

# Casuals and FMLA

**Q 1. Management in my station has occasionally been using "clerk" casuals to perform letter carrier duties. Is this permitted?**

**A** The short answer is yes; management may use the same casual in more than one craft. However, the National Agreement contains important limits on management's right to employ or utilize casuals.

Article 7, Section 1.B.2 requires that during the course of a service week, management must make every effort to insure that qualified and available part-time flexible employees are used at the straight-time rate prior to assigning such work to casuals. This provision is frequently violated and must be vigorously enforced at the local level.

Article 7, Section 1.B.3 establishes a 3½ percent nationwide limit on total casual employment in the letter carrier craft. If a casual is used even once in the letter carrier craft, that casual will thereafter be counted toward the 3½ percent limit. This means that if management uses the same casual in both the clerk and letter carrier craft, the casual will be counted twice—once toward the NALC limit and once toward the APWU limit. Since the Article 7.1.B.3 limit is monitored and enforced at the national level, there is no basis for local grievances concerning this provision. However, branches can assist us in enforcing the provision by verifying that whenever casuals are used in the letter carrier craft, they use the correct letter carrier Labor Distribution Code for their clock rings.

Article 7, Section 1.B.4 limits casuals to two 90-day terms of employment as a letter carrier casual during a calendar year; in addition, they may be reemployed during the Christmas period for not more than 21 days. This provision should also be enforced at the local level.

**Q 2. Our station manager has been using a Rural Carrier Associate (RCA) to perform city letter carrier work. He asserts that the cross-craft provisions of Article 7, Section 2 do not apply because the RCA has a dual appointment as a casual. Is this correct?**

**A** The cross-craft provisions of Article 7, Section 2 only apply to the six crafts covered by the 1978 National Agreement (i.e. letter carrier, special delivery, clerk, motor vehicle, maintenance and mailhandlers). This does not include rural letter carriers. Thus cross-craft assignments to and from the Rural Carrier Craft may only be made in the restricted circumstances provided by the emergency provisions of Article 3, Section F. (See "Contract Talk" in the July

*Postal Record* for a fuller explanation.)

However, the situation you describe is not, strictly speaking, a cross-craft assignment. Section 323.6 of the *Employee and Labor Relations Manual* (ELM) authorizes "dual appointments" under certain circumstances. The most important restriction on such dual appointments is that only one of the appointments may be to a career position. Since casuals are not part of the career workforce, dual appointments to RCA and casual positions are permitted.

The fact that an employee has a dual appointment to a casual position does not change any of the provisions of Article 7, Section 1.B. A "dual appointment" employee is counted toward the 3½ percent casual limit and is still subject to the Article 7.1.B.4 limits discussed above. Since violations of the 7.1.B.4 limits should be grieved at the local level, you should carefully monitor management's actions to ensure that the limits are not exceeded. At a minimum, this will require that you obtain a copy of the employee's Form 50 to verify the dates and periods of appointment to the casual position.

**Q 3. If I am on annual leave, sick leave or leave-without-pay for a serious health condition covered by the Family and Medical Leave Act, can my supervisor require a fitness-for-duty exam before I am allowed to return to work?**

**A** The regulations do not prohibit the employer from requiring the employees to submit to an examination after returning to work. However, the examination must be job-related and concern the condition for which the leave was taken. The Postal Service may not deny an employee the right to return to work following FMLA leave pending such a fitness-for-duty examination. The law provides that the employee must only provide the employer with certification from the health-care provider in order to return to work. Any examination by the employer's medical staff should take place on the clock after the employee's return to work. ☒

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**William H. Young, Vice President**  
**James G. Souza Jr., Assistant Secretary-Treasurer**  
**Jim Edgemon, Director of City Delivery**  
**Michael J. O'Connor, Director of Life Insurance**  
**Thomas H. Young Jr., Director, Health Benefit Plan**

## Route adjustments

**Q1. May management use the 1840-B average street time to establish base street time for route examination purposes in DPS offices?**

**A** It depends. Taking DPS mail directly to the street without casing is a fundamental change in work methods that may affect both office and street time. Evaluating DPS routes using 1840-B street times from periods before DPS mail was taken directly to the street could result in completely inaccurate results. It is NALC's position that in a DPS office management may use the 1840-B average street time to establish evaluated street time only if DPS mail was also taken directly to the street during all of the weeks of the analysis period. If DPS mail was still being cased during any of the weeks of the 1840-B analysis period, the 1840-B street time may not be used. In such cases the street time must be established as the average street time used during the week of count and inspection.

