligible employees who were both (a) positively identified as in the picket line or otherwise appeared to be participating in a work stoppage and (b) scheduled to be working at the NYB and FMC during the time of their participation in work stoppage activities . . .

10. Letters of proposed termination were sent only to those preference eligible employees who were both (a) positively identified as in the picket line, or otherwise appeared to be participating in a work stoppage and (b) scheduled to be working at the NYB&FMC during the time of their participation in work stoppage activities . . .

11. Letters of termination or proposed termination were not to be sent to employees who simply did not come to work or who participated in work stoppage activities when they were not scheduled to be at work at the NYB&FMC.

Such a self-imposed restriction by the Postal Service of its authority to discharge for just cause appears to us to be rational and reasonable under the circumstances it confronted.

Adoption by the Postal Service of this restricted and confining standard in the identification of those "participants" who were to be discharged (rather than a broader standard that would have resulted in a vastly larger number of discharges than the 125 which are being arbitrated), was justified by a number of considerations. The Postal Service was faced by the need to avoid the almost unmanageable administrative burden of having to process hundreds or thousands of grievances through the grievance steps and arbitration; and the cost to the Postal Service in doing so and in meeting its "back-pay" liability to grievants (who, at long last, might be reinstated by arbitrators) would be enormous. If priority were given in the processing of the grievances of those discharged for participating in the strike (as, indeed was done), and the hearing of other grievances on the docket (unrelated to the strike) should have to be deferred, the effectiveness and utility of the dispute-resolution process

provided for in the Agreement would be seriously damaged. "Justice delayed is justice denied."

Although the Panel might not have drawn the line precisely as it was done by the Postal Service (as described in the Condon Affidavit), we cannot say, under the circumstances, that the general formula used was so arbitrary and capricious as to entitle those who were discharged to claim that the criteria for discharge provided for in that affidavit are unlawful or unjust.

Since we do not yet have before us the facts as to "participation" in the largest number of Postal Worker cases in arbitration we are unable to say whether, in particular cases, the Postal Service may have misapplied its own formula or whether, regardless of the formula proclaimed, the facts, in particular cases, warrant a finding that a difference in treatment of "participants" was improper and unjust. Whether such a finding should be made is a question to be faced by individual members of this Panel sitting in arbitration of cases involving particular grievants. In this case, we emphasize, we decide only the propriety of the adoption and application of the general formula as described in the Condon Affidavit. Our group authority to decide is not perceived as extending beyond such action.

D. The Issue of the 30-Day Notice Requirement

Part IV of the APWU Brief is entitled "The failure to give all Grievants 30 days notice of proposed termination was a violation of contract and was not for just cause." It is argued under this point that the notices in these cases provide "Notice of Proposed Removal--Crime" and then there is reference, first to 5 USC 7311 and then to the criminal statute, 18 USC 1918; that "the alleged commission of a crime was a cause of discharge" (Brief, p. 25); that there has never been a criminal prosecution under 18 USC 1918; and that the Attorney General in a letter sent in September 1978 told the Postal Service no criminal prosecutions would be undertaken. The Union goes on to observe that inasmuch as no criminal prosecution was contemplated, each of the grievants was entitled, under the Agreement, to the 30-day notice of removal.[1]

The Union then contends that whether "there was such reasonable cause can be the subject of a separate inquiry" and that "in any such inquiry the 'just cause' standard of the contract applies" (Brief, p. 26) and there existed "no just cause for the lack of 30-day notice." Accordingly, it is said, if reinstate-

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[1]Article XVI Section 3 guarantees that in the case of discharge all employees are entitled to be "on the job or on the clock at the option of the Employer for a period of thirty (30) days." It also provides that the thirty days advance notice of removal need not be given "When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed." (Emphasis supplied.)

ment is ordered or is not ordered, a grievant is entitled to back pay for 30 days.

We hold that if it is found that a grievant participated in a strike against the Postal Service in violation of the provisions of 5 USC 7311(3) the relationship of that statute to 18 USC 1918 entitles the Postal Service to the position that it had "reasonable cause to believe" that a grievant "was guilty of a crime for which a sentence of imprisonment can be imposed." Article XVI Section 3 does not provide that the thirty-day notice can be dispensed with only if a grievant had been prosecuted and convicted of a crime. The standard for the waiving of the thirty-day notice of removal could not be expressed with greater clarity. It only requires the Postal Service to be reasonable in its belief that a criminal statute had been violated and that <u>if</u> prosecuted, the grievant <u>could</u> be sentenced to imprisonment. We perceive no need to make any statement here beyond this.

V. The Claim that the Discharges Were Punitive Rather than Corrective

This claim[1] is based on Article XVI of the Agreement which states that discipline shall be "corrective in its nature rather than punitive." Manifestly, it refers to the kinds of misconduct in which reasonable ground exists to believe that counselling and penalties of an increasingly severe character will deter an employee from future failure in his employment responsibilities. A typical example of the situation in which corrective discipline must be imposed is failure to attend promptly and regularly for work as scheduled.

The claim can have no relevance to misconduct such as theft, deliberate physical assault, sabotage or similar misbehavior which (except perhaps in extraordinary cases which we cannot now envisage) give the employer reasonable and just cause to believe that in the future the grievant cannot be trusted to fulfill his employment duties and step-by-step corrective discipline is unlikely to be fruitful.

Similarly, step-by-step corrective discipline is clearly out of place in such a situation as this in which a) an employee is forbidden by law to "hold a position" if he participates in a strike; b) the agency is forbidden to permit him to "hold a position" if he so participates; c) the statutory provisions have become an integral and merged part of the job responsibilities

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[1]See pages 23 and 24 of Union Brief.

of an employee and the conditions under which he may be employed; d) on the occasion of his employment the grievant had signed an affidavit swearing that he would not participate in a strike; and e) the employee's exclusive bargaining agent has agreed to a no-strike clause.

We affirm, strongly, the need and desirability of corrective discipline, wherever appropriate, in preference to punitive or retributive measures. We do not regard "participation in a strike" to be behavior which, in light of all of the circumstances related in this decision (including the warnings given by the Postmaster General) occasioned corrective discipline.

VI. Ruling on Additional Documentary Exhibits Offered for the Record

In Section 2 of their February 9, 1979, Consolidation Agreement, the parties recognized that they might not agree upon the admissability of certain evidence to be made available in their initial presentations, and declared that

> "If the parties are unable to agree upon the admissibility of any evidence, such disagreement will be resolved by the en banc panel of arbitrators. "

That understanding is reflected in the "Stipulated Testimony and Exhibits for Submission to Arbitration Panel" at the conclusion of which are listed nine exhibits under the heading

> "Exhibits Offered by the Postal Service and Objected to by the APWU Submitted for Arbitrators' Determination as Per Paragraph 2 of the Consolidation Agreement."

We have received these exhibits and they have been found to be relevant to the extent that they are cited in the foregoing opinion.

There remains the question of an exhibit submitted on March 8, 1979 by the attorneys for the Union to the Panel of Arbitrators, for inclusion as a part of the record in this case, a portion of a document entitled "Contingency Planning Work Stoppage" dated May 1, 1977. The letter stated that the document had not previously been available to the Union. Counsel also stated that the document "has materiality" in the decision which the Panel is called upon to make.

On March 14, 1979, by letter, counsel for the Postal Service objected to acceptance by the Panel, of the proffered document on the ground that it was "violative of the letter and spirit of the parties' February 9, 1979 Agreement to consolidate specified cases."

The Panel has been empowered to act in respect of a record stipulated by the parties that does not include the proffered document. Accordingly, it would be inappropriate for us to expand the record with additional materials. We are acting under a specific agreement as to what material is to be introduced or considered for introduction. It is beyond our authority to alter that agreement to receive unilaterally offered documents that are alleged not to have been previously available to the Union.

Accordingly, we rule that the proffered document will not be accepted as a part of the stipulated record in this case.

DATE: May 5, 1979

DANIEL KORNBLUM

DATE: May 5, 1979

EDWARD LEVIN

DATE May 5, 1979

HERBERT L. MARX, JR.

DATE: May 5, 1979

MILTON RUBIN

DATE: May 5, 1979

PETER SEITZ

DATE: May 5, 1979

ALLAN WEISENFELD

DATE: May 5, 1979

ARNOLD M. ZACK

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

On this 5 day of May, 1979, before me personally came and appeared DANIEL KORNBLUM to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LINDA FERRARA
Notary Public, State of New York
No. 24-4674999
Qualified in Kings County
Commission Expires March 30, 19[illegible]

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

On this 5 day of May, 1979, before me personally came and appeared EDWARD LEVIN to me known and known to me to be the individual described in an who executed the foregoing instrument and he acknowledged to me that he executed the same.

[illegible]
Notary Public, State of New York
No. 24-4674999
Qualified in Kings County
Commission Expires March 30, 19[illegible]

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

On this 5 day of May, 1979, before me personally came and appeared HERBERT L. MARX, JR. to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LINDA FERRARA
Notary Public, State of New York
No. 24-4674998
Qualified in Kings County
Commission Expires March 30, 1980

Linda Ferrara

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

On this 5 day of May, 1979, before me personally came and appeared MILTON RUBIN to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LINDA FERRARA
Notary Public, State of New York
No. 24-4674998
Qualified in Kings County
Commission Expires March 30, 1980.

Linda Ferrara

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

On this 5 day of May, 1979, before me personally came and appeared PETER SEITZ to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LINDA FERRARA
Notary Public, State of New York
No. 24-4674998
Qualified in Kings County
Commission Expires March 30, 1980

Linda Ferrara

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

On this 5 day of May, 1979, before me personally came and appeared ALLAN WEISENFELD to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LINDA FERRARA
Notary Public, State of New York
No. 24-4674998
Qualified in Kings County
Commission Expires March 30, 1980

Linda Ferrara

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

On this 5 day of May, 1979, before me personally came and appeared ARNOLD M. ZACK to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LINDA FERRARA
Notary Public, State of New York
No. 24-4674998
Qualified in Kings County
Commission Expires March 30, 1980

Linda Ferrara

APPENDIX A

AGREEMENT

1. The APWU and the Postal Service agree to request Arbitrators Zack, Seitz, Rubin, Kornblum and Weisenfeld to sit, en banc, to decide after consultation with each other, legal and factual questions underlying the pending arbitration cases in the Northeast Region which involve alleged strike activities. These arbitrators have informed the parties of their willingness to participate in such procedures.

2. The factual record to be placed before the Arbitrators will be agreed upon by the parties and will consist of specified portions of the testimony already adduced in APWU cases, together with agreed upon documents and additional stipulations, if any. If the parties are unable to agree upon the admissibility of any evidence, such disagreement will be resolved by the en banc panel of Arbitrators.

3. The parties will submit a main brief to the panel which will cover all submitted cases on February 12, 1979,

4. The parties will submit supplemental briefs relating to the specific facts of individual cases within seven days after receipt of transcripts in the specific cases, or on February 23, 1979, whichever is later.

5. The panel will issue a decision (or majority decision) on the underlying questions presented.

6. After the Arbitrators have rendered a majority decision on the underlying questions, each Arbitrator will separately apply the majority decision to the specific facts of the APWU cases which that Arbitrator has already heard, based upon the actual record in each specific case, and shall issue an award in each case.

7. The parties agree, and will stipulate in each

pending Northeast Region case above that the panel decision is controlling on all issues decided therein, and that the Arbitrators shall apply the decision to each APWU case coming before them.

8. The parties will attempt to stipulate the facts, to the extent possible, in all pending cases, and will otherwise attempt to expedite the hearing and decision on all pending cases.

9. Subject to the foregoing provisions as to the binding effect of the panel decision, the right of the Union to have a separate hearing on each grievant's case is preserved.

10. Neither party waives any right to judicial review of the panel decision or of any award in any specific case, to the extent allowed by law. However, in order to expedite procedures, neither party will seek judicial review of the panel decision except insofar as it is embodied as part of an award in a particular case. Further, if either party seeks judicial review, both parties will cooperate fully to expedite such review.

Dated February 9, 1979.

EMMET ANDREWS
General President
American Postal Workers Union
AFL-CIO

STEPHEN E. ALPERN
Associate General Counsel
Office of Labor Law
U. S. Postal Service

DANIEL B. JORDAN
General Counsel
American Postal Workers Union
AFL-CIO

ARBITRATION AWARD

November 21, 1983

UNITED STATES POSTAL SERVICE

-and-

Case No. H8C-3W-C 34408
(A8-S-2617)

AMERICAN POSTAL WORKERS UNION

Subject: Prohibition of Wearing of "No Contract — No Work" Buttons

Statement of the Issue: Whether the Postal Service's action in Miami, Florida in prohibiting employees from wearing "No Contract — No Work" buttons on postal premises was a violation of the National Agreement?

Contract Provisions Involved: Articles 3, 5, 16, 18 and 19 of the July 21, 1978 National Agreement.

Appearances: For the Postal Service, R. Andrew German, Senior Attorney, Office of Labor Law; for the APWU, Arthur M. Luby, Attorney (O'Donnell & Schwartz).

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests a Management memorandum banning the wearing of "No Contract — No Work" buttons on the Miami, Florida Post Office premises. The APWU insists that this prohibition was a violation of the National Agreement.

The essential facts are not in dispute. In the 1974 APWU national convention, a resolution was adopted embracing the principle of "No Contract — No Work." The precise wording of the resolution was not introduced in evidence. The APWU's Assistant Director of the Clerk Craft views this slogan as "an expression that the membership supports the leadership of the organization." The APWU's National President views it as a means of "pull[ing] people together and mak[ing] sure that we were strong in dealing with Management." Thereafter, during periods when the APWU was engaged in contract negotiations with the Postal Service, APWU employees sometimes wore "No Contract — No Work" buttons during working hours on postal premises.

The 1978 National Agreement expired on July 20, 1981. The APWU and the Postal Service were then in the midst of negotiations. Some APWU employees in the Miami Post Office were wearing "No Contract — No Work" buttons on the premises. A. Bame, the then Acting Manager of Labor Relations, issued a memorandum on June 24, 1981, prohibiting the wearing of such buttons. The memorandum read:

> "Recently, reports have been received of the intention of some individuals to wear buttons with the slogan 'No Contract — No Work', or phrases of that nature.
>
> "The wearing of this type of button is considered to be unprotected activity and will not be allowed on Postal premises or property."

The work force complied with the memorandum. No one wore such a button after the prohibition was made known and no one was disciplined.

A grievance was filed on June 24, 1981, claiming that the prohibition was a violation of the First Amendment of the United States Constitution. At Step 3, the APWU added that the prohibition was also a violation of the National Labor Relations Act. And at Step 4, it appears to have added that the prohibition was contrary to Article 19 of the National

Agreement in that it was not "fair, reasonable, and equitable." The Postal Service denies all of these allegations and urges, moreover, that some of them are not properly before the arbitrator.

DISCUSSION AND FINDINGS

At the arbitration hearing, the APWU dropped its claim that the prohibition of "No Contract — No Work" buttons was a violation of the National Labor Relations Act. Hence, its challenge rests essentially on two provisions of the National Agreement. First, it relies on Article 19. Its argument is that this Postal Service prohibition is a "published regulation" which impacted "working conditions" and which was not "fair, reasonable, and equitable." Second, it relies on Article 5. Its argument is that this article requires the Postal Service to refrain from any action "inconsistent with its obligations under law." It believes the button prohibition is a violation of the First Amendment.

As for the first argument, I shall assume without deciding the point that the APWU claim properly falls within the scope of Article 19.* The prohibition must therefore be measured against the "fair, reasonable, and equitable" test.

Several points should be emphasized. Strikes by federal employees are expressly forbidden by statute. The relevant statute, 5 USC 7311 bars an individual from accepting or holding a position in the federal government if he "participates in a strike...against the Government of the United States..." This bar against strikes applies to Postal Service employees. The APWU does not challenge this view. Furthermore, the National Agreement expressly prohibits strikes** although that bar presumably applies only to strikes during the life of the National Agreement.

The "No Contract — No Work" buttons were plainly a call for strike action in the event that a new National Agreement was not negotiated by July 21, 1981 (or in the event the old contract was not extended). The words on the button, in

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* The Postal Service vigorously contends, for several reasons, that Article 19 is inapplicable to this case.

** Article 18, Section 1 states that "the Unions in behalf of their members agree that they will not call or sanction a strike..."

trade union parlance, have always meant that if no contract exists, no employee works. That is a pure and simple strike threat. It is so understood by employees and managers alike in almost every enterprise in this country.

The APWU takes a benign view of these words. Its witnesses see "No Contract — No Work" buttons as harmless slogans intended only to show worker solidarity and to demonstrate support for union leadership in the midst of negotiations. These may well be incidental effects of such buttons. But the larger effect is clearly to urge employees to strike in the absence of a new contract. The National APWU President testified in a June 1980 deposition concerning a wildcat strike at New Jersey postal facilities in July 1978. He indicated that earlier APWU "advocacy of no contract, no work" may have been partially responsible for this wildcat strike. And when asked about the meaning of this "No Contract — No Work" policy, he replied:

> "It means at the time the contract expires, which is, in this case, deadline, July 20th, midnight, that there is no work after that if there is no contract." (Emphasis added)

My conclusion must be that the wearing of a "No Contract — No Work" button on postal premises during the final weeks of contract negotiations was a call for illegal strike action in the event the deadline passed without a new contract. The prohibition of the wearing of such buttons, in these circumstances, was "fair, reasonable, and equitable." Management was within its rights in insisting that employees not urge illegal strike action in this fashion. There was no violation of Article 19.

As for the second argument, I shall assume without deciding the point that the First Amendment is incorporated into the National Agreement through Article 5. The prohibition must therefore be measured against the constitutional stricture that the state "shall make no law...abridging the freedom of speech..."

A number of observations seem appropriate. To begin with, the Postal Service's prohibition does not prevent employees from discussing among themselves their views with respect to the APWU no contract-no work resolution. Miami Management made no attempt to dictate permissible conversation among employees. Nor indeed were the employees prohibited

from wearing "No Contract — No Work" buttons off postal premises. They could wear the buttons before and after working hours and on their off days. They had abundant opportunity to press their point of view at local union meetings, in local publications, in conversations with fellow employees at work, in get-togethers after work, and so on. The Postal Service's prohibition was simply limited to posted premises and working hours. This prohibition was reasonable given the fact that the buttons were a call for imminent illegal strike action.

Surely, Management would be free to bar buttons encouraging employees to engage in a slowdown or to disregard supervisory instructions. The bar against "No Contract — No Work" buttons is no different except that it is aimed at illegal strike activity rather than contractually impermissible activity. I do not believe employees' First Amendment rights were violated in these circumstances.

AWARD

The grievance is denied.

Richard Mittenthal

Richard Mittenthal, Arbitrator

UNITED STATES POSTAL SERVICE	:	
	:	Arbitration Cases Nos.
and	:	MB-NAT-562
	:	MB-NAT-936
NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	:	Inglewood, California
	:	ISSUED:
	:	January 19, 1977

BACKGROUND

This national level arbitration involves two grievances, which took form at the Inglewood, California, Post Office, wherein the Mail Handlers Union asserts that introduction of a new policy and procedure at Inglewood improperly restricts the rights of Union Stewards protected under Article XVII of the 1973 National Agreement and also violates Articles V and XIX. A hearing was held on September 8, 1976 and briefs thereafter filed as of November 18, 1976. 1

Article XVII, Sections 3 and 4, are particularly significant here. They read: 2

> "Section 3. Rights of Stewards. When it is necessary for a steward to leave his work area to investigate and adjust grievances, he shall request permission from his immediate supervisor and such request shall not be unreasonably denied. In the event his duties require he leave his work area and

enter another area within the installation or post office, he must also receive permission from the supervisor from the other area he wishes to enter and such request shall not be unreasonably denied.

"The steward or chief steward may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance, and shall have the right to interview the aggrieved employee, 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 shift or to another facility unless there is no job for which he is qualified on his shift or in his facility, provided that this paragraph shall not apply to rural carriers.

"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 2A) <u>for time actually spent in grievance handling</u>, including investigation and

meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance.

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 steward's (only as provided for under the formula in Section 2A) regular work day."

(Underscoring added.)

Late in 1974 Inglewood Post Office supervision became concerned that some Union Stewards might be taking excessive time to investigate and adjust grievances. On September 9, 1974 Acting Director of Mail Processing Ford sent a memorandum to all Inglewood Mail Processing Supervisors stating, in relevant part: 3

"It is Management's responsibility to determine amount of 'reasonable time' to be allowed steward to investigate and/or prepare grievance (Oper 560). When such time is requested, require from steward a specific time limit and necessary information to justify that time involvement.

"If you are satisfied time request is justified, approved [sic] request (using Form 7020, in duplicate) with the understanding with steward that steward will return to work no later than end of time approved. This will eliminate need for supervisor's harassing stewards to leave lunch room--which practice is demeaning to steward, distasteful to supervisor, and a waste of supervisor's time--which must stop. If a steward doesn't return by prescribed time, deal with that as a disciplinary problem. If steward needs more time, it is his responsibility to request same, which starts process over.

"If agreement can't be reached on appropriate amount of time, refer matter to Tour Supt for resolution."

(Underscoring added.)

The Form 7020, to which reference is made in the second paragraph, above quoted, was developed by the Postal Service for general use throughout its operations. The Form is referenced specifically in Part 431 of Methods Handbook M-65, reading:

> "431 Form 7020, Authorized Absence from Workroom Floor, will be used to record authorized absences from assigned duties on the workroom floor, e.g., scheme examination, visits to the medical unit, etc. At the time Form 7020 is issued, record the personnel change on Form 2345 to the closest six minute interval. Upon the employees return, collect Form 7020 and record the change to the closest six minute interval on Form 2345. The leaving and returning times on Form 7020 must coincide with time entries on Form 2345."
>
> (Underscoring added.)

Form 7020 includes the following:

NAME OF EMPLOYEE OR NO. OF EMPLOYEES		DATE
	SUPERVISOR'S INITIALS	TIME
LEAVE UNIT →		
ARRIVE →		
LEAVE →		
RETURN TO UNIT →		
REASON FOR ABSENCE		
SEE REVERSE SIDE FOR INSTRUCTIONS.		

PS Form 7020 Dec. 1970 *AUTHORIZED ABSENCE FROM WORKROOM FLOOR

6. MB-NAT-562,
MB-NAT-936

(Reverse Side)

INSTRUCTIONS

Use this form when employees leave for scheme examinations, medical unit, guide duty, civil defense, time devoted to grievances, consultations with personnel section and consultation with administrative officials.

The tour supervisor will insure the collection of this form from work center supervisors for transmittal to the Chief Accountant who will total time recorded on Forms 7020 and charge to appropriate operation number.

(Underscoring added.)

Following issuance of Acting Director Ford's September 9, 1974 Memorandum, the Inglewood Post Office discontinued using Form 7020 to record time away from work by Stewards on Union business, in early 1975, and substituted a locally developed form entitled "Request for Official Time to Conduct Union Business." This reads as follows:

MB-NAT-562,
MB-NAT-936

"REQUEST FOR OFFICIAL TIME TO CONDUCT UNION BUSINESS

DATE_____ APPROXIMATE TIME REQUESTED_____HOURS _____MINUTES
REQUESTED FOR WHAT PURPOSE _____

IF CONFERRING WITH ANOTHER EMPLOYEE - HIS/HER NAME _____

IF REVIEW OF RECORDS NEEDED, WHAT RECORD NEEDED _____

REQUEST TO MAKE LOCAL TELEPHONE CALLS RELATING TO UNION BUSINESS (NO MESSAGE UNITS, TOLL OR LONG DISTANCE CALLS.)

NUMBER CALLED _____

_____ BEGIN TIME
_____ END TIME

_____
SIGNATURE OF REQUESTING EMPLOYEE

_____
TITLE - UNION ORGANIZATION

REQUEST TO LEAVE WORK AREA

SUPERVISOR INITIALS		TIME
	LEAVE WORK AREA	
	ARRIVE OTHER AREA	
	LEAVE OTHER AREA	
	RETURN WORK AREA	

SIGNATURE OF APPROVING SUPERVISOR
DATE REQUEST GRANTED _____

IF REQUEST IS DENIED - STATE REASON AND DATE DENIED _____

USE OTHER SIDE IF NEEDED

IF REQUEST IS DELAYED BEYOND DATE OF REQUEST, STATE REASON. (DOCUMENT ON A DAILY BASIS WHY REQUEST CANNOT BE GRANTED.)

USE OTHER SIDE IF NEEDED ROUTE TO: Tour, Supt.

As a result of these developments the present grievances were filed directly in Step 4 on October 18, 1974 and February 26, 1975, as national level grievances. Local 303 of the Mail Handlers also filed unfair labor practice charges claiming violation of Sections 8-A-1 and 8-A-5 of the National Labor Relations Act. On March 18, 1975 the NLRB declined to issue a complaint pending completion of the present arbitration proceeding. 6

The Union now contends that the local policy enunciated in the September 9, 1974 Memorandum, and implemented through the new form introduced at Inglewood, violates not only Article XVII, Section 3 of the National Agreement, but also Article XIX, which provides: 7

> "Copies of all handbooks, manuals, and regulations of the Postal Service that contain sections that relate to wages, hours, and working conditions of employees covered by this Agreement shall be furnished to the Unions on or before January 20, 1974. Nothing in any such handbook, manual, or regulation shall conflict with this Agreement. Those parts of any such handbook, manual, or regulation that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, 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.

"Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least 30 days prior to issuance. The parties shall meet concerning such changes, and if the Unions believe that the proposed changes violate the National Agreement (including this Article), they may submit the issue to arbitration in accordance with Step 4 of the grievance-arbitration procedure within 30 days after receipt of the notice of proposed change."

(Underscoring added.)

The Union stresses that the September 9, 1974 Memorandum assumes that it is Management's responsibility to determine the "reasonable time" to investigate a grievance and seeks to limit a Steward, in advance, to a fixed amount of time for such activity. To require a prior determination of the amount of time to investigate a grievance, says the Union, is inconsistent with Article XVII, Section 3. It agrees that this Section requires the Steward to request permission to leave his work area, and gives the Supervisor the right to deny permission to leave the work area, but nowhere does it suggest that a Supervisor can impose a fixed time limit upon a Steward, requiring that the Steward return to work at some specific time. Violation of Article XIX also is seen, in that use of Form 7020 is specified for this purpose in Methods Handbook M-65, Part 431, but the Form in

this respect has been replaced by an entirely new local form. In the Union view Article XIX requires the USPS to continue to use Form 7020 as provided in Methods Handbook M-65 until such time as notice is given to the Union of a proposed change, for negotiations pursuant to Article XIX. Although the Service claims that the new local form was necessary because of alleged abuse by Stewards at Inglewood, this is precisely the kind of problem which should be explored in the negotiations between the parties under Article XIX.

The Postal Service does not agree that the September 9, 1974 Memorandum at Inglewood asserts a Management right to determine the amount of time a Steward properly may spend on Union business. The Service concedes that one sentence may be so interpreted, if read out of context, but suggests that in context it should be construed to mean "that management must determine whether the amount of time that is requested for investigation or preparation of a grievance can be reasonably accommodated with the needs of the Postal Service." Such a reading of the Memorandum, says the Service, reveals that Inglewood supervision is not concerned with the total time spent investigating a grievance but only with the "impact of the time requested on operational needs." Under this analysis, the approval of a request for an hour to investigate a grievance does not establish that no more than an hour should be spent on the investigation, but only that the Steward can be spared only for an hour at the time he wishes to be absent from his work area. Any such a determination, so the argument runs, necessarily is without prejudice to further requests for time to investigate the same grievance. Thus the Service stresses that the last sentence in the second paragraph of the Memorandum reads: 8

"If steward needs more time, it is his responsibility to request same, which starts process over."

Insofar as the local Memorandum relates to the writing of a grievance, it is equally inoffensive, according to the Service. Here it quotes from Article XVII, Section 4: 9

> "The Employer will also compensate a steward <u>for the time reasonably necessary to write a grievance.</u>"
>
> (Underscoring added.)

Indeed, the Service does not now claim that the local Memorandum instructs supervisors to determine that the time requested to prepare a grievance constitutes the amount necessary to complete the task. It urges:

> "Instead, the Memorandum simply requires supervisors to balance a request for time to prepare a grievance against operational needs. Nothing in the 1973 National Agreement limits management's right to do so."

Given the right of the Service under Article XVII, Section 3, to determine the reasonableness of a Steward's request for permission to leave his work area, there is nothing in the Agreement to prohibit the Service from requiring a Steward to fill out a form including a blank space labeled "Approximate Time Requested." There was no impropriety in discontinuing use of Form 7020 for this purpose, says the Service, since Form 7020 was not designed for use in requesting authorization to leave a work area. Thus the Service suggests that Form 7020 is simply a record of the movement of an employee from one work area to another, where a request for such movement already has been authorized. (It stresses that Part 431 of the M-65 Handbook states that Form 7020 will be used to record authorized absences.) 10

Form 7020 has no value as a source of information for a Supervisor in determining the reasonableness of a request by a Steward for permission to leave his work area. The new local form thus is not a substitute for Form 7020, but actually is a supplementary form seeking information that Management is entitled to have. Since the Service is fully authorized under Article XVII, Sections 3 and 4, to determine the reasonableness of requests to leave the work area, it follows that to assess the reasonableness of such a request, the Supervisor must know how much time away from the work area is being requested and to require that this be provided on a form. 11

FINDINGS

The two grievances here present separate but related issues: first, whether the local September 9, 1974 Memorandum is consistent with Article XVII, Sections 3 and 4; and, second, whether the local form instituted early in 1975 to effectuate the Memorandum conflicts with an established procedure under the M-65 Manual, and protected by Article XIX. 12

The September 9, 1974 Memorandum indicates on its face that it is Management's responsibility to determine what is a reasonable time to investigate or prepare a grievance. It includes no reference to Article XVII, Sections 3 or 4, nor does it state that a request by a Steward for time to investigate a grievance "shall not be unreasonably denied." The critical language quoted earlier in this Opinion from the September 9, 1974 Memorandum is preceded by an underlined assertion "B. Union Stewards taking too much time preparing Step 2A grievances." The Memorandum instructs a Supervisor that if you "are satisfied time request is justified" the request should be approved on condition that the Steward will return "no later than end of time approved." If the Steward does not return "by prescribed time," moreover, this is to be dealt with as a "disciplinary problem." Finally, the Memorandum advises that if agreement "can't be reached on appropriate amount of time" the matter should be referred to the Tour Superintendent. 13

Further light is shed upon the objective meaning of the September 9, 1974 Memorandum by reference to the form developed locally to implement it. This requires the Steward to (1) furnish in advance the names of other employees who may be interviewed, (2) indicate in advance what records may be needed, and (3) to identify (by number) any local telephone calls which may be made and the time to be involved in the call. It also includes a line captioned "If request is delayed beyond date of request, state reason. (Document on a Daily Basis why request cannot be granted.)" Lastly, the Form is routed to the Tour Superintendent. 14

These various restrictive provisions apparently were designed to combat abuses which were thought to have developed at Inglewood in taking excessive time for investigation and preparation of grievances. This surely is a proper Management objective, generally speaking, but the problem here is whether the Inglewood program is permissible under Articles XVII and XIX of the 1973 National Agreement. This is by no means only a local problem--if such a unilateral program is permissible at Inglewood, it is equally permissible throughout the entire Postal Service. 15

While the Postal Service brief includes an unusually skillful effort to depict the Memorandum as no more than an effort to require a Supervisor to determine whether a Steward "can be spared" from his job at the time he or she seeks permission to leave, there is nothing in the Memorandum itself which supports this narrow interpretation of its purpose. 16

The fact is that the Memorandum does not accurately state the substance of Article XVII, Section 3, particularly since it assumes that a Supervisor is entitled to determine in advance the amount of time necessary to investigate a grievance and requires the Steward to specify the time likely to be required and to provide detailed information in advance "to justify" such time requirement. The Memorandum implies that the decision as to whether any such request is "justified" lies within the discretion of the individual Supervisor, and provides no standards to guide the exercise of such discretion nor any reference to the controlling language of Article XVII, Section 3. 17

Thus it now should be made clear that Article XVII, Section 3, does not authorize the Service to determine in advance the amount of time which a Steward reasonably needs to investigate a grievance. Since the September 9, 1974 Memorandum is inaccurate in this and other significant respects, it should be withdrawn and given no effect. This is not to say, of course, that Management cannot (1) ask a Steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the Steward anticipates he or she will be away from his or her work station; or (2) that a Supervisor cannot decline to release a Steward from duty during a period of time when his or her absence during such period will unnecessarily delay essential work; or (3) that a Supervisor, in advance, may not specify a time period during which the Steward's absence will unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, consistent with the Agreement, in any case where it can be established that a Steward has improperly obtained 18

permission to leave his or her work station under the guise of investigating or preparing a grievance.

The special form developed at Inglewood early in 1975 was designed to implement the September 9, 1974 Memorandum and hardly can be used except to effectuate that Memorandum. In addition, Part 431 of Methods Handbook M-65 states that Form 7020 will be used to record authorized absences from assigned duties, and the instructions on Form 7020 make it applicable to "time devoted to grievances." The local form at Inglewood in fact has been substituted for Form 7020 when Stewards seek to leave their work stations. 19

It is well settled by now that employee representation by a Union Steward or Grievance Committeeman constitutes a significant working condition, or condition of employment. Thus the matter here in issue falls within the scope of Article XIX. The development of a new form locally to deal with Stewards' absences from assigned duties on Union business--as a substitute for a national form embodied in an existing Manual (and thus in conflict with that Manual)--thus falls within the second paragraph of Article XIX. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the Inglewood form must be withdrawn. 20

AWARD

The grievances are sustained as indicated in this Opinion. The September 9, 1974 Memorandum and the local form developed to implement that Memorandum must be withdrawn and given no effect. 21

Sylvester Garrett
Impartial Chairman

In the Matter of the Arbitration between	:	Case No. N8-W-0214 Use of Bulletin Board (Tacoma, Washington)
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	:	
and	:	OPINION AND AWARD
UNITED STATES POSTAL SERVICE	:	

APPEARANCES:

For the NALC*- Cohen, Weiss, and Simon
Keith E. Secular, Esq.

For the USPS- Wyneva Johnson, Esq.
Office of Labor Law

Pursuant to the provisions of the current collective bargaining agreement between the above-captioned parties, this case was duly processed through to and presented in arbitration before the Undersigned. The hearing was held at the offices of the USPS in Washington, DC, on January 23, 1981. Thereafter, post-hearing briefs were submitted and exchanged.

THE ISSUE:

At the opening of this hearing, the parties stipulated that the issue could be defined as follows:

> "Whether Management at the Tacoma, Washington, Post Office properly prohibited the Union from posting a notice on the Union bulletin board listing the names of non-members. If not, shall Management be prohibited from preventing the Union from using the bulletin board in this fashion in the future?"

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* At the opening of the hearing, Mr. John P. Richards, Director of Industrial Relations for the APWU, appeared for the purpose of noting that the APWU joins with and supports the position taken in this proceeding by the NALC.

STATEMENT OF THE CASE:

The parties stipulated at the opening of the hearing that many of the facts are not in dispute. They can be noted as follows:

During the period between November 17 and November 19, 1979, Management removed the notice at the Lakewood Station, and the notices also posted at other stations were removed pursuant to Management's instructions by sometime on or after November 19, 1979.

The decision to remove these notices was made by Mr. Roy Olson, the Director of Employee and Labor Relations for the Tacoma, Washington, Post Office.

DOCUMENTS CITED:

The Collective Bargaining Agreement

Article III (Pertinent Part) MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B....

C. To maintain the efficiency of the operations entrusted to it;

D...

Article XXII BULLETIN BOARDS

The Employer shall furnish separate bulletin boards for the exclusive use of each Union party to this Agreement, subject to the conditions stated herein, if space is available. If sufficient space is not vailable, at least one will be provided for all Unions signatory to this Agreement. The Unions may place their literature racks in swing rooms,

if space is available. Only suitable notices and li ature 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 Unions.

The Notice in Issue Which Was Posted (Undated)

Carriers listed below are NON-UNION MEMBERS WHO WILL Soon Receive A Pay Increase of $749.00 Annually or .36¢ Per Hour. THIS IS DUE TO A UNION NEGOTIATED CONTRACT SEE A SHOP STEWARD and JOIN THE UNION

Clark, V.C. - Lakewood	Kaszokski, S.A. - T.A.F.
...	...
...	...

Western Region Notice Dated November 11, 1975

Subject: Majority Union Bulletin Board Postings of Non-Members

To: District Managers
General Managers, Bulk Mail Centers

Some months ago, it was determined that the posting on union bulletin boards of non-members was neither illegal nor improper.

A reassessment of this position has been made and it is now determined that such postings constitute a potential source of operational disruptions.

In our view, the controlling considerations in this area must be our primary obligation to insure that postal operations are not disrupted and that postal employees not be subjected to undue pressures at postal installations in the course of their employment. In these circumstances, beginning immediately, majority unions shall not be permitted to display notices listing the names of non-members on bulletin boards provided under the National Agreement.

Please notify those offices under your jurisdiction of the above.

/s/ R. H. Stevens, Director
Office of Labor Relations

CONTENTIONS OF THE PARTIES:

The Union contended that the removal of the above-quoted notice, which had been posted on November 11, 1979, was a violation of the provisions of Article XXII as well as a violation of the National Labor Relations Act proscribed by the opening provision of Article III of the Agreement.

The Union argued that the contents of the notice were suitable within the meaning of Article XXII. The Postal Authorities, according to the Union, cannot unilaterally decide upon the suitability of notices. Whether a notice is suitable must be decided upon the basis of some objective standard or criteria. The purpose of this notice, just as was the purpose of a similar one posted in 1976 without management objection, was to encourage membership in the Union.

The Union argued that the language of the notice was a "straight-forward exhortation" addressed to non-members to join the Union. As a result of the posting, a number of non-member employees did so. The Union has a contractually recognized right to solicit membership in the Union, pursuant to Article XXXI, in non-work areas of the Employer's premises. In this case, according to the Union, Tacoma Management had no evidence that the notice was a disuptive force on the work floor. Such a conclusion would have to be based upon mere assumption.

The Union also argued that it did not waive the right to grieve the action taken at Tacoma because it failed to raise a national grievance when the directive to management was issued in the Western Region in November of 1975. That internal memorandum did not have the force or effect of modifying the National Agreement. Merely acknowledging the existence of such a memorandum does not signify union acquiescence. Likewise, the Union contended that in 1975 and 1978 it had only attempted to get contractual language in Article XXII which would have permitted the Union to post items of a political nature on the bulletin board. The Union did not seek nor think it necessary to seek any change in the language of that provision to post items dealing with collective bargaining or other union business.

Finally, the Union argued that removing this notice violated the National Labor Relations Act and for that reason was in violation of Article III as well. The Union argued here that this type of notice was a manifestation of protected concerted activity. The Union referred to Old Dominion Br. No. 496, NALC, AFL-CIO v. Austin , 418 U.S. 264 (1974), where the U. S. Supreme Court held that the publication of a list of non-union members and branding them as "scabs" fell within the protection of Section 7 of the Statute. In the instant case, as in Austin, the Union argued that the Local Union was in the midst of an organizing campaign to get non-members to join. Unlike Austin, in the instant case, the Union did not employ any lurid language to describe the non-members or to incite its own members. The Union also cited a number of other NLRB decisioms wherein the employer was not permitted to censor materials appearing on bulletin boards provided by contractual arrangement.

The Union claimed that there was no evidence presented to establish how or why this notice could prove disruptive of postal operations at the facilities where it was posted. The Union conceded that if a direct link could be established between the contents of a notice and actual disruptions the employer could act to restore order and such action might be to order the removal of the offending notice.

Management contended that the notice was disruptive in that it had received reports of carriers arguing with shop stewards at various stations and there was an E.E.O.C. complaint filed.

Management further contended that the testimony and other evidence offered by the Union to support a claim that a similar notice was posted in 1976 and was not challenged by management did not have sufficient probative value to support such a claim.

The USPS pointed out that in 1975 a clear and unambiguous restriction on the Unions' right to post lists of non-members had promulgated. The Union did not choose to grieve that directive and the practice of prohibiting such postings has remained unchallenged thus rising to the status of a past practice .

Finally, the Postal Service contended that in bargaining during 1975 the Union sought to gain unilateral control over the decision on removing any notices from bulletin boards or literature from racks. The USPS successfully resisted such an attempt. In 1978, the Postal Service claimed that the Unions attempted to remove the word "suitable" and permit all notices regardless of

content suitability to be posted. This effort also failed, and Management contended that the Union was required now to recognize nize that the Postal Service had the exclusi ve right to determine what constituted a suitable or unsuitable notice.

OPINION OF THE ARBITRATOR:

The Postal Service's principal contention was that the specific language of the Agreement gave management the right to prohibit the posting of what it considered to be unsuitable material. The Undersigned is in agreement that the language of the Agreement does not give the unions an unfettered right to post any material on the bulletin boards which they consider is suitable for such posting. That language reads, "...only suitable notices and literature may be posted or placed in literature racks." Management certainly, under this language, may challenge the contents of the proposed notices and literature on the grounds that such material is not suitable for publication in such fashion on post office premises and more particularly in work areas.

When management does prohibit a posting on union bulletin boards on the grounds that the material is unsuitable, it is required to establish that it has just cause for reaching such a conclusion. The decision on suitability must be bottomed upon factual evidence that the posting will prove or has proven to be a cause of disruption or dissension and thus has had or will have an adverse impact upon productivity or efficiency.

If the testimony and other documentation offered by Management did establish that this could be or was the consequence of such a posting, the Arbitrator would have to sustain management's right to prohibit such a posting. From within the four corners of the Agreement would come the authority for such a finding in the provisions of Article III dealing with management's exclusive right to maintain the efficiency of the operations. Resort to external law would not require that the unions be allowed to post inflamatory, prejudicial, or derogatory statements. It would be reasonable to assume that the results of such a posting would undermine management"s ability to direct the work force and the enterprise efficiently and productively. That would be the primary purpose of the prohibition and not to strip away the rights of employees to engage in certain protected concerted actions which are detailed under the provisions of Section 7 of the National Labor Relations Act.

To establish a reasonable basis for assuming that the results of publishing and posting the names of non-members would interfere with efficient postal operations, the Postal Service offered the following testimony:

Roy A. Olson, Management Sectional Center Director of Employee and Labor Relations at Tacoma stated that he denied the Union the right to post the notice here in controversy because of the contents of the letter issued in 1975 denying the unions the right to post the names of non-members. He also said he felt the notice was "disruptive" because, "We had several phone calls from letter carriers regarding how this notice could come down." He also claimed that there was one EEO complaint filed. He testified further that he had been advised that there were verbal confrontations between shop stewards and carriers at several units. Mr. Olson, on cross-examination, admitted that he personally did not witness any confrontations between stewards and letter carriers.

There was no additional evidence offered by the Postal Service to support the claim that the contents of the notice caused management any work shop floor problems.

Based upon the testimony from Mr. Olson, outlined above, the Undersigned had to find that Mr. Olson was prompted to remove the notice because he was advised of the existence of a 1975 letter which indicated such postings should be prohibited. That was his principal motivation. He only learned from others about so-called confrontations between stewards and letter carriers. He also learned of telephone calls from carriers about having the notice taken down. One EEO complaint was filed, and as Mr. Olson testified, it was later withdrawn in the informal stage after the notice came down. Mr. Olson did not testify about the long existing dispute between some members of the national workforce and the national unions about which organizations deserve to represent them and receive dues payments. Nothing in Mr. Olson's testimony supported a conclusion that the notices did, in fact, caused sufficient disruption or dissension so as to interfere with the orderly conduct of business, or that a failure to remove such notice would inevitably lead to such a result.

For the reasons set forth above, and after due deliberation, the Undersigned makes the following

A W A R D

The grievance filed by the NALC in Case No. N8-W- 0214 is sustained. Management is directed not to interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that this material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the work force and to manage its operations efficiently and productively.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
July 14, 1981

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

October 15, 1981

Mr. John P. Richards
Director, Industrial Relations
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Dear Mr. Richards:

On October 13, 1981, you met with Frank Dyer in pre-arbitration discussion of H8C-NA-C 49 and H8C-2B-C 9351. After a thorough discussion of the issue it was agreed that the following would represent a full settlement of the cases; in compliance with Arbitrator Gamser's Award of case N8-W-0214.

Management will not interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that the 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.

Please sign the attached copy of this letter acknowledging your agreement with this settlement, withdrawing H8C-NA-C 49 and H8C-2B-C 9351 from the pending national arbitration listing.

Sincerely,

Sherry S. Barber
General Manager
Arbitration Division
Office of Grievance and
and Arbitration
Labor Relations Department

John P. Richards
Director, Industrial Relations
American Postal Workers Union,
AFL-CIO

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

RE: E90N-1E-C 93023117
(OLD #W0N-5R-C 15397)
BRANCH
EVERETT WA 98201

E90N-1E-C 93023118
(OLD #W0N-5R-C 15398)
BRANCH
EVERETT WA 98201

Dear Mr. Sombrotto:

Recently, I met with your representative to discuss the above-captioned grievances at the fourth step of the contractual grievance procedure.

The issue in these cases is whether a contractual violation occurred when management removed certain items from NALC bulletin boards in the Lynnwood Station and Marysville Post Office. The items were removed due to management's determination that the material in question, which consisted of an NALC Bulletin listing endorsements of political candidates, was inappropriate for display in a building owned or leased by the Postal Service.

Based on the particular facts and circumstances at issue, the grievances are sustained.

Time limits were extended by mutual consent.

Sincerely,

Melissa J. Doniger
Grievance and Arbitration
Labor Relations

Date: 12/16/93

M 00441

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

NOV 14 1977

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: NALC Branch
St. Petersburg, FL
NC-S-8831/NSPL-14634

Dear Mr. Riley:

On October 11, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Based on the evidence presented in this grievance, we find that local management will permit union officers to enter postal facilities as provided in Article XXXII of the National Agreement. In addition, the fact that mail volume in high on a particular day is not a legitimate reason to prevent union officials from entering a facility. However, the union representatives shall not interrupt the work of employees due to such visits as provided in the National Agreement.

Therefore, the issues raised are resolved and the grievance is closed.

Sincerely,

Michael J. Garrison
Labor Relations Department

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

APR 12 1978

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: R. Lang
Columbus, OH
NC-C-10535/5-COL-2590

Dear Mr. Riley:

On March 28, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Management will work with union officials in granting access to postal service facilities in accordance with the language of Article XXIII of the current National Agreement. To enhance effective labor-management relations, there should be no unreasonable delays in management granting a requesting union official access to a U. S. Postal Service facility. This grievance is resolved.

Sincerely,

Richard A. Sheftel
Labor Relations Department

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

June 25, 1982

Mr. Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: Branch
Fremont, CA 94536
HIN-5C-C-1479

Dear Mr. Overby:

On June 8, 1982, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed that there was no interpretive dispute between the parties at the National level as to the meaning and intent of Article 23 of the National Agreement as it relates to the rights of Union officials to enter postal installations.

Upon reasonable notice to the Employer, duly authorized representatives of the Unions shall be permitted to enter postal installations for the purpose of performing and engaging in official union duties and business related to the Collective Bargaining Agreement. Normally, reasonable notice would not be required in writing. A telephone call to an appropriate management official would be sufficient.

Accordingly, as further agreed, this case is hereby remanded to Step 3 for further processing, if necessary, by the parties at that level.

Please sign the attached copy of this decision as your acknowledgment of agreement to remand this case.

Sincerely,

Robert L. Eugene
Labor Relations Department

Halline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO

UNITED STATES POSTAL SERVICE

Washington, DC 20260

E: May 13, 1986

EF: LR100:KAWise:mrb:20260-4110

JECT: Battery Powered Forklift and Other Industrial Powered Equipment

Regional Managers
Labor Relations

Field Directors
Human Resources

The operation of powered industrial equipment that is powered by electric motor (battery) or internal combustion (flammable gasses) requires the operators to have an appropriately endorsed SF-46. This is the case regardless of whether the operator walks behind or rides on the equipment to guide it.

Level 4 mail handlers who operate the equipment referenced in standard position 2-21 and are required to have an appropriately endorsed SF-46, meet the core requirements for the position of mail handler equipment operators, PS-5. Therefore, they are entitled to higher level compensation for the period of such operations. Any grievances pending should be settled accordingly.

William J. Downes, Director
Office of Contract Administration
Labor Relations Department

cc: Mr. Anna - NFOMH

In the Matter of the Arbitration Between AMERICAN POSTAL WORKERS UNION (CLERK CRAFT DIVISION, LOS ANGELES) AFL-CIO -and- UNITED STATES POSTAL SERVICE	Case No. AB-W-1520 OPINION AND AWARD

Appearances:

For the Union: Mr. Excel Hunter, President, Clerk Crafts Division, Los Angeles Local, APWU, AFL-CIO

Mr. Russel Robinson, Director of Industrial Relations, Los Angeles Local

For the Employer: Lawrence M. Evans, Esq., Labor Law Division, USPS, Washington, DC

Mr. Lawrence G. Handy, Employee Labor Relations Executive, Western Region, USPS

Background:

In compliance with Article XV, Section 2, Step 2(a) of the 1973-75 Collective Bargaining Agreement, Mr. Hunter, on December 26, 1973 directed a letter to Mr. James J. Symbol, District Manager/Officer in Charge of the Los Angeles Post Office. In that letter, Mr. Hunter stated that a grievance was being initiated on behalf of all Level 5 Clerical Employees, "who are presently performing Level 6 Postal Source Data Technician duties and responsibilities at both, Carrier and Finance Stations without remuneration of Level 6 pay." In his letter, Mr. Hunter, stated further that the provisions of Article XXV (I) of the Agreement were being misapplied. The relief requested was, "that the Los Angeles Postal Service amend its records to show all employees involved in a duty status of Level 6 retroactive to July 21, 1973 with appropriate remuneration."

The case was processed through the steps outlined in the grievance procedure provided for in Article XV. The Step 4 answer was provided by letter dated May 14, 1974. In that answer, the Postal Service stated: "Information in the file discloses that the two job descriptions vary. The time keeping duties at Stations are Level 5 duties and not duties which would warrant the higher level pay of a PSDS Technician. In our view there is no contractual violation. Therefore, the grievance is denied."

The case was then referred to arbitration by the APWU on June 6, 1974, and also certified at that time within the 60 day limit in accordance with the provisions of Article XV, Section 3.

Subsequently, by letter dated February 26, 1975, the case was referred to the undersigned for arbitration. Hearings were scheduled and held in Los Angeles, California, on May 13-14, 1975. At these hearings, both parties were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. By agreement, after the hearings were concluded, the parties submitted and exchanged post-Hearing briefs in timely fashion. The arguments contained therein as well as the materials and evidence received at the hearings were fully weighed and considered in arriving at the Award below.

The Issue:

The parties could not mutually agree upon a definition of the matter in issue. However, from the presentation of the Union and the contentions of the Postal Service, it is apparent that in issue is whether certain Distribution and Window Clerks and Distribution, Window and Mark-up Clerks at the Los Angeles Installation's Carrier Stations are being paid at the appropriate level for the work which they are performing. The Union alleged that they were classified in the Job Titles set forth above, which are paid at Level 5, whereas the work they were called upon to perform is contained in the job description of a Postal Source Data System Technician, PS-6. If this is so, then the Union claimed on their behalf, that this was a violation of Article XXV (1) and (4), and that these employees who were improperly compensated should be properly compensated for the work performed retroactively.

Thus, the issue may be posed as whether the Clerks at certain Carrier Stations at the Los Angeles Post Office have been properly compensated for the work they have performed pursuant to the pertinent provisions of Article XXV, and if they have not, what should the appropriate remedy be?

Contentions of the Union:

The Union contended that through its witnesses it had established that the designated Distribution and Window Clerks, PS-5, at Carrier Stations performed and continue to perform the basic duties and responsibilities of Postal Source Data System Technicians, PS-6.

The Union argued that the Employer, through its subsequent actions after the filing of this grievance, substantiated the Union contention above.

Finally, the Union asserted that the arguments advanced by the Employer, during the processing of the grievance, were effectively disproven.

Contentions of the Employer:

The Employer contended that, under Article XXV of the 1973 National Agreement, these Distribution and Window Clerks at the Carrier Stations are not entitled to higher level pay for performing the duties of a ranked higher level position unless such employees perform the significant and fundamentally essential duties of the higher level position.

According to the Employer, the duties and responsibilities of Level 6 Postal Source Data Technicians extend far beyond the duties performed by the Level 5 Clerks in the Los Angeles Post Office's Stations.

The Employer also claimed that the records maintained by Clerks for the Attendance, Time and Leave Program (ATAL) and for the Work Load Recording System(WLRS) were Level 5 functions recognized as such in pertinent job descriptions. In addition the WLRS functions are substantially and significantly dissimilar from the duties and responsibilities of a Level 6 Postal Source Data Technician in the maintenance of that System.

Opinion:

The pertinent provisions of Article XXV read as follows:

ARTICLE XXV-HIGHER LEVEL ASSIGNMENTS

1. 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.

2...

3...

4. 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.

What the Union is contending in this case, when related to these contractual requirements, is that certain lower rated Distribution and Window Clerks, PS-5, at Carrier Stations, have been directed or assigned to the position of Postal Source Data System Technicians, PS-6, a higher level position. These aggrieved Clerks were not officially and formally detailed to the higher level position, but in fact these employees were directed to perform the duties of the higher level position and thus should be paid accordingly.

What the Union sought to establish through the testimony of its witnesses and the production of certain documentary evidence is that at the Carrier Stations in the Los Angeles Post Office certain designated Clerks perform essentially the same functions as do Post Source Data System Technicians at Control Stations and certain Carrier Stations where such Technicians are now assigned. The Union did not contend, significantly, that the Clerks in contention at the Carrier Stations are performing duties found in a Data Collection Site which are performed at such an installation by these Technicians.

The Union argued that if the aggrieved Clerks are doing the same work as the Technicians at Control Stations and certain Carrier Stations then these Clerks should be paid at the higher level in conformity with the requirements of Sections 1 and 4 of Article XXV quoted above. The Union asserted that not only does the language of these provisions support this claim, but that such entitlement was provided in an Award issued by Arbitrator J. Fred Holly in a case arising at the Macon, Georgia Post Office.

As stated, in the contentions of the Employer, the Postal Service sought to establish through the testimony of its witnesses and certain documentary evidence which it introduced that these Clerks were not directed to perform nor were they assigned duties and responsibilities which could equate their performance with that required of the Technicians who were classified and paid at Level 6.

The Postal Service contended that a decision issued by Arbitrator Sylvester Garrett in a case involving work jurisdiction and two of the National Unions support the Employer's claim that, although there is some overlapping between the job duties and description for the Level 5 Clerk and the Level 6 Technician, such overlapping does not require that the employees at the lower pay level be raised and paid at the higher level.

In effect, the case presented by the Union here raises the question of whether these Clerks, who now have to perform certain record keeping and reporting duties in connection with the ATAL program and WLRS system, are properly classified as Clerks or whether they should be classified as Technicians and paid accordingly. Is the work now being performed by these Clerks "higher level" work than that called for in their present job description, and if so, is that "higher level" work that of a Technician classified and paid at Level 6?

The Union spokesmen presented a very thorough case. The witnesses and the documents submitted clearly established that since the advent of the ATAL Program and the WLRS System the aggrieved Clerks have been assigned certain duties in connection with data collection for those programs that was not required of them previously. The nature of these new duties did in fact overlap certain of the functions and duties of the Technician assigned to data collection, integration, analysis and dissemination in connection with this same Program and this same System.

The testimony of the present incumbents at various Carrier Stations regarding the work they are required to perform in connection with ATAL and WLRS was carefully examined as was the testimony of those witnesses who were trained, classified and performed as Level 6 Technicians. The Level 5 Carrier Station employees, this testimony revealed, performed one comparable function in connection with the collection of data employed in the ATAL Program. These same employees also performed one data collection chore in connection with the WLRS System that might be considered in some ways comparable to the function and responsibility of the Technician in that same System.

The Postal Source Data Technician, in addition to the attendance, time and leave records collected in connection with the ATAL Program and recording and reporting mail under the WLRS System, both of which duties are performed to some extent by the Distribution and Window Clerks, has duties and responsibilities assigned that extend far beyond the duties performed by the Level 5 Clerks at the Carrier Stations under review. The undisputed testimony in this record revealed that a trained and qualified Technician has the responsibility for collecting data in connection with a cost ascertainment program which has nothing to do with the ATAL or WLRS data gathering functions. The Postal Source Data Technicians and Data Collection Technicians perform in an interrelated and interchangeable way in connection with the operation of the Postal Source Data System, which again is unrelated to either the ATAL or the WLRS statistical gathering operations to which a Clerk may be assigned. The Technicians at the data collection sites operate various types of statistical gathering equipment which is not the responsibility of the Clerk at the Carrier Station such as the concentrators, high speed printers, and the alphanumeric device. The Postal Source Data Technicians know how to operate all this equipment and how to deal with a break down of such equipment

In point of fact the work of the Postal Source Data Technician is concerned with a number of employees' master records concerning work related facts about employees and about inventory, repair and replacement of equipment which are in no way within the province or responsibility of the Clerk at the Carrier Station. Most significantly, with regard to the higher level of skill required of the Technician, the testimony pointed out that only these trained Technicians were permitted to "fine tune" volume adjustments dealing with mail volume and to deal with operational and analysis reports which are not even prepared or seen at the Carrier Station.

It is true, as the Union pointed out, within the current job description of the Distribution and Window Clerk or the Distribution, Window and Markup Clerk there is no provision for requiring these employees to collect and collate data with regard to the ATAL and WLRS Program and System. Many of the Clerks do spend a major portion of their work day on such projects. These Programs and Systems are also the major part of the work responsibility of certain Technicians who are part of the Postal Service Data Collection System whether they were at Data Collection Centers, Control Centers or, on occasion, are assigned to Carrier Stations.

However, an examination of the job descriptions for the Distribution and Window Clerk, PS-5, or the Distribution, Window and Markup Clerk, at the same level, indicates clearly that, even with the addition of the duties described by Union witnesses, in connection with ATAL and WLRS reporting and in further addition of certain "accounting duties" described by these same witnesses, the work performed by these Clerks still falls within the ambit of Key Positions 11, 12 and 13 which all relate to Level 5. These augmented duties do not require slotting within the perimeters of Key Positions 14, 15 and 16 which carry with them a Level 6 pay entitlement.

This exercise in slotting, or this classification problem raised by the Union, justifies the conclusion in the paragraph above because an examination of the function and purpose of the job duties and responsibilities of these clerks must be distinguished from those of the Postal Source Data System Technician as they relate to the mission of the entire organization. The degree of supervision required for these respective classifications must be considered and distinguished. The complexities of the duties as well as the skills and knowledge requirements are certainly and clearly distinguishable. The degree of discretion in carrying out assigned duties must also be weighed. Finally, the responsibility for checking the work of others and adjusting based upon judgmental decisions is also a consideration.

Taking all of these considerations into account, and basing an evaluation of same on the testimony adduced during the course of this hearing, it cannot be held that the Clerk positions under review even with the additional responsibilities and duties assigned in connection with the new Systems and Programs is improperly slotted in Level 5.

Viewing the Union's case in relation to the contractual requirement to pay at the higher level, if the employee is detailed to higher level work, the conclusion must be reached in view of the findings above that the work assigned to the Clerks at the Carrier Stations cannot be regarded as higher level work or equated fully with the work of the Technician.

This view is buttressed by the holdings in the two arbitration Awards cited by the parties. In the case relied upon by the Union, Arbitrator Dolly found in favor of the grievant because as he held, if the incumbent were present on the weekend when the grievant was his substitute the higher level incumbent would not have performed any duties that the grievant did not perform on that weekend. In the instant case, this record supports the conclusion that the Technician performs many duties over and above those required by the designated Clerks who are in the aggrieved class.

There are two significant provisions in the Award of Arbitrator Garrett which relate directly to the issue presented in this case.

In the first of these he addressed himself to the contention raised by the Union herein regarding the failure of the Clerk's job description to encompass all the duties required of them. On this point he stated: 1/

> Job descriptions normally are intended only to reflect the significant requirements, duties, responsibilities, and working conditions of various jobs in such manner as to provide adequate factual basis to determine appropriate rates of pay for the jobs in question. Position (or job) descriptions in large enterprises, moreover, inevitably include general statements describing functions and responsibilities which either overlap or are closely similar to functions included in other position or job descriptions.

That is true here. There are certain essential clerical tasks and data collection assignments that are similar in both the actual and written job descriptions for the Clerks and the Technicians with whom they are compared by the Union. However, there are, as stated above, disparate key or core elements in each of these classifications which must be recognized. There has been no requirement placed upon the Clerk to perform many of the distinguishing higher level duties and responsibilities of this Level 6 Classification.

In this connection Arbitrator Garrett wrote:

> Determination of an appropriate level of compensation for a given Position (as a whole) normally involves considering those of its elements which require the highest levels of responsibility, skill, training and the like. All duties performed under a given position description normally do not call for the highest level of all of those factors which are considered in slotting a position in the pay scale. Thus, in practice, it is by no means unusual in large enterprises, with inter-related work functions, to find incumbents of two or more different positions at times performing similar or even identical individual work assignments or duties at different rates of pay. In the Postal Service, as matters now stand, each employee is paid for the position which such employee fills, and not for each separate duty which he or she may perform within scope of that position, at one time or another.

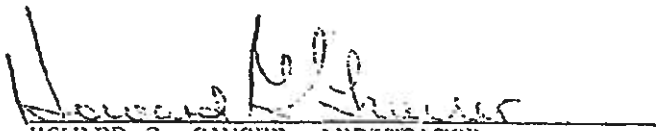
1/Opinion and Award issued April 2, 1975 in connection with Grievances AC-NAT-5753, A-NAT-2964, and A-NAT-5759.

Once again, in the instant case, an examination of the full scope of the duties assigned and performed by the Clerks involved as contrasted with the duties which the PSDS technician may be and is required to be able to perform establishes that the technician is in fact held to a higher level of responsibility, skill, training and the like which call for a Level 6 compensation slotting. The clerks are performing, according to the description of the job duties offered by the witnesses, what might be called time and attendance work predominantly. Others are performing time and attendance work for a portion of their work day and various other clerical duties relating to accounting and maintenance of necessary forms. That work is most closely related to that performed by specialized clerks slotted at Level 5. The highest level of skill involved in any of these miscellaneous tasks does not bring the job content up to Level 6.

For all these reasons, the evidence adduced by the Union in this proceeding with regard to the work required of the Clerks at the Carrier Stations, on whose behalf this grievance was brought, did not establish that they were required to perform or were performing the work of the Postal Source Data System Technician, PS-6; and this grievance requesting that these aggrieved clerks be compensated at Level 6 must be denied.

A W A R D

The grievance filed in Case No. AB-W-1520, alleging a violation of Article XXV (1) and (4) of the 1973-75 National Agreement is hereby denied.



HOWARD G. GAMSER, ARBITRATOR

Washington, DC
October 28, 1975

UNITED STATES POSTAL SERVICE	CASE NO. AC-NAT-6743
and	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	Issued: May 25, 1977

BACKGROUND

This national level grievance involves interpretation and application of Article XXV, Sections 1, 2, and 4 of the July 21, 1973 National Agreement, reading: 1

> "1. 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.
>
> "2. An employee, except a rural carrier, 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 he were promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at his own rate.

. . . . . .

"4. 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."

(Underscoring added.)

In the late 1960's the Post Office Department developed a statistical sampling program to collect data covering various types of mail volume, including service and other mail characteristics for use at all levels of management. The program, titled "Origin-Destination Information System" (ODIS), began to operate in April of 1970. 2

With the advent of postal reorganization and establishment of the USPS, ODIS was embraced as a convenient tool for measuring success in achieving newly devised service standards. About 12,000 first and second class post offices now participate in the nationwide program, which is largely computerized. Raw data collection in the 12,000 installations is accomplished by use of Form 1300, to which data are transcribed by an individual employee completing the Form for each particular delivery unit involved in a given sample. The Form 1300 in each instance is completed in accordance with a "Header Sheet," normally prepared by 3

accounting or supervisory personnel, which shows the date of the test, the unit to be tested, the criteria for selection of sample pieces to be tested, and the test identification number. Under "Instructions for Data Collection Employees" each Header Sheet, among other things, cautions that no test may be conducted unless the tester has available the "Data Collection Procedures, Methods Handbook M-61" and the "Revised Data Collection Procedures."

ODIS is described in Methods Handbook M-60 as well as in the M-61. The M-60 Handbook primarily is for use by post office officials, whereas the M-61 Handbook was prepared in much simpler form for easy use by employees completing Forms 1300 in the some 12,000 postal installations involved in the program, recognizing the difficulty of providing advance personal instruction to such a large number of persons. The M-61 advises that the Header Sheet for each sample is to be prepared by "accounting personnel." It then includes detailed instructions for dealing with substantially all of the questions likely to be encountered by the Data Collection Employee. 4

The M-60 Handbook states in Section 335: 5

"335 Data Collection Employee

335.1 Must be thoroughly familiar with the instructions and forms involved in collecting data pertaining to origin-destination and service analysis, as well as the classes and subclasses of mail.

"335.2 Complies with the analysis and recording instructions carefully and without deviation.

"335.3 Collects all required data and records it correctly on appropriate forms.

"335.4 Refers to his supervisor any matters not covered by instructions or which require resolution. Raises questions on matters requiring clarification."

Section 553 further provides that, after Forms 1300 have been completed and returned to the accounting section, accounting personnel shall:

"553 Thoroughly review Forms 1300 for completeness and correctness. In addition:

a. Check to see if the number of Forms 1300 is the same as the number recorded in Item 8 of the corresponding header sheet.

b. Check to see if the data collection employee indicated having Handbook M-61 in his possession during the test by the recording of the handbook serial number in Item 9 of Form 1300-HH and HR.

"c. Check to see that the identification information has been correctly entered on each Form 1300 used. Special care should be taken to insure the accuracy of the test identification number on each Form 1300.

d. Check to see that each column has been completed in accordance with instructions.

e. Review the forms to see that a number 2 pencil was used, and that the shape of the numbers entered conforms to the special rules for printing and that entries do not extend into the blue areas of Form 1300 (Refer to the Data Collection Procedures Handbook, M-61)."

On or before September 5, 1969, a Standard Position of Data Collection Technician was established in Level 6 with the following position description: 6

"BASIC FUNCTION. Collects and analyzes a variety of statistical data on selected operating and financial activities in the post office in order to serve management needs for these data and performs in relief assignment for postal source data technicians are required.

"DUTIES AND RESPONSIBILITIES. Performs A and B as assigned in accordance with the requirements of the post office:

(A) Collects and analyzes management data under any number of data collection systems such as cost ascertainment, national service index, and ZIP Code usage. Participates in data collection activities related to one-time special studies, requiring the proper interpretation of complex written instructions. This involves identification of sampling units and updating the lists as required, and recognition of various categories of mail for which characteristics are being measured. Audits report forms prepared by others to insure consistency between revenue, pieces and weight for each mail category. Makes adjustments for obvious errors. Computes and enters on forms total revenue, pieces and weight for each mail category. Makes record of errors for use in quality measurement and control.

(B) Performs in relief capacity for postal source data technicians in operating the PSDS equipment in the data collection site in the post office and/or controlling the weighing activities at a weighing station in the PSDS system in the post office.

(C) Performs other related duties as necessary.

"ORGANIZATIONAL RELATIONSHIPS. Is under the administrative and technical supervision of the director, office of finance (or chief accountant) or other designated supervisor."

In larger postal installations throughout the U.S. incumbents of the Data Collection Technician position (as well as incumbents of the Level 6 position of Postal Source Data Technician) normally have been assigned significant duties under the ODIS program, and this typically has included the completion of Forms 1300. In the many thousands of smaller installations throughout the country involved in ODIS, however, no Data Collection (or Source Data) Technician positions have been authorized. Management apparently has contemplated from the beginning of ODIS that such data collection (completing Forms 1300) would be assigned to Level 5 Clerks in all such smaller installations. The present case essentially involves a claim that, when so assigned to complete Forms 1300, Level 5 Clerks in effect are assigned to the Data Collection Technician position and thus are entitled to Level 6 pay for all such work. 7

Form 1300 requires the following information as to each piece of mail in the sample to be tested: 8

A. Postmark Date - month and day if legible, or an indication that it cannot be read. 9

B. Postmark of Origin - whether local, non-local, foreign, or illegible. (If non-local, indication of the first three digits of the Zip Code of origin is required or, if unknown, then a specification of Post Office and State or foreign country. 10

C. Mail Class - whether first class, air mail, priority mail, parcel post, other fourth, or third class. 11

D. Mail Type - whether letter, card, SPR (small parcels and rolls), flat, parcel, or catalog. 12

E. Indicia - whether stamp, meter, permit, or government. 13

F. ZIP in mailing address - whether correct, incorrect, or not shown. (Where incorrect, the ZIP shown in the address is listed.) 14

While the completion of these entries would not appear to present serious difficulty for a qualified and properly trained Level 5 Clerk, there are many complexities and distinctions which may have to be understood in order to complete Form 1300 accurately, and accuracy is essential. The M-61 Manual consists of 43 pages of descriptive material and instructions in large type which are designed to deal with substantially all such problems likely to be encountered in completing the Form. Two audio-visual workbooks (7D-23C and 7-D-24D) also have been prepared for use in self-instruction with three separate film strips. The M-60 Manual also provides that a data collection employee may refer to his or her supervisor on all matters requiring clarification. (For whatever reason, the M-61 Manual does not so advise the employee.) 15

There is no evidence that any problem arose as to possible application of Article XXV to completing Forms 1300 under the July 21, 1971 National Agreement. Some time in 1974, however, a grievance was filed at the Springfield, Massachusetts Post Office, apparently seeking Level 6 pay for Level 5 Clerks assigned to some ODIS duties. The precise facts involved in that grievance (including the actual duties performed by the Springfield grievants) are not revealed in the present record, which shows only that the grievance was 16

granted at the Regional Level. Under date of October 9, 1974 the Director of the Office of Labor Relations for the Northeast Region wrote to the Postmaster at Springfield explaining the Regional decision as follows:

> "Upon further review prior to arbitration it was determined in view of the fact the Springfield Post Office has not authorized Data Collection Technicians, SP2-506, Level 6, those Level 5 employees performing the attached duties would be entitled to higher level pay for time actually spent on such assignment.
>
> "Our determination in awarding those employees who have properly filed grievances for higher level pay is based on Article XXV, Higher Level Assignment, as contained in the 1973 National Agreement."
>
> (Underscoring added.)

Attached to this explanatory letter was copy of the Level 6 Data Collection Technician position description. 17

Sixteen days after the above letter was written, Grievance V-74-7232 (74-3378) was filed by Chief Steward Gillotti in Danbury, Connecticut, seeking Level 6 pay for all Level 5 Clerks while assigned to conduct ODIS tests in Danbury. The Danbury grievance recited that it was based 18

on a "similar grievance filed by the Springfield, Mass. local which was resolved in a pre-arbitration decision granting higher level pay for ODIS duties." This grievance ultimately was designated as AB-5271 and was denied by USPS at all levels on the ground that there was no showing that the Danbury Level 5 Clerks actually were performing at Level 6 while doing ODIS work.

Grievance AB-5271 is one of many hundreds of similar grievances now on file. Along with four other grievances it has been included in the present national level grievance as a representative case to illustrate the problem involved. Other such representative grievances are: AB-7593 (Iowa City, Iowa), AB-8709 (Marblehead, Massachusetts), AB-5620 (Greenwich, Connecticut), and AB-6244 (Meriden, Connecticut). 19

Chief Steward Gillotti was one of the first Clerks assigned to ODIS work in Danbury, apparently some time in 1972. Originally, he not only completed the Form 1300 but also prepared Header Sheets for various tests on the basis of computer print-outs provided by Management. This latter function seems to have been taken over by accounting personnel around 1974 (in accordance with the M-60 and 61 Handbooks), and is not within the scope of the present case.

The first individual assigned to complete Forms 1300 in Iowa City, was a Level 5 Clerk, Eugene Sorge, who also is APWU Steward there. Sorge was assigned ODIS duties some time in 1972 and studied both the M-60 and M-61 Handbooks on the clock and at home, in order to master the details of the work and pass a test in completing Form 1300. On a number of occasions, starting in 1973, his work was checked 21

by an individual from Des Moines who apparently was a Data Collection Technician (there is no direct evidence on this point).

It appears that Data Collection Technician positions typically are authorized and filled in larger postal installations throughout the country. A group, or "cadre," of Level 5 Clerks also typically may be designated as back-up personnel for the Level 6 Technicians in such larger installations--members of the "cadre" in at least some installations, have been paid at Level 6 when assigned to replace or fill in for a Level 6 Technician. There is no indication that Level 6 Technician positions are authorized for any smaller postal installations, where the Service assigns Level 5 Clerks to complete Forms 1300 as part of their work assignments as Clerk. The Standard Position description for Distribution Clerk lists, among various other potential duties of the job: "Maintains records of mails." 22

The June 6, 1976 letter of AFWU President Filbey, which initiated the present national level grievance, noted that a large number of local grievances already had been filed "on the issue of higher level pay for employees who are performing all or part of the ODIS function" and asserted that any employee engaged in such work should be paid at Level 6 "for any and all time spent on ODIS" (underscoring added). 23

CONTENTIONS

1. APWU

The APWU brief asserts that the recording of data on mail volume under the ODIS program is performed "throughout" the Postal Service by Data Collection Technicians at Level 6. Under Article XXV, Section 1, of the National Agreement, an employee assigned to a "ranked higher level position" is performing "higher level work" even if the higher level position has not been authorized for inclusion in the complement of employees at the specific postal installation involved. Thus when a Level 5 Clerk in a smaller post office "conducts an ODIS test" he or she is doing the work of a Level 6 Technician and should receive Level 6 pay. 24

The Union holds, therefore, that the broad issue stated in President Filbey's letter initiating this grievance, must be resolved in its favor once it is found that "ODIS is part of the duties and responsibilities of a Data Collection Technician." Even if ODIS sampling were examined solely in terms of the level of skill required by the specific work involved, however, the Union deems the ODIS test to constitute a "representative function" of the Level 6 Data Collection Technician job. Form 1300 is the heart of the ODIS program. The APWU urges that its preparation "requires thorough familiarity with complex instructions and forms as well as classes and subclasses of mail" and that an "extensive training program, both on and off the job" is essential to assure proper completion of Forms 1300. Each employee assigned to complete a Form 1300 is provided with copies of the M-60 and M-61 Handbooks. It asserts that the "skip sample interval" is determined by the data collection employee and depends on the number of pieces of all mail

that the sampling unit is expected to receive on the day of the test. It also claims that a test Clerk at times may be required to estimate mail volume.

The APWU brief analyzes in some detail a June 7, 1973 decision of Arbitrator Holly in an APWU case from Macon, on which it relies here as a valuable precedent. It also strives to distinguish an October 28, 1975 decision of Arbitrator Gamser in an APWU case from Los Angeles, cited by the Postal Service, where a grievance under Article XXV, Sections 1 and 4, was denied. While disagreeing with the decision, the APWU here relies heavily on evidence and argument presented by USPS in the Gamser case, which might be construed to indicate that in that proceeding the Service had characterized ODIS work as a significant and representative function of the Postal Service Data Technician job (also in Level 6). It further urges that a number of its exhibits (which are USPS documents) reveal that the completion of Forms 1300 is a "basic duty and responsibility of the Data Collection Technician" and cites testimony of a Data Collection Technician to support the same proposition. 26

Since Data Collection Technicians also are used in the Revenue, Pieces and Weight Program (RPW), the Union notes Section 425 of the F-35 Handbook, stating: 27

"425 DATA COLLECTION TECHNICIAN

Is responsible for:

a. Being thoroughly familiar with all the instructions and forms involved in the collection of data pertaining to pieces, revenue and weight, as well as the classes and sub-classes of mail.

"b. Following the analysis and recording instructions carefully and without deviation, unless specifically instructed otherwise by his superior or higher designated authority.

c. Collecting all required data carefully and recording it neatly on the appropriate forms. Extending, editing and reviewing completed test forms of other data collection employees.

d. Bringing to the attention of his supervisor any matters not covered by instructions or which require resolution. Raises questions on matters requiring clarification."

According to the APWU, this statement is "virtually identical" with a statement concerning ODIS in the M-60 Handbook, Section 335:

"335 DATA COLLECTION EMPLOYEE

335.1 Must be thoroughly familiar with the instructions and forms involved in collecting data pertaining to origin-destination and service analysis, as well as the classes and sub-classes of mail.

335.2 Complies with the analysis and recording instructions carefully and without deviation.

"335.3 Collects all required data and records it correctly on appropriate forms.

335.4 Refers to his supervisor any matters not covered by instructions or which require resolution. Raises questions on matters requiring clarification."

The Union also suggests that the Service plans to use mail processing employees, as needed, in all of its testing programs. It notes that Fiscal Handbook F-35, .evenue and Cost Analysis System (RPW) provides in Chapter 4, Para. 426: 28

"426. MAIL PROCESSING EMPLOYEES

At post offices where no data collection technicians or other finance employees are authorized to collect data at the sampling site mail processing employees will assume responsibility for collecting data. Where assigned finance employees are authorized, mail processing employees may be requested as needed to supplement the staff of finance employees in the collection of data and will be returned to mail processing duties upon completion of data collection duties."

Since a similar policy is indicated in the Postal Bulletin 21024 (February 20, 1975), the APWU infers that the Service intends to act on the basis that the skills required of the Data Collection Technician do not vary from one information collecting system to another. 29

As the Union sees it, the level of skill required of the employee who records the basic data in the ODIS system is fairly representative of the level of skill required of Technicians who record data in the RPW and In-Office Cost programs. The Service itself holds that the preparation of forms associated with RPW and In-Office Cost is a level 6 skill. Thus the Union concludes that preparation of Form 1300 is comparable in every material respect to the RPW and In-Office Cost forms, so as to require Level 6 pay. 30

In his opening remarks, USPS Counsel asserted that Data Collection Technicians received Level 6 pay because of "numerous and complex" duties and responsibilities and also because they are required to make "judgmental decisions" and much of their work is "unreviewable." The APWU stresses this latter claim and notes that USPS Counsel, as well as its job classification expert in the Los Angeles hearing before Arbitrator Gamser, had asserted that Postal Source Data Technicians received Level 6 pay, in part, because their reporting of mail volume was <u>unreviewable</u> and was used in making management decisions. 31

Taking these USPS assertions at face value, the Union now stresses that data entered on a Form 1300 cannot be reviewed for accuracy later. Such data also may be significant in subsequent formulation of important management decisions as to design of facilities, manpower planning, and rate negotiations. 32

The APWU further claims that the February 20, 1975 Postal Bulletin (21024) "classifies" ODIS data collection duties as Level 6, and that ODIS testing thus was assigned to the Level 6 Data Collection Technician as a "basic duty." It argues that USPS classification experts must have "concluded that ODIS is a level 6 skill" and had to be "classified as such." Postal Bulletin 21024, says the Union, "accomplished this task" by "effectively amending the Data Collection Technician Standard Position Description." Here the APWU greatly stresses assertions made in the Los Angeles case by USPS representatives to the effect that ODIS was an important part of the duties of Postal Source Data Technicians in Level 6. The Union believes that the Service now should be held bound by such representations so as to sustain the present grievance. 33

Finally, the APWU notes that Level 6 Data Collection Technicians are authorized for larger postal installations and regularly prepare Forms 1300 as part of their work. In many such installations, moreover, Level 5 Clerks are used to supplement the Data Collection Technicians, and receive Level 6 pay. This is illustrated in the following Operating Instruction at the Charlotte, North Carolina, Post Office in regard to Clerks assigned to ODIS work: 34

> "B. Data Collection Cadres will distribute mail in their normal assignment except when assigned to data collection work.
>
> 1. Data Collection Cadres assigned to assist a regular Data Collection Technician will be under the latter's directions.

"2. Data Collection Cadres assigned to replace a regular Data Collection Technician will work in data collection without direct supervision. They will be paid higher level 06 for all time used in any data collection work."

Union evidence confirms that a similar policy is in effect at the MSC facility in Prince Georges County, Maryland, and other larger installations. Given these facts, the Union brief concludes: 35

"The payment of level 6 pay to Level 5 clerks performing the ODIS test at larger postal facilities is significant because at these installations, management is acutely aware that ODIS work is an integral part of the duties and responsibilities of Level 6 Data Collection Technicians. Management at the small post offices, where there are no Data Collection Technician positions, has greater difficulty identifying ODIS work with the higher level position. Of course, an employee is entitled to higher level pay irrespective of whether the higher level position is authorized at the installation. (Art. XXV, Sec. 1). The performance of the ODIS test requires Level 6 pay wherever the work is done."

(Underscoring added.)

2. USPS

The Service emphasizes that employees assigned to Level 6 positions do not always perform duties which, if viewed in isolation from other duties and responsibilities of the given position, would warrant payment of Level 6. It quotes the following passages from the April 2, 1975 decision of the Impartial Chairman in the Mail Handler-APWU Jurisdictional dispute: 36

> "... In the Postal Service, as matters now stand, each employee is paid for the position which such employee fills, and not for each separate duty which he or she may perform within the scope of that position, at one time or another.
>
> . . . . . .
>
> "Thus, in practice, it is by no means unusual in large enterprises, with interrelated work functions, to find incumbents of two or more different positions at times performing similar or even identical individual work assignments or duties at different rates of pay.
>
> . . . . . .
>
> "Determination of an appropriate level of compensation for a given position (as a whole) normally involves considering

> those of its elements which require the highest levels of responsibility, skill, training, and the like. All duties performed under a given position description normally do not call for the highest level of all of those factors which are considered in slotting a position in the pay scale."

37 The Service stresses that its rates of pay are established on the basis of the highest level of skill required of the various positions, not on secondary functions. Thus, it says:

> "... in order for a lower rated employee to successfully lay claim to higher level pay, he must perform at least one duty of that higher position that requires the higher level of skill."

38 The Service further asserts that this analysis was upheld by Arbitrator Gamser in the Los Angeles case where Level 5 Clerks sought Level 6 Technician pay because they were directed to perform data collection or recording functions, primarily under the Attendance Time and Leave Program (ATAL), but also under the Work Load Recording System (WLR). In that case the AFWU argued that the Clerks so assigned were performing the same work as Postal Source Data Technicians which is a Level 6 position.

The Data Collection Technician was placed in Level 6, says the Service, only because an incumbent may be responsible for performing a wide variety of statistical functions, such as the Revenue, Pieces and Weight program (RPW), completing Forms 2600 to measure in-office costs, and various functions under the USPS probability sampling system and other tests requiring a high degree of judgment. In contrast, says the Service, all that is required in completing a Form 1300 is to record what the individual sees on each piece of mail in the sample selected. For this purpose it is necessary only to recognize "gross" pieces of mail, whereas a Data Collection Technician must be familiar with 135 classes and sub-classes of mail to conduct a RPW test. 39

In addition, the Level 5 Clerk completing a Form 1300 clearly has no responsibility for the performance of others. In contrast, the Data Collection Technician may be responsible for reviewing, editing, and extending test forms completed by other data collection employees. It requires only a brief period to train a Level 5 Clerk to complete a Form 1300, says the Service, while it may take six months to train a Data Collection Technician adequately. 40

Finally, the Service stresses the testimony of its job classification expert that the completion of Forms 1300 entails skills and responsibilities well within the scope of the Level 5 Clerk position, and notes that the APWU presented no countervailing expert testimony. 41

FINDINGS

This case involves a technical but fundamentally important question under Article XXV of the 1973 National Agreement: What is the meaning of the phrase "assignment to a ranked higher level position"? 42

Although the existing USPS position description and classification system initially was developed by the Post Office Department during the mid-1950's, no relevant practice developed prior to the advent of conventional collective bargaining in the Postal Service in 1971, which could be helpful in answering this question. Until 1971 the concept of an "assignment" to a higher level position for pay purposes apparently had a quite different meaning than is true today. Article XIV of the 1968 Agreement (between the Post Office Department and the seven craft organizations then in existence) is revealing in this respect, since it was the forerunner of the present Article XXV. The old Article XIV required higher level pay only when an employee was "detailed" to a higher level position in writing. In no event, moreover, was such a "detail" possible unless the higher level position actually was included in the authorized complement of the specific postal installation. 43

Thus Article XIV spelled out the following limitations which make clear that the present issue could not have arisen under the 1968 Agreement: 44

"C. Conditions for Use of Paragraphs A and B above:

1. The phrase 'to a position having a salary level higher than his own' shall mean to a position which has been established, approved as to job content, ranked, and approved for use by an authorized postal official higher in the organization structure than the supervisor of the work unit in which the position is located. The term established means the position is part of the permanent complement of its installation or has been added to the complement for 'higher-level purposes only.'

. . . . . .

6. Any employee detailed to perform the work of a higher level position shall be given a written management order which directs the employee to perform the work of the higher level position. The fact that the employee was directed in writing to perform the work of a higher level position will be accepted as evidence that the employee performed all the required duties of the assigned position. When local management decides that a non-supervisory position must be 'covered' and an employee is detailed for that purpose, the position

> will not be segmented in scope for the sole purpose of avoiding a higher level pay opportunity. The duration or nature of the detail may be changed or terminated at any time by management by issuance of an amending written order."
>
> (Underscoring added.)

In their 1971 negotiations the parties modified the above quoted limitations in an apparent effort to embrace policies commonly found in collective bargaining agreements covering major industrial enterprises in the private sector: they specifically defined "higher level work" as an "assignment" to a ranked higher level position "whether or not such position has been authorized at the installation." Then in their 1973 negotiations they added the sentence to Article XXV, Section 4 which states: "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." 45

Thus the stage was set for the present interpretive problem. While the term "assignment" now apparently has a broader meaning than the term "detail," whatever difference there may be in the scope of these terms presents no problem for present purposes: there is no suggestion here that Level 5 Clerks have not in fact been <u>assigned</u> the specific duty of completing Forms 1300 under the ODIS Program since 1972. Since Level 6 Technicians also perform precisely this duty 46

under their higher level position descriptions, to a significant extent, the Union reasons that the assignment to complete Forms 1300 constitutes an "assignment" to the higher level "position."

This argument requires careful consideration of what constitutes a "position" for purposes of applying Article XXV, in view of the somewhat unusual--if not unique--nature of the position description and pay structure in the Postal Service. Identification of higher level production jobs in large industrial establishments, for purposes of assignments and wage payment, usually presents no serious difficulty. In such situations most of the jobs typically involve specific work locations or "work stations" for which employees are scheduled (often as members of defined crews), to attend, operate, service, or maintain some specific piece of equipment or some portion of a major producing unit. When a lower rated employee in such a bargaining unit is directed to move into such an assignment temporarily, it normally is as a replacement for a scheduled employee and the applicable rate of pay for the specific job thus is clear. An important exception to this, in the generality of heavy industry, typically exists in respect to so-called "trade or craft" jobs, or as to highly skilled maintenance or technical positions. Jobs in these categories frequently may perform a wide variety of functions at different times and are not confined to single work locations or areas. In filling jobs in these categories, the employer typically is concerned with the highest levels of skill and responsibility that may be required by the job at times, even though not required in much, or even most, of the work routinely performed by an incumbent. Employees assigned to such jobs, therefore, usually are paid at a level primarily determined on the basis

47

of the highest level skills involved at any one given time. When employees on such jobs are performing only more routine and less demanding functions, they nonetheless remain available, as needed, for the higher level duties and responsibilities of their job. When employees on lower rated jobs are assigned to work with incumbents of such highly skilled jobs, or to perform duties which they also perform, it may be extremely difficult to decide, in any given instance, whether such employee should receive the higher rate.

The job structure in the Postal Service, for the 48
ost part, is markedly different from that in most large
ndustrial bargaining units in the private sector. Here the great bulk of the work force of hundreds of thousands of employees, working in many thousands of postal installations, is covered by a relatively limited number of Key or Standard Position Descriptions. These Descriptions were developed in a civil service environment, as the result of an Act of Congress, and without any collective bargaining. Some employees assigned to such Positions may never be required to perform certain duties clearly covered in the given description. As bargaining evolved in the Postal Service initially, moreover, it was on a "craft" basis with the essential outlines of the respective "crafts" largely determined by the so-called "Key" Position Descriptions established by the Congress. Position Descriptions also were based on an assumption that proper testing might be utilized, in advance, to determine whether individual employees were qualified for assignment to any given Key Position.

In one major earlier decision, the Impartial Chair- 49
man was exposed to some of the salient characteristics of USPS Position Descriptions and rates of pay. The Mail

Handlers Union in Cases AW-NAT-5753, etc. (The Mail Handler-APWU Jurisdictional Dispute, decided April 2, 1975) claimed jurisdiction over work specifically covered by the Mail Handler Position Description, but also long and typically performed by Clerks in many locations, including installations where both crafts were employed. The Opinion in that case included the following paragraphs:

> "... The Mail Handlers appear to assume that jurisdictional work claims are relatively easy to deal with by applying general language appearing in established Key and Standard Position descriptions. This view is unrealistic. Job descriptions normally are intended only to reflect the significant requirements, duties, responsibilities, and working conditions of various jobs in such manner as to provide adequate factual bases to determine appropriate rates of pay for the jobs in question. Position (or job) descriptions in large enterprises, moreover, inevitably include general statements describing functions and responsibilities which either overlap or are closely similar to functions included in other position or job descriptions. The evidence here confirms that Postal Service operations in no way provide an exception to this generalization. Indeed, the Position Descriptions of <u>both</u> Key Position 8 and Key Position 12 actually include some <u>identical</u> duties, as: (1) operating cancelling machines, (2) facing

mail, and (3) opening and dumping sacks. It also is clear that separate Standard Positions for Sack Sorting Machine Operator exist at Levels 4, 5, and 6, with some having Mail Handler incumbents and others Clerk incumbents. Finally, there are no incumbents at all of the Mail Handler Position in a great number of Post Offices, so that typical Mail Handler duties in such locations long have been performed by employees working under other Position Descriptions, and specifically by Clerks.

"Thus the only possible conclusion on this record is that Mail Handlers and Clerks often perform the same or similar work functions, throughout the far-flung operations of the Postal Service, and that such functions long have been deemed to fall within the broad language used in the descriptions of both Key Position 8 and Key Position 12. While the Mail Handlers place great weight upon a single item in Key Position 8 which refers to occasional distribution of parcel post (without use of a scheme), there thus can be no doubt that this kind of distribution of parcel post long has been performed by Clerks as well as Mail Handlers.

. . . . . .

"Here the Mail Handlers argue that the Postal Service has done violence to 'its own congressionally imposed equal pay regulations' in

awarding parcel sorting work to Clerks. It emphasizes that in the various Post Offices throughout the country Distribution Clerks and Mail Handlers may perform some identical duties, occasionally side by side. Since most Mail Handlers are paid at Level 4 and most Clerks at Level 5, the Mail Handlers characterize this situation as a clear violation of the 'equal pay for equal work' principle. The proper remedy, say the Mail Handlers, is to award all 'simple, non-scheme separation of parcels' to the Mail Handlers.

"This argument rests upon an erroneous assumption as to the intent of the above-quoted excerpts from the Postal Service Compensation Act of 1955 and Section 451 of the Postal Manual. These provisions both, on their face, deal with the ranking (or classifying) of positions. In no way do they purport to indicate that individual employees working at different pay levels, under different position descriptions, should receive the same rate of pay for performing those individual aspects of their respective positions which are identical or otherwise overlap. Determination of an appropriate level of compensation for a given Position (as a whole) normally involves considering those of its elements which require the highest levels of responsibility, skill, training and the like. All duties performed under a given position description normally do not call for the highest level of all of those

> factors which are considered in slotting a position in the pay scale. Thus, in practice, it is by no means unusual in large enterprises, with inter-related work functions, to find incumbents of two or more different positions at times performing similar or even identical individual work assignments or duties at different rates of pay. In the Postal Service, as matters now stand, each employee is paid for the position which such employee fills, and not for each separate duty which he or she may perform within the scope of that position, at one time or another."

Nothing in the present record indicates that the basic principles enunciated in these paragraphs from the Opinion in the APWU-Mail Handler Jurisdictional Dispute are not fully applicable here. In short, the assignment of an employee to perform some particular duty which also is performed by a higher level position, does not necessarily constitute assignment to such higher level position for purposes of Article XXV. The initial argument of the APWU in the present case--that assignment to complete Forms 1300 in itself constitutes assignment to the Level 6 Data Collection Technician position--thus must be rejected out of hand. 50

The remaining critical issue is whether the duty of completing Forms 1300--as such--requires Level 6 pay because it is a representative duty of the Level 6 Technician 51

position in the sense of requiring skills and responsibilities which fairly reflect essential requirements of the Level 6 Data Collection Technician.

This inquiry properly starts with the described Duties and Responsibilities of the Data Collection Technician: 52

"DUTIES AND RESPONSIBILITIES. Performs A and B as assigned in accordance with the requirements of the post office:

(A) Collects and analyzes management data under any number of data collection systems such as cost ascertainment, national service index, and ZIP Code usage. Participates in data collection activities related to one-time special studies, requiring the proper interpretation of complex written instructions. This involves identification of sampling units and updating the lists as required, and recognition of various categories of mail for which characteristics are being measured. Audits report forms prepared by others to insure consistency between revenue, pieces and weight for each mail category. Makes adjustments for obvious errors. Computes and enters on forms total revenue, pieces and weight for each mail category. Makes record of errors for use in quality measurement and control.

"(B) Performs in relief capacity for postal source data technicians in operating the PSDS equipment in the data collection site in the post office and/or controlling the weighing activities at a weighing station in the PSDS system in the post office.

(C) Performs other related duties as necessary."

From the face of this Description some Data Collection Technician duties obviously are more demanding and significant than others for the purpose of rating or classifying the position. A requirement to "collect" data clearly is less demanding than a requirement to analyze such data. An incumbent may work in "any number of data collection systems" and some such systems are substantially more demanding than others. One such more demanding system is "cost ascertainment" which is specified in the Position Description, whereas ODIS is not. An incumbent also may be required to audit report forms prepared by others "to insure consistency" between revenue, pieces, and weight for each mail category. This also may entail an important responsibility of making adjustments for obvious errors. 53

A Data Collection Technician also must be able to "measure" characteristics of all of the various categories of mail and compute total revenue, pieces, and weight for each mail category. Participation in special "one-time" studies also may be necessary, requiring interpretation of complex written instructions. 54

There can be no question that the analyzing, auditing, computing and correcting responsibilities detailed in the Data Collection Technician description, coupled with its reference to "any number of data collection systems," contemplate levels of skill and responsibility well above those involved in merely completing Forms 1300. The Key Position Description for Clerk, moreover, includes: "Maintains records of mail" as a miscellaneous duty which may be required. The APWU here (through testimony of a Clerk with 25 years of service) seeks to depict this duty as involving only "reporting the number of feet of mail in the Clerk's mail case and signing for certified and insured mail." This characterization hardly can be accepted in the face of (1) the reasonable meaning of the Description itself, and (2) extensive evidence (largely from the Union's own testimony) in the Los Angeles hearing before Arbitrator Gamser showing that Clerks long have performed significant recording duties. Thus it would appear that the recording of data on a Form 1300 properly is encompassed in the Level 5 Clerk job unless the other evidence in this record affirmatively establishes that this specific duty requires skills and responsibilities which make it a representative function of the Data Collection Technician position for classification purposes, even though not calling for the highest level of skill and responsibility of the Technician. 55

Numerous Union arguments bear on this question. Initially the Union emphasizes that (1) ODIS is treated in detail in two separate Handbooks (the M-60 and the M-61) and that (2) audio-visual programs, with two explanatory work books, have been developed for ODIS training purposes. (In some instances, special two-day training programs also 56

have been provided for both Level 5 Clerks and Level 6 Data Collection Technicians.) The APWU urges that in order to complete Forms 1300 Clerks (1) must become thoroughly familiar with both the M-60 and M-61 Handbooks, and (2) must determine skip intervals for sampling in accordance with Section 522.2a and .2b of the M-60 Handbook. The fact is, however, that the M-60 Handbook was prepared primarily for use by USPS officials, whereas the M-61 is in much simpler form and intended for use by data collection personnel. Even though one Union witness was told in 1972 to study the -60, when ODIS was initiated at Iowa City, this one incident provides no basis to find that all Clerks who may be assigned to completing Forms 1300 actually are required to be fully familiar with the contents of the M-60.

Nor can it be found that the Clerk who records data on Forms 1300 also is responsible for determining the sample skip interval (on the basis of volume expected to be received by the sampling unit on the day of the test). Under the M-60 (Section 521) this clearly is a responsibility of "accounting personnel" who prepare the Form 1300 "Header Sheets" which then (Section 523) are given to the "data collection employees" along with a supply of Forms 1300 and a copy of the M-61 Handbook. The M-61 itself states flatly that "A Header Sheet for each sample is completed by the accounting personnel." Even though at least one Clerk in Danbury prepared Header Sheets in 1973 and early 1974, the evidence shows that this practice was discontinued there, and properly so. 5

While obviously some training is essential to qualify a Clerk to complete Forms 1300 adequately, the M-61 Handbook appears to be relatively easy for a qualified Clerk to understand and absorb. Moreover, a Clerk completing a Form 1300 is entitled--under Section 335 of the M-60 Handbook--to seek clarification from his or her supervisor on any matter not covered by the M-61 Handbook instructions; or otherwise requiring clarification. 58

Since the basic function of the Level 5 Distribution Clerk (Key Position 12) requires separation of mail in accordance with established schemes, and the development of requisite "scheme knowledge" requires intensive study, there is nothing in the present record to warrant a finding that the training required to complete Forms 1300 is more demanding than that contemplated for a Level 5 position. 59

The APWU nonetheless places heavy reliance on statements by USPS representatives during the Los Angeles hearing before Arbitrator Howard Gamser. In that case Los Angeles Level 5 Clerks claimed, unsuccessfully, that they were being assigned to perform the work of Postal Source Data Technicians in Level 6 because they were involved in time-keeping under the ATAL (Attendance, Time, and Leave) Program, and recording under the WLR (Work Load Recording) System, in a number of Carrier stations. The Union now stresses that USPS counsel had asserted, in the hearing before Arbitrator Gamser, that many decisions by Postal Source Data Technicians were "unreviewable" and subsequently were used in formulating Management decisions. USPS Senior Job Analyst Galloway also testified in the Los Angeles case that the decisions of a 60

Postal Service Data Technician as to volume under the RPW Program were unreviewable since "he is the only one that can make that decision of what volume should hit."

The APWU now seeks to capitalize on these statements in the Los Angeles case by stressing that data entered on a Form 1300 also is unreviewable, and ultimately may be relied upon in making Management decisions. It buttresses this argument by noting that Acting Director of Finance (Los Angeles) Porras had indicated in the Los Angeles hearing that the data collection function of Postal Source Data Technicians, under ODIS, was an important responsibility of that position. Thus the APWU now suggests that the USPS "should be bound by their representation before Arbitrator Gamser that conducting an ODIS test is a Level 6 skill." 61

This line of argument assumes, contrary to the present evidence, that the completion of Forms 1300 represents the entire responsibility of Postal Source Data Technicians and Data Collection Technicians under the ODIS Program. It also overlooks the fact that the USPS representatives in Los Angeles had stressed that the Postal Source Data Technicians there made judgmental decisions which were unreviewable. Such judgments are required, for example, under the RPW Program and entail considerably more knowledge and responsibility than required for making entries on Form 1300. The bare fact that the making of entries may be unreviewable hardly is controlling where the entries do not in themselves require a significant degree of responsible judgment.

Even though one USPS witness in Los Angeles may have seemed to urge that ODIS was an important part of the work of Postal Source Data Technicians, there is no reason to believe that this testimony referred only to the limited function of recording data on Forms 1300 (rather than to responsibility for the entire ODIS function). 63

A related Union claim is based on an interpretation of three APWU exhibits (a job posting in the Prince Georges County MSC, a posting in Charleston, W.Va., and a Charlotte, N.C. management directive). These, the Union says, identify he ODIS "sampling and recording function" as "the basic duty and responsibility" of the Data Collection Technician position. Since the present case deals primarily with the completion of Forms 1300, however, the Union sees too much in these exhibits. Indeed, the Charleston posting states, in relevant part: "Will travel throughout the Sectional Center to take ODIS tests and perform any other duties of a Data Collection nature at associate offices in the SCF as required" (underscoring added). The Union's own evidence makes clear that the "other duties" include cost ascertainment and WLR functions at Charleston. The Prince Georges MSC posting sets forth the entire Data Collection Technician Position Description and states that the job collects and analyzes a variety of statistical data. It simply lists "ODIS Section" as the "Principal Assignment Area." 64

The Union's reliance on these exhibits again seems to reflect its basic failure to distinguish between the potential duties of a Data Collection Technician (including preparation of Header Sheets) under the ODIS Program as a whole, and the more limited function of completing Forms 65

1300. This is particularly apparent when it is noted that the Charlotte directive spells out the following as the "Responsibility" of the Data Collection Technician incumbents at that location:

"E. Responsibility

All Technicians are responsible for all data collection counts made on their tour. This includes:

1. RPW/ODIS- Makes all counts in every test during his tour. Inserts temporary headers at all holdouts affected by each test when a test begins on his tour, and removes these headers when a test ends on his tour. Keeps all managers, whose sections are affected by any RPW/ODIS test, informed of progress in those tests and cooperates with supervision in expediting distribution and dispatch consistent with proper data collection procedures.

2. In-Office Costs (PS Form 2600)- makes all readings required in this system on his tour and coordinates readings with affected supervisors.

"3. Special Tests - conducts all such counts on his tour and insures that affected supervisors are aware of these tests.

4. In all cases, technicians must keep affected supervisors informed of any data collection activity in his or her section, and cooperates with all employees whose duties may be affected by any test. In the event of a disagreement between any mail processing employee and a data collection technician, the technician will:

a. Report the problem to the Tour Superintendent immediately and abide by his decision in the matter; and

b. Report all such events to the Data Collection Officer no later than the next business day."

An APWU witness from the Prince Georges MSC confirmed that the Technicians there performed duties going well beyond the completion of Forms 1300. She estimated she spent 4 or 5 hours per tour "doing ODIS work" but stated that the rest of her time was devoted to preparing Header Sheets (including determination of appropriate skip intervals), to completing Forms 2600 (Work Load Sampling), and to other types of data collection, including the Revenue, Piece, and Weight (RPW) Program. 66

The failure to distinguish between the limited nature of completing Forms 1300, and the more demanding work of the Data Collection Technician position, seems to pervade the APWU presentation, including its reliance on the February 20, 1975 Postal Bulletin 21024 and a repeated assertion that both Level 5 Clerks and Level 6 Technicians "perform the ODIS function in its entirety." 67

It is only fair to state, however, that confusion in this area is fully understandable in view of the cryptic nature of the Regional level ruling sustaining the Springfield grievance as to ODIS work. This ruling does not suggest any distinction between the completion of Forms 1300 and other aspects of the ODIS Program. Knowledge of this settlement spread quickly to APWU officers in other Post Offices and no clarifying statement of detailed USPS policy on the matter was made available. The resultant flood of grievances was expectable. 68

Since the present national level grievance seeks Level 6 pay for employees who are performing "all or part of the ODIS function," it seems essential now to lay out some basic rules for application of Article XXV in this area. The Charlotte, N.C. management directive, cited by the Union, provides an excellent starting point for this purpose. In addition to detailing the duties of Level 6 Technicians, it provides for Data Collection Cadres of Level 5 Clerks who are available to replace or fill in for Technicians, and who receive Level 6 pay for such hours of work. Under "Operating Instructions" the directive states: 69

"Data Collection Technicians will be responsible to the Data Collection Officer in the Finance Section of this office. This applies to all technicians and data collection cadres for all hours used in data collection work.

A. Data Collection Technicians will be required to work in Division of Mails only during such periods as there are no data collection duties to fulfill.

1. Data Collection Technicians will work without direct supervision in their data collection activities.

2. Data Collection Technicians with no data collection duties will report to the Tour Superintendent for mail processing assignments.

B. Data Collection Cadres will distribute mail in their normal assignment except when assigned to data collection work. -

1. Data Collection Cadres assigned to assist a regular Data Collection Technician will be under the latter's directions.

2. Data Collection Cadres assigned to replace a regular Data Collection Technician will work in data collection without direct supervision. They will be paid higher level 06 for all time used in any data collection work."

As this directive recognizes, whenever a Level 5 Clerk is assigned by Management at any time--even if only for part of a tour--to replace a Level 6 Data Collection Technician in performing required duties within the scope of the Technician Position Description (including ODIS), such Clerk is entitled to Level 6 pay under Article XXV, Sections 1 and 2. The June 7, 1973 ruling of Arbitrator Fred Holly in the Macon, Georgia, case, cited here by the APWU, seems fully in accord with this proposition. 70

The same principle also applies in any instance 71
here a Clerk is assigned to augment the normal force of Technicians (without replacing any specific Technician) as long as the Clerk is expected to handle all Technician duties which may be required on that tour.

Where a Clerk merely assists a Data Collection Technician (and works under the Technician's direction), however, there is no warrant for payment of the Level 6 rate to the Clerk. In such situation the Clerk properly may be viewed as serving essentially in a training capacity, and not actually responsible for proper performance of Level 6 Technician duties. While the Charlotte directive is not entirely clear on this precise point, Paragraph B, as above quoted, seems by implication to recognize this distinction.

Finally, a Level 5 Clerk who is assigned only to 73
the limited function of completing Forms 1300, in accordance with previously prepared Header Sheets, is not entitled to Level 6 pay under Article XXV.

AWARD

1. The grievance is denied insofar as it seeks Level 6 pay under Article XXV for all Level 5 Clerks who are assigned to complete Forms 1300, but who are not responsible for performing any other more significant duties of a Data Collection Technician. 74

2. In all instances where Level 5 Clerks (1) replace or substitute for Data Collection Technicians, or (2) are assigned to handle all Data Collection Technician duties which may arise during the hours of such assignment, such Clerks are entitled to Level 6 pay under Article XXV. 75

Sylvester Garrett,
Impartial Chairman

422.142 **Written Management Order**

Any employee, except one of those covered in 432.2, who is temporarily assigned to higher level work is given PS Form 1723, *Assignment Order,* stating beginning and approximate termination and directing the employee to perform the duties of the higher level position. The written order is accepted as authorization for higher grade 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 of the higher level position.

422.143 **Rate of Pay**

Rates are as follows:

a. *Part-time Flexible Employees.* A part-time flexible employee remains a part-time flexible employee while temporarily assigned to a higher level position. The employee neither has nor acquires a regular work schedule and is paid at the part-time flexible hourly rate for the higher level position.

b. *Regular Employees.* Rules for pay for temporary higher level work depend on the factors below:

(1) *Assignment in PS Schedule.* A PS employee who is temporarily assigned to higher level work in the PS schedule is paid at the higher level for time actually spent on such job. The employee's higher level rate is determined as if he or she had been promoted to the position. (See promotion rules in 422.123.)

(2) *Assignment to Other Schedule.* The rate of pay for service in a higher grade position in other than the PS Schedule is determined in accordance with promotion rules for the salary schedule in which the higher level position is placed. (See rules for assignment to a different salary schedule in 410.)

(3) *Service in Several Positions.* If higher level service is performed in more than one position in a pay period, the appropriate rate for each wage level is determined and paid in accordance with the actual time worked at each level.

(4) *Annual and Sick Leave Pay.* Leave pay for employees temporarily assigned to a higher level position depends on the term of the assignment as follows:

(a) *Short-term Temporary Assignments* (see 422.141a). These employees, except those covered by 422.8, are entitled to approved annual and sick leave paid at the higher level rate for a period *not to exceed 3 days* for each occurrence, provided that they are not replaced while on leave and that they resume the assignment upon returning to work.

(b) *Long-term Temporary Assignments* (see 422.141b). These employees are entitled to approved annual and sick leave paid at the higher level rate for the full period of leave provided that they resume the assignment upon returning to work.

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(b) *Long-term Temporary Assignments* (see 422.141b). These employees are entitled to approved annual and sick leave paid at the higher level rate for the full period of leave provided that they resume the assignment upon returning to work.

HBC-5F-C 4333

In the Matter of the Arbitration between

Case No. A8-W-~~251~~

AMERICAN POSTAL WORKERS UNION, AFL-CIO

and

UNITED STATES POSTAL SERVICE

OPINION AND AWARD

Appearances:

For the Union - Gerald "Andy" Anderson, Executive Aide
John A. Morgen, President, Clerk Craft

For the Employer - Howard J. Kaufman, Esq.
R. B. Hubbell, Labor Relations Executive

Background:

Pursuant to the provisions of the July 21, 1978 collective bargaining agreement between the above-captioned parties, this case was brought on for arbitration on March 20, 1981. The parties agreed that the procedural steps required to advance the case as a national level grievance to arbitration had been followed and the case was before the Undersigned for final and binding decision. By agreement, post-heraing briefs were filed. These were received in timely fashion and their contents duly considered.

Statement of the Case:

Many of the operative facts in this case are not in dispute. The matter in issue is exemplified by an unassigned regular clerical employee who is assigned on a daily basis, sometimes for as little as thirty minutes a day to as many as eight hours per day for a thirty day period, to work at Level 6 although she was regularly classified as a Level 5 clerk. That employee then goes on forty-two hours of leave. When she returns, that employee was again assigned on a daily basis, sometimes for thirty minutes a day and sometimes for as long

as eight hours per day as a Level 6 LSM Machine Operator. During the time that she worked at the Level 6 job, she was paid at Level 6. When she returned to her regular duties as a Level 5 Distribution Clerk, she was paid at Level 5.

Contentions of the Parties:

The Union contended that this employee should have received Level 6 pay for the forty-two hours she was on annual leave. The Postal Service paid her at Level 5 for her annual leave hours. The appropriate pay for the period of her annual leave is the subject in dispute in this proceeding.

The Union placed its reliance upon the wording and requirements of Section 5 of Article XXV of the Agreement which deals with leave pay for employees detailed to a higher level position. The Union pointed to the language of paragraph 3 of that Section, which reads as follows:

> "Long term shall mean an employee has been on an assignment or detail to a higher level position for a period of 30 consecutive workdays or longer at the time the leave is taken and such assignment or detail to the higher level position is resumed upon return to work."

The Union pointed to the fact that the USPS conceded that for a period of over thirty days prior to going on annual leave, the Grievant had been assigned higher level work for at least part of each of these days. The USPS also agreed that she resumed working at least part of each day following her return from leave at the higher level job.

The Union also argued that the contract language is clear and spells out to what leave pay an employee is entitled when that employee is detailed to a higher level assignment on either a long term or short term basis. The Union says that the Postal Service's reliance upon the definition of workday found in Article VIII of the Agreement is misplaced since this case was processed through the steps of the grievance procedure as an Article XXV violation.

The Union contended that a reading of the language of the Agreement in Article XXV, as the Postal Service would have it, could result in an employee detailed for a short term to a higher level assignment being paid at the higher level while on leave while an employee on a long term assignment would not receive such a payment.

The Union argued that a reading of the full text of Article XXV would reveal that details under the Article do not have to be for full workdays. They can be for shorter periods in a workday. In this case, according to the Union, the Grievant met all the conditions laid down in Section 5 of Article XXV, and the Grievant deserved to be paid at the Level 6 rate for the period of annual leave.

The Postal Service took the position that the Grievant was not entitled to Level 6 pay because Section 5 of Article XXV requires an unbroken higher level assignment of consecutive eight hour workdays for thirty consecutive days or longer. The USPS believed that an employee could not receive Level 6 pay for an entire period of annual leave when that same employee only worked a part of the previous thirty or more workdays at the higher level.

The Service argued that Article VIII, Section 1 of the Agreement defines the work week for full time regular employees as "forty (40) hours per week, eight (8) hours per day..." For that reason, the interpretation of the word "workday" as used in Article XXV had to be the same and consistent by referring to an eight hour day.

The Service also argued that each time that the Grievant returned to her regular Level 5 duties as a Distribution Clerk, her detail or assignment at the higher level was broken. She did not have "30 consecutive workdays" in a higher level assignment at the time her leave was granted. The Union's own exhibit showed that on only an occasional day, prior to her leave, did the employee work 8 hours at the Level 6 job. It was the same upon her return.

Management also referred to the requirements of Section 4 of Article XXV, wherein a detail of five working days in a week or longer must be given to the senior qualified and eligible employee in the immediate work area. The Union never pressed to have the disputed assignment open for bids to the senior qualified employee in the area. The USPS contended when employees are assigned on a long term basis it is contemplated they will be used on a sporadic basis over a long period of time. When employees are detailed on a long term basis, it is contemplated that they are to have an uninterrupted term of eight hour days for at least thirty days-an unbroken assignment.

This is not a case, according to Management, of a mixed assignment where the "core" functions of a job determine the pay level. That is the type of issue dealt with in the F-21 Handbook to which the Union made reference in presenting this case.

Opinion of the Arbitrator:

These parties appear to agree that this case is not concerned with the question of whether this grievant was improperly assigned and should have always been considered a Level 6 employee because of the amount of time that she spent as an operator of a Multi-Position Letter Sorting Machine, a Level 6 classification. That would be an issue addressed in another fashion and to which reference to certain provisions of the Employee and Labor Relations' Manual would be appropriate.

A resolution of the matter in issue does require reference to the specific language of the Agreement. The Union contended that such language was clear and unambiguous and supported its claim. Management also appeared to place primary reliance for its position on the wording of Article XXV and Article VIII.

Article XXV in its entirety is found below:

ARTICLE XXV

HIGHER LEVEL ASSIGNMENTS

"1. Higher level work is defined as an assignment to a ranked higher level position, whether or not such posotion has been authorized at the installation.

"2. 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.

"3. 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 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.

"4. 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 Articles 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.

"5. 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 cancelled if replacements are required for absent detailed employees.

"Long term shall mean an employee has been on an assignment or detail to a 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."

Reference must also be made to Article VIII. In Section 1 of the Article, the work week is defined. That Section provides:

> 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.

What the Union is claiming in this case is that if an employee works as little as one hour or less on thirty consecutive work days, at a higher level position, prior to going on leave, and then returns to the same pattern of daily employment, that employee is entitled to receive leave pay at the rate of the higher level position. In effect, the Union is arguing that this employee has been "assigned or on detail" to this higher level position for a period of thirty days or longer before going on leave. The reading of the other Sections of Article XXV, more specifically Section 4 will establish that "detailing" for periods of five working days or longer requires the incumbents to be chosen on the basis of seniority and the other qualifications set out in this Section. Since there is no evidence in this record that the Grievant on whose behalf this case was brought was so selected, it cannot be argued that she had been detailed to the higher level position for a long term.

This Grievant was "assigned" on a daily basis, for varying periods of time, to fill in on the higher level job. No vacancy was created when she vacated the job to go on annual leave. Another employee was used to fill-in, and when that other employee did so, he or she was paid at Level 6. When the Grievant in this case did return from annual leave, she returned to her Level 5 Distribution

Clerk job, and for a portion of the day upon which she returned she was paid at Level 5 and for another portion of the day, when she was assigned to the LSM operation she was paid at Level 6.

Although the Union asserted that this case was brought as an alleged violation of Article XXV and the parties did address their arguments to the provisions of that portion of the contract, it is well accepted, in the interpretation of written instruments, that reference to other provisions of the same agreement may shed some light on the meaning of the provision under consideration.

In Section 1 of Article VIII, a work day is clearly defined. It is eight hours per day within ten consecutive hours in offices with less than 100 full-time employees and eight hours per day within nine consecutive hours in larger offices. In a work day, so defined, this Grievant did not work for a full work day at Level 6 on the vast majority of the thirty or more work days prior to her annual leave nor on the day of her return.

There is no question that this Grievant was paid at the higher level rate for the actual time she was assigned to perform the higher level job. If that Grievant had worked for 29 consecutive work days or less at the time of her annual leave, she would only have been entitled to be paid 3 days at the higher level, even if she had worked 8 hours at the higher level on each of those 29 or less days and had returned to a full 8 hour assignment at the higher level. The fact that it was not regarded as a "long term" assignment dictated that only a portion of the annual leave would be paid at the higher level. To qualify for a full annual leave payment at the higher level, that same employee would have had to put in 30 consecutive days or more on the higher level job just prior to taking the leave and then return to the same full time status on this higher level job at the completion of her leave. That is the definition of the "long term" higher level assignment to be found in Article XXV.

For the reasons set forth above, the Undersigned is required to conclude that this grievance cannot be sustained.

A W A R D

H8C-5F-C 4333

The Grievance in Case No. A8-W-257 is hereby denied.

Howard G. Gamser

HOWARD G. GAMSER, NATIONAL ARBITRATOR

Washington, DC
July 27, 1981

(5) *Holiday Leave Pay.* Full-time employees are paid for the holiday at the rate of the higher level, provided that they perform higher level service both on the workday preceding and on the workday following the holiday. Otherwise, the employee is paid for the holiday at the rate appropriate for his or her regular position.

(6) *Holiday Worked Pay.* If an employee performs authorized service at the higher grade on a holiday, the employee is paid at the rate for the higher grade position, in addition to holiday leave pay.

422.144 **Adjustments and Increases**

Adjustments and increases are made as follows:

a. *Step Increase Credit.* An employee temporarily assigned to a higher grade bargaining unit position is entitled to credit toward the next step increase for service in the higher grade with higher grade pay that is continuous to the date of any subsequent promotion.

b. *Effect on Promotion.* If subsequently promoted, the employee's salary is reviewed to ensure application of the appropriate promotion rule and credit for continuous service at the higher grade if the higher level service is continuous to the time of promotion to the higher grade. (See 422.123 for promotion rules.)

422.145 **Benefits**

The following benefits apply:

a. *Terminal Leave Payments.* Terminal leave payments resulting from death are paid at the higher grade for any employee, except one of those covered by 422.9, who is temporarily assigned to a higher grade position on his or her last day in a duty status.

b. *Retirement Deductions.* Retirement deductions are determined from the basic annual salary and any additional basic higher level pay the employee is receiving for the pay period.

c. *Continuation of Pay (Injury Compensation).* An employee who is eligible for continuation of pay as a result of an injury on duty and who is serving in a higher level position when injured will receive such payments at the higher level rate.

422.15 Dual (Multiple) Employment

422.151 **Explanation**

Dual or multiple employment means that a current employee is appointed to an additional position or a new employee is appointed to two or more positions at the same time.

422.152 **Salary Determination**

The appropriate compensation for each new position is determined under the rules relating to appointments (see 422.121).

422.153 **Documentation**

Separate personnel actions are effected for each position, with an estimate of the work hours to be spent in each position and compensation specified in advance for the employee's attention.

MEMORANDUM OF UNDERSTANDING

PTFs IN 200 MAN YEAR FACILITIES SUBJECT TO EXCESSING

If one or more employees in a 200 man year facility are subject to excessing outside the installation, the parties at the Regional/Area may enter into an agreement which allows employees to remain in the installation as part-time flexibles (PTFs). The exact number of employees to remain in the installation as PTFs will be determined by the Employer based on the operational need to perform the remaining mail handler work in the facility. If no employees elect to remain as PTFs in the facility, the Employer may hire additional mail handler assistant employees (MHAs) who will not be counted against any cap limitation provided the work remains part-time.

MEMORANDUM OF UNDERSTANDING

LIGHT DUTY BIDDING

It is agreed that the following procedures will be used in situations in which an employee covered by the Mail Handlers' National Agreement, as a result of illness or injury, is temporarily unable to work his or her normal assignment, and is working another assignment on a light duty or limited duty basis or is receiving Continuation of Pay (COP) or compensation as a result of being injured on the job, sick leave, or annual leave or Leave Without Pay (LWOP) in lieu of sick leave.

I. Bidding

A) An employee who is temporarily disabled will be allowed to bid for and be awarded a mail handler bid assignment in accordance with Article 12.3.E, or, where applicable, in accordance with the provisions of a local memorandum of understanding, provided that the employee will be able to assume the position within six (6) months from the time at which the bid is submitted.

B) Management may, at the time of submission of the bid or at any time thereafter, request that the employee provide medical certification indicating that the employee will be able to perform the duties of the bid-for position within six (6) months of the bid. If the employee 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 employee shall not be eligible to re-bid the next posting of that assignment.

C) If at the end of the six (6) month period, the employee is still unable to perform the duties of the bid-for position, management may request that the employee provide new medical

certification indicating that the employee will be able to perform the duties of the bid-for position within the second six (6) months after the bid. If the employee fails to provide such new certification, the bid shall be disallowed and the assignment shall be reposted for bidding. Under such circumstances, the employee shall not be eligible to rebid the next posting of that assignment.

D) If at the end of one (1) year from the submission of the bid the employee has not been able to perform the duties of the bid-for position, the employee must relinquish the assignment, and shall not be eligible to re-bid the next posting of that assignment.

E) It is still incumbent upon the employee to follow procedures in Article 12.3.C to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

II. Higher Level Pay

Employees 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.

MEMORANDUM OF UNDERSTANDING

RETURN TO DUTY

The parties affirm 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.

2. Normally, the employee will be returned to work on his/her next scheduled tour of duty or the date stated in the medical documentation, provided that adequate medical documentation is submitted within sufficient time for review and that a decision is made to return the employee to duty.

3. The reasonableness of the Service in delaying an employee's return beyond his/her next scheduled tour of duty or the date stated

4. *The apron is nonreimbursable, although some offices may choose to provide retail service employees with aprons to protect their uniforms when working away from the retail counter. These aprons are not to be worn while working at the retail counter or in the lobby.*
5. *Footwear is reimbursable after the employee has completed at least 2 years of eligibility in the retail uniform program.*

933.22 Type 2 Combinations

	Female Combinations	
Male Combination	**Option No. 1**	**Option No. 2**
Shirt (long- or short-sleeve)[1]	Shirt (long or short sleeve)	Shirt or maternity blouse (long or short sleeve)
Tie and tie bar[2]	Tie or button cover[2]	Tie or button cover[2]
Trousers	Slacks	Skirt or skort (unbelted), or jumper (with fabric belt)[3]
Black belt	Black belt	Fabric belt
Optional Item		
Vest	Vest	Vest
Sweater (emblem attached)[4]	Sweater (emblem attached)[4]	Sweater (emblem attached)[4]
Postal Service certified shoes	Postal Service certified shoes	Postal Service certified shoes

1. *Men must wear shirts tucked into pants.*
2. *Tie design and color choice is at the discretion of the employee.*
3. *Women must wear hosiery with skirts and jumpers. Hosiery may be in natural skin tones or navy blue. Socks or hosiery can be worn with the skort.*
4. *Retail personnel may not purchase or wear the delivery personnel sweater.*

933.3 Type 3 Uniform Items

Type 3 uniforms are worn by vehicle maintenance, custodial maintenance, mail handler, BMEU, and clerical employees eligible under 932.12 and 932.13.

Items for Men and Women	
Jacket	Utility, with or without liner, with horizontal corporate emblem, dark blue
Jacket liner	Zip-in
Sweatshirt	Hooded, zip-front, navy blue, with horizontal corporate emblem
Sweater	Zip-front, navy blue, with horizontal corporate emblem
Vest	Insulated, navy blue, with horizontal corporate emblem
Shirt	Long- or short-sleeve, light or dark blue; long- or short-sleeve denim; dark blue knit with horizontal corporate emblem; dark blue knit with embroidered horizontal corporate emblem; dark blue tee shirt with silk-screened horizontal corporate emblem[1]
Trousers	Twill weave, dark blue

Items for Men and Women	
Coveralls	Authorized for and may be worn over the uniform by vehicle maintenance, custodial maintenance, BMEU, and clerical employees eligible under 932.12 and 932.13 during periods when they are exposed to dirty or toxic materials; dark blue
Belt	Leather belt, black with gold buckle; leather belt, black with silver logo buckle
Headgear	Baseball cap, summer or winter style, with vertical corporate emblem, postal blue; fur trooper cap, with vertical corporate emblem, postal blue
Socks	Calf-length, crew style, or quarter-length uniform blue-gray, white, black, or white with blue stripes. Compression socks – Authorized for and may be worn by vehicle maintenance, custodial maintenance, BMEU, and clerical employees eligible under 932.12 and 932.13
Shoes	Regulation shoes bearing SR/USA tag, black
Gloves	Leather or knit, black – Authorized for and may be worn by vehicle maintenance, custodial maintenance, BMEU, and clerical employees eligible under 932.12 and 932.13

1. *Shirts are available in 100 percent cotton.*

933.4 Type 4 Uniform Items

Type 4 uniforms are worn by security force police officers.

Items for Men	
Uniform coat	Postal security dark blue
Overcoat	Postal security dark blue
Bomber jacket	Postal security dark blue
Emblem	Postal police officer shoulder patch
Rank insignia	Sergeant — embroidered or enameled stripes, blue, white, and black; Lieutenant — single gold metal bar; Captain — two connecting gold metal bars; Colonel — gold eagle
Uniform shirt (Regular Officer)	Long- or short-sleeve, postal security dark blue
Uniform shirt (Sergeant, Lieutenant, Captain, Colonel)	Long- or short-sleeve, postal security white
Tie	Four-in-hand, clip-on, solid postal security dark blue
T-shirt	Crew neck, moisture management, ribbed, solid jersey, or mesh, white, and postal security dark blue
Trousers	Postal security dark blue
Socks	Crew or over-the-calf, solid dark blue or dark blue with white soles
Shoes	Black leather regulation-type shoe or boot with plain toe, not over 8" in height from sole tops, with or without built-in safety toes, bearing SR/USA label. Shoes or boots must be capable of accepting a buff shine to obtain a glossy finish.
Battle Dress Utility Uniform	Postal security dark blue

d. The uniform is not worn, except when authorized by the postmaster or Headquarters, when an employee participates in activities such as public speeches, interviews, picket lines, marches, rallies, or any public demonstration that may imply service sanction of the cause for which the demonstration or activity is being conducted.

935 Uniform and Work Clothes Allowances

935.1 When Allowances Take Effect

935.11 Anniversary Date

Allowances take effect on the earliest date an employee is required to wear the uniform following completion of the 90-day probationary period. This date is known as the employee's anniversary date.

935.12 Transfers

When employees who have been receiving allowances in one uniformed category transfer or are reappointed to a different uniformed category within the allowance year, they start a new anniversary date, provided they are eligible in the new category on the date of assignment (see 935.251).

935.2 Adjustment for Certain Absences During Allowance Year

935.21 Absences From Uniform Category of 90 Days to 1 Year

935.211 Policy

Employees temporarily assigned to light duty assignments, OWCP absences, extended sick leave, or higher level detail for a period of 89 days or more that does not require wearing a uniform have their uniform allowance suspended for the time they are on this assignment. When such is the case, the following provisions apply:

a. A request for a personnel action to terminate the uniform allowance is submitted to the personnel office. The personnel office generates PS Form 50, *Notification of Personnel Action,* using Nature of Action (NOA) 903, Uniform Certification/Disallowance, to document the termination of allowance. (See Handbook EL-301, *Guidelines for Processing Personnel Actions,* for PS Form 50 processing instructions.)

b. Invoices showing purchase dates during the time an employee is in a nonuniform category may not be accepted for payment.

c. If the detail is terminated in less than a year after the last anniversary date, the allowance is redetermined by the postmaster as described in 935.23, and the employee retains the former anniversary date.

935.212 Suspension Instructions

A statement is inserted on the PS Form 50, NOA 903, Uniform Certification/ Disallowance, that the uniform allowance is suspended for the period of the detail. When the detail is terminated and the employee is reassigned to a position that makes him or her again eligible for a uniform allowance, if the employee's eligibility has been suspended for one year or more, a new PS Form 50, NOA 903, establishing the employee's eligibility is prepared. If the suspension is for less than a year, a PS Form 8006, *Uniform Allowance Code*

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

John F. Hegarty, National President
National Postal Mail Handlers Union
1101 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036-4304

Re: Q90M-4Q-C95048706
Class Action
Washington, DC 20260-4100

Dear John:

Recently, I met with Bill Flynn and Sam D'Ambrosio to discuss the above-captioned case that is currently pending national-level arbitration.

The issue in this grievance involves revisions to ELM Sec. 450 Recovery of Postal Debts and Sec. 460 Collection of Postal Debts.

After full discussion of this issue, we mutually agreed that no national interpretive issue is fairly presented in this case.

There is no dispute between the parties that a money demand from current employees must be consistent with Article 28 of the National Agreement, Section 460 of the Employee and Labor Relations Manual, and any applicable law. The parties agree 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. No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to resolve this case, thereby removing it from the pending arbitration list.

Time limits at this level were extended by mutual consent.

Joseph R. Berezo, Manager
Contract Administration (NPMHU)
and EAP/WEI Programs

John F. Hegarty, National President
National Postal Mail Handlers
Union, AFL-CIO

Date: 4-19-11

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration		
between		
AMERICAN POSTAL WORKERS UNION		
and	Case Nos.	H7C-1K-C 31669, et. al.
UNITED STATES POSTAL SERVICE		
with		
NATIONAL ASSOCIATION OF LETTER CARRIERS (Intervenor)		
and		
NATIONAL POSTAL MAIL HANDLERS UNION (Intervenor)		

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the American Postal Workers Union:
Mr. Lee W. Jackson

For the U.S. Postal Service:
Mr. Kevin B. Rachel
Ms. Marta Erceg

For the National Association of Letter Carriers: Mr. Keith E. Secular

For the National Postal Mail Handlers Union: Mr. Francis R.A. Sheed

PLACE OF HEARING: Washington D.C.

DATES OF HEARINGS: March 15, 1994
April 15, 1997

POST-HEARING BRIEFS: August 4, 1997

RELEVANT CONTRACTUAL PROVISIONS: Articles 3, 19, and 39; POM, Chapter 7; EL-827, § 120; EL-303, § 110

CONTRACT YEAR: 1987-90 and 1991-94.

TYPE OF Grievance: Contract

AWARD: Grievance denied.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the grievances are denied consistent with the analysis in this report. It is so ordered and awarded.

Date: 11-14-97

Carlton J. Snow
Professor of Law

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION BETWEEN AMERICAN POSTAL WORKERS UNION AND UNITED STATES POSTAL SERVICE WITH NATIONAL ASSOCIATION OF LETTER CARRIERS (Intervenor) AND NATIONAL POSTAL MAIL HANDLERS UNION (Intervenor) (Case Nos. H7C-1K-C 31669; H7V-3S-C 40533; H7V-1K-C 37022; H0V-3E-C 3100; AND H7V-1N-C 33344) (OF-346 LICENSE GRIEVANCE)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to two collective bargaining agreements between the parties effective from July 21, 1997 through November 20, 1990 and from June 12, 1991 through November 10, 1994. Hearings in this matter took place on March 15, 1994 and April 15, 1997 in a conference room of Postal Headquarters located in Washington, D.C. The first hearing addressed the issue of arbitrability, and the arbitrator found the matter to be arbitrable at the national level. The second hearing examined the merits of the case. Mr. Lee W. Jackson, an attorney with the law firm of O'Donnell,

Schwartz & Anderson in Washington, D.C., represented the American Postal Workers Union. Mr. Kevin B. Rachel, Labor Relations Counsel, and Ms. Marta Erceg, Labor Relations Attorney, represented the United States Postal Service. Mr. Keith E. Secular, attorney with the law firm of Cohen, Weiss & Simon in New York City, represented the National Association of Letter Carriers. Mr. Francis R. A. Sheed, with assistance from Mr. Bruce R. Lerner, attorneys with the law firm of Bredhoff & Kaiser in Washington, D.C., represented the National Postal Mail Handlers Union.

The hearings proceeded in an orderly mannner. The parties had a full opportunity to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. A reporter from Diversified Reporting Services, Inc., recorded the hearing and submitted a transcript in the second hearing of 219 pages. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no further issues of substantive or procedural arbitrability to be resolved. They elected to submit the matter on the basis of evidence presented at the hearing as well as post-hearing briefs. The arbitrator officially closed the hearing on August 4, 1997 after receipt of the final post-hearing brief in the matter.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Did the Employer violate the parties' National Agreement by issuing OF-346 licenses which extended driving privileges to bargaining unit employees holding positions which do not mandate such driving duties? If so, what shall the remedy be?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

D. To determine the methods, means, and personnel by which such operations are to be conducted.

ARTICLE 19 - HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

ARTICLE 39 - MOTOR VEHICLE CRAFT

Section 3. Special Provisions

E. All motor vehicle craft positions listed in the P-1 Handbook, designated to the motor vehicle

craft, shall be under the jurisdiction of the Motor Vehicle Division of the American Postal Workers Union, AFL-CIO.

F. When filling details to bargaining unit work in the Motor Vehicle Craft, the Employer shall give first consideration to the assignment of available and qualified motor vehicle craft employees from the immediate work area in which the detail exists.

IV. STATEMENT OF FACTS

In this case, the parties submitted five consolidated grievances that address driving privileges. In March of 1994, the arbitrator concluded that the dispute is arbitrable at the national level. On April 15, 1997, the parties submitted the merits of the case to the arbitrator.

In these grievances, the American Postal Workers Union challenges the Employer's practice of issuing OF-346 drivers' licenses to employees whose jobs do not expressly include driving duties. The issue is quite narrow, and the American Postal Workers Union emphasized that it is not raising a jurisdictional claim with regard to driving duties per se. It is not the duties themselves that elicited a challenge from the American Postal Workers Union. What the APWU challenges is the right of the Employer to authorize particular workers to drive particular vehicles. All parties to the proceeding agreed to the narrow definition of the issue before the arbitrator.

The American Postal Workers Union initially filed the

five grievances in 1990 and 1991. Each grievance arose in a different location when the Employer issued OF-346 drivers' licenses with vehicle endorsements to employees whose Position Descriptions did not require them to drive the particular vehicle endorsed by the license. At that point in time, an employee was required to have an OF-346 driver's license with appropriate endorsement in order to drive a vehicle on the job. The Employer granted endorsements for specific vehicles on the basis of training, experience, and/or other licenses already held.

Since the Union filed the grievances, the Employer discontinued using the OF-346 driver's licenses. Management replaced it with a simpler certification process. Management also abolished enabling handbook regulations in EL-827 and replaced them with Handbook TD-087. The new handbook does not contain parallel language about surrendering one's driver's license or certificate. The arbitrator did not receive a copy of the replacement handbook.

The American Postal Workers Union filed the first of the five grievances on June 12, 1990 in Manchester, New Hampshire. (See Case No. H7V-1K-C 31669). In this case, the Manchester Area Local of the APWU filed a class action grievance contending that Mail Handlers held OF-346 licenses with endorsements to drive two-ton and five-ton trucks, despite the absence of driving duties in their Position Descriptions. Management had issued 17 Mail Handlers such licenses based on a call for volunteers. (See Tr. 133.) Although the facility in Manchester,

New Hampshire employed no motor vehicle operators, it did employ approximately 18 mechanics and support personnel within the Motor Vehicle Craft. (See Tr. 135.) The APWU requested that management require Mail Handlers to surrender OF-346 licenses or endorsements for individuals without driving duties on their bid assignments and that the Employer comply with Section 444 of the EL-827 Handbook in regard to driver selection, training, testing, and licensing. The Employer denied the grievance and argued that an absence of driving duties did not preclude management from issuing driving licenses to Mail Handlers.

The APWU filed the second grievance in July of 1990 with regard to a complaint in Hackensack, New Jersey. (See Case No. H7V-1N-C 33344.) The complaint was that Mail Handlers had been issued OF-346 licenses to drive five-ton or larger vehicles. Specifically mentioned in this particular grievance was the fact that Mail Handlers were assigned work (transporting mail) which allegedly should have been offered to Motor Vehicle Craft employees. (See APWU Exhibit No. 5, p. 7.) Management denied this grievance as well and relied on managerial discretion, an absence of contractual limitations on issuing driver's licenses, and on the fact that the Motor Vehicle Craft held no exclusive right to "driving" work. (See APWU's Exhibit No. 5, p. 2.)

The Union filed a third grievance on February 14, 1991 in Bangor, Maine. (See Case No. H7V-1K-C 37022.) As in the other cases, the issue remained whether the Employer had

authority to issue OF-346 licenses to Mail Handlers who have no driving duties. The Employer denied the grievance and asserted that management had complied with the parties' agreement as well as the fact that the grievance allegedly was untimely. The practice of having Mail Handlers shuttle mail to an annex had been in effect since 1985.

The Union filed the fourth grievance on March 13, 1991 in West Palm Beach, Florida. (See Case No. H7V-3S-C 40533.) The issue again was whether Mail Handlers had a right to hold OF-346 driver's licenses with endorsements to drive five-ton and seven-ton vehicles. Mail Handlers in this locale apparently drove seven-ton trucks on a reasonably regular basis. (See APWU's Exhibit No. 2, pp. 11 and 20.) The Employer denied the grievance.

The final grievance in the group consolidated for arbiration arose in Atlanta, Georgia on August 26, 1991. (See Case No. H0V-3E-C 3100.) The issue in this case focused on the operation of five-ton, seven-ton, and nine-ton vehicles by employees who had no driving duties in their job descriptions, including Clerks, Mail Handlers, and Letter Carriers. At Step 3 of the grievance procedure, the Union argued that "all MVS work should be assigned to MVS employees who are not being used to the maximum extent possible prior to such outside assignments." (See APWU's Exhibit No. 4, p. 11.) As with the four prior cases, the Employer denied the grievance; and the parties consolidated all five denials for consideration in arbitration at the national level.

The five grievances before the arbitrator all involve the right of the Employer to issue licenses and endorsements that allow Mail Handlers and Letter Carriers to drive five-ton trucks or larger. The respective employees held positions that did not include driving duties in either the Standard Position Descriptions or specific local bid assignments. Position Descriptions for Mail Handlers made no reference to driving duties, other than operating a fork lift; and job requirements did not include driving experience or licensing. (See APWU's Exhibit No. 11.) The Position Description for City Carrier includes delivering mail "on foot or by vehicle." (See APWU's Exhibit No. 12.) But a Carrier is required to have a valid driver's license and must pass the road test to be issued the appropriate driver's license.

Workers in the Motor Vehicle Service include two groups of employees, namely, Vehicle Maintenance workers and Postal Vehicle Service workers. Workers within Postal Vehicle Service include the positions of Motor Vehicle Operators and Tractor Trailer Operators. In contrast to the absence of driving duties for Mail Handlers, Position Descriptions for Motor Vehicle Operators and Tractor-Trailer Operators are specifically and predominantly concerned with operating a mail truck to transport mail in bulk. (See APWU's Exhibit No. 10.) Requirements for such positions include one year of experience driving five-ton vehicles, a valid and appropriate driver's license, and certain minimum physical abilities. In addition, employees must be able to pass a road test and,

otherwise, to qualify for the appropriate governmental driver's license.

Evidence submitted to the arbitrator showed that management often assigned driving duties involving five-ton vehicles and larger to employees outside of the motor vehicle craft. Situations in which this might occur include circumstances such as (1) a Letter Carrier needing to use a larger vehicle to deliver substantial quantities of mail to one facility, such as the official mail messenger service in Washington, D.C.; (2) an employee in a unit with no motor vehicle service employees regularly transporting mail or equipment to an airport for other facilities; and (3) a Mail Handler or other employee filling in for Motor Vehicle Service employees who are unavailable. (See Tr. 182, 192, 207.) Specific duties for a worker might range from a brief trip across a parking lot to an assignment of driving for a full eight-hour day on the road. (See Tr. 181.) These facts provided the context for the dispute which proceeded to arbitration when the parties failed to resolve their differences.

V. ANALYSIS

A. Boundaries of the Dispute

1. The American Postal Workers Union

The American Postal Workers Union asserts that the Employer violated the parties' agreement by extending driving privileges to employees who are not required to drive. Such conduct allegedly violated Articles 19 and 39 of the parties' National Agreement in addition to a number of manuals and handbooks.

It is the belief of the American Postal Workers Union that "the extension of driving privileges to a bargaining unit employee for a particular postal vehicle is controlled by the postion that the . . . employee holds." (See APWU's Post-hearing Brief, p. 15.) According to the APWU, a worker's "position" is defined by both the official Position Description as well as the local bid assignment posted for a specific position. The APWU argues that Article 19, which incorporates relevant handbooks and manuals, has been violated. Such administrative regulations allegedly deny management the right to issue a driver's license to people whose job assignment does not include driving. Moreover, the APWU argues that a violation of a handbook, manual, or published regulation "constitutes a violation of the National Agreement itself." (See APWU's Post-hearing Brief, p. 16.)

The APWU relied on its interpretation of numerous provisions in the Employee and Labor Relations Manual in support of its contention that the absence of driving duties in a Position Description prohibits the Employer from granting

driving privileges to an employee. The purpose of a Position Description is:

> To describe three components of a position: (a) the primary assignment or basic function; (b) the tasks and skills involved in carrying out the primary assignment, and (c) the organizational relationship. (See APWU's Exhibit No. 9.)

Accordingly, the Union reasons that a Position Description which fails to include either driving duties as a primary assignment or as a task or skill involved in carrying out the primary assignment means that management should not grant driving privileges to a person holding such a position.

The American Postal Workers Union argues that the positions of both Mail Handler as well as Letter Carrier include limited driving duties. The driving duties of Letter Carriers allegedly are limited to two-ton, long-life vehicles. Duties of Mail Handlers allegedly are limited to forklift trucks. The APWU contracted such duties with those of a Level 5 Motor Vehicle Operator whose primary function is transporting quantities of mail by truck and whose Qualification Standards include significant experience and training on five-ton trucks. (In testimony from Mr. LaFauci, National Business Agent for the Motor Vehicle Division in the northeast region, the APWU does not contest the authority of Letter Carriers to drive five-ton and larger vehicles for the purpose of delivering mail but, rather, object to their involvement in transporting mail in bulk. (See Tr. 126.)

It is the belief of the American Postal Workers Union that Manual EL-303 supports a conclusion that the Employer

violated the parties' agreement in this case. Manual EL-303 lists qualifications necessary for positions under discussion in this case, and the Manual also makes provision for local exceptions to national standards. Under Section 142 of EL-303, management may add typing or driving requirements when filling a vacant position, if such action is "reasonably related to the efficient performance of the duties of the job" and if such work is "expected to be performed on a regular basis." (See APWU's Exhibit No. 13.) The APWU contends that Section 142 of EL-303 is the only way for management to add driving requirements to a position, and the APWU believes that such additions are strictly limited by requirements of EL-303. In particular, Section 142.5 of EL-303 states that "local officials may not modify or delete . . . existing requirements contained in official Qualification Standards," and Section 151 of EL-303 states that "no additions, deletions, or modifications (to Qualification Standards) are permitted." (See APWU's Exhibit No. 13.)

It is the contention of the APWU that the Employer did not comply with these administrative regulations because (1) no vacancies were filled; (2) driving five-ton vehicles was not "reasonably related to the efficient performance" of the jobs at issue; and (3) the driving duties were not "expected to be performed on a regular basis." According to the APWU, the Employer did not add driving duties to positions at issue in this case, and management allegedly could not have done so under Sections 142.1, 142.5, and 151 of the EL-303 Handbook.

The APWU, therefore, concludes that it was not possible for the positions of employees who received the disputed OF-346 licenses for five-ton vehicles legitimately to have included driving duties.

The APWU maintains that, by requiring certain employees to "obtain OF-346 licenses to drive vehicles not required by either their Standard Position Descriptions or their bid positions, also violated Section 142.5 and 151 of the EL-303." (See APWU's Post-hearing Brief, p. 21.) As support for its conclusion, the APWU offers a case in which the Employer and the APWU agreed that adding a driving requirement to a position must comply with Section 142 of the EL-303 Handbook. (See Case No. H4T-4L-C 28093.) In addition, the APWU relies on another case in which the parties agreed that "there is no provision for the addition of an item by local management to an established Position Description." (See Case No. H1C-5B-C 6155.)

The APWU also finds support for its position in Chapter 7 of the Postal Operations Manual. Chapter 7 of the Postal Operations Manual is entitled "Fleet Management" and covers policies and procedures for postal vehicles. The APWU relies on the definition of motor vehicle service in Section 714 of the POM, the driver categories described in Section 721 of the POM, and licensing regulations in Section 22 (drivers must be licensed). The APWU uses these provisions to buttress its conclusion that employees in nondriving positions must not be granted driving privileges by management.

In support of its theory of the case, the APWU also

relies on the EL-827 Handbook. The APWU argues that provisions in Section 120 with regard to "incidental drivers" operating only personal or passenger vehicles, when added to the training requirements as well as the definition of an OF-346 license, all give support to a conclusion that authorization to drive five-ton trucks and larger may be given only to employees whose job duties include such driving. The APWU anchors its argument with Section 444 of the EL-827 Handbook, a provision calling for the surrender of OF-346 licensing. It is the contention of the American Postal Workers Union that Section 444 requires the Employer to revoke the OF-346 license of employees who do not hold driving positions. The regulation lists as an occasion for such a revocation circumstances such as a transfer to a different MSC, or separation, a change to a nondriving position, or expiration of the license. The APWU, accordingly, theorizes that, when the Employer issues an OF-346 license to an employee in a nondriving position, it violates the EL-827 Manual, as well as (a) the position description, (b) the EL-303 Handbook, (c) the POM, and (d) the collective bargaining agreement as an entire document.

It is the belief of the American Postal Workers Union that three recent regional arbitration awards covering the same general issue now being considered at the national level provide an important source of guidance in this proceeding. They are the Germano Award, the Marx Award, and the Franklin Award. (See Case Nos. N7V-1E-C 31646; N7V-1N-C 32924; and NOV-1W-C 1576).

With regard to claims made by the Employer as well as the Intervenors, the American Postal Workers Union takes a defensive position. In response to the suggestion that the APWU has no standing to challenge the Employer's action because the licenses in question were issued to employees represented by other unions, the APWU asserts that its bargaining unit members, indeed, do have a stake in the outcome of the issue. According to the APWU, craft identity of its members is a distinct and significant interest; and that interest allegedly is threatened by the Employer's action. The APWU maintains that, in fact, more than craft identity is at stake in these cases. Work itself allegedly is being lost. The APWU maintains that, "to the extent that postal management licenses a Mail Handler or Letter Carrier to drive five- and seven-ton trucks, and thereafter employs them to perform that work, that much less work . . . will be performed by Motor Vehicle Craft employees within the AWPU's bargaining unit." (See APWU's Post-hearing Brief, p. 27.) The APWU also relies on a Gamser Award in 1980 and a Collins Award in 1986 as providing support for its contention that a remedy need not be directed at members of a party's bargaining unit in order for that party to have standing to pursue a case at the national level.

A further defense by the American Postal Workers Union focuses on the status of the EL-827 Manual and the OF-346 license procedure. Despite the fact that the Employer appeared to discontinue the license and to replace the manual in 1984,

the APWU contends that both continue to exist, as evidenced by references to them in other documents issued after 1994. If, merely for the sake of argument, the APWU were to concede that the EL-827 Manual and OF-346 licenses are obsolete, the Union continues to maintain that the issue remains active by virtue of the similar policies in the replacement manual as well as the new certification procedure. In fact, the American Postal Workers Union asserts that its suggested remedy (of revoking the licenses of employees in nondriving positions) easily could be revised to include surrender of vehicle certification. Accordingly, the APWU concludes that the issue is far from moot and should be resolved in its favor.

2. The Employer

The Employer raises several procedural and substantive challenges to claims of the American Postal Workers Union. First, the Employer argues that the APWU does not have standing to challenge the Employer's actions with regard to members of other bargaining units. It is the Employer's contention that Article 19 rights undermine the standing of the APWU to pursue this case. As management sees it, Article 19 limits the incorporation of manuals and handbooks to "employees covered by this agreement;" and, accordingly, the APWU allegedly does not have standing to enforce such manuals and handbooks against

employees covered by agreement with other unions.

More specifically, the Employer maintains that its decision to grant driving privileges to Mail Handlers and other employees has no direct effect on members of the APWU bargaining unit and that the Employer's theory finds support in the APWU's insistence that the dispute before the arbitrator is not concerned with jurisdictional issues. A contention that the Employer's action has a direct effect on APWU bargaining unit members would undermine the position of the APWU as to the jurisdictional issue, in the view of the Employer. It is the belief of the Employer that the APWU is using a "back door attempt" to claim more driving work without mounting a jurisdictional challenge. (See Employer's Post-hearing Brief, p. 8.) If the APWU is claiming that the Employer's decision authorizing Mail Handlers and Letter Carriers to drive five-ton trucks takes away work from its members, this allegedly is a jurisdictional dispute and, as such, must be resolved at the bargaining table, according to the Employer. If, however, the APWU is not claiming any injury due to a loss of work, the APWU lacks standing to pursue the matter, according to the Employer.

A second defense of the Employer takes issue with the APWU's characterization of Position Descriptions as a source of control over an employee's work assignment. The Employer asserts that "Job Descriptions are not determinative of the work that employees may perform," and management finds support for this position in a 1975 decision by Arbitrator Garrett

involving a jurisdictional dispute between the Mail Handlers Union and the APWU. (See Case No. AW-NAT-5753.) Arbitrator Garrett described as "unrealistic" an assertion that Position Descriptions can be used to determine jurisdictional claims. (See p. 50.) The Employer finds confirmation of its view in a later decision by Arbitrator Dobranski which allegedly asserts that Position Descriptions are not intended to restrict duties that an employee can perform. (See Case No. H4C-1K-C 33597.) The Employer concludes that employees may not be denied driving duties merely because such duties are not specifically listed in a Position Description. Management believes that this error in the APWU's theory of the case fatally flaws the Union's entire argument.

Third, the Employer argues that the grievances are moot. They allegedly are moot because, on January 27, 1994, management abolished the EL-827 Handbook and the OF-346 license at issue in this case. The Employer discounts the APWU's argument that proof of the continuing viability of the El-827 Handbook is found in a reference to the handbook in Article 29 of the latest agreement between the parties. The reference to the EL-827 Handbook in Article 29 of the 1994-98 agreement allegedly is obsolete and is explained by the fact that the parties did not renegotiate Article 29 in the last round of negotiation. It allegedly would produce an absurd result to infer an intention to retain the EL-827 Handbook from this clerical irrelevancy.

Management finds proof that the EL-827 Handbook and the

OF-346 license have been abolished in testimony from Mr. Jones of the Office of Safety and Risk Management. He asserted that his office no longer administers the EL-827 Handbook or issues Of-346 licenses. The Employer contends that the parties already have discussed and settled the issue of replacing the EL-827 Handbook with the TD-087 Handbook. The Employer further contends that, even though the Handbook was in effect at the time the APWU filed its grievances, the fact that the remedy it seeks is prospective in application only undermines the Union's case and would serve no purpose.

Even if the APWU's challenge is not moot and the Union has standing to pursue the matter, the Employer still contends that its action did not violate the parties' agreement. The Employer asserts that the purpose of Section 444 in the EL-827 Handbook was not to compel management to revoke OF-346 licenses but, rather, to allow management to exercise its discretion as to whether an employee should be licensed. It is the Employer's contention that evidence of intent and practice are pivotal to a correct interpretation of Section 444, especially in view of the ambiguity of language in the provision. It is the conclusion of the Employer that Section 444 should be interpreted as granting flexibility to management rather than limiting its discretionary authority.

Fifth, the Employer argues that provisions of the EL-303 Handbook relied on by the APWU fail to support the Union's theory of the case and, in fact, damage it. According to the

Employer, provisions in Section 142 of the EL-303 Handbook (covering proper procedures for adding requirements to a position) support management's contention that the Employer retains the discretion to add driving duties to a position, as long as management meets the "reasonableness and efficiency" requirement. Moreover, the Employer contends that Section 142 deals only with job requirements and does not address permission to perform a particular function. Accordingly, the Employer believes the provision is not directly relevant to grievances before the arbitrator.

Finally, the Employer argues that the position of the American Postal Workers Union is contrary to a past practice of the parties as well as to "operational realities of the industry." (See Employer's Post-hearing Brief, p. 16.) Evidence submitted to the arbitrator allegedly proved the existence of a long-standing past practice according to which Mail Handlers, Letter Carriers, and others have operated five-ton and larger vehicles for over 30 years. The Employer contends that this type of practice is crucial to its operation, especially in facilities where PVS employees may not be available. It is the belief of the Employer that at least five arbitration decisions between 1970 and 1987 support its view that management may either permit or require Mail Handlers and Letter Carriers to drive large vehicles. Management concludes that not only does the evidence prove the existence of the past practice but also that its continuation is vital to the efficiency of the Postal Service.

3. The National Association of Letter Carriers

The National Association of Letter Carriers argues that the dispute is moot. The dispute allegedly is moot because abolition of OF-346 licenses renders meaningless the requested remedy of revoking the disputed licenses. The NALC sees a narrowly defined issue in the case (whether Letter Carriers and Mail Handlers were properly issued licenses), and the narrow issue requires an equally narrow consideration of the "mootness" issue, according to the NALC.

Even if the dispute is not moot, the NALC argues that the grievances should be denied on the merits. It is the belief of the NALC that reliance on Position Descriptions to limit work assignments is contrary to precedent established in this industry through prior arbitration decisions. According to the NALC, arbitral precedent has concluded that "work assignment disputes are to be determined on the basis of established local practice." (See NALC's Post-hearing Brief, p. 3.)

According to the NALC's theory of the case, conduct of parties is crucial in this dispute as evidence of contractual intent. It also allegedly provided important evidence for resolving disputes in arbitration cases on which the parties relied in this case. According to the NALC, no evidence received by the arbitrator undermined the vitality of the course of conduct followed by the parties for many years. In the view of the NALC, no evidence established an exclusive right of employees in the APWU bargaining unit to perform

such work. Accordingly, the NALC argues that the case should be dismissed as moot or denied on the merits.

4. National Postal Mail Handlers Union

The National Postal Mail Handlers Union argues that the dispute in this case should not be approached as merely a technical question about who gets to drive but, rather, that it really is a disguised jurisdictional dispute. It is the belief of the NPMHU that only workers who are not in the APWU bargaining unit will be affected by the outcome of the case. Hence, the APWU allegedly has no standing to pursue the dispute. Licensing Mail Handlers and Letter Carriers is not covered by the APWU's agreement with the Employer, and the APWU has no right to interfere, according to the National Postal Mail Handlers Union. The NPMHU contends that Article 19 in the parties' agreement incorporates handbooks and manuals into an agreement only as they apply to relevant employees and, thus, do not apply to nonmembers of a bargaining unit.

The NPMHU also asserts the "mootness" argument based on the theory that the EL-827 Handbook is no longer enforced and OF-346 licenses are no longer issued. It is the position of the NPMHU that the remedy sought by the American Postal Workers Union (revocation of licenses) would have "no practical significance" because management has implemented a new procedure. (See NPMHU's Post-hearing Brief, p. 6.)

On the merits the NPMHU argues that the EL-827 Handbook did not require management to list particular driving duties on a Position Description or job posting before the Employer could issue an OF-346 license. Rather than focus on the surrender of licenses in Section 444, the NPMHU argues that relevant provisions in Section 420 regarding the issuance of licenses should be scrutinized. It is the belief of the NPMHU that Section 420 does not include any requirement that an employee's Position Description list driving duties. Section 420 lists a number of prerequisites, but there allegedly is no requirement that an employee's position must include driving duties. (See NPMHU's Post-hearing Brief, p. 7.)

The NPMHU also argues that Section 444 of the EL-827 Handbook did not list a "change of duties" as a reason to revoke an OF-346 license. Using the "surrender" provision in the regulation to make an argument for a licensing requirement is logically convoluted, in the opinion of the NPMHU. "It is not reasonable to believe that such a significant limitation on the issuance of licenses would have been addressed in such a backhanded, and indeed obscure manner" by placing such a requirement in the "surrender" provision, according to the NPMHU. (See NPMHU's Post-hearing Brief, p. 10.)

It is the belief of the NPMHU that the American Postal Workers Union incorrectly defines the term "nondriving position" as it is used in Section 444. Rather than a "driving position" being one in which driving is required, the NPMHU asserts that a "driving position" is "any postal position in which an

employee is either required or allowed to drive." (See NPMHU's Post-hearing Brief, p. 11.) A nondriving position, then, would be one in which an employee is neither required nor allowed to drive, according to the NPMHU; and the fact that the "surrender" provision was dropped completely when the TD-087 Handbook replaced the EL-827 Handbook implies that no licensing requirements were included in it, according to the NPMHU.

As the NPMHU sees it, many of the arguments by the APWU based on materials other than the EL-827 Handbook have more to do with the right to drive than they do with the right to be licensed. As such, such arguments allegedly raise jurisdictional issues and are not applicable to the narrow issue presented in this case. Even if applicable, they allegedly lack merit.

The NPMHU argues that Position Descriptions do not limit tasks to which employees may be assigned. According to the NPMHU, the purpose of provisions in the EL-303 Handbook for adding driving requirements to a job is to insure that applicants will not be required to meet unnecessary qualification standards. The purpose is not to prevent the Employer from allowing an employee to drive or to prevent management from making necessary work assignments, according to the NPMHU. In conclusion, the NPMHU believes that, even if the arbitrator reaches the jurisdictional issue inherent in the dispute, the grievances should be denied on the merits of the case.

B. The Issue of Mootness

Each party argued about the impact of mootness in this case. A moot question is one in which no controversy continues to exist or one in which a question has ceased to be significant because of changed circumstances. The changed circumstance in this case is the fact that the EL-827 Handbook and OF-346 licenses are no longer valid. But this fact does not necessarily support a conclusion that the controversy is settled or a mere abstraction. The basic outline of the question before the arbitrator is still to be found in the documents that replace the supplanted procedures. The issue before the arbitrator is far from settled and more than a hypothetical question.

The suggestion, however, that the dispute remains viable as a consequence of a stray reference to an abolished document in the 1994-98 agreement failed to be persuasive. The EL-827 Handbook continues to be listed in only one collective bargaining agreement with the Employer. The reference is not to be found in the agreement with the National Association of Letter Carriers or the National Postal Mail Handlers Union. Even if one were to accept the argument of the American Postal Workers Union in this regard, it would apply only to workers covered by the agreement.

Arguments made by the Employer, the National Association of Letter Carriers, and the National Postal Mail Handlers Union fail to be convincing on the issue of mootness. The issue advanced by the American Postal Workers Union arises in

the context of a justiciable controversy, and the conduct challenged by the American Postal Workers Union has far more than theoretical impact. Although the arbitrator did not receive a copy of the TD-087 Manual, it is clear from the record of the case that there is more at issue than a mere difference of opinion and that the revocation of OF-346 licenses and the replacement of certificates has a considerable effect on the American Postal Workers Union.

The issue of standing is less easily unraveled. The Employer argued that the American Postal Workers Union is without standing to pursue the grievances in this case. "Standing" is not a concept customarily applied in arbitration proceedings, although the concept has been applied from time to time to deny strangers access to the grievance procedure. For example, arbitrators have denied interest groups that were not a party to a collective bargaining agreement any access to the contractual grievance procedure. (See, e.g., Hotel Employers Association of San Francisco, 47 LA 873 (1966).) Likewise, retirees have been denied access to the grievance procedure if they sought to compel arbitration of a dispute not involving their employment status which arose after their retirement. (See, e.g., Van Dyne-Crotty, Inc., 46 LA 338 (1966).) To have standing in an arbitration proceeding, it is necessary to show that (1) there is no special reason to deny standing to a party; (2) conduct challenged by a party, in fact, has caused injury to the party; and (3) the interest a party seeks to protect is within that party's penumbra of

duties as an exclusive representative of a group of employees.

No one advanced any special reason for denying standing to the American Postal Workers Union in this case. Whether the APWU has an injury in fact is enmeshed in unraveling whether the dispute is really a jurisdictional matter. A "jurisdictional dispute" is one in which there are two or more competing claims to particular work. If it is clear that "the only existing dispute is between the Employer . . . and the other unions, there is no jurisdictional dispute." (See Developing Labor Law 1374 (1992).)

The American Postal Workers Union walked a thin line with regard to the issue of standing. It asserted what it contended is enough of a stake in the dispute to have standing but not too much of a stake to result in a jurisdictional dispute with other unions involved in the proceeding. Doubts in such matters should be resolved in favor of a finding of standing, and the dispute in this case seems to fall within the APWU's penumbra of duties as an exclusive bargaining representative. The issue of licensing drivers has potentially damaging implications for members of the APWU bargaining unit. Hence, the American Postal Workers Union has standing to assert its interest in the dispute.

C. Narrowness of the Issue

On one hand, the American Postal Workers Union argued that the issue in the case is restricted to examining circumstances in which the Employer is permitted to issue an OF-346 license. On the other hand, arguments of the APWU generally focused on the Employer's ability to require certain employees to be licensed. Issuing a license is not synonymous with requiring an employee to drive. At most, issuing a license is permitting an employee to drive. Arguments based on qualification standards and on local options for driving in the EL-303 Handbook as well as the description of motor vehicle service in the Postal Operations Manual fall into this category and fail to provide much guidance. For example, the APWU argued that the Employer did not comply with "local option" provisions in the EL-303 Handbook for adding driving requirements. But whether duties so added by management met conditions in the handbook provision is material only to the Employer's decision to add requirements to a position and not to a decision to authorize a license without requiring it. Furthermore, credible evidence established that the EL-303 Handbook provisions were intended, not as a curb on the Employer's right to assign work, but as a limitation on the Employer's ability to burden applicants with unnecessary qualifications.

Evidence submitted by the American Postal Workers Union failed to establish whether Mail Handlers and Letter Carriers in the five grievances had been required to drive, despite the absence of driving duties in their Job Descriptions or

bid assignments. It is clear that in the "Manchester" grievance, licensing was solicited by the Employer and was voluntary on the part of Mail Handlers. (See APWU's Exhibit No. 1.) Whether the Employer could require the workers to qualify for a driver's license is not the issue before the arbitrator. The focus of the dispute is on whether the Employer had a right to issue licenses to such workers. The APWU argued eloquently against the requirement of such driving qualifications and duties, but the case it made was considerably less persuasive against the authorization of such licensing.

Arguments advanced by the American Postal Workers Union based on the EL-827 Handbook "surrender" provisions as well as the treatment in the Employee and Labor Relations Manual of Position Descriptions are more directly relevant to the issue of licensing. Verbiage in these documents is subject to more than one interpretation. Such ambiguity opens the door to examining extrinsic evidence in an effort to understand the meaning of the provision, and this conclusion implicates standard rules of contract interpretation.

The parties struck a bargain according to which they gave the Employer an exclusive right "to determine the method, means, and personnel by which [postal] operations are to be conducted." (See Joint Exhibit No. 1, p. 5.) Such a right must be exercised pursuant to any limitation in the parties' agreement and must be consistent with applicable laws and regulations. This contractual language may not be ignored or treated as though it is merely grandiloquence. It is an

assumption of the common law of the shop that no part of the parties' agreement is superfluous. (See Restatement (Second) of Contracts, §203, 92 (1981).)

Does Section 444 of the EL-827 Handbook, as incorporated by Article 19 of the parties' agreement, restrict the Employer's right to issue OF-346 licenses? Section 444 governs the surrender of Of-346 licenses. Its language is ambiguous as to the extent of the Employer's discretion in effecting such surrender. The provision appears on its face to grant local management the ability to control the licensing of transferring employees. Evidence in the parties' relationship allows a contract reader to move beyong reliance on mere appearances. The doctrine of past practice long has been used by arbitrators as an interpretive aid to resolve contractual ambiguity.

In his seminal research on past practice, Arbitrator Richard Mittenthal espoused the use of past practice as a source of meaning from which to draw the essence of a collective bargaining agreement. He implicitly recognized the imperfect nature of words and concluded that it is logical to use conduct of the parties regularly repeated in response to a given set of circumstances as a means of clarifying ambiguous contractual verbiage. (See Mittenthal, "Past Practice and the Administration of Collective Bargaining Agreements," in Arbitration and Public Policy Proc., Fourteenth Annual Meeting, National Academy of Arbitrators 30 (1961).) Courts have given an approving nod to the Mittenthal analysis. (See SFIC Properties,

103 F.3d 926 (9th Cir. 1996).) The heart of the Mittenthal analysis has remained unchanged for over three and a half decades. (See Sylvester Garrett, "Contract Interpretation," in Arbitration 1985: Law and Practice, Proceedings of the Thirty-eighth Meeting of the National Academy of Arbitrators 1, 140 (1986).)

A review of the parties' past practice reveals that Section 444 of the EL-827 Handbook has not been used to limit the ability of the Employer to authorize Mail Handlers, Letter Carriers, and other non-MVS employees to drive large vehicles. Issuing licenses to such employees has been common practice in many, if not most, postal installations for many years. Mr. Eddy, Transportation Specialist at Postal Headquarters in the Logistic Department of Motor Operations, testified that ignoring the past practice of the parties would have a "disastrous effect" on the efficiency of the operation, either because licensed drivers would be unavailable for necessary duties or because it would be inordinately costly to change the practice. (See Tr. 184-85.) The well-established past practice makes clear that Section 444 of the EL-827 Handbook does not require management to revoke the licenses of "nondriving" employees.

The American Postal Workers Union failed to be persuasive in its contention that Position Descriptions and qualification standards limit a Mail Handler's or Letter Carrier's work authorization. The APWU's theory of the case suggested that merely because a worker's duty is not listed or because an

individual is not "required" to qualify to drive, an otherwise qualified person must be prevented from being allowed to drive at all. A balance must be struck in a case of this sort between extremes. On one hand, it is important not to overly circumscribe management's discretion in a way that negatively affects efficiency and the productive operation of the Postal Service. On the other hand, management must not be left with such unbridled discretion that it is able to threaten certain jobs by abuse of its discretion.

A significant difference between driving duties about which the APWU complained in the five grievances and such duties listed in the Position Description for a Motor Vehicle Operator is that one can best be described as a minor, irregular task, while the other constitutes the primary function of a position. It clearly makes sense to list major duties and to require employees to be qualified in order to perform such duties. At the same time, it would not be sensible to require every Mail Handler and Letter Carrier to qualify to perform a minor duty that might never be needed by most employees in the classification. Absent express contractual limitations, management possesses the discretion to dictate when such a duty might be needed and whether enough qualified employees are available, should such a contingency arise. Managerial discretion, however, is not unlimited. It is tempered by the contractual intent of the parties, as evidenced by their past practice. There are additional limitations on opportunistic behavior inherent in the doctrine of good faith.

D. Not a Jurisdictional Issue

The parties agreed on the narrow issue before the arbitrator that focused on the Employer's right to license certain employees. At the same time, all acknowledged either tacitly or openly that the dispute also may involve jurisdictional implications with regard to management's authority to extend driving privileges. The dispute at this point in time, *however, is not ripe for consideration as a jurisdictional* conflict. There are not competing claims to the work at this point. Neither the National Association of Letter Carriers nor the National Postal Mail Handlers Union advanced arguments in this proceeding with regard to the contractual right of employees they represent to drive five-ton or larger vehicles. Such jurisdictional issues do not need to be addressed in order to resolve the narrow issue with regard to the Employer's right to license and have not been the focus of this review.

It, however, seems clear that the possibility of such a dispute overshadows these five grievances. Resolution of such a dispute might well depend on the materiality and significance of driving assignments. These no doubt would vary from facility to facility. The arbitrator did not receive significant evidence on this issue. As a consequence, the result in this case is not intended to presage the appropriate determination in a jurisdictional challenge, should it proceed to arbitration at this level.

E. Conflicting Regional Decisions

The American Postal Workers Union advanced three regional arbitration decisions in support of its theory of the case. In the Germano Award, an arbitrator concluded that the ability of the Employer to license Mail Handlers to drive five-ton or seven-ton vehicles, even if not required to do so and even if the driving were limited to emergencies, was denied by Section 444 of the EL-827 Handbook. (See APWU's Exhibit No.6.) Only Section 444 stood in the way of the Employer's discretion according to Arbitrator Germano. Arbitrator Germano reasoned that, if the Employer were to add incidental driving duties to a position, only passenger vehicles could be authorized. He reasoned that the labor contract's overall lack of clarity with regard to this issue meant that clear and specific language in Section 444 of the EL-827 Handbook must be given priority. Accordingly, he sustained the grievance and ordered the licenses to be surrendered.

In the Marx Award, the grievance focused on the retention of an OF-346 driving license by employees in the classifications of Mail Handler, Electronics Technician, Tool and Parts Clerk, General Mechanics, and Custodians. (See APWU's Exhibit No. 7.) Arbitrator Marx concluded that employees in the Custodian classification would be permitted to retain their driving licenses but that Mail Handlers would be required to surrender theirs. He based his conclusion on a finding that driving is not required in a Mail Handlers job classification and is not essential to performance of the work.

In the Franklin Award, the issue focused specifically on the Employer's authority to issue a driving license to Mail Handlers. The grievance was based on instances in which a Mail Handler transported mail to a branch station in a two-ton vehicle under emergency circumstances. Arbitrator Franklin concluded that driving duties of Mail Handlers were limited by the Position Description to driving forklift trucks only. She also concluded that, because the disputed work was infrequent and unexpected, the Employer failed to meet criteria for "local options" that permitted management to add driving duties. The arbitrator reasoned that, if driving is required in a position, the Employer should add the requirement by using proper procedures to do so. If such work is not required, the arbitrator found that the Employer should not issue a driving license. She granted the grievance and ordered the Employer to limit Mail Handler licenses to forklift trucks or passenger vehicle endosements only. Curiously, the order did not require Mail Handlers to surrender licenses already granted by management.

Although all three arbitrators essentially agreed with the APWU's understanding of its rights in this matter, the three arbitration decisions were premised on different criteria. Arbitrators Marx and Franklin placed more emphasis on job requirements. For Arbitrator Germano, the issue turned solely on the language of the "surrender" provision in the EL-827 Handbook. There was no indication that Arbitrator Germano was presented with an alternative interpretation of

the provision and, accordingly, found the language to be clear and unambiguous. His assumption, however, that the provision could be interpreted only one way led to an erroneous conclusion.

Since the provision is no less ambiguous than the rest of the language covering this subject, it is appropriate to use past practice as an interpretive aid. Such an analysis leads to an opposite conclusion from that of Arbitrator Germano. Arbitrator Germano correctly distinguished between a license being required and a license being allowed. It is reasonable to believe that he would have allowed licensing for voluntary and energency situations had it not been for a misplaced reliance on the EL- 827 Handbook "surrender" provision.

The flaw in the result reached by Arbitrators Marx and Franklin results from a misplaced reliance on Position Descriptions. As discussed earlier in the analysis, Position Descriptions must not be relied on woodenly and rigidly to limit managerial discretion in terms of work assignments, unless such Position Descriptions have come into existence through a deliberative process of good faith bargaining. Arbitrators Max and Franklin erred in equating "required" with "allowed." Absent clear contractual guidance to the contrary, to restrict the Employer to assigning work only where it also has authority to require it constitutes an unreasonable burden on the efficient operation of the Postal Service and, hence, is inconsistent with Article 3 of the

parties' agreement. As a result, the three regional arbitration decisions on which the APWU relies failed to provide a persuasive source of guidance in this case.

F. Conclusion

The Employer is not required by the parties' collective bargaining agreement to revoke driving privileges of employees who are not required to drive solely on the basis of their position or job descriptions. Neither is management prevented by the parties' collective bargaining agreement from granting driving privileges to employees who, otherwise, are qualified to drive and meet internal requirements. The APWU failed to be persuasive in its theory to the contrary.

Past practice has been an important source of guidance in understanding the intent of ambiguous language in this case. It should also be useful in charting future action. Recognizing the potential for abusing the ability to license drivers and to assign driving duties, it is important to stress that this decision should not be construed as giving management unlimited discretion in this area. Where management can show a local past practice of licensing Mail Handlers, Letter Carriers, and others to drive five-ton and larger vehicles, such conduct continues to be permissible within the bounds of good faith.

If it can be shown that local management has not conducted its operation in such a manner, the Employer is limited

to its prior course of conduct, unless the parties negotiate a different approach or an appropriate arbitration decision produces a different configuration. For example, some evidence suggested that in the Marx Award in 1991, the Employer agreed that Mail Handlers should not be licensed. (See APWU's Exhibit No. 7, p. 3.) The point is that local past practice must control, unless the parties negotiate a different result.

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE -and- NATIONAL ASSOCIATION OF LETTER CARRIERS	GRIEVANTS: Branch #57 CASE NOS. H7N-1F-C 39072 H7N-1F-C 39075 H7N-1F-C 39076

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service:	John W. Dockins Labor Relations Spec.
For the NALC:	Keith E. Secular and Peter DeChiara Attorneys (Cohen Weiss & Simon)
Place of Hearing:	Washington, D.C.
Date of Hearing:	February 9, 1995
Date of Post-Hearing Briefs:	May 15, 1995

AWARD: The grievances are denied.

Date of Award: June 2, 1995

Richard Mittenthal
Arbitrator

BACKGROUND

This dispute was prompted by Postal Management's action in declaring certain Local Memoranda of Understanding (LMOU) null and void. Management took this action because these particular LMOU were negotiated outside the 30-day period of local implementation set forth in Article 30-B of the National Agreement. NALC insists Management's behavior was improper. It believes that nothing in the National Agreement bars local parties from changing their LMOU whenever they wish to do so and that Management should not be permitted to nullify such changes on the ground that they occurred after the local implementation period.

NALC Branch #57 represents carriers in several Rhode Island communities. It has negotiated separate LMOU for Bristol, Barrington, and Warren. When the 1987 National Agreement was executed, the local parties in these communities had a 30-day period commencing October 1, 1987, to negotiate changes in their then existing LMOU. Negotiations took place in all three locations. New LMOU emerged within the 30-day period of local implementation. They were made effective as of October 1, 1987. They stated that each LMOU "shall continue in effect until such time as it is mutually agreed to negotiate a new agreement."

Some years later in early 1991 these local parties again entered negotiations. Substantial changes were made in their LMOU. I shall use Bristol as an example. Under Article 3 (Hours of Work, Overtime), a provision concerning overtime charges for those sick or on an extended leave of absence was deleted. Under Article 4 (Leave), the leave calendar was to be placed in circulation no later than January 15 (previously February 1) and requests for leave were deemed to be approved if supervision does not notify the carrier within 48 hours (previously 72 hours) of receipt of the request. A clause prohibiting the charging of certain time away from work against choice vacation periods was enlarged to include non-choice vacation periods as well. A new provision was added to cover the carrier who had either voluntarily passed up his leave selection or failed to make his selection in a timely manner. Other language in this Article was simplified or clarified.

Under Article 5 (Posting), the posting of a carrier assignment had previously been required in certain circumstances. Now such an assignment may or may not be posted at

the carrier's discretion. When a vacancy occurs, it must be posted within five days (previously seven days). And a new provision was added requiring that successful bidders for vacant assignments accept the non-workdays accompanying such assignment. Under Article 8 (Safety and Health Committee), a new provision called for equal representation on the committee with meetings to be held no less than once a month. Another new provision involved Management's commitment to meet with a NALC representative during emergencies and hazardous conditions to help determine guidelines for curtailment or termination of operations and to notify carriers of any such action. Still another new provision declared that mail delivery after dark is a safety hazard and will not be allowed.

Under Article 9 (Local Policy on Discipline), a new provision required Management to make every effort to schedule PTF carriers in advance and noted that such PTFs need not remain near their phones awaiting an assignment. Under Article 10 (Representation...), new provisions called for the Branch President to be notified of all personnel actions and granted Branch representatives the right to use post office telephones for official NALC business. Under Article 13 (Training a New Carrier), a new provision gave a carrier 30 days within which to familiarize himself with a new route and to become proficient. Under Article 14 (Inspection of Personnel Jacket), a NALC representative previously had the right to inspect a carrier's personnel jacket if accompanied by the carrier. New language permitted this inspection without the presence of the carrier provided the carrier gave his representative permission in writing to make the inspection. Under Article 20 (Seniority PTF Carriers), a rotating schedule for Sunday and holiday collections by PTFs had been maintained and posted. A new provision called for separate and distinct Sunday and holiday schedules. Under Article 21, new provisions were added with regard to employee lockers, choice of winter or summer apparel, and availability of a separate NALC bulletin board and an area for carrier literature.

This Bristol LMOU became effective February 28, 1991. Similar changes were made in the negotiation of new LMOU for Barrington and Warren in January 1991.

When Division Labor Relations became aware of these new LMOU, it concluded that the local parties had no right to enter into negotiations and execute these LMOU. It directed the Postmasters of the three communities in question to

advise Branch #57 that the new LMOU were "null and void" because they were in violation of Article 30 of the 1987 National Agreement. The Postmasters sent letters to that effect to Branch #57. The result was the three grievances now before the arbitrator.

The relevant terms of Article 30 (Local Implementation) read as follows:

> A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1987 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.
>
> B. There shall be a 30-day period of local implementation to commence October 1, 1987 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1987 National Agreement:
>
> [Items 1 through 22]
>
> * * *
>
> C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President. 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 1987 National Agreement.
>
> * * *
>
> 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. The request for arbitration must be submitted within 10 days of the end of the local implementation period.

DISCUSSION AND FINDINGS

The 30-day local implementation period under the 1987 National Agreement began on October 1, 1987. The local parties negotiated LMOU during that period. The next 30-day implementation period occurred under the 1990 National Agreement. It did not begin until October 1, 1991. The local parties, however, negotiated new LMOU in January-February 1991, some eight months before the latter implementation period. The issue, simply stated, is whether the local parties had the right under Article 30 to negotiate these new LMOU without regard to the local implementation period.

NALC answers the issue in the affirmative. It acknowledges that local parties are required, on request, to negotiate LMOU during the implementation period. But it argues that nothing in Article 30 bars the parties from choosing to negotiate at other times if they wish. Nor, it says, does Article 30 justify voiding any new LMOU negotiated outside the implementation period. It believes this position is supported by the past behavior of many local parties throughout the country, by a need for this kind of bargaining flexibility, and by a number of prior national level arbitration awards.

The Postal Service answers the issue in the negative. It contends that Article 30, in clear and unambiguous terms, prohibits local parties from negotiating new LMOU after the contractual implementation period. It states that there is just one 30-day implementation period and that local parties may not negotiate LMOU changes after that period. It concedes that certain minor adjustments in language, resulting from grievance settlements and other such happenings, may legitimately prompt changes in LMOU at some later time. It maintains, however, that the kind of substantial, widespread changes in LMOU which occurred here constitute a complete disregard of the restrictions imposed by Article 30. It urges that these restrictions, given the circumstances of this case, justify its action in voiding the LMOU in question.

The national parties plainly intended to insure the continuity and stability of LMOU through Article 30. They provided in 30-A that LMOU "shall remain in effect during the term of this [National] Agreement..." They recognized that LMOU could be "changed by mutual agreement" but only where such "mutual agreement" was reached "pursuant to the local implementation procedure..." And, as 30-B states, the "local implementation procedure" refers to a carefully defined 30-day period beginning on a date certain, typically 60 days after the execution of a new National Agreement. There is just one such implementation period listed in Article 30 of the 1987 National Agreement, namely, "a 30-day period...to commence October 1, 1987..." Any change in LMOU must take place during this 30-day period. To allow local parties to make later changes through "mutual agreement" would mean that "presently effective" LMOU had not, contrary to 30-A, "remain[ed] in effect during the term of this Agreement."

These findings can be readily applied to the facts of this case. At the time the 1987 National Agreement was executed, there were "presently effective" LMOU at the three Rhode Island post offices involved in this dispute. Those LMOU, according to 30-A, were to "remain in effect during the term of this [National] Agreement..." unless changed during the 30-day local implementation period which began on October 1, 1987. Changes were "mutually agree[d]" upon during this implementation period. The resultant LMOU, again according to 30-A, "shall remain in effect during the term of this [National] Agreement..." But they did not. They were substantially revised by the negotiation of new LMOU in early 1991 while the terms of the 1987 National Agreement still governed the relationship between the national parties. The next implementation period under the successor National Agreement did not occur until October 1, 1991, some eight months after the January-February 1991 changes. The continuity the national parties had bargained for was ignored by the local parties' premature negotiation of new LMOU. The local parties acted contrary to the restrictions found in 30-A.

It could be argued that the continuity contemplated by 30-A ("shall remain in effect...") concerns only the time between the execution of the National Agreement (here July 21, 1987) and the start of the local implementation period (October 1, 1987) and that local parties are free thereafter to change LMOU through "mutual agreement" whenever they wish. But that would be a strained and unrealistic interpretation. It is difficult to believe that the

national parties meant the promised continuity to apply to such a brief time span. Indeed, LMOU are to "remain in effect during the term of this [National] Agreement..." This promise is not just for a part of the contract "term" (a matter of months) but rather for the entire contract "term" (a matter of years). This would be perfectly clear where there is no "mutual agreement" during the implementation period and "presently effective" LMOU are simply carried forward from one National Agreement to the next. The fact that LMOU are revised during the implementation period is no reason to treat them any differently, that is, no reason to deny revised LMOU the continuity assured by 30-A.

No doubt some local parties have over the years made changes in their LMOU through "mutual agreement" outside the implementation period. They have done so without higher postal authority declaring the changes null and void under 30-A. None of this, however, is necessarily inconsistent with the interpretation I have given 30-A. To the extent to which such changes were relatively minor, in character or scope, one could properly say that the affected LMOU had essentially "remain[ed] in effect..." and no 30-A violation had occurred. It is only when the changes are substantial, in character or scope, that the affected LMOU cannot be regarded as having "remain[ed] in effect..."

As for the present case, I have already described the extensive changes made in the Bristol LMOU in February 1991. Articles 3, 4, 5, 8, 9, 10, 13, 14, 20 and 21 of that LMOU were impacted. Some provisions were altered; others were discontinued; and still others were added. The changes dealt with a wide variety of subject matter. Several time periods were shortened or lengthened. It is obvious that the Bristol local parties did much more than a mere amendment or two. They engaged in a full-scale negotiation of their LMOU. They did not allow the prior LMOU, the one negotiated in October 1987, to "remain in effect during the term of this [1987 National] Agreement..." They did exactly what 30-A sought to prevent. Given this violation of the 30-A restrictions, the Postal Service was within its rights in nullifying the February 1991 LMOU.

This same article-by-article analysis of the Barrington and Warren LMOU shows the same kind of widespread changes. These early 1991 LMOU, like the situation in Bristol, were the product of a full-scale negotiation. The local parties did not allow their prior LMOU, the ones negotiated in October 1987, to "remain in effect during the term of this

[1987 National] Agreement..." They did exactly what 30-A sought to prevent and the Postal Service was within its rights in declaring such LMOU null and void.

NALC emphasizes that there is nothing to prevent the national parties from renegotiating the National Agreement midterm if they wish to do so. It notes that this is true even though the National Agreement contains a "Duration" clause stating that its terms "shall remain in full force and effect to and including..." a specified future date. It believes the local parties have this very same freedom to renegotiate midterm if they wish to do so.

The difficulty with this argument is that the national parties and local parties do not have the same standing. The national parties may amend the National Agreement any time they wish provided their action is the product of "mutual agreement." However, the national parties placed strict limitations on local parties through 30-A. They stated that LMOU "shall remain in effect during the term of this [National] Agreement..." and that LMOU could be altered through "mutual agreement" only where such "mutual agreement" occurred pursuant to the implementation procedure. These restrictions could of course be waived by the national parties. But there was no such waiver here. Hence, the local parties were bound to honor 30-A and live with their October 1987 LMOU until the next implementation period when LMOU could once again be negotiated.

NALC relies heavily upon a national arbitration award issued in September 1981 in Case No. N8-W-0406. There, Helena, Montana Management refused to follow a LMOU clause requiring cases for a particular route to be "...re-labeled by the Regular Carrier or T-6 only." The Postal Service asserted that the Helena local parties had authority to negotiate only on the 22 items enumerated in 30-B, that they had no authority to negotiate on other subject matter, that they had nevertheless done so in agreeing to this re-labeling clause, and that this clause should therefore be deemed unenforceable. I gave the following explanation for rejecting the Postal Service's position:

> This argument rests on a single sentence in Article XXX-B, "There shall be a 30-day period of local implementation...on the 22 specific items enumerated below..." These words simply state that the local parties <u>are</u> to negotiate on these 22 items. A familiar rule of contract construction provides, "To express one thing is to

exclude another." The Postal Service apparently relies on this rule in asserting that the local parties are not to negotiate anything other than these 22 items. Its position is that the local parties in Helena had no authority to negotiate the clause on re-labeling and that this clause must therefore be deemed null and void.

This point of view is not persuasive. To begin with, it must be remembered that the local parties had in the past routinely negotiated local memoranda on subject matter nowhere mentioned in the National Agreement. No one claims these memoranda were, for that reason, invalid. However, so many local issues were deadlocked in the 1971 negotiations that the procedure for resolving such impasses was overwhelmed and hence unworkable. This problem prompted the introduction of XXX-B in the 1973 National Agreement. Clearly, the concern of the national parties was not the subject matter of the local memoranda but rather the number of impasses. It is true that XXX-B served to limit the subjects on which the local parties were required to negotiate. But that obviously was done in order to limit the number of potential impasses in the future.

Given this tradition of broad local memoranda and the limited objectives of XXX-B, it would take clear contract language to prohibit the local parties from negotiating a clause on a subject outside the 22 listed items. No such language, no such prohibition, can be found in XXX-B. The Postal Service believes this provision describes what the local parties are authorized to negotiate. But it is equally plausible to argue, as NALC does, that this provision describes what the local parties are required to negotiate. This interpretation is, I think, more consistent with the parties' history as well as collective bargaining reality. The rule of construction noted earlier, when applied to this view of XXX-B, would indicate only that the local parties are not required to negotiate on any subject outside the 22 listed items. Thus, the local parties are free if they wish to expand their negotiating agenda to include subjects nowhere mentioned in XXX-B. That

is exactly what happened in Helena when the local parties agreed to a re-labeling clause in the 1975 negotiations. They had the authority to negotiate such a clause.

NALC believes my argument on this award is clearly applicable to the present case. It contends that just as 30-B did not prohibit local parties from negotiating on subject matter outside the 22 items, so too 30-A does not prohibit local parties from negotiating LMOU outside the implementation period if they choose to do so. It maintains, referring to the prior award, that 30-B merely describes when local parties "are required" to negotiate LMOU, namely, the implementation period, and that although they "are not required" to negotiate at other times, they may do so if they wish.

The present case, however, is clearly distinguishable from N8-W-0406. The decisive language here is in 30-A, not 30-B. And 30-A states that LMOU "shall remain in effect during the term of this [National] Agreement..." and can be changed only through "mutual agreement pursuant to the local implementation procedure." This is a clear commitment to continuity. There was no comparable restriction with respect to the subject matter of LMOU. Article 30-B simply said, "There shall be a 30-day period of local implementation...on the 22 specific items..." Nowhere in 30-A or 30-B is there any suggestion that local parties were prohibited from agreeing to cover subject matter outside the 22 items. The purpose of these provisions, the contract language chosen to express that purpose, and the factual background of these cases prevent N8-W-0406 from being considered a controlling precedent.[1]

One final comment seems appropriate. It is understandable why these Rhode Island local parties acted as

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[1] Regional Arbitrator Roumell held in Case No. C1C-4G-C 17430 that "there is nothing in Article 30 that would prevent the local [Postal] Service to enter into Memoranda of Understanding even outside the local implementation period...". That award, however, made no attempt at any detailed analysis of this issue. Roumell drew this conclusion without any real explanation.

they did. The 1987 National Agreement was to expire on November 20, 1990. But because the national parties were unable to negotiate successfully a new Agreement and had to go through interest arbitration, the Agreement was extended until this arbitration was completed and a new Agreement was in place. That did not happen until June 1991. The implementation period would ordinarily have begun on February 1, 1991, but was delayed by the interest arbitration until October 1, 1991. The local parties, apparently impatient with this long delay, chose to negotiate new LMOU in January and February 1991. It is also understandable why local parties may choose to revise a LMOU after the implementation period. Such changes allow unexpected problems to be resolved in a mutually agreeable manner, particularly where the language of the LMOU becomes over the years a hindrance to fair treatment of carriers or an unnecessary burden to efficient postal operations.

For all the reasons expressed in this opinion, there has been no violation of the National Agreement.

AWARD

The grievances are denied.

Richard Mittenthal

Richard Mittenthal, Arbitrator

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE -and- AMERICAN POSTAL WORKERS UNION -and- NATIONAL ASSOCIATION OF LETTER CARRIERS	GRIEVANTS: APWU President NALC President CASE NO. HOC-NA-C 3

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service:	Suzanne H. Milton Attorney Office of Labor Law
For the APWU:	Darryl J. Anderson Attorney (O'Donnell Schwartz & Anderson)
For the NALC:	Keith E. Secular Attorney (Cohen Weiss & Simon)
Place of Hearing:	Washington, D.C.
Date of Hearing:	November 20, 1992
Dates of Post-Hearing Statements:	June 18, 1993
AWARD:	The grievance is granted.

Date of Award: July 12, 1993

Richard Mittenthal
Arbitrator

BACKGROUND

This grievance involves the scope of the Postal Service's newly won right to invoke the impasse arbitration procedures of Article 30 (Local Implementation) of the 1990 National Agreement. The parties agree that the Postal Service may resort to interest arbitration to challenge an existing provision of a Local Memorandum of Understanding (LMOU) which deals with subject matter within the 22 enumerated items in Article 30B. The Postal Service insists it is entitled to make this same challenge against an existing provision of a LMOU which is outside the 22 enumerated items. The Unions disagree.

Since the mid-1960s, the parties have encouraged the execution of LMOUs. Those agreements included a wide variety of clauses. Some served to implement the general provisions of the National Agreement; others dealt with subject matter not covered by the National Agreement. The parties specifically contemplated LMOUs which went beyond the terms of the National Agreement. For instance, Article 7, Section 13(c) of the 1968 National Agreement prohibited local clauses which "repeat, reword, paraphrase or conflict with the National Agreement..." but added that "this is not to be interpreted to mean that local negotiations are to be restricted to only those options provided in articles in the National Agreement..."

This history was not ignored in the 1971 National Agreement, the first contract following the Postal Reorganization Act and the creation of the collective bargaining process now in effect. Article 30 stated that "it was impractical to set forth in the Agreement all detailed matters relating to local conditions..." and that therefore "further negotiations regarding local conditions will be required with respect to local installations, post offices, and facilities." It went on to say that "any agreement reached shall be incorporated in memoranda of understanding." It provided that no such LMOU "shall be inconsistent or in conflict with this Agreement..."; it provided for arbitration of impasses reached in local negotiations. And arbitration could then be invoked either by the Unions or the Postal Service.

The 1971 local negotiations resulted in a huge number of impasses. More than 100,000 of them were appealed to arbitration. Obviously, the parties were unable to dispose of this volume of disputes. This difficulty prompted changes in the 1973 National Agreement. The parties decided to limit the number of impasses by restricting "local implementation" to

"22 specific items enumerated below..." Thus, the local negotiators were required to deal with any or all of these 22 items but were not required to discuss anything else. The parties provided for arbitration of impasses where the appeal to arbitration was timely and was authorized by the National Union President. This impasse arbitration process could not be invoked by the Postal Service.

The language of the 1973 National Agreement, specifically, Article 30, was carried forward into the 1975, 1978, 1981, 1984 and 1987 National Agreements. It should be quoted at length:

> A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1987 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.
>
> B. There shall be a 30-day period of local implementation to commence October 1, 1987 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1987 National Agreement.
>
> > [1 through 22 dealing with such subjects as wash-up periods, local leave program, vacation scheduling, scope of "overtime desired" lists, light duty assignments, local implementation of the National Agreement language on seniority and posting, and so on]
>
> C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President. 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 shall apply, unless inconsistent or in conflict with the 1987 National Agreement.

D. An alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure.[1]

Also a National Memorandum of Understanding with respect to "procedures" to be applied is the "implementation of Article 30" has been in effect for a good many years.

The Postal Service was dissatisfied with some aspects of Article 30. It believed it was unfair for the Unions alone to have access to impasse arbitration over the terms of a LMOU. It noted that the Unions could seek changes in a LMOU through arbitration while Management could do no more than oppose such changes. It urged that simple justice required that Management be given equal access to arbitration under the "local implementation" procedure of Article 30. Its proposals in the 1990 national negotiations reflected this objective. The Unions, on the other hand, claimed no revision in Article 30 was necessary and resisted Management's demand for equal access.

The 1990 negotiations failed and the parties appointed an interest arbitration board (Board) to resolve their differences. One of the many issues before the Board was Article 30. The Postal Service argued, as it had in negotiations, that equal access to impasse arbitration should be granted. Its initial proposal to the Board stated:

> Local Implementation. In order to establish a "level playing field" with respect to those items subject to local implementation, the Postal Service proposes that Article 30 be amended to provide that both the Union as well as the Postal Service could submit disputed proposals to final and binding arbitration. Currently, only the Union can request arbitration which, in effect, "chills" local implementation discussions.

The Board's award summarized the parties' positions as follows:

> Union Position - The Joint Bargaining Committee argues against any change in the status quo and contends that Article 30 and the accompanying implementing Memorandum of Understanding should not be changed.

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[1] This quoted language is taken from the 1987 National Agreement.

> USPS Position - The Postal Service seeks to amend Article 30 and the accompanying implementing Memorandum of Understanding to permit [local] issues remaining in dispute to be appealed to impasse arbitration by management, a right currently enjoyed only by the Unions.

The Board ruled in the Postal Service's favor. New language was added to Article 30A, stating that "presently effective" LMOUs could be changed not only by "mutual agreement pursuant to the local implementation procedure..." but also -

> ...as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective [LMOU]...

New language was added to Article 30C, stating that proposals remaining in dispute "may be submitted to final and binding arbitration" not only by one of the national Union Presidents but also by "the Assistant Postmaster General, Labor Relations." And, finally, a new Article 30F was written to establish a different burden of proof on the Postal Service with respect to certain proposals it submits to impasse arbitration:

> 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 [LMOU], the Postal Service shall have the burden of establishing that continuation of the existing provision would represent an unreasonable burden to the USPS.[2]

The parties agree that the Postal Service, like the Unions, can now invoke impasse arbitration over any subject matter within the 22 items listed in Article 30B. The Postal Service, however, believes it may also invoke arbitration on subject matter presently in a LMOU but beyond the scope of these 22 items. The Unions disagree. It was this disagreement which prompted the present grievance.

APWU initially filed a motion asking that I recuse myself because I served as Chairman of the Board which made these changes in Article 30. Its position was that I should not be

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[2] A few other minor changes in the language of Article 30 were also made.

called upon to interpret the very provision which I played a part in creating. Both the Postal Service and NALC opposed the motion. In an award dated December 23, 1992, I denied APWU's motion. The parties now request a decision on the merits.

DISCUSSION AND FINDINGS

The Postal Service relies heavily on the new language in Article 30A and F. It stresses that paragraph A recognizes that a presently existing LMOU may be "changed...as a result of an arbitration award...arising from either party's impasse of an item from the presently effective...[LMOU]." It stresses that paragraph F similarly speaks of Management making a proposal to "change a presently-effective...[LMOU]" and Management later, following Union rejection of the proposal, having the right to "submit...[such] a proposal... to arbitration." Its position is that these Article 30 revisions meant that Management thereafter would be able to take to impasse arbitration <u>any</u> LMOU provision regardless of whether or not its subject matter is covered by the 22 items set forth in 30B. Moreover, it insists its concern that Management be allowed to impasse LMOU clauses outside the 22 items was made clear to the Unions "in the Postal Service proposals and at the bargaining table prior to interest arbitration."

The Unions approach the problem quite differently. They argue that the right to place a local issue in impasse arbitration is found in Article 30C, not 30A or 30F. They contend that this right deals with "all proposals remaining in dispute" at the end of the "local implementation period", that this quoted language from 30C plainly refers to local proposals regarding the 22 items listed in 30B, and that the parties thus meant to limit impasse arbitration to subject matter within the scope of these 22 items. They urge, accordingly, that Management should not be permitted to appeal to impasse arbitration any current LMOU clause whose content is outside the 22 items. Furthermore, they assert that the record upon which the Board based its award "does not contain any indication that the Postal Service was seeking to expand the scope of impasse arbitration to matters outside the 22 items.". They believe the Board meant to give Management the "same access to impasse arbitration that the Unions enjoyed [prior to 1990] -- no less, but no more." They emphasize that the Unions were limited in impasse arbitration to these 22 items in the past and that this limitation should apply to the Postal Service as well.

The Postal Service's interpretation is not without appeal. LMOUs were never frozen. According to Article 30A, they could be changed in a number of ways prior to 1990. A LMOU clause "inconsistent or in conflict with the...National Agreement" was not enforceable and hence could in effect be ignored. A LMOU clause could be revised (or eliminated) through "mutual agreement" during the local implementation period. A LMOU clause could be revised (or eliminated), absent mutual agreement, through the "local implementation procedure", namely, through "final and binding arbitration." These possibilities had existed for years at the time the Board began its deliberations on the terms of the 1990 National Agreement.

The Board established another way of changing LMOUs. Its award stated that a LMOU clause could be modified (or eliminated) "as a result of an arbitration award...arising from either party's impasse of an item from the presently effective...[LMOU]." These words were not mere surplusage. They were written in recognition of the fact that a new device for changing a LMOU had been created. The parties disagree as to the nature of the new device. The Unions insist that it is procedural, that it merely grants Management equal access to local impasse arbitration. The Postal Service insists it is substantive as well as procedural. It urges that the new language serves not only to provide Management with equal access but also to permit Management to place "an item", that is, <u>any</u> item, from a "presently effective" LMOU before the impasse arbitrator.

The Postal Service position, at first blush, seems plausible. But it must be remembered that the <u>purpose</u> of Article 30A is simply to guarantee the continuity of LMOUs subject only to whatever changes may be justified by "inconsistenc[y]...", "mutual agreement", or "final and binding arbitration." Article 30A does not authorize the parties to take a local issue dispute to impasse arbitration. That authorization is found in Article 30C, "All proposals remaining in dispute may be submitted to final and binding arbitration..." A close reading of Article 30 as a whole makes clear that 30C is referring to "all proposals..." under the local implementation procedure, that is, "all proposals..." under 30B with respect to the 22 specific items mentioned therein. Accordingly, 30C limits the submission to impasse arbitration to these 22 items.

Had the Board intended to ignore these limits and expand the impasse arbitration agenda to other than the 22 items, it surely would have changed the language of 30C. Its failure to do so suggests that the Board never meant to expand the

impasse arbitration agenda.

This conclusion is reinforced by the terms of Article 30F, "Where the Postal Service, pursuant to Section C, submits a proposal remaining in dispute to arbitration..." (Emphasis added). The underscored words reveal, as I have already noted, that it is 30C which authorizes a submission to interest arbitration. It follows that the scope of that arbitration must be determined by 30C, not by 30A. And when 30C speaks of "all proposals remaining in dispute...", it is plainly referring to proposals made by the parties under the local implementation procedure described in 30B, proposals concerning the 22 items set forth in 30B.

Whatever doubt remains should be dispelled by the purpose of the Article 30 revision. The Postal Service's initial proposal to the Board on Article 30 stated:

> ...In order to establish a "level playing field" with respect to those items subject to local implementation, the Postal Service proposes that Article 30 be amended to provide that both the Union as well as the Postal Service could submit disputed proposals to final and binding arbitration... (Emphasis added)

The "level playing field" was obviously an appeal for equal access, nothing more. Nowhere does this Postal Service statement to the Board suggest that the "playing field" not only be leveled but enlarged as well. Indeed, the Postal Service sought equal access only "with respect to those items subject to local implementation." These words refer to the 22 specific items in Article 30B, the permissible impasse arbitration agenda.

Later, in the proceeding before the Board, the Postal Service offered a position paper explaining its Article 30 proposal. The position paper urged that the parties be put on "equal footing", that they meet on "equal terms", that Management be an "equal party" with an "equal chance" to resolve problems. Although the position paper discussed "old provisions" of LMOUs which Management should be allowed to submit to impasse arbitration, all of those "old provisions" dealt with subject matter set forth in the 22 items for local implementation. Nowhere did the position paper request that the 22 items be expanded, that the impasse arbitration agenda be enlarged.

Finally, the Board's award summarized the Postal Service request as follows:

> ...to permit [local] issues remaining in dispute to be appealed to impasse arbitration by management, a right currently enjoyed only by the Unions. (Emphasis added)

The Board's concern was whether to provide Management with the same right of access to impasse arbitration as was then "...enjoyed by the Unions." Equal access was the issue. Nothing in the Board's words suggest that it believed the Postal Service was seeking to add to the 22 specific items in Article 30B or otherwise expand the impasse arbitration agenda.

Indeed, the Postal Service concedes that it has no right to submit to impasse arbitration a new LMOU clause whose subject matter is outside the 22 items. It insists, however, that it now may go to impasse arbitration over an old (that is, an existing) LMOU clause outside the 22 items. This distinction may have been raised during the negotiations which preceded the 1990 interest arbitration but it certainly was not raised in the arguments made to the Board.

For these reasons, my ruling is that the Article 30 changes simply provide the Postal Service with equal access. The Postal Service's access to impasse arbitration should be neither greater nor smaller than the Unions' access under prior National Agreements. Because the Unions were not entitled before 1990 to go to impasse arbitration on subject matter outside the 22 items, the Postal Service does not have that right either.

AWARD

The grievance is granted.

Richard Mittenthal, Arbitrator

National Postal Mail Handlers Union

William H. Quinn
National President

Mark A. Gardner
Secretary-Treasurer

Hardy Williams
Vice President
Central Region

Samuel C. D'Ambrosio
Vice President
Eastern Region

John F. Hegarty
Vice President
Northeastern Region

James C. Terrell
Vice President
Southern Region

Efraim Daniel
Vice President
Western Region

June 19, 2002

Andrea Wilson, Manager
Contract Administration NPMHU
US Postal Service Headquarters
475 L'Enfant Plaza
Washington, DC 20260

Dear Andrea:

I am writing concerning the language contained in Article 30.3A of the 2000 National Agreement between the NPMHU and the Postal Service.

Although this provision states that a request for arbitration of an impasse item remaining in dispute may be submitted "within ten (10) days of the end of the local implementation period," this language is inconsistent with the procedures contained in the Memorandum of Understanding (MOU) Re: Article 30 — Local Implementation Procedures, paragraph 4 of which establishes a fixed date by which unresolved impasse items may be appealed to arbitration.

In order to clarify these seemingly contradictory provisions, this letter is to confirm that the parties agree that the language of the MOU is controlling for purposes of determining the date by which appeals to arbitration of unresolved impasse items must be accomplished.

Please contact me if you have any questions in this regard. Also, please sign below to indicate the Postal Service's agreement with this letter.

Very truly yours,

William J. Flynn, Jr.
Manager
Contract Administration

cc: William H. Quinn, National President
Mark A. Gardner, National Secretary-Treasurer
Frank Jacquette, USPS

It is so agreed.

Andrea Wilson 6/21/02
Andrea Wilson Date

UNITED STATES POSTAL SERVICE and NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	IMPASSED LOCAL NEGOTIATIONS IN RESPECT TO APPLICATION OF SENIORITY IN WORK ASSIGNMENTS ISSUED: October 28, 1974

NATURE OF THE CASE

This case involves an interest arbitration under Article XXX--Local Implementation, of the July 21, 1973 Agreement between the United States Postal Service and American Postal Workers Union; National Association of Letter Carriers, National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of Laborers' International Union of North America; and National Rural Letter Carriers Association. It is brought by the Mail Handlers Union to obtain final resolution of various issues which arose in local negotiations after execution of the July 21, 1973 National Agreement. 1

In a July 5, 1974 joint letter the matter was scheduled for hearing on the basis that impasses concerning "day-to-day" application of seniority existed in 10 separate locations. At the hearing, however, it was indicated that either 14 or 15 separate locations were involved. The post-hearing 2

Union brief indicates that there are 12 locations in which a local impasse exists as to "day-to-day" application of seniority. Among the local installations seemingly involved are Syracuse, New York; Springfield, Missouri; Kansas City, Missouri; Trenton, New Jersey; Orlando, Florida; Memphis, Tennessee; Louisville, Kentucky; Toledo, Ohio; Springfield, Ohio; Cincinnati, Ohio; Atlanta, Georgia; and St. Louis, Missouri.

All of the local impasses concerning "day-to-day" seniority, in any event, were combined by the parties for purposes of hearing the present case. The hearing was held in Washington, D.C., on August 6 and 7, 1974 and both parties filed briefs as of October 2, 1974. 3

There is no need to detail here all of the original local Union proposals. Their general nature seems adequately ...lected in two. At Kansas City the Union simply requested ...at seniority should provide "the basis for selecting Mail Handlers for a temporary change of work assignment." A more detailed proposal was presented at Louisville (also at Toledo and Springfield, Ohio, in identical form), as follows: 4

> "1. Proposal - Reassignment out of bid assignment will be by junior employee.
>
> "2. Reassignment back into bid assignment will be by seniority.
>
> "3. Part-time flexible employees will have reporting assignments but will be utilized to meet the needs of the Service. The first excess of each part-time flexible each day from the reporting assignment shall be by juniority.

"4. Employees who work on straight or over-time beyond the cut-off (end of tour) time are juniority.

"5. Employees who are called in for over-time on their off day are junior.

"6. Employees reporting for duty six (6) or more minutes late forfeit seniority when workload is assigned by mail handler present. Seniority is regained for next open unassigned job."

Insofar as here relevant, Article XXX of the 1973 National Agreement states:

"ARTICLE XXX--LOCAL IMPLEMENTATION

"A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1973 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.

"B. There shall be a 30-day period of local implementation to commence 45 days after the effective date of this Agreement, on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement:

. . . . . .

"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.

"C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President. 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 1973 National Agreement."

In each of the involved local negotiations the Postal Service representatives took the position that the "day-to-day" seniority proposals were not negotiable because, if they were granted, the result would be inconsistent with the 1973 National Agreement. For this purpose the Postal Service relied largely on the proviso in Article XXX declaring that "no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement." 6

After the disputed local proposals had been transmitted to the Mail Handlers National Office, for authorization to arbitrate pursuant to Article XXX, Paragraph C, settlement efforts took place at the National level upon the initiative of the Postal Service. During these negotiations the Postal Service ultimately indicated a willingness to consider the following as a basis for settlement of all of the local impasses: 7

"LOCAL IMPLEMENTATION SENIORITY

"1. In order to meet the responsibility of Article XLII, Section 1(c), a Union Shop Steward, designated by the Union pursuant to Article XVII, shall be recognized as the Union's representative on a day-to-day basis in matters pertaining to the administration of seniority.

"2. In all matters where a dispute arises regarding seniority, the supervisor will, when possible and consistent with the requirements of the service, discuss such disputes with the designated Union Steward prior to implementing the decision. When such disputes cannot be satisfactorily resolved, the employer's discussion (sic) will be implemented and the matter will be subject to the grievance procedure.

"3. When, for any reason, consistent with qualification requirements, it becomes necessary to move an employee, the employer will follow the guidelines set forth below in working such assignments.

a. Non-craft employees performing mailhandler craft duties.

b. Members of any other craft performing mailhandler duties.

c. Part-time mailhandlers.

d. Full-time mailhandlers."

The Union then submitted a counter-proposal including Paragraphs 1 and 2 as above quoted but with Paragraph 3 reading:

"3. When it is necessary to move an employee from his bid assignment, or assigned section for any reason, seniority shall be applied as follows:

1. Non-craft employees performing mailhandler craft duties

2. Members of any other craft performing mailhandler duties

3. Part-time mailhandlers

"4. Full-time mailhandlers by juniority

"Return to their bid assignment or section shall be by seniority."

The Postal Service rejected this proposal and the matter then was carried into arbitration. At the hearing the Union suggested that its last proposal for settlement at the National level should be deemed to constitute the impassed local issue for each location involved, but recognized that each local issue, as originally submitted, properly might constitute the impassed local issue for the given location. The Postal Service replied that none of the impassed local issues on "day-to-day" seniority was arbitrable since each embodied proposals inconsistent with the National Agreement. It requested that the Impartial Chairman refuse to consider any of the local proposals. 9

Under these unique circumstances, and in view of the long range importance of this jurisdictional argument, the Impartial Chairman indicated that the present decision would deal principally with the jurisdictional issue without prejudice to possible full substantive presentations later, if necessary. The Mail Handlers did, moreover, present substantial evidence as to the merits, in support of its view that the substantive issues were arbitrable. 10

CONTRACT SECTIONS INVOLVED

In addition to Article XXX, as set forth above, the following provisions of the July 21, 1973 Agreement have been noted in the arguments of the parties: 11

"ARTICLE III-MANAGEMENT RIGHTS

"The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

"A. To direct employees of the Employer in the performance of official duties;

"B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

"C. To maintain the efficiency of the operation 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.

. . . . . .

"ARTICLE VII-EMPLOYEE CLASSIFICATIONS

. . . . . .

"Section 2. Employment and Work Assignments

. . . . . .

"B. In the event of insufficient work on any particular day or days in full-time or part-time employee's own scheduled assignment, management may assign him to any available work in the same wage level for which he is qualified, consistent with his knowledge and experience, in order to maintain the number of work hours of his basic work schedule.

"C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

. . . . . .

"ARTICLE XII
PRINCIPLES OF SENIORITY, POSTING
AND REASSIGNMENTS

. . . . . .

"Section 2. Principles of Seniority

"A. The seniority principles contained in Article XII of the National Agreement executed July 20, 1971, continue except as otherwise provided below or in the craft seniority provisions of this Agreement.

. . . . . .

"ARTICLE XLIII
MAIL HANDLERS CRAFT

"Section 1. Seniority

. . . . . .

"C. Responsibility

"The installation head and the Unions are responsible for the day-to-day administration of seniority. Installation heads will post a seniority list of mail handlers on all official bulletin boards for that installation. The seniority list shall be corrected and brought up to date quarterly. The application of this general Section on Seniority will be open to local negotiations at the installation level in accordance with the local implementation provisions of the National Agreement.

. . . . . .

"Section 2. Posting

"A. In the mail handler craft, vacant craft duty assignments will be posted for bid as follows:

. . . . . .

"11. An unassigned full-time employee may bid on full-time duty assignments posted for bid by employees in the mail handler craft. Any unassigned full-time employee may be assigned to any vacant duty assignment. Such employee shall be given his choice if more than one vacant assignment is available. Part-time fixed scheduled employees shall be treated similarly within their own category.

. . . . . .

"D. Information on Bids

"Bids shall include:

. . . . . .

"4. The principal assignment area; e.g., section and/or location of activity.

. . . . . .

"E. Successful Bidder

. . . . . .

"3. Normally, an employee shall work the duty assignment for which he has been designated the successful bidder. However, when an employee is moved off his duty assignment, he shall not be replaced by another employee."

BACKGROUND EVIDENCE

Because the flow of mail in most postal installations fluctuates widely from hour to hour over any representative period, it usually is essential to move employees on given jobs from one work area or function to another during any single work tour. Over the years, Mail Handler Union officials have come to believe that supervisors sometimes tend to deal with employees "as numbers" in making such within-tour work assignments rather than giving due weight to individual craft status and relative length of service. The Union believes, moreover, there are significant instances of individual favoritism as well as "craft" discrimination (such as using Clerks or others to perform Mail Handler duties). Union evidence indicates that over some years the Postal Unions have attempted to limit Management flexibility in assigning of rk, in order to reduce the possibility of such abuses. It ints to Article I, Section 1; Article II; Article VII; Article VIII, Section 5; Article X; Article XI; Article XII; Article XXV; Article XXXIII, and Appendix A of the 1973 National Agreement, as well as to Article XLIII (dealing specifically with the Mail Handler craft) as reflecting collectively bargained efforts to deal with such problems. The Union thus regards the presently disputed local proposals as additional efforts to deal more effectively with this general problem. 12

During local negotiations under the 1971 National Agreement there were a number of Mail Handler local impasses on similar "day-to-day" seniority proposals which reached the National level for further negotiations under Article XXX of the 1971 Agreement. Mail Handler witnesses testified that they were told by the Postal Service in the course of such 13

negotiations (early in 1973) that the local proposals were not negotiable, in part, because Section C of the Mail Handlers 1971 Supplemental Agreement on Seniority included as its first sentence: "The installation head is responsible for the day-to-day administration of seniority." While not accepting this Postal Service claim of unfettered discretion in day-to-day seniority administration, the Mail Handlers did not press the 1971 impasse issues into arbitration upon the advice of counsel. Instead they decided to deal directly with the problem in the impending negotiations for a new 1973 Agreement. Accordingly the Mail Handlers offered a craft proposal in the 1973 negotiations which included the following relevant paragraphs:

"SENIORITY

. . . . . .

"B. Coverage

"These rules apply to the regular work force when a guide is needed for filling vacant assignments and for other purposes. No employee, solely by reason of this Agreement, shall be displaced from an assignment he gained in accord with former rules.

"Seniority shall be the governing factor in all matters not covered in this agreement or supplements (such as movement of employees from one section to another, filling vacancies of higher level positions within a section, granting annual leave on a day-by-day basis, etc.)

"An employee shall be able to exercise his seniority rights to any position that is to be covered by a supplemental work force employee.

"C. Responsibility

"The Installation Head and the Union are responsible for the day-to-day administration of seniority. Installation heads will post a seniority list of Mail Handlers on all official bulletin boards for that installation. The seniority list shall be corrected and brought up to date every three (3) months. The application of this general Agreement on Seniority will be open to local negotiations at the installation level."

(Underscoring added.)

In the ensuing 1973 craft negotiations, Postal Service representatives rejected most of Section B of this proposal, and particularly the second paragraph. Ultimately it was dropped. At the same time Section C was adopted as follows: 14

> "The installation head and the Union are responsible for the day-to-day administration of seniority. Installation heads will post a seniority list of mail handlers on all official bulletin boards for that installation. The seniority list shall be corrected and brought up to date quarterly. The application of this general Section on Seniority will be open to local negotiations at the installation level in accordance with the local implementation provisions of the National Agreement."
>
> (Underscoring added.)

The foregoing Section C is part of Section 1 of Article XLIII, dealing with Mail Handler craft seniority and quoted earlier in this Opinion. Insofar as here relevant, this revised Section C differed from the 1971 Section C (applicable to the Mail Handler craft) to the extent indicated by the words underlined above. 15

The Union now urges that insertion of the words "and the Union" in the first sentence of Section 1-C, together with the provision for local negotiations to implement "application 16

of this general Section on Seniority," leave no doubt that the Union is entitled to bargain locally concerning "day-to-day seniority." Postal Service negotiators testified, however, that they left the 1973 bargaining table fully satisfied that the Mail Handlers had not succeeded in obtaining any right to bargain locally concerning "day-to-day seniority." The Union also presented evidence that in 1973 local seniority agreements in fact were negotiated in a substantial number of locations, applying "day-to-day seniority" and that some such local agreements had been in effect for years.

THE JURISDICTIONAL ARGUMENTS

While it is unnecessary here to set forth all of the 17
parties' skillful and comprehensive arguments, some detail may be useful in sharpening the issues to be decided.

1. Postal Service

The Service emphasizes that Article III of the 18
National Agreement spells out its exclusive right, "subject to the provisions of this Agreement," to direct the work force in the performance of official duties, to transfer and assign employees, and to determine the methods and personnel by which operations are to be conducted. It also stresses that Article VII, Sections 2-B and 2-C, deal specifically with day-to-day situations when there is insufficient work for employees' regular scheduled assignments and where exceptionally heavy workload periods for given occupational groups may require assignment of additional employees. These paragraphs leave no doubt that the Service may assign employees to other work

"in the same wage level," and contain no suggestion that seniority is to be applied in determining which employees should be assigned and reassigned within their tours. Article XXX of the National Agreement limits local implementation negotiations to 22 subjects listed in its Paragraph B and states that no local memorandum of understanding may be inconsistent with, or vary the terms of, the 1973 National Agreement. Since nothing in the National Agreement requires an application of seniority to limit Management discretion in assigning and reassigning employees to deal with day-to-day fluctuations in workload, the Service holds the disputed Union proposals to be in conflict with the National Agreement.

The Service flatly denies the Mail Handlers' claim 19
that Article XLIII, Section 1 (covering the Mail Handlers craft) brings the issues under Item 21 of Article XXX, Paragraph B. The addition of the words "and the Union" to the last sentence of Article XLIII, Section 1-C in 1973 in no way indicates that local Unions may negotiate to establish new policies for administration of seniority. The Service holds that the three new words in this sentence mean only that the Union shares, with the installation head, the basic responsibility for administration of already established seniority provisions, on a day-to-day basis, through its representational role on behalf of the employees. The last sentence of Section 1-C, it notes, simply states that the application of "this general Section on Seniority" will be open to local negotiations in accordance with "the local implementation provisions of the National Agreement." Even if the local proposals here had been agreed upon, it follows, in the Postal Service view, that they arguably would be unenforceable as a matter of contract right.

The Service places great weight upon the October 1, 1973 decision of this Arbitrator in an APWU case involving a New York City "Seniority Impasse." There the local seniority proposal would have required that "within tour" temporary work assignments of Clerks, to meet varying work loads at various defined work locations (including assignments from one work floor to another), be made on the basis of moving junior employees first so that senior Clerks would remain on their usual assignments or their normal work locations. 20

In denying the APWU grievance in that case, the Arbitrator held that this local proposal did not represent "an implementation of any identifiable provision embodied in Article XII of the 1971 National Agreement (including the 1968 provisions incorporated therein)." Under the language of Article XII, Section 3-A of the 1971 Agreement, the Arbitrator therefore found the local proposal to be inconsistent with Article XII. 21

The evidence as to the 1973 craft negotiations with the Mail Handlers leaves no doubt, in the Postal Service view, that the addition of the words "and the Union" to the first sentence of Article XLIII, Section 1-C did not mean that the Union thereby became entitled to seek day-to-day application of seniority through local negotiations. Its witness who participated in the negotiations denied that there were any discussions which might have supported such an interpretation. 22

The Service also denies ever waiving its position that within-tour movement of Mail Handlers by inverse seniority was not appropriate for local negotiation under Article XXX. Its effort to settle the local impasses by further negotiation 23

at the National level in 1974 is said to have represented only a good faith effort to solve the problems short of arbitration.

2. The Union

The Mail Handlers emphasize that Item 21 in Article XXX, Paragraph B, contemplates negotiations at the local installation level of "items which are subject to local negotiation as provided in the craft provisions of this Agreement." Article XLIII, Section 1-C, is such a craft provision and its last sentence states that "The application of this general Section on Seniority will be open to local negotiations at the installation level in accordance with the local implementation provisions of the National Agreement." In the Mail Handlers' view, the first sentence of Article XLIII, Section 1-C, confers upon the Union, full responsibility for "day-to-day administration of seniority," jointly with the installation head. It thus deems this to authorize a local Union to seek to establish, through negotiations, that seniority will be observed in "day-to-day" movement of employees from one work assignment to another. 24

In support of this critical interpretation of Article XLIII, Section 1-C, the Mail Handlers urge that during negotiations on impassed local seniority issues under the 1971 National Agreement, at the National level, Postal Service officials asserted that "day-to-day seniority" was non-negotiable in part because the first sentence of Section C of the 1971 supplement on seniority broadly stated that "The installation head is responsible for the day-to-day administration 25

of seniority." Since the Postal Service later agreed to insert the three words "and the Union" following the words "Installation head" in this portion of the Mail Handler craft agreement in 1973, the Union deems this to establish that local Unions thereafter would have equal responsibility with the installation head. It emphasizes the recollection of its negotiators that they had withdrawn a proposed sentence in Article XLIII which clearly would have required applying seniority in day-to-day work assignments because they believed that the insertion of the three above quoted words in Section 1-C would authorize local negotiations on this subject. Even if there were a misunderstanding between the parties' negotiators on this point, the Union feels that the blame for any such misunderstanding must be placed upon the Postal Service negotiators. It rejects the Postal Service suggestion that the new words "and the Union" were intended simply to recognize that the Union in fact was responsible for day-to-day administration of the seniority provisions in performing its role in processing of grievances as representative of the employees. The Union thus concludes that the reasonable interpretation of Article XLIII, Section 1-C is that "it grants Management and labor equal voice in the application of day-to-day seniority and provides for local negotiation to finally determine that application."

Apart from this interpretive argument, the Mail Handlers urge that the Service is estopped from claiming that day-to-day seniority is not negotiable under Article XXX. It sees an estoppel in the fact that in the 12 cities here involved, the Postal Service actually did negotiate without questioning the negotiability of day-to-day seniority. It also

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emphasizes that there are many Postal installations in which similar local provisions in fact have been negotiated over the years, including 1973. Indeed, Postal Service representatives actually negotiated on the impassed issues here in dispute at the National level without ever asserting that the matter was not negotiable.

The Mail Handlers do not believe that the October 1, 1973 decision of this Arbitrator in the APWU case really applies in the present circumstances since the facts and contractual context of the two cases are different. It emphasizes that the earlier APWU Opinion placed considerable weight on Article XII, Section 3-A of the 1971 National Agreement, whereas the comparable provision in the 1973 Agreement is Article XXX, Paragraph B, Item 22. Here, however, the Union does not rely upon Item 22, but rather upon Item 21, covering local negotiations as to "those other items which are subject to local negotiation as provided in the craft provisions of this Agreement." In short, the Union places its weight essentially on the language of Article XLIII, Section 1-C, as outlined above, to substantiate its belief that the present case must be distinguished from the 1973 APWU decision. Even if Article VII, Sections 2-B and -C were deemed to confirm Management's right to assign employees as required in the ordinary course of operations, these provisions do not state what criteria should be applied in making such movements of personnel. Thus the Mail Handlers deem these paragraphs merely to state that employees, whoever they may be, may be reassigned to other work areas in given circumstances, and leave open the question of <u>which</u> workers are so to be assigned.

27

FINDINGS

1. The Earlier APWU Decision

This case involves a problem of major importance to all parties to the 1973 National Agreement, largely because key language in the present Article XXX differs from that in Article XXX of the 1971 National Agreement. That difference is critical in determining the jurisdictional issue here, as will appear below. There is no doubt that decision of the present case may be of long-range significance to all parties to the National Agreement, in respect to the scope of permissible local negotiations under Article XXX. The October 1, 1973 decision of this Arbitrator in the APWU case nonetheless provides significant background for present purposes. 28

In the APWU case the local proposal, under the 1971 Agreement, in essence would have required that "within-tour" temporary work assignments, to meet varying workloads of Clerks at various defined work locations (including assignments from one work floor to another), be made by moving junior employees first. Article XXX of the 1971 National Agreement provided for local negotiations to implement the National Agreement, but--unlike the present Article XXX--it included a sentence stating, "No such negotiations or memoranda of understanding shall be inconsistent with or in conflict with this Agreement, nor deprive any employee of any rights or benefits provided for under this Agreement." (Underscoring added.) In reliance on this language the New York City Postal Service representatives refused to negotiate in response to the local APWU proposal. Subsequent efforts by the APWU to induce the Postal Service to negotiate on the matter were unsuccessful and the case then was presented in arbitration under Article XV of the 1971 National Agreement, to determine whether the Postal Service was entitled to refuse to negotiate in response to such a local proposal. 29

In the APWU case the Postal Service particularly stressed Articles III and VII, Section 2-B and -C of the 1971 National Agreement. These provisions were not changed when the 1973 National Agreement was negotiated. Article XII, Section 3-A of the 1971 National Agreement also included a provision that: 30

> "A. The parties recognize that it is impractical to set forth in this Agreement all the matters relating to local implementation of the above seniority provisions of this Agreement, and that, in some cases, it may be necessary for the local parties to incorporate local implementation in memoranda of understanding. Such understandings, however, shall neither conflict with this Agreement, nor deprive an employee of any rights or benefits provided for under this Agreement. Such local memoranda of understanding shall be subject to the grievance and arbitration procedure."

In the APWU case the Union asserted that an application of seniority to control within-tour work assignments clearly represented an implementation of the seniority provisions in the National Agreement. It stressed that there had been numerous local agreements to this effect in various locations under the 1968 Agreement and even earlier, and held that nothing in Articles III or VII actually prohibited applying seniority in making within-tour work assignments. 31

The findings in the APWU case include the following 32
paragraphs which seem particularly relevant here:

> "The extent to which local parties are authorized to negotiate their own agreements in the context of a bargaining relationship governed by a single master, national, or basic agreement--covering multitudinous operations in many different locations--is a matter of first rank importance to all concerned. A master agreement hardly can treat all of the myriad local problems in adequate detail and where local implementations are not authorized expressly they nonetheless seem inevitably to arise in practice. Seasoned negotiators usually are inclined to recognize, in any event, that local agreements or practices should not be permitted to vary or subvert basic terms of the master agreement, since this would tend to defeat a principal purpose of bargaining on this basis rather than in smaller units. Thus it is not uncommon for master agreements to recognize that local agreements and practices are permissible only to the extent not inconsistent with the master agreement.
>
> "The negotiators of the 1971 Postal Service National Agreement seemingly embraced this general approach as sound when they wrote the 'Local Implementation' provisions, in what

now appears as Article XXX in the APWU printed version of the 1971 National Agreement. This being the first national agreement negotiated under the Postal Reorganization Act, moreover, the precise language which the negotiators used in treating the subject should have been a matter of considerable significance to all representatives of all parties.

"In the present case, of course, there actually are two key provisions governing 'local implementation,' under the 1971 National Agreement, both of which must be given proper application. The later and more comprehensive provision (Article XXX) provides at least the procedural context in which the present seniority issue arose and in which it must be decided. The Arbitrator finds, however, that decision of the substantive seniority issue in this case must be based primarily upon the scope of local seniority implementation, as defined in Article XII, Section 3-A, giving due regard to the context in which this provision was adopted. Thus the present Opinion does not seek to determine or define the full scope or range of permissible local agreements (on matters other than seniority) under Article XXX since, at least arguably, there might be more flexibility delegated to the local parties thereunder in dealing with matters other than those governed by Article XII, Section 3-A.

"Sound decision of the present case requires that the revised local Union proposal be viewed as an entity. Had the parties undertaken detailed discussion of each item in the seven-point proposal, some possibly might have been modified or withdrawn. This did not happen and neither party now suggests that such detailed discussion should have taken place, was contractually required, or in fact could have produced any meaningful compromise consistent both with the National Agreement and the objective of the local proposal. Notably, too, Article XXX states that local '<u>negotiations</u>' shall not be 'inconsistent or in conflict with' the 1971 National Agreement. This somewhat unusual provision seemingly authorizes a refusal to <u>negotiate</u> with respect to a local demand 'inconsistent' with the 1971 National Agreement, even though full negotiation might result in modifications which would eliminate the conflict. (It is unnecessary to elaborate on this here, since not an issue under the presentations.)

"The essential thrust of all items in the disputed local proposal, in any event, is that 'seniority' must control in making assignments of Clerks during scheduled tours of duty, with 'junior' employees assigned first to work areas or details other than those for which originally scheduled, or to which originally assigned on the tour. Since this proposal is put forward as an application of seniority under Article XII of the 1971 National Agreement, Article XII,

> Section 2, constitutes a first point of reference. Insofar as relevant, this incorporates into the 1971 National Agreement certain clearly defined pre-existing agreements, as follows:
>
> ' ... Article XII (Reassignments), Article XIII (Assignment of Ill or Injured Regular and Substitute Employees), Article XXII (Posting), and the Supplemental Agreements on Seniority, as stated in the Agreement between the United States Post Office Department and the seven (7) national exclusive unions, contained in POD Publication 53, dated March 9, 1968 ...'"

Against the background of these general observations, 33
the Opinion in the APWU case then analyzed the argument that the Local Union proposals constituted an application or implementation of seniority under Article XII of the 1971 Agreement as follows:

> "While the Union suggests that the disputed local proposal represents a local 'detail of seniority,' and thus is a conventional application of seniority principles, there is no support for this assumption. Instead, it is unusual for length of service to be the

controlling factor which Management must observe in all instances of temporary work assignments during a given tour or shift, among employees who are filling the same job or who have bid successfully for the same 'duty assignment.' The Union points to no language in any of the 1968 Agreement seniority provisions (incorporated by Article XII, Section 2) which truly may be said to be 'implemented' by the disputed local proposal. While that proposal may constitute an effort to apply seniority principles, it seeks to do so on a subject not treated in, or relevant to, these seniority provisions.

"The Arbitrator also can find nothing in Article XII of the 1971 Agreement which limits the exercise of Management discretion under Article III in making and changing temporary work assignments within scheduled tours of duty, to meet fluctuations in workload and like operating contingencies, among employees regularly assigned to fill the same job or duty assignment. The fact that supervisors often, or nearly invariably, in practice may tend to assign junior employees to other duties or areas first does not establish that this always is feasible, even if it represents a generally sound practice. Perhaps it should be noted also that Article VII, Section 2-B and -C include language which seems to contemplate that certain types of work assignments 'on any particular

> day' may be made in Management discretion, consistent with the employees' knowledge, experience, and capabilities.
>
> "To inject a rigid requirement that seniority always be observed (in reverse) in making within tour work assignments among Clerks filling the same job or duty assignment, thus hardly would seem to 'implement' any specific seniority provision incorporated by Article XII, Section 2 of the 1971 National Agreement. Article XII, Section 3-A, in so many words, authorizes only 'local implementation of the above seniority provisions of this Agreement.'"

This specific holding in the APWU case seems directly relevant to the interpretation and application of Item 22 in Paragraph B of the 1973 Article XXX. Accordingly it cannot be found that the disputed local proposals here represent an "implementation" of the seniority provisions of the National Agreement. 34

2. The Meaning of Article XLIII, Section 1-C

The Mail Handlers seek to distinguish the earlier APWU decision on the ground that the local seniority proposals here involve only an application of the seniority provisions 35

of Article XLIII, which accordingly may be carried into arbitration under Article XXX, Paragraph B, Item 21, of the 1973 National Agreement as an item "subject to local negotiations as provided in the craft provisions of this Agreement."

The validity of this key argument turns upon the meaning of Article XLIII, Section 1-C, and particularly the three words "and the Union" added to its first sentence in the 1973 negotiations. 36

While the Union first urges that Section 1-C, on its face, "explicitly" authorizes local negotiations concerning "day-to-day seniority questions," this clearly is not the case. More realistically, the Mail Handlers' brief places greater weight upon various statements attributed to Postal Service negotiators in 1973, which are said to establish that the intended consequence of adding the words "and the Union" was to authorize local negotiations concerning "day-to-day" seniority. Thus it claims that in March or April of 1973 Postal Service representatives had rebuffed its effort to negotiate locally on day-to-day seniority (under the 1971 Agreement) essentially because the first sentence of Section 1-C in its 1971 Craft Agreement made the installation head solely responsible for seniority administration. The Union then refers to the 1973 negotiations concerning Article XLIII, Section 1-C (which commenced shortly thereafter), as follows: 37

"The record discloses that the issue was of vital importance to the parties and thoroughly negotiated. The Postal Service steadfastly refused to grant a provision establishing the control of temporary transfers by day-to-day seniority. One of the employer arguments in those negotiations was that the Mail Handler seniority proposal contained inconsistent provisions. Whereas, proposed Section B would have provided for day-to-day seniority as the governing factor in the temporary transfer of personnel, proposed Section C provided for the local negotiation of the same issue. While the Mail Handlers may have desired a national level commitment to the use of day-to-day seniority, it was unable to achieve this demand, withdrew its proposed language in subsection B, and does not now claim that the National Agreement binds the Postal Service to the use of day-to-day seniority in all local post offices. However, the trade-off for the withdrawal by the Mail Handlers of the proposed language in Section B, was the continuation of the language in Section C which allowed for local negotiation of the same issue. In order to avoid the inconsistency of arguing for 'two bites of the apple' by demanding both B and C, the Mail Handlers withdrew the desired claim for broader rights in Section B for the more limited ones contained in C."

(Underscoring added.)

Not surprisingly the Postal Service negotiator does not have the same impression concerning what was said and accomplished in the 1973 negotiations and was totally unaware of the claimed "trade-off." The Service spokesman in these meetings denied that there ever had been any suggestion, by anybody, that addition of the words "and the Union" to Section 1-C would mean anything more than that the Union locally would "have an equal authority to see that the seniority provisions are properly administered." At this precise time, indeed, the APWU Local Seniority Impasse was moving into arbitration under the 1971 National Agreement and the Postal Service scarcely would have granted such a major concession on this very point in the Mail Handler negotiations. 38

This witness also emphasized that the Union simultaneously had sought to eliminate the word "normally" from [illegible] now appears as the first sentence in Article XLIII, Section 2-E-3. While flatly rejecting this proposal, the Postal Service did agree to add a second sentence to this provision, so that it now reads: 39

> "Normally, an employee shall work the duty assignment for which he has been designated the successful bidder. However, when an employee is moved off his duty assignment, he shall not be replaced by another employee."

In the Postal Service view, this paragraph, as revised in the 1973 negotiations, plainly recognizes that Management may move

employees off their duty assignments temporarily with the sole restriction that such employee not be replaced by another employee.

In all truth, however, it is not fruitful now to try 40
to reconstruct the 1973 craft negotiations to determine specifically what the various participants may have said or argued, and the inferences which might have been drawn from such claimed statements or arguments. As most seasoned negotiators in major collective bargaining relationships fully understand, such an undertaking usually is impossible to accomplish and also can be a source of irritation and frustration likely to impede future negotiations. No one individual participant in a complicated negotiation really can claim to have either a complete, or fully accurate, recollection of what was said by all participants. The frailties of human perception, comprehension, and memory are too obvious to require elaboration here. There is no way to avoid a certain amount of unconscious editing, bias, and wishful thinking which color subsequent recollections of earlier arms' length negotiations.

Given the seriously conflicting testimony as to what 41
was said and implied in the 1973 negotiations, therefore, the Impartial Chairman is forced to rely primarily upon the actual language adopted by the parties. That language, moreover, must be evaluated in the bargaining context known to both parties when it was negotiated.

Reading the first sentence of Article XLIII, Section 42
1-C in this light leaves no doubt that it refers to the administration of seniority on a day-to-day basis. It does

not say that the installation head and the Union are jointly responsible for "day-to-day seniority." The key word is "administration." This necessarily pre-supposes the existence of established policies and procedures to be administered. Standing alone, this sentence does not authorize a Local Union and installation head to negotiate entirely new seniority policies and procedures, beyond those already established or authorized in the 1973 National Agreement, or elsewhere in Article XLIII itself.

The validity of this interpretation is supported by the following key factors: 43

(1) When the 1973 Mail Handler negotiations took place, the APWU impasse on the same subject was being carried into arbitration; 44

(2) Article III of the National Agreement confirms the Postal Service's "exclusive right" to assign employees as required to conduct its operations, subject to the provisions of the National Agreement;

(3) Nothing in Article XII of the 1971 National Agreement contemplated any limitation upon the right to assign employees to deal with work fluctuations within scheduled tours; 46

(4) Articles VII, Section 2-B and -C in both the 1971 and 1973 National Agreements limit the right to assign employees to available work, in response to fluctuations in workload, by requiring that such assignments be "in the same wage level" but suggest no seniority limitation; 47

(5) The Postal Service refused to accept, and the Mail Handlers dropped proposed language which specifically would have established day-to-day seniority as the criterion in making work assignments; 48

(6) The parties in 1973 did not modify an existing provision as to the Mail Handler craft that: "Normally, an employee shall work the duty assignment for which he has been designated the successful bidder." Instead, they added to this provision a sentence reading: "However, when an employee is moved off his duty assignment, he shall not be replaced by another employee." (Article XLIII, Section 2-E-3). 49

Under all of the evidence, therefore, there is no sound basis to find that the 1973 negotiators for either party understood--or should have understood--that the ambiguous inclusion of the words "and the Union" in the first sentence of Article XLIII, Section 1-C was intended to authorize local Unions to negotiate seniority restrictions upon temporary assignments of employees in response to fluctuations in workload. 50

3. Proper Application of Article XXX

An alternative Union argument holds that the Postal Service now is estopped, because its representatives negotiated on day-to-day seniority at both local and National levels, from arguing that such an issue is not negotiable under Article XXX. No useful purpose can be served by considering this argument, however, since the reasonable meaning of Article XXX, in light of the realities of the collective bargaining process, precludes a flat refusal to negotiate on such a matter. 51

Here it is important to emphasize that the present Article XXX differs materially from its predecessor in the 1971 National Agreement. The earlier Article XXX declared that no local "negotiations" were permissible if they were in conflict with the National Agreement. It was specifically on this basis that the Postal Service had refused to negotiate in the APWU local seniority impasse case, and that case then came before the Arbitrator, as a rights dispute under Article XV of the 1971 National Agreement, solely to determine whether the Postal Service was obliged to negotiate. 52

It is common knowledge that many initial proposals in collective bargaining are unsound, impractical, and sometimes even frivolous or unlawful, yet such proposals may sometimes be so modified through negotiations as to eliminate objectionable features. A local proposal which may seem to seek a result in conflict with the National Agreement--but which nonetheless seeks to deal with a genuine problem within the scope of Article XXX--accordingly still may provide a basis for good faith negotiation. In any such negotiation, of course, either party may and should resist agreement upon any compromise or alternate solution which would conflict with the National Agreement. 53

Nothing in the present Article XXX authorizes a refusal to negotiate concerning a local proposal, on one of the subjects delineated in Paragraph B thereof. When the local and National Postal Service representatives in fact did enter into negotiations concerning the present impassed local issues, therefore, there could have been no estoppel. The Postal Service representatives simply were complying with the reasonable intent of Article XXX. 54

It follows that the present impasses are both negotiable and arbitrable under Article XXX, within the clear limitation that any ultimate settlement or award must not be "inconsistent with or vary the terms of the 1973 National Agreement." 55

4. Disposition of the Case

The Union's estoppel argument seems to run not only to jurisdiction (i.e., negotiability and arbitrability) but also to the substantive merit of its ultimate proposal for settlement at the National level. Because the Postal Service d suggested a basis for settling the impassed issues in ional level negotiations, the Mail Handler brief contends: 56

> "Given that the Postal Service concedes that the Union may bargain to restrict the temporary transfer of personnel by use of craft and duty status designations, it is not tenable to draw the line ... when the concept of seniority is introduced. Once the employer has agreed to restrict its prerogative by any means whatsoever, the negotiation of other standards, including day-to-day seniority is merely an element within the negotiations ..."
>
> (Underscoring added.)

The Impartial Chairman cannot embrace this reasoning, in view of the plain limitation in Article XXX that "no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement." This important proviso cannot be rendered inoperative under an estoppel or waiver theory at the local level. There is, moreover, no evidence here which would support a finding of estoppel or waiver at the National level. At no time did any Service representative in the National level negotiations on these impasses indicate any willingness to agree that reverse seniority would be applied in making day-to-day work assignments. The whole thrust of the Postal Service participation in these negotiations was to find some compromise solution, in response to the local proposals, which would not inconsistent with the National Agreement. 57

Under all of the evidence, therefore, it is held that the final Union proposal to settle the disputed local issues does not constitute a proper disposition of the impasses. Under Article III of the National Agreement, the Postal Service enjoys the freedom to assign employees to various duties and work stations, subject only to the restrictions which are specified in the National Agreement. Nothing in the National Agreement contemplates any seniority restriction upon the making of within-tour assignments in response to workload fluctuations. To the extent that the Union proposal would require that reverse seniority be applied whenever it becomes necessary to move an employee from his bid assignment or assigned section, it thus is inconsistent with the National Agreement.

This is not to say, however, that some meaningful settlement of the disputed local issues is not possible. The Postal Service already has suggested a settlement designed to deal with some of the basic problems envisioned by the Union, and has not claimed that this possible solution would be improper under Article XXX. The present record is inadequate to warrant expressing an opinion as to whether such possible settlement would represent proper final disposition of the impassed local issues. 59

This case came to arbitration primarily because the parties needed clarification of several difficult interpretive issues, particularly under Articles XXX and XLIII. Now that these matters have been clarified, within the limitations of the present record, the parties should have a further opportunity to bargain realistically concerning the impassed issues. It seems probable that final settlement thus can be achieved and further resort to arbitration avoided. The Award here is shaped to enhance this possibility. 60

AWARD

1. The impassed local seniority issues in this case are both negotiable and arbitrable under Article XXX of the 1973 National Agreement. 61

2. As stated in this Opinion, no negotiated settlement or arbitration Award under Article XXX may be inconsistent with or vary the terms of the 1973 National Agreement. 62

3. The parties shall have a period of 60 days following this Award--or longer if they so agree--in which to negotiate full settlement in light of this Opinion. 63

4. Failing full settlement, any remaining impassed local issue may be returned to arbitration for final disposition under Article XXX. 64

Sylvester Garrett
Impartial Chairman

ARBITRATION AWARD

September 21, 1981

UNITED STATES POSTAL SERVICE
Helena, Montana

-and-

Case No. N8-W-0406

NATIONAL ASSOCIATION OF
LETTER CARRIERS
Branch 220

Subject: Assignment of Work - Enforceability of Local Memorandum of Understanding

Statement of the Issues: Whether the Helena Memorandum of Understanding with respect to the assignment of re-labeling work is enforceable or unenforceable? - Whether Helena Management waived its unenforceability claim by failing to invoke the procedures set forth in the 1978 National Memorandum of Understanding for resolution of an alleged conflict between the Helena Memorandum and the 1978 National Agreement?

Contract Provisions Involved: Articles III, XIII, XV and XXX and the Memorandum of Understanding on XXX of the July 21, 1978 National Agreement. Article XLI, Section 3U of the November 14, 1978 Helena Memorandum of Understanding.

Grievance Data:	Date
Grievance Filed:	April 28, 1980
Step 2 Answer:	May 22, 1980
Step 3 Answer:	June 30, 1980
Step 4 Answer:	December 19, 1980

Appeal to Arbitration:	January 22, 1981
Case Heard:	April 28, 1981
Transcript Received:	May 11, 1981
Briefs Submitted:	June 28, 1981

Statement of the Award: The grievance is granted. The Helena postal facility should reimburse the Regular Carrier or T-6 for re-labeling work improperly assigned to others in April 1980.

BACKGROUND

This grievance from Helena, Montana involves the Postal Service's refusal to honor a clause in a Local Memorandum of Understanding which requires cases for a particular route to be "...re-labeled by the Regular Carrier or T-6 only." NALC insists that this refusal is a violation of Article XXX of the 1978 National Agreement. The Postal Service argues, however, that this clause is unenforceable (1) because its subject matter does not fall within the 22 items enumerated for local negotiations in Article XXX, Section B and (2) because its terms are inconsistent or in conflict with Articles III and XIII. NALC disagrees with both of these propositions.

Since the mid-1960s, the parties have encouraged the execution of local agreements. Those local agreements included a variety of clauses. Some served to implement the general provisions of the National Agreement; others dealt with subject matter not covered by the National Agreement. The parties specifically contemplated local ageements which went beyond the terms of the National Agreement. For example, Article VII, Section 13(c) of the 1968 National Agreement prohibited local clauses which "repeat, reword, paraphrase or conflict with the National Agreement..." but added that "this is not to be interpreted to mean that local negotiations shall be restricted to only those options provided in articles in the National Agreement..."

This history was not ignored in the 1971 National Agreement, the first contract following the Postal Reorganization Act and the creation of the collective bargaining process now in effect. Article XXX stated that it was "impractical to set forth in the Agreement all detailed matters relating to local conditions..." and that therefore "further negotiations regarding local conditions will be required with respect to local installations, post offices, and facilities." It went on to say that "any agreement reached shall be incorporated in memoranda of understanding." It provided that no such memoranda "shall be inconsistent or in conflict with this Agreement..."; it provided for arbitration of impasses reached in local negotiations.

The 1971 local negotiations resulted in a huge number of impasses. More than 100,000 of them were appealed to arbitration. Obviously, the parties were unable to dispose of this volume of disputes. This difficulty prompted changes in the 1973 National Agreement. The parties decided

to limit the number of impasses by restricting "local implementation" to "22 specific items enumerated below..." Thus, the local negotiators could deal with any or all of these 22 items but were not required to discuss anything else. The parties provided for arbitration of impasses where the appeal to arbitration was timely and was authorized by the National Union President.

The language of the 1973 National Agreement, specifically, Article XXX, has been carried forward into the 1975 and 1978 National Agreements. It is crucial to the resolution of this grievance and must be quoted at length:

> "A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1978 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.
>
> "B. There shall be a 30-day period of local implemention to commence October 1, 1978 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1978 National Agreement:
>
> ...[Items 1 through 22]
>
> "C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President. 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 1978 National Agreement.
>
> "D. An alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure."*

* This quotation is taken from the 1978 National Agreement. The language of the 1973 and 1975 National Agreements is identical except for the year 1973 or 1975, respectively, instead of 1978.

Given this background, the facts which prompted the instant dispute should be considered. Route cases are labeled so as to allow a Letter Carrier to case mail in a proper delivery sequence. Re-labeling is periodically required, perhaps two hours' work on each carrier route once a year, because of route changes (e.g., new addresses). In the 1975 local negotiations in Helena, Montana, the parties agreed to a Memorandum of Understanding which included the following clause in Article XLI, Section 3:

> "U. Routes will be re-labeled by the Regular Carrier or T-6 only."

This clause does not fall within any of the 22 items enumerated in Article XXX-B. It was nevertheless applied by Management throughout the life of the 1975 National Agreement. It was not mentioned during the 1978 local negotiations and it appeared again, unchanged, in the 1978 Memorandum of Understanding. No claim was made by Management in those negotiations that the clause was inconsistent or in conflict with the National Agreement.

Helena Management used a part-time Flexible Carrier and a limited duty Regular Carrier to remove and replace [illegible]ls on route cases on April 14, 1980. This was contrary [illegible] the terms of the 1978 Memorandum of Understanding. NALC Branch 220 grieved on April 28, 1980, alleging a violation of the Memorandum and seeking back pay for the Regular Carriers who would have performed this re-labeling had Management complied with Article XLI, Section 3U of the Memorandum.

DISCUSSION AND FINDINGS

This case concerns the enforceability of that portion of the 1978 Helena Memorandum of Understanding which deals with the assignment of re-labeling work. Two principal questions are before the arbitrator. The first is whether this Helena clause is rendered unenforceable by reason of the fact that its subject matter is outside the scope of the 22 items enumerated for local negotiations in Article XXX-B. The second is whether this Helena clause is inconsistent or in conflict with the 1978 National Agreement and hence unenforceable under Article XXX-A and -B. The Postal Service believes both questions call for an affirmative answer. NALC disagrees.

I - Enforceability - Subject Matter

The Postal Service argues that Article XXX-B limits the permissible scope of local negotiations. It insists that local parties have the authority to negotiate only on those 22 items enumerated in XXX-B. It urges that they have no authority to negotiate on other subject matter and that should they nevertheless do so, any agreement they reach would be unenforceable. It asserts that these principles require that the Helena clause on re-labeling be declared unenforceable inasmuch as it does not fall within the 22 enumerated items.

This argument rests on a single sentence in Article XXX-B, "There shall be a 30-day period of local implementation...on the 22 specific items enumerated below..." These words simply state that the local parties are to negotiate on these 22 items. A familiar rule of contract construction provides, "To express one thing is to exclude another." The Postal Service apparently relies on this rule in asserting that the local parties are not to negotiate anything other than these 22 items. Its position is that the local parties in Helena had no authority to negotiate the clause on re-labeling and that this clause must therefore be deemed null and void.

This point of view is not persuasive. To begin with, it must be remembered that the local parties had in the past routinely negotiated local memoranda on subject matter nowhere mentioned in the National Agreement. No one claims these memoranda were, for that reason, invalid. However, so many local issues were deadlocked in the 1971 negotiations that the procedure for resolving such impasses was overwhelmed and hence unworkable. This problem prompted the introduction of XXX-B in the 1973 National Agreement. Clearly, the concern of the national parties was not the subject matter of the local memoranda* but rather the number of impasses. It is true that XXX-B served to limit the subjects on which the local parties were required to negotiate. But that obviously was done in order to limit the number of potential impasses in the future.

Given this tradition of broad local memoranda and the limited objectives of XXX-B, it would take clear contract

* The national parties were, of course, always concerned about local memoranda being consistent with the National Agreement. That matter is discussed later in this opinion.

language to prohibit the local parties from negotiating a clause on a subject outside the 22 listed items. No such language, no such prohibition, can be found in XXX-B. The Postal Service believes this provision describes what the local parties are authorized to negotiate. But it is equally plausible to argue, as NALC does, that this provision describes what the local parties are required to negotiate.* This interpretation is, I think, more consistent with the parties' history as well as collective bargaining reality.** The rule of construction noted earlier, when applied to this view of XXX-B, would indicate only that the local parties are not required to negotiate on any subject outside the 22 listed items. Thus, the local parties are free if they wish to expand their negotiating agenda to include subjects nowhere mentioned in XXX-B. That is exactly what happened in Helena when the local parties agreed to a re-labeling clause in the 1975 negotiations. They had the authority to negotiate such a clause.

Two other points deserve brief mention. First, the Postal Service concedes that any pre-1973 local memoranda on subjects outside the 22 listed items would be valid and binding notwithstanding XXX-B. It says only post-1973 memoranda are affected by the XXX-B constraints. If this distinction were correct, then the validity of many local clauses would depend not on their subject matter but rather on the date they happen to have been negotiated. The same clause might be valid if executed in the 1971 negotiations but invalid if executed in the 1973 negotiations. That would be a strange result. Second, the Postal Service cites several awards which have interpreted XXX-B in a manner consistent with its position. All but one*** of those awards were impasse arbitrations. They were not grievance arbitrations; they were not heard

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* And Article XXX-B and -C together indicate that the parties are free to arbitrate what they are required to, but cannot successfully negotiate.

** Multi-facility (or multi-employer) collective bargaining contracts always permit local agreements so long as they are not in conflict with the master contract. That phenomenon is a result of the need for mutually acceptable arrangements for matters not covered by the master contract.

*** The one exception, Case No. AC-N-14034, was a grievance arbitration at the national level. But the arbitrator's opinion did not really deal with the issue before me in the present case.

at the national level; they do not appear to have involved a full airing of this XXX-B issue. In another award at the national level (Case No. A8-N-0036), Arbitrator Aaron stated, "...it can scarcely be contended that management is precluded by Article XXX, Section B, from agreeing to negotiate locally about any particular matter." Under these circumstances, I do not consider myself bound by the Postal Service citations.

For these reasons, my conclusion is that the Helena Local Memorandum clause on re-labeling was enforceable even though it covered a subject outside the 22 enumerated items in XXX-B.

II - Enforceability - Continuity of Memoranda

The Helena clause in question was initially agreed to in the 1975 local negotiations. It was incorporated in the 1975 Local Memorandum. No mention was made of this clause in the 1978 negotiations and the parties carried it forward into the 1978 Memorandum.

That clause is enforceable under Article XXX-A, "Presently effective local memoranda of understanding...shall remain in effect during the term of this [1978 National] Agreement." It was in effect in April 1980 when Management ignored its terms and assigned re-labeling work to someone other than "the Regular Carrier or T-6...." According to XXX-D, such "an alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure."

III - Enforceability - Conflict with National Agreement

Article XXX-A provides that only those "presently effective local memoranda" which are "not inconsistent or in conflict with the 1978 National Agreement shall remain in effect during the term of this Agreement..." The Postal Service asserts that the Helena clause on re-labeling is "inconsistent or in conflict with" Articles III and XIII of the 1978 National Agreement and is hence unenforceable. NALC disagrees.

Article III (Management Rights) states in part:

> "The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees...in the performance of official duties;

B. To...assign...employees in positions within the Postal Service;

C. To maintain the efficiency of the operations...;

D. To determine the methods, means and personnel by which such operations are to be conducted..."

This contract language grants the Postal Service an "exclusive right" to "direct" the work force and "assign" work. Its broad discretion in these areas is "subject" to the provisions of the 1978 National Agreement. Neither party has cited any portion of the National Agreement which would limit that discretion in relation to the facts of this case. The M-39 Manual, Part 121.21, says that one of the Carrier's office duties is to "relabel cases if local management so desires..." These words merely indicate that Carriers are to perform re-labeling work only when Management asks them to do so.

The Helena clause on re-labeling work is part of a Local Memorandum of Understanding. It is not a provision of the 1978 National Agreement:* It states, "Route...[cases] will be re-labeled by the Regular Carrier or T-6 only." The issue raised by the parties is whether this clause, this restriction on Helena Management's right of assignment, is "inconsistent or in conflict with" Article III of the National Agreement.

The Postal Service's argument is not without appeal. It correctly observes that this local clause prohibits Helena Management from assigning re-labeling work to anyone other than the Regular Carrier or T-6. It insists that Management's "exclusive right" to "assign" is thereby limited, that the broad discretion granted by Article III is reduced by the Helena clause. In its opinion, therefore, the prohibition in this local clause is "inconsistent or in conflict with" its Article III rights. It says this inconsistency should prevent this clause from being treated, under XXX-A, as a

* Local memoranda are enforceable through the terms of the National Agreement. But that surely does not make any such memorandum a provision of the National Agreement.

"presently effective local memoranda:..."

The difficulty with this argument is that it assumes Helena Management had no "right" to agree to such a clause. That is not true. One who holds an "exclusive right" has a wide variety of options. Thus, Helena Management had many alternatives with respect to the assignment of the disputed work. It was free to assign the re-labeling to any of its Carriers. It was free to assign the re-labeling to a special group of employees, the Regular Carrier or T-6 only. It was free indeed to reduce this latter arrangement (i.e., use of the Regular Carrier or T-6 only) to writing through a Local Memorandum. Each of these approaches represents a legitimate exercise of Management's "exclusive right" of assignment. It had a right to do whatever it wished to do.

In short, the "exclusive right" in Article III did not prevent Helena Management from contracting with the Local NALC Branch to limit the assignment of particular work to particular employees. That was simply one of the options available to it. Because this Helena clause was hence within Management's powers, it can hardly be considered "inconsistent or in conflict with" Article III rights. That being so, this local clause is not rendered unenforceable by XXX-A or -B. Helena Management was bound by this clause. When it assign[illegible]-labeling to employees other than the Regular Carrier or T-6 on April 14, 1980, it violated that clause. Such a violation is subject to correction through the terms of XXX-D.

In reaching this conclusion, I have examined awards by Arbitrators Krimsly and Balicer cited by the Postal Service. Both appear to have been the result of impasse arbitrations. The Balicer award involves other provisions of the National Agreement besides Article III and seems to be distinguishable from the present case. The Krimsly award is based, at least in part, on the faulty premise that local parties cannot negotiate assignment restrictions because that is not one of the 22 local implementation items in XXX-B. I have already ruled otherwise in Part I of this opinion.

There remains the Postal Service's claim that the local clause in question is "inconsistent or in conflict with" Article XIII which concerns "assignment of ill or injured regular work force employees." The difficulty here is the lateness of this argument. Article XV describes in great detail what is expected of the parties in the grievance procedure. The Postal Service's Step 2 decision must make a "full statement" of its "understanding of...the contractual provisions involved." Its Step 3 decision must include "a statement of

any additional...contentions not previously set forth..." Its Step 4 decision must contain "an adequate explanation of the reasons therefor." In this case, the Postal Service made no mention of Article XIII in Steps 2, 3 and 4. Its reliance on this contract provision did not surface until the arbitration hearing itself. Under such circumstances, it would be inappropriate to consider this belated Article XIII claim.*

For these reasons, I find that the Helena clause on re-labeling is valid and enforceable and that Helena Management violated this clause in April 1980 by using employees other than the Regular Carrier or T-6 to perform the re-labeling work.

AWARD

The grievance is granted. The Helena postal facility should reimburse the Regular Carrier or T-6 for re-labeling work improperly assigned to others in April 1980.

Richard Mittenthal

Richard Mittenthal, Arbitrator

* This procedural objection to any consideration of XIII in this case was made by NALC at the arbitration hearing and in its post-hearing brief.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

AUG 29 1985

Mr. Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Re: Class Action
Madison, WI 53707
H4N-4J-C 2536

Dear Mr. Johnson:

On July 19, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether employees are permitted to fill out Standard Form 1187 (Authorization for Deduction of Union Dues) during employee orientation.

During our discussion, we mutually agreed that the following would represent a full settlement of this case:

> Completion of SF-1187 as identified in ELM 913.414 will be permitted during employee orientation in the areas designated by management.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Thomas J. Lang
Labor Relations Department

Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO

MAR 22 1984

Mr. Lonnie L. Johnson
National Director
National Post Office Mail Handlers,
Watchmen, Messengers and Group
Leaders, AFL-CIO
Suite 450
1225 19th Street, N.W.
Washington, D.C. 20036-2411

Re: J. Micci
New Haven, CT 06511
H1N-1J-C 10717

Dear Mr. Johnson:

On February 20, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance union's request to review a supervisor's Step 1 Grievance Summary form, PS-2608.

It was mutually agreed to full settlement to the case as follows:

1. The PS Form 2608 is not completed by the Postal Service at the time of the Step 1 discussion. Therefore, it is not available for the Union to review until Step 2.

2. If at Step 2 or any subsequent step of the grievance procedure, the Union requests to review the complete PS Form 2608 it will be made available.

The time limits were extended by mutual consent.

Sincerely,

Daniel A. Kahn
Labor Relations Department

Lonnie L. Johnson
National Director
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 23, 1981

Mr. Wallace Baldwin, Sr.
Administrative Vice President,
Clerk Craft
American Postal Workers Union,
AFL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: APWU Local
San Diego, CA 92199
H8C-5K-C 14259

Dear Mr. Baldwin:

On April 8, 1981, we met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented as well as the applicable contractual provisions have been reviewed and given careful consideration.

The parties mutually agree that the disclosure provisions set forth in Articles XV, XVII and XXXI, National Agreement intend that any and all information upon which the parties rely to support their position in a grievance is to be exchanged between the representatives to assure that every effort is made to resolve the grievance at the lowest possible level. Accordingly, provided managements' file contains the supervisors request for disciplinary action of M. G. Edwards (Local APWU 851080) same should be made available to the Union.

Time limits were extended by mutual agreement.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Howard R. Carter
Labor Relations Department

Wallace Baldwin, Sr.
Administrative Vice President,
Clerk Craft
American Postal Workers Union,
AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE -and- AMERICAN POSTAL WORKERS UNION -and- NATIONAL ASSOCIATION OF LETTER CARRIERS Intervenor -and- MAIL HANDLERS DIVISION, LABORERS INTERNATIONAL UNION OF NORTH AMERICA Intervenor	GRIEVANT: Class Action Philadelphia, Penn. CASE NO. H4T-2A-C 36687

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service:	Mary Anne Gibbbns Attorney Office of Labor Law
For the APWU:	Anton G. Hajjar Attorney (O'Donnell Schwartz & Anderson)
For the NALC:	Keith E. Secular Attorney (Cohen Weiss & Simon)
For the Mail Handlers:	Laurence E. Gold Attorney (Connerton Ray & Simon)

Place of Hearing: Washington, D.C.

Date of Hearing: May 23, 1990

Date of Post-Hearing Briefs: October 25 and November 6, 1990

AWARD: The Postal Service violated APWU's rights under Article 17, Section 3 and Article 31, Section 2. The remedy for this violation is provided in the foregoing opinion.

Date of Award: November 16, 1990.

Richard Mittenthal
Arbitrator

BACKGROUND

This grievance protests the Postal Service's refusal to provide APWU with the minutes of certain Employee Involvement/ Quality of Work Life (EI/QWL) meetings held jointly by the Postal Service and the Mail Handlers. APWU insists that this denial of information was a violation of Article 17, Section 3 and Article 31, Section 2 of the National Agreement. The Postal Service disagrees. NALC has intervened in support of one phase of APWU's position. The Mail Handlers have intervened in support of the Postal Service's position.

The EI/QWL concept was introduced in postal facilities in September-October 1982. Three of the four major unions - NALC, Mail Handlers, and Rural Letter Carriers - agreed to participate in the process. APWU is not a participant. The purpose of the program, broadly stated, is to "improve...the working life..." of employees and "enhance the effectiveness of the Postal Service." Management and each of the three unions above have established joint committees at local, regional and national levels to implement the EI/QWL concept. The committees attempt to identify and solve problems which affect the employees' work and the quality of their work life with the object of achieving greater job satisfaction and smoother operations. The committees, however, are "not intended to be a substitute for collective bargaining or the grievance procedure." And "no agreement or understanding reached as a result of the QWL process may negate or interfere with the National Agreement..."[1]

The Philadelphia Bulk Mail Center (BMC), Business Annex, has a 045 operation (non-preference letter distribution) and a 075 operation (non-preference flat secondary distribution). APWU clerks had been responsible for sorting this mail into cases by zip code and scheme knowledge, removing the sorted mail, bundling or banding it, and placing it in the appropriate receptacle, either a sack or an all-purpose container (APC). The latter task was part of the so-called dispatch function. These arrangements had evidently been in effect for some years.

M. Gallagher, the then President of APWU Local 7048, was told by a Mail Handler in September 1986 that this particular dispatch function had been discussed in EI/QWL meetings

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[1] The quotations in this paragraph are taken from the October 15, 1982 Understanding (Statement of Principles & Committee Responsibilities) signed by the Postal Service and the Mail Handlers.

involving Management and the Mail Handlers and changes in this function were being considered by Management. Gallagher heard that the dispatch area was to be redesigned and that this would likely mean a "change in jurisdiction", namely, a re-assignment of dispatch work from APWU employees to Mail Handler employees. He therefore submitted the following request to Management on September 18:

> ...We request that the following documents...be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:
>
> 1. Request copies of all the minutes of all Employee Involvement/Quality of Work Life meetings ...

He apparently made clear that he was referring to Management-Mail Handler minutes.

Gallagher's request was passed along to the appropriate department. He spoke with W. Traugott, the then Acting Employee & Labor Relations officer in the EMC. He claims that Traugott advised him "he would provide that information as soon as he could get it" and that Traugott expressed no reservations about satisfying APWU's request. However, he was later informed that Traugott was having difficulty getting the minutes because P. Brown, the Coordinator for the local EI/QWL group, was not sure these minutes could be given to APWU. And he was still later informed that his request had to be referred to the national EI/QWL group for an answer. APWU became impatient with the delay and filed a grievance (CG-426) on November 1. It cited Articles 17 and 31 and complained of Management's failure to "provide the Union an opportunity to review the minutes of all...[EI/QWL] meetings."

In the meantime, evidently in late October, Management redesigned this dispatch function. APWU employees continued to distribute the mail, casing and bundling, at the 045 and 075 operations. But they now put the bundles in a utility cart. The cart was moved to a dispatch area by Mail Handler employees who then placed the bundles in APCs. These employees matched the "labels", perhaps this refers to zip codes, on the bundles with the "labels" on the APCs. They did not require scheme knowledge for this task. APWU believed that dispatch work had been improperly transferred from APWU jurisdiction to Mail Handler jurisdiction. It filed a grievance (CG-424) on October 24 and complained that the duties in question were "clearly clerical distribution activities" which were part of APWU's jurisdiction.

As for the grievance now before the arbitrator, the grievance protesting the failure to provide the EI-QWL minutes, Management's Step 1 representative was a Supervisor of Mails. She referred the grievance to Step 2 because "information is not available to me on QWL meetings." At Step 2, only Gallagher and Traugott were present. There is a difference of opinion as to what was said. Gallagher alleges he told Traugott that the dispatch change had an impact upon the APWU bargaining unit and was a by-product of EI/QWL discussions and that the minutes of those discussions were hence "relevant." He insists that Traugott did not raise the question of "relevancy" and that Traugott simply said he would give the minutes to the APWU if he had them but he had been unable to obtain them. Traugott, however, alleges that Gallagher offered no explanation as to why he wanted the minutes. Nor, according to Traugott, did he ask Gallagher for an explanation.

The Step 2 answer, prepared on November 20 by someone on Traugott's staff, read in part:

> A review of the facts indicates that the APWU Local 7048 has no contractual right to access to the minutes of the quality of work life meeting. The record indicates that the APWU declined during contract negotiations to participate in the QWL process. Therefore, their elimination from the program was by choice. Management has no obligation (and since another craft union is a primary participant), and no right to make this information available to the APWU.

Gallagher sought to correct Management's Step 2 answer on November 29. He advised Traugott in writing that he had "clearly indicated" at the Step 2 hearing that APWU had "sufficient reason to question discussions...in QWL meetings as we...suspect that on occasion our bargaining unit positions are the topic."

Traugott formally replied on December 2, 1986, to Gallagher's September request for information. He noted on the request form that the request was "denied" because he had been "unable to secure copies of minutes from QWL Committee." The Postal Service-Mail Handlers committee decided at the national level on February 3, 1987, that the minutes of any committee meeting could not be released without the consent of both such parties.

The grievance was heard in Step 3 on March 2, 1987. Management denied the grievance on the ground that APWU "has

not established the relevancy of their request to review the records in question." An appeal to regional arbitration followed but the Postal Service took the position that a "national interpretive issue" was involved. Hence, a Step 4 meeting was held on March 22, 1988. Management again denied the grievance, emphasizing the following points:

> Whether an APWU bargaining-unit position is discussed during an EI-QWL meeting is immaterial. No action has been taken as a result of such meetings which would affect any positions within the APWU crafts. The APWU has chosen not to participate in the EI/QWL process, therefore, the information from EI/QWL meetings would not be necessary for the enforcement, administration, or interpretation of the National Agreement.
>
> In addition, because the Union has not claimed that any action has been taken which affected an APWU craft position, the minutes would not even be necessary to determine whether a grievance exists.

APWU found this answer unsatisfactory and appealed the case to national level arbitration on May 12, 1988.

Meanwhile, the other grievance (CG-424) concerning the merits of the work jurisdiction issue was moving through the grievance procedure. It reached regional arbitration in April 1989. Arbitrator Condon held that the Postal Service did not violate Regional Instruction 399 "when it assigned Mail Handlers to perform functions in the PA 045 & 075 areas." His ruling, in short, was that the dispatch function once performed by APWU employees could properly be reassigned to Mail Handler employees under the peculiar circumstances of that case.

The relevant provisions of the 1984 National Agreement read in part:

Article 17, Section 3

> 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. (Emphasis added)

Article 31, Section 2

The Employer will make available for inspection by the Unions 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. (Emphasis added)

DISCUSSION AND FINDINGS

The APWU contends it had a right to the minutes of EI/QWL meetings held jointly by Management and the Mail Handlers at the Philadelphia BMC. It asserts that its representatives are responsible for filing and processing grievances, that they meet this responsibility in part by obtaining from Management "relevant information..." and "necessary" records or other documents, and that the minutes in question contained such "relevant" and "necessary" materials. It urges, accordingly, that Management's refusal to provide such minutes was a violation of Article 17, Section 3 and Article 31, Section 2. It alleges that it had reason to believe the minutes referred to a possible rearrangement of certain dispatch work, a rearrangement which could and later did result in the reassignment of work from APWU employees to Mail Handler employees. It claims that the minutes promised to reveal what was, from its standpoint, an improper intrusion on APWU's work jurisdiction. NALC supports one phase of APWU's position.

The Postal Service completely disagrees with APWU's analysis of the case. It argues, for the following reasons, that Management committed no violation of the National Agreement. First, it says APWU has failed to show that the requested minutes were "necessary" records or contained "relevant information." It stresses that EI/QWL committees do not engage in collective bargaining and cannot "negate or interfere" with the terms of the National Agreement. It maintains that because these committees therefore cannot discuss any subject which could impact APWU contract rights, the minutes could not possibly be "relevant."

Second, the Postal Service urges that only Management actions, not Management thoughts or discussions, can produce a legitimate grievance. It emphasizes that EI/QWL committees can merely recommend, that the APWU could have no grievance until Management acted on such recommendation, that APWU's request for information in September 1986 occurred before any rearrangement of the dispatch function (i.e., before any alleged intrusion on APWU's work jurisdiction), and that the request was hence inappropriate. Third, it maintains that the minutes in question were the joint property of Management and the Mail Handlers, that such minutes could be turned over to APWU only with the consent of both parties on the committee, and that no such joint consent was given. The Mail Handlers support the Postal Service position.

I - The Right to Information

The National Agreement plainly provides APWU with a means of acquiring from Management information it may need in filing or processing grievances. Article 17, Section 3 gives Union representatives the right to "obtain access...to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists..." The Union representative must first "request" such information. Not all "requests" need be granted but Section 3 states that a request "shall not be unreasonably denied." Thus, when a request is made and denied and a grievance is filed protesting the denial, the issue is whether the denial was "unreasonable." The answer to that question is likely to turn on whether the information sought was "necessary..."

Similarly, Article 31, Section 2 gives Union representatives the right to "inspect...all relevant information necessary for...enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance..." The Union representative must first "request" such information and Management then "will furnish" it. Management may of course refuse to furnish information if it is not "relevant" or if it has nothing to do with "enforcement, administration or interpretation" of the Agreement. These latter words relate in large part to the Union's responsibility with respect to the filing and processing of grievances.

Article 31, Section 2 has been the subject of two national level arbitration awards. The first, Case No. H4N-NA-C 17, by Arbitrator Bernstein is dated August 1988. There, NALC had requested individual employee data which it alleged was "necessary for both collective bargaining and contract

administration." Its request sought a list of city carriers by name and by sex, date of birth (i.e., age), minority code, handicap code, and veteran's preference code. It insisted that this information was needed on an "ongoing" basis and asked that it be furnished "quarterly." The Postal Service rejected the request and NALC grieved.

The arbitrator denied the grievance. He explained that Article 31, Section 2 of the 1981 National Agreement required Management to furnish "on a regular, ongoing basis" nothing more than the following employee information: "name, full address, and social security number; craft designation; health benefits enrollment code number; post office name, finance number and class." He held that NALC was asking for further data "on a regular ongoing basis" and was therefore improperly "attempt[ing] to expand the scope of..." Article 31, Section 2 through arbitration. His ruling stressed that NALC had couched its request in an inappropriate manner, that it had sought information it could not have "on a regular, ongoing basis." But the arbitrator went on to say, by way of dicta, that if NALC requested this same information "on an infrequent basis", its request would have been justified and Management would have had to provide such information.

The second award, Case No. H7N-NA-C 34, by Arbitrator Mittenthal is dated November 1989. There, several months after the Bernstein award, NALC had requested the same data Bernstein had said it was entitled to on an "infrequent" or "occasional" basis. It sought certain additional information as well. I held, following the principles expressed in the Bernstein award, that NALC was entitled to all such information other than the individual minority code.

What is significant in this case was the Postal Service argument that NALC failed to show that the information requested was "relevant or necessary for collective bargaining and/or contract administration" My decision noted that NALC had explained in Step 4 that this information was to be used for "telephone surveys" of its members. Those surveys, according to the Bernstein award, were to be conducted among "specific subgroups of the bargaining unit - women, blacks, veterans, etc. - to ascertain their particularized needs and desires so that they can properly be represented in the Union's bargaining proposals." On the basis of NALC's claim that such information was "necessary" for collective bargaining, Bernstein had held and I expressly agreed:

> ...This is a sufficient showing to comply with the [Article 31, Section 2] mandate that the data sought must be "relevant information necessary for

collective bargaining."

> ...[T]he arbitrator [cannot be made] the judge of the Union's bargaining needs. The decision as to what data is needed to prepare the Union's bargaining proposals is one that only the Union can make. If it asserts that it needs this data for that purpose, and there is no reason to conclude that the assertion is not truthful, that is enough to satisfy the mandate of [Article 31, Section 2]...

These findings should be kept in mind in evaluating the "relevancy" arguments made in the instant case.

II - Relevancy of Requested Information

The parties disagree as to whether the minutes APWU requested were "relevant" or "necessary" within the meaning of Articles 17 and 31. APWU says these minutes were "relevant" and "necessary." The Postal Service says they were not.

To place this disagreement in sharper focus, certain facts bear repeating. An APWU representative was informally advised that Management and the Mail Handlers, at their EI/QWL meetings, had discussed the rearrangement of a dispatch function in the BMC and perhaps a reassignment of work which might result from such a rearrangement. APWU believed that such discussions may have impinged on its work jurisdiction in violation of the National Agreement. It hence asked for the minutes of these meetings. Management refused to provide this information. APWU grieved. The Postal Service does not deny that such discussions took place at EI/QWL meetings. It claims, however, that the minutes of these meetings would not be "relevant" or "necessary." Neither APWU nor the arbitrator has seen the minutes in question.

Perhaps the minutes contained nothing which could arguably be the basis for the filing of a grievance. In that event, APWU's request would not be "relevant." But perhaps the minutes did contain material which could arguably support the filing of a grievance. Suppose, for instance, that EI/QWL discussions went beyond their permissible limits and suggested some kind of bargain over work jurisdiction.[2] APWU could then understandably believe that a violation of Article 1 or some other provision of the National Agreement may have occurred. In that event, its request would be "relevant."

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[2] This is pure supposition and should not be read to suggest what actually happened at any EI/QWL meeting.

APWU was plainly at a disadvantage in this situation. Because it had not seen the minutes, because it had not been informed as to precisely what the minutes said, APWU was confronted by special difficulties in establishing the "relevancy" of its request. However, APWU had good reason to believe that EI/QWL discussions between Management and the Mail Handlers involved a possible new work flow through the BMC. It knew that such a change might well have an adverse impact on APWU's work jurisdiction. It knew too that work jurisdiction issues are grievable under the National Agreement. Given these circumstances, where APWU asserts it needs EI/QWL minutes for purposes of contract administration and there is no reason to conclude this assertion is not truthful, that is enough to demonstrate "relevancy." APWU has a right under Article 17 to "review...records necessary for ...determining if a grievance exists..."; APWU has a right under Article 31 to "relevant information...necessary to determine whether to file a grievance..."

No doubt some type of investigation precedes the submission of a grievance. Information is developed and a decision is made by APWU as to whether or not a grievance is warranted. If there seems to be no merit in a particular complaint, presumably no grievance would be filed. It is for the APWU alone to "determin[e]...if a grievance exists...", t "determine whether to file...a grievance..." If the information it seeks has any "relevancy" to that determination, however slight, its request for this information should be granted. Assume for the moment that the EI/QWL minutes were not "relevant" to the work jurisdiction grievance filed five weeks after APWU initially requested these minutes. That assumption cannot control the disposition of the present case. Whether a piece of information is "relevant" to the merits of a given claim is one thing; whether such information is "relevant" to APWU's determination to pursue (or not pursue) that claim through the filing of a grievance is quite another. The latter question allows "relevancy" a far broader reach and should have permitted the APWU, for the reasons already expressed, to receive the appropriate EI/QWL minutes. The Postal Service view that APWU's request for these minutes was a mere "fishing expedition" is not persuasive.

III - Other Postal Service Defenses

The Postal Service emphasizes that APWU requested the minutes in September 1986 and that any EI/QWL meetings preceding this request would have involved mere discussions, maybe recommendations, but certainly no Management action. It

contends that there could be no legitimate grievance until Management acted, until Management actually rearranged the dispatch function and perhaps reassigned work. It believes that APWU's request for the minutes therefore could not have been "relevant" and was properly denied.

This argument has in part already been answered. Surely, the restrictions on permissible subject matter for EI/QWL groups could be ignored in a given meeting and work jurisdiction could become a matter of group discussion and perhaps even tacit agreement. That may not be what happened. But the only way APWU could discover what was actually said in these meetings was to examine the minutes. Management refused to allow APWU to do so. It thus prevented APWU from making an informed and measured "determin[ation]" as to whether "a grievance exists" or whether "to file...a grievance." That was improper under Articles 17 and 31.

Even if Management was correct in rejecting APWU's request in September 1986, the fact is that a grievance was filed on October 24, 1986, protesting an alleged incursion on APWU's work jurisdiction. The APWU request for the minutes was still pending as of October 24.[3] By then, however, Management had rearranged the dispatch function and perhaps reassigned work. Management had acted but nevertheless continued to refuse APWU's request for the minutes. What the minutes contained I do not know. They could possibly have revealed the kind of considerations which prompted the reassignment of the dispatch function; they could possibly have revealed some conflict between what Management told the Mail Handlers and what Management later told APWU in processing the work jurisdiction grievance; and so on. They could very well have proven "relevant" to APWU's case on the merits. APWU had a right under Article 17 to "review... records necessary for processing a grievance..."; APWU had a right under Article 31 to "relevant information...necessary to determine whether...to continue the processing of a grievance ..." These rights were simply not honored.

The Postal Service alleges further that APWU's request was for "all" the minutes of "all" EI/QWL meetings of Management and the Mail Handlers at the BMC. It maintains that this request was too broad, too unfocused, and that hence its denial was not unreasonable.

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[3] Management did not formally reject APWU's request until it issued its Step 2 answer to the present grievance on November 20, 1986.

The difficulty with this argument is that it would have been a simple matter for Management to insist that APWU make its request more specific. Management's representative in Step 2, for example, admitted he did not ask why APWU wanted the minutes. The APWU representative, I believe, would have provided the specifics if asked. Indeed, he claims he told Management in Step 2 what APWU's concerns were. He submitted a written correction to Management's Step 2 answer in which he stated that "we clearly indicated in our Step 2 hearing..." that APWU has reason to believe that "our bargaining unit positions are the topic..." of EI/QWL meetings. Surely, the Management and APWU representatives should have known by Step 2 - and most likely did - that APWU's request concerned information relating to the work jurisdiction grievance which had been filed in late October 1986, several weeks earlier.

The Postal Service asserts finally that the minutes were the joint property of Management and the Mail Handlers. It says these minutes cannot be released to APWU, or anyone else, without the consent of the parties to this particular EI/QWL arrangement. It stresses that such mutual consent had not been given.

This argument is not convincing. APWU has a right to obtain from Management information which satisfies the "relevancy" or "necessary" test in Articles 17 and 31. As explained in Part II, its request for the minutes in this case did satisfy these tests. Nothing in either article suggests that the parties meant to exclude EI/QWL minutes from the "documents, files and other records" which are subject to the discovery procedure. True, Article 17, Section 3 states that "requests shall not be unreasonably denied" and thus infers that a request can properly be denied for good reason. It may be that some matters discussed at EI/QWL meetings are so confidential or personal that Management would have good reason to deny disclosure. But I am not convinced, on the evidence before me, that an administrative decision not to release any minutes without the joint consent of Management and the Mail Handlers constituted good reason for refusing APWU's request. The minutes sought by APWU were potentially "relevant" and "necessary" to the work jurisdiction issue raised by APWU and should therefore have been provided.

IV - Summary

My ruling must be that the Postal Service violated Articles 17 and 31 by refusing to grant APWU's request for EI/QWL minutes, specifically, those portions of the minutes which related in any way to the rearrangement of the dispatch function and the possible reassignment of work due to such

rearrangement. The denial of this request was not reasonable.

As for the remedy, Management must now provide APWU with the information it sought. Of course this disclosure will occur far too late. Arbitrator Condon has already decided the merits of the work jurisdiction grievance in favor of the Postal Service. Should the information revealed in the minutes suggest that the Condon award was in error, should such information suggest that Condon may have ruled differently had he been privy to these minutes, APWU should be free to bring the grievance back to regional arbitration. Condon could then reconsider the matter and determine whether he would have decided the merits of the dispute differently had he possessed this additional piece of information.

AWARD

The Postal Service violated APWU's rights under Article 17, Section 3 and Article 31, Section 2. The remedy for this violation is provided in the foregoing opinion.

Richard Mittenthal, Arbitrator

SETTLEMENT AGREEMENT

The American Postal Workers Union and United States Postal Service agree to settle grievance H8C-5D-C-8083 (A8-W-0635) upon the following terms and conditions:

1. The Postal Service acknowledges its obligation under Article XXXI of the National Agreement to provide the Union with information which is relevant and necessary for collective bargaining or the enforcement, administration or interpretation of the National Agreement.

2. The Postal Service agrees that relevant information within the meaning of Article XXXI, including requests for restricted sick leave lists, will be provided to the Union, upon request, pursuant to the routine use provisions set forth in the description of the systems of records issued under the Privacy Act, 45 Fed. Reg. 1570, Sec. 120.070 (1980).

3. As the remedy to this grievance, the Postal Service agrees to promptly provide the Local with the restricted sick leave list requested.

W. E. Henry Jr.
WILLIAM E. HENRY, JR.
Director, Office of Grievance and Arbitration
Labor Relations Department

April 14, 1981
Date

John P. Richards
JOHN P. RICHARDS
Director, Industrial Relations
American Postal Workers Union, AFL-CIO

April 14, 1981
Date

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

JUN 14 1988

Re: Class Action
Manchester, NH 03103
H4C-1K-C 41761

Dear Mr. Connors:

On February 10, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management properly denied the union's request for information under the provisions of the National Agreement.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Articles 17 and 31 of the National Agreement. The union agreed that they will be required to reimburse the USPS for any costs reasonably incurred in gathering requested information, in accordance with the schedule of fees outlined in Section 352.6 of the Administrative Support Manual. Management should provide the union an estimate and may require payment in advance. With this in mind, requests for information should not be denied solely due to compliance being burdensome and/or time consuming.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

James L. Rosenhauer
Grievance & Arbitration
Division

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

FEB 27 1974

Mr. Lonnie L. Johnson
National Director
National Post Office Mail Handlers, Watchmen,
Messengers and Group Leaders, AFL-CIO
905 - 16th Street, NW
Washington, DC 20006

Re: Article XXXIII
M-NAT-17

Dear Mr. Johnson:

On February 14, 1974, we met with you to discuss the above-captioned national level grievance.

The matters presented during this discussion have been given careful consideration. As indicated, the intent of concern was with the position of the US Postal Service with respect to promotional opportunities for mail handler employees.

As stated in the 1973 National Agreement, the US Postal Service is committed to the principal of promotions from within, with emphasis upon career advancement opportunities. The language in Article XXXIII sets forth the ground rules to be followed when promotional opportunities to a craft position exist. As acknowledged, any breach of these provisions would be grievable under Article XV of the 1973 National Agreement.

Sincerely,

William E. Henry, Jr.
Labor Relations Department

c. Continuing to learn throughout their careers to improve their knowledge, skills, and abilities and to share these with other employees.

722 Postal Employee Development Centers — Organization and Operations

722.1 Purpose

Postal Employee Development Centers (PEDCs) are field units, located in districts, that provide area-wide training and development support services on a continuing basis for all Postal Service employees. The primary mission of the PEDCs is to contribute to and foster improved employee job performance. The PEDCs also provide guidance to help employees pursue career and self-development goals.

722.2 PEDC Network Operating Procedures

722.21 Geographic Area of Responsibility

A PEDC's geographic area of responsibility consists of all Postal Service facilities in a performance cluster, as determined by the Manager, Human Resources (District).

Managers, Human Resources, ensure that all field Postal Service facilities within a geographic area are the responsibility of a specific PEDC. This includes Postal Service facilities with unique purposes, such as Headquarters field units.

Each PEDC must ensure that all employees within its geographic area of responsibility receive required training and developmental opportunities.

722.22 PEDC Reporting Relationships

PEDC reporting relationships are as follows:

a. One area staff member serves as a liaison with headquarters staff for the Manager, Learning Development & Diversity (MLDD). This staff member interacts periodically with ERM staff.

b. The MLDD reports functionally and administratively to the Manager, Human Resources (District).

c. The Human Resources specialist assigned to the training function at the district level reports functionally and administratively to the MLDD.

722.23 Facilities

The following guidelines apply to allocation of facility space for PEDCs:

a. Managers, Human Resources (District), are authorized to establish and abolish PEDCs and to determine the number and location of PEDCs within their districts.

b. Changes in the PEDC network must be communicated to Headquarters so that records and distribution lists can be revised in a timely manner.

c. Handbook AS-504, *Space Requirements*, specifies the space allocations for PEDC activities.

711.41 Job Training

711.411 Description

Job Training is training required by management to: (a) qualify an employee for presently assigned duties; (b) improve an employee's performance of assigned duties; (c) prepare an employee for a future assignment subject to selection procedures.

Job Training is always compensable for Fair Labor Standards Act (FLSA) nonexempt employees. Salaried exempt employees continue to receive their salary while attending Job Training.

711.412 Conditions

To be categorized as Job Training, all of the following conditions apply:

a. Management requires attendance at the training.

b. The training is directly related to the performance of the employee's current job or specific future assignment subject to satisfactory completion of the training and/or a job examination.

c. Refusal to attend the training, or less than satisfactory performance in the training, may jeopardize the employee's present position or make the employee ineligible for qualification or promotion to a specific position or duty.

711.413 Examples

Specific examples of Job Training are:

a. Postal orientation for a new employee.

b. A Postal Employee Development Center (PEDC) course in electricity and mechanics for a mail processing equipment mechanic (MPE).

c. A driver training program for a motor vehicle operator.

d. A PEDC financial transaction course for a Sales and Services Associate (SSA).

e. A NCED Networking course for an electronics technician.

f. A SSA training program for a distribution clerk who is the senior bidder for a SSA position.

g. A Postmaster course taken in preparation for a specific officer-in-charge (OIC) assignment.

h. Scheme training for an employee in the deferment period established by Article 37 of the USPS-APWU National Agreement when the employee qualifies for and accepts the preferred assignment.

711.42 Self-Development Training

711.421 Description

Self-Development Training is that which is taken in order to attain self-determined goals or career objectives but is not directly related to the employee's current job. This training is noncompensable for FLSA nonexempt employees and must be approved by management in advance if postal resources are to be used. Before approving such training, management should take into account the provisions of 713.1 and 713.2.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

NOV 21 1983

Mr. James I. Adams
Research and Education Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Adams:

On November 14 you met with Frank Dyer in prearbitration discussion of H8C-4B-C 29625/A8-C 2460, Battle Creek, Michigan. The question in this grievance is whether management violated the National Agreement by not compensating employees for time spent outside their normal schedule completing an inservice examination.

It was mutually agreed to full settlement of this case as follows:

1. Inservice examinations are to be conducted on a no-gain-no-loss basis.

2. Management will not intentionally schedule inservice examinations in order to avoid any payment applicable under the no-gain-no-loss principle.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H8C-4B-C 29625/A8-C 2460 from the pending national arbitration listing.

Sincerely,

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and Arbitration
Labor Relations Department

James I. Adams
Research and Education Director
American Postal Workers Union, AFL-CIO

11 22 83
Date

Enclosure

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers
Union, APL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: V. Gomez
Staten Island, NY 10314
H4C-1M-C 5833

Dear Mr. Wevodau:

On February 19, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is entitlement to compensation for time spent outside of the grievant's regular schedule in an interview.

During our discussion, we mutually agreed to settle this case as follows:

1. Any job interviews conducted are to be on a no gain-no loss basis.

2. Management will not intentionally schedule interviews in order to avoid any payment applicable under the no gain-no loss principle.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

Margaret H. Oliver
Labor Relations Department

Richard I. Wevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO

Mr. Lonnie L. Johnson
National President
National Post Office Mail
Handlers, Watchmen, Messengers
and Group Leaders, AFL-CIO
1225 19th Street, N.W., Suite 450
Washington, D.C. 20036-2411

OCT 4 1984

Re: Local
Salt Lake City, UT 84199-9998
H14-5L-C 20301

Dear Mr. Johnson:

On September 13, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance involved an allegation that local management is instituting new work and/or time standards.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Articles 3 and 34 of the National Agreement. This is a local dispute over the application of Article 3 of the National Agreement. We further agreed that management may establish goals and objectives for employees in a specific work unit. However, as provided by Article 34, 2.B the employer agrees that before changing any current or instituting any new work measurement systems or work time standards, it will notify the union as far in advance as practicable, but not less than 15-days in advance.

Accordingly, we agreed to remand this case to Step 3 for further consideration by the parties.

Please sign and return the enclosed copy of this decision as acknowledgment of our agreement to remand this grievance.

Time limits were extended by mutual consent.

Sincerely,

Thomas J. Lang
Labor Relations Department

Lonnie L. Johnson
National President
National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders, AFL-CIO

UNITED STATES POSTAL SERVICE

December 8, 1994

Mr. William H. Quinn
National President
National Postal Mail Handlers
Union, AFL-CIO
One Thomas Circle, N.W., Suite 525
Washington, D.C. 20005-5802

Re: H4M-3P-C 28212
CLASS ACTION
GREENSBORO NC 27495

Dear Mr. Quinn:

On October 25, 1994, I met with your representative, T.J. Branch, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by using average van unloading times as a criterion for measuring employees' performance.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties further agree that Article 34 embodies the mutual recognition of the principles of a fair day's work for a fair day's pay. Further, the parties agree that discipline cannot be imposed on one mail handler solely because they fail to perform at the same level as another.

Accordingly, we agreed to remand this case to the parties at step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

Alan S. Moore
Contract Administration
(APWU/NPMHU)
Labor Relations

William H. Quinn
National President
National Postal Mail
Handlers Union, AFL-CIO

Date: 12/13/94

475 L'Enfant Plaza SW
Washington DC 20260

c. *Family member* — any legal dependent of the employee, or anyone living in the employee's household, with the exception of tenants or employees of the Postal Service employee who live in the household.

d. *Internal EAP* — an employee assistance program whose counselors are employed by the Postal Service.

e. *Management referral* — the referral of an employee to EAP by a supervisor or manager because the manager notices behavior that may indicate work performance issues or personal problems.

f. *Other addictions* — not addiction to drugs or alcohol, but addictive behaviors that may include excessive gambling, eating, and internet use as well as hypersexuality.

g. *Other problems* — problems such as depression, anxiety, gambling, and stress as well as emotional, family, marital, financial, and legal problems.

h. *Self-initiated referral* — an employee's voluntary referral of him- or herself for assistance from EAP, made by directly contacting an EAP counselor.

i. *Substance abuse* — the excessive use of a substance, especially alcohol or a drug, that results in recurring negative life consequences, such as:

(1) Interpersonal conflicts;

(2) Failure to meet work, family, or school responsibilities; or

(3) Legal problems.

j. *Substance dependence* — commonly referred to as an addiction, it is characterized by:

(1) A need for increasing amounts of a substance to maintain desired effects;

(2) Withdrawal symptoms if drug-taking stops; and

(3) Preoccupation with activities related to substance use.

941.3 Policy

941.31 Job Security

Participation in EAP is voluntary and will not jeopardize the employee's job security or promotional opportunities.

941.32 Limits to Protection

Although an employee's voluntary participation in EAP counseling should be given favorable consideration in disciplinary action, participation in EAP does not limit management's right to proceed with any contemplated disciplinary action for failure to meet acceptable standards of work performance, attendance, or conduct. Participation in EAP does not shield an employee from discipline or from prosecution for criminal activities.

941.33 Confidentiality

Inquiries regarding participation in EAP counseling are confidential, pursuant to the provisions of 944.4. EAP records may not be placed in an employee's official personnel folder (OPF).

c. *Family member* — any legal dependent of the employee, or anyone living in the employee's household, with the exception of tenants or employees of the Postal Service employee who live in the household.

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emotional stress, and marital problems as well as substance abuse, dependence, or other addictions.

942.22 Referrals to EAP

942.221 Management Referrals

If a supervisor or manager observes any of the patterns listed in 942.21 or has some other reason to believe that the EAP could provide needed assistance to an employee, he or she may refer the employee to the EAP. Since participation is voluntary, the employee has the option to refuse the referral and **cannot be disciplined** for noncompliance.

Exception: If an employee has signed a Last Chance or Settlement Agreement that requires EAP participation, the employee **can be disciplined** for noncompliance under the terms of the agreement.

942.222 Referrals From Others

Fellow employees, union representatives, management association representatives, medical personnel, family members, or judicial and social service agencies may refer employees to the EAP. However, if any of these suggest or recommend that the employee seek EAP assistance, participation is always voluntary.

942.223 Self-Referrals

Employees who want help with any personal problem or concern are encouraged to seek assistance directly by personally contacting the EAP.

942.224 EAP Response

The following requirements apply:

a. EAP counselors must accept all referrals.

b. Face-to-face or telephone interview appointments must be available within a reasonable period from the time the request is made by the employee or family member.

c. Face-to-face and telephone appointments for urgent situations must be made consistent with need, regardless of the counselor's regularly scheduled hours.

d. Crisis counseling must be available by telephone 24 hours a day, 365 days a year.

942.23 Problem Evaluation

EAP counseling staff provides assessment services and arranges counseling for employees or family members or refers them to appropriate treatment resources.

942.3 Recovery Counseling and Resources

942.31 EAP Counseling Sites

EAP sites are staffed by EAP professionals trained to provide assessment, short-term counseling, and referral services to individuals who seek their assistance. Postal Service EAP sites are not equipped to provide detoxification or drug rehabilitation assistance, but they can make referrals to outside programs and treatment facilities for these problems. To provide convenient, ready access to EAP counseling services for all Postal Service

941.34 Reasonable Access

The contractor providing counseling must endeavor to provide confidential counseling facilities within a reasonable driving distance from the employee's work site or home, in accordance with the following guidelines:

a. The Postal Service will provide office space and furnishings for those sites that require counselors to be in postal locations.

b. Providing ready accessibility to face-to-face EAP counseling is desirable, but may not always be possible. Counselors may offer telephone counseling or request that the employee travel to the counselor's office.

c. Reasonable hours and days, including coverage of all three tours, will be set by mutual agreement between the EAP consultant and the Human Resources manager.

d. Counselors may adjust their schedules to respond to crisis situations and to meet other needs, such as providing information sessions and visiting facilities.

941.35 Scheduling

The following guidelines apply to scheduling and whether EAP sessions take place on or off the clock:

a. An employee's first visit to EAP is on the clock, whether the visit is initiated by management, the union representative, or the employee (unless the employee prefers to visit the EAP unit on his or her own time).

b. Subsequent consultations are on the employee's own time.

c. If a reasonable period of time has elapsed since a management referral or a previously disclosed self-referral, the manager or supervisor may, on a case-by-case basis, approve an additional on-the-clock session.

d. To receive pay for an on-the-clock session, the employee must authorize the EAP provider to disclose his or her attendance to management.

942 Program Elements

942.1 Education

EAP counselors and subcontract counselors must provide information, training, or both periodically for all Postal Service employees to inform them about EAP services and the kinds of personal problems that can affect job performance or conduct.

942.2 Problem Identification, Referrals, and Evaluation

942.21 Patterns of Behavior and Work Performance Problems

Certain patterns of behavior and/or work performance can be indicative of problems affecting an employee. Deterioration in attendance, appearance, conduct, ability, or any combination of these factors may signal that the employee is experiencing a personal problem that may affect his or her job performance. These problems may include depression, anxiety, gambling,

c. *Family member* — any legal dependent of the employee, or anyone living in the employee's household, with the exception of tenants or employees of the Postal Service employee who live in the household.

d. *Internal EAP* — an employee assistance program whose counselors are employed by the Postal Service.

e. *Management referral* — the referral of an employee to EAP by a supervisor or manager because the manager notices behavior that may indicate work performance issues or personal problems.

f. *Other addictions* — not addiction to drugs or alcohol, but addictive behaviors that may include excessive gambling, eating, and internet use as well as hypersexuality.

g. *Other problems* — problems such as depression, anxiety, gambling, and stress as well as emotional, family, marital, financial, and legal problems.

h. *Self-initiated referral* — an employee's voluntary referral of him- or herself for assistance from EAP, made by directly contacting an EAP counselor.

i. *Substance abuse* — the excessive use of a substance, especially alcohol or a drug, that results in recurring negative life consequences, such as:

(1) Interpersonal conflicts;

(2) Failure to meet work, family, or school responsibilities; or

(3) Legal problems.

j. *Substance dependence* — commonly referred to as an addiction, it is characterized by:

(1) A need for increasing amounts of a substance to maintain desired effects;

(2) Withdrawal symptoms if drug-taking stops; and

(3) Preoccupation with activities related to substance use.

941.3 Policy

941.31 Job Security

Participation in EAP is voluntary and will not jeopardize the employee's job security or promotional opportunities.

941.32 Limits to Protection

Although an employee's voluntary participation in EAP counseling should be given favorable consideration in disciplinary action, participation in EAP does not limit management's right to proceed with any contemplated disciplinary action for failure to meet acceptable standards of work performance, attendance, or conduct. Participation in EAP does not shield an employee from discipline or from prosecution for criminal activities.

941.33 Confidentiality

Inquiries regarding participation in EAP counseling are confidential, pursuant to the provisions of 944.4. EAP records may not be placed in an employee's official personnel folder (OPF).

944.4 Disclosure

944.41 General

944.411 Usual Recipients

Information identifying substance abuse program participants, whether or not such information is recorded, may be disclosed as follows:

a. To medical personnel to the extent necessary to meet a bona fide medical emergency involving the EAP participant.

b. To qualified personnel, with the express written authorization of the vice president of Employee Resource Management, for purposes of conducting scientific research or program audits or evaluation. However, under no circumstances may any *personally identifiable information* be disclosed in the resulting evaluation, research, or audit reports.

c. To a court, under the following circumstances:

(1) When authorized by a court order upon showing of good cause, such as when necessary to protect against an existing threat to life or threat of bodily injury, or in connection with the investigation or prosecution of a crime.

(2) In litigation or an administrative proceeding when authorized by the trier of fact, when the EAP participant offers testimony or other evidence pertaining to the content of his or her EAP participation. Counsel should be contacted for assistance in evaluating the court order and in determining the extent to which information must be released.

d. To any person when the EAP participant gives prior written consent to disclose information. This consent specifies the nature and scope of the topics to be released, to whom information is to be released, the purpose of the disclosure, and the date on which the consent terminates.

e. To a person in any situation in which the EAP counselor has a duty to warn.

f. To an expert, consultant, or other individual who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function, and in accordance with the Privacy Act restrictions of 39 CFR 266.6.

944.412 Limitation of Disclosure

In all cases cited in 944.411, only information that is absolutely necessary to satisfy the recipient's business or medical need is to be disclosed.

944.42 Criminal Activity

944.421 EAP Records

EAP counseling records or personnel may not be used to initiate or substantiate any criminal charges against an EAP participant or to conduct any investigation of a participant, except as authorized by a court order for good cause.

613 Credit Unions

613.1 Authority

Employee credit unions in the Postal Service, as in all federal departments or agencies, are chartered according to the Federal Credit Union Act (12 U.S.C. 1753–1754). That Act gives the power to direct and control the Federal Employees Credit Union Program to the National Credit Union Administration, an independent agency in the executive branch of the government. Credit unions may also be chartered under state laws and are generally supervised by the banking department of the state involved. The address of the National Credit Union Administration follows:

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET
ALEXANDRIA VA 22314-3428

613.2 Space Allowance

The Postal Service will authorize, if available, a suitable location (other than workroom floor space) for credit unions in postal buildings. If the area is accessible through the workroom only, membership in the credit union is restricted to Postal Service employees (active and retired). Other federal employees in the same building may not join unless the credit union is situated so that it is unnecessary to enter the postal workroom. Credit union business cannot be conducted from any post office service window.

613.3 Employees With Credit Union Duties

Postal personnel who are employees, officers, officials, or board members of employee credit unions are not entitled to Postal Service compensation for credit union duties. They have the option of annual leave or leave without pay (up to 8 hours daily) to perform credit union activities — provided they can be spared from their regular duties.

614 Food Services

614.1 Policy

The Postal Service provides food services, including provision of snacks and beverages, that cannot be conveniently obtained at reasonable prices from commercial sources and that are required for the health, comfort, or efficiency of postal employees while on duty. The Randolph-Sheppard Act, as amended in 1974, dealing with the operation of vending facilities by a blind vendor, applies to the Postal Service.

614.2 Operation

614.21 Responsibility

Food service facilities in central lunchrooms and in satellite work areas — manual, vended, or a combination — are under the control of the installation head. This responsibility may not be delegated to any employee committee.

437.6 Action by Eagan Accounting Service Center

The Eagan ASC waives the claim if it can determine from a review of the file that all of the following conditions are met:

a. The overpayment occurred through administration error of the Postal Service. Excluded from consideration for waiver of collection are overpayments resulting from errors in time keeping, 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 interest of the Postal Service.

437.7 Appeal of Disallowed Request

437.71 Appeal Procedure

When a request for waiver has been partially or completely denied, the applicant may submit a written appeal to the Eagan ASC within 15 days of receipt of the determination. The appeal letter should clearly indicate that the employee is appealing the disallowance of the waiver request and explain in detail the reasons why the employee believes the claim should be waived.

437.72 Final Decision

The Eagan ASC then forwards the appeal, with the entire case file, to the applicable area Finance manager for area employees or to the manager of National Accounting at Headquarters for Headquarters and area office employees for a final decision. The area Finance manager or manager of National Accounting advises the employee concerned and the Eagan ASC of his or her final decision. If necessary, the Eagan ASC adjusts its records.

438 Pay During Travel or Training

438.1 Pay During Travel

438.11 Definitions

Definitions relevant to pay during travel or training include the following:

a. *Travel time* — time spent by an employee moving from one location to another during which no productive work is performed and excluding the normal mealtime if it occurs during the period of travel.

b. *Local commuting area* — the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.

438.12 Commuting To and From Work

438.121 Regular Commuting

Commuting time before or after the regular workday between an employee's home and official duty station or any other location within the local commuting area is a normal incident of employment and is not compensable. It is not compensable regardless of whether the employee works at the same

location all day or commutes home after the workday from a location different from the one where the workday started.

438.122 **Commuting to a Different Worksite**

Commuting time to and from work is not compensable when an employee is called back to work after the completion of the regular workday. However, such commuting time is compensable if the employee is called back to work at a location other than his or her regular work site.

438.123 **Commuting With a Break in Duty Status**

When an employee is employed to work on a permanent basis at more than one location in the same service day, the time spent commuting between the locations is not compensable travel time, provided there is a break in duty status between the work performed in the different locations. A break in duty status occurs when an employee is completely relieved from duty for a period of at least 1 hour that may be used for the employee's own purposes. This 1-hour or greater period must be in addition to the actual time spent in travel and the normal meal period, if the normal meal period occurs during the time interval between the work at the different locations. (See 438.132 for travel time between job locations when there is no break in duty status.)

438.13 Types of Compensable Travel Time

438.131 **General**

The determination of whether travel time is compensable or not depends upon (a) the kind of travel involved, (b) when the travel takes place, and (c) the eligibility of the employee (see Exhibit 438.13). The three situations that may involve compensable travel time are described below.

438.132 **Travel From Job Site to Job Site**

The following applies to travel from job site to job site:

a. *Rule.* Time spent at any time during a service day by an eligible employee in travel from one job site to another without a break in duty status within a local commuting area is compensable. (See 438.123, which makes the travel time noncompensable as commuting time when there is a break in duty status between the work performed in different locations.)

b. *Eligibility.* This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for FLSA-nonexempt employees who are entitled to receive overtime pay.

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b. *Eligibility.* This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for FLSA-nonexempt employees who are entitled to receive overtime pay.

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b. *Eligibility.* This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for FLSA-nonexempt employees who are entitled to receive overtime pay.

b. *Eligibility.* This type of travel time is compensable for all employees on their scheduled workdays. On nonscheduled days, this type of travel time is compensable only for nonexempt employees.

c. *Intermediate Travel Home.* Employees who are on an extended assignment away from home may be given the opportunity during the assignment to return home for personal convenience. Although the cost of the round trip is a reimbursable travel expense, the travel time involved is not compensable when it falls outside of the scheduled service week given to the employee during the temporary assignment.

d. *Scheduling of Travel.* Travel away from home overnight is to be scheduled by management on a reasonable basis without a purpose either to avoid compensation for the travel time or to make the travel time compensable.

438.14 Special Travel Provisions

438.141 Use of Private Automobile for Personal Convenience

If an eligible employee who is traveling under the provisions of 438.132, 438.133, or 438.134 is offered public transportation but uses a personally owned conveyance for personal convenience, only the lesser of the time spent actually driving or those creditable hours that would have been spent in travel by public transportation are compensated.

438.142 Required Use of an Automobile

All time spent actually driving an automobile while traveling away from home overnight because no public transportation is available is compensable travel time for an eligible employee whether the time occurs within or outside of the employee's established hours of service.

438.143 Work Performed While Traveling

Any time spent by an eligible employee in actual work that is required or suffered or permitted to be performed while traveling is compensable.

438.15 Compensation Provisions

Provisions concerning compensation are as follows:

a. Compensable travel time is counted as worktime for pay purposes and is included in hours worked in excess of 8 hours in a day, 40 hours in a week, or on a nonscheduled day for a full-time employee, for the determination of overtime for eligible employees (see 433 and 434.1).

b. Out-of-schedule premium, nonbargaining rescheduling premium, and guaranteed time are not payable to employees while traveling away from home overnight.

c. Night differential is paid to eligible employees during those hours of compensable travel between 6:00 P.M. and 6:00 A.M. on either a scheduled or nonscheduled day.

d. Sunday premium is paid to eligible employees for paid travel time during a scheduled tour that includes any part of a Sunday.

438.16 Effect on Other Travel Reimbursement

The rules stated in 438.1, Pay During Travel, do not affect the entitlement of employees to other types of reimbursement under applicable regulations, such as reimbursement of certain travel expenses and per diem.

5-5 Arranging to Use Your Privately Owned Vehicle (POV)

A privately owned vehicle (POV) may be either an automobile, a motorcycle, or an airplane.

5-5.1 Determining When to Use

5-5.1.1 Circumstances That May Justify Use of Your POV

You may receive approval to use your POV in the following circumstances:

a. It will be advantageous to the Postal Service.

b. You are on specific assignments, such as investigation and route examinations, customer service travel, and postal systems reviews.

c. You are participating in civil defense tests and activities. Employees traveling for civil defense purposes to and from emergency locations are considered to be on official business and acting within the scope of their employment.

You may also receive approval to use your POV for personal convenience. However, you must submit a cost comparison with your travel voucher. See 5-1.4 for information on performing a cost comparison.

5-5.1.2 Criteria That the Approving Official Will Use

The approving official's decision will be based on, but not limited to, the following criteria:

a. Whether commercial air, train, or bus service is suitable.

b. Whether Postal Service or GSA vehicles are available.

c. Whether using your POV would reduce the overall cost of travel, such as by saving on per diem or local transportation expenses.

d. Whether using your POV would save time, either travel time or overall work time.

e. Whether your POV would be used extensively in the vicinity of the temporary duty station.

f. Whether the vehicle is required for civil defense travel.

5-5.2 Allowable Expenses When Using Your POV

5-5.2.1 For Your Car or Motorcycle

The allowable expenses for using your car or motorcycle vary according to whether you are using it because no Postal Service or GSA vehicle is available or because it is more convenient for you to do so.

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

24 OCT 1978

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: Branch 404
Waco, TX
NC-S-11532/W5ET-18895

Dear Mr. Riley:

On September 26, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

We recognize that in the interest of maintaining good labor/management relations, it is necessary for management to make every effort to respond to all issues discussed at labor/management meetings in as short a time as is practical. Based on this understanding which we arrived at during our Step 4 meeting, we mutually agreed to consider this case resolved.

Sincerely,

Daniel A. Kahn

Daniel A. Kahn
Labor Relations Department