**Q2. My station is under the X-Route Process. We have current route data (i.e. data less than 18 months old). However, some of the carriers have bid off their assignments since the last route examination. What data should we use for adjustment purposes?**

**A** Since the route data is current, it may be used even if the carriers subsequently bid on another assignment. Remember, however, that when using the "Hempstead Formula" to estimate the impact of DPS on carrier office time, you must use the demonstrated performance of the carrier who is actually on the route.

**Q3. My station is receiving DPS mail, but we are still casing it since the quality is very low. My route qualifies for a special route examination, but management says that the provisions of M-39, Section 271g do not apply in such circumstances. They say that when I am finally able to take mail directly to the street without casing, my route will no longer be overburdened. Is this correct?**

**A** As long as your route qualifies for a special inspection under the provisions of M-39, Section 271g applies and the special mail count and inspection must be completed within four weeks of the request. The fact that your unit is receiving DPS mail does not change your rights under this provision.

**Q4. A special route examination showed that my route is overburdened. Management said they will provide relief through daily auxiliary assistance. Is this a proper adjustment?**

**A** No. The parties agreed in a national level prearbitration settlement (M-0792) that auxiliary assistance is not an acceptable form of permanent relief. Permanent relief must be provided by using one of the methods specified in M-39, Section 243.21b. These include: territorial adjustments, segmentation, router assistance, hand-offs, and relocating vehicle parking.

**Q5. Is the use of routers still authorized?**

**A** Yes—but only to provide relief to overburdened routes. Arbitrator Mittenhal's "Hempstead" award prohibited management from using routers to provide a buffer for anticipated future events such as the implementation of DPS. Furthermore, we anticipate that when DPS is fully implemented, any use of routers will be greatly reduced.

**Q6. Management has informed us that one of the routes in our station is not suitable for DPS and will remain a non-DPS route. How is this accounted for in determining whether the target percentage has been reached and planned adjustments may be implemented?**

**A** When management determines that a route will remain a non-DPS route, both the route and the mail volume received by the route are excluded when determining whether the target percentage has been reached.

**Q7. DPS mail must meet a 98% quality threshold for three days before it can be taken directly to the street without casing. Is this determined on a route individually or on a station-wide basis?**

**A** Whether or not DPS mail has met the 98% quality threshold must be determined on a route-by-route basis. This is true under both the Unilateral and X-Route Methods. ☒

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## Recent settlements

**Q 1. I am a reserve letter carrier. If I sign the work assignment list, what overtime will I be eligible to work?**

**A** The parties at the national level agreed in the Step 4 decision, M-01232 that reserve letter carriers and unassigned regulars on the work assignment list are eligible for overtime on the assignment that they are working on a given day.

**Q 2. How are transitional employees granted leave?**

**A** The parties agreed in the Step 4 decision M-01228 that NALC transitional employees are not covered by Article 10 or Article 30 of the National Agreement. The granting of annual leave to TEs is covered by Appendix D of the January 16, 1992 Transitional Employee Interest Arbitration Award. The text of this award is published as a supplement in the National Agreement.

**Q 3. Management in our office requires carriers to sign and deliver a preprinted apology form if they make misdelliveries. Is this permitted?**

**A** No. Management is not permitted to require a letter carrier to sign a locally developed form such as the one you describe. Furthermore, the Step 4 Settlement M-01229 reconfirms that local forms can only be developed and issued in accordance with Section 352.12 of the Administrative Support Manual.

**Q 4. Our office is under the Union Management Pairs (UMPS) process. Management asserts that grievances concerning DPS issues cannot be handled through UMPS. Is this correct?**

**A** No. The Step 4 decision in M-01220 provides that DPS issues may be discussed in the UMPS process, unless the UMPs agreement provides otherwise, or the dispute involves an issue that is pending at the national level.

**Q 5. Article 8, Section 8D provides that transitional employees have a four hour reporting guarantee. However, on light days management in our station is offering the work to TEs who are willing to work less than four hours and waive the guarantee. Is this permitted?**

**A** No. In the Step 4 Decision M-01227 management agreed that it may not solicit TEs to work less than the four hour reporting guarantee. However, a TE may request to work less than the guarantee in cases of illness or

personal emergency. The appropriate remedy for violations of this provision is to require management to pay the full guarantee.

**Q 6. Management in my office has instructed letter carriers to leave all non-accountable parcel post mail at the delivery address when the patron is not at home or is unavailable to receive the mail. This appears to violate the current regulations in Section 320 of the M-41 Handbook. Can local managers issue such instructions?**

**A** Local management is not permitted to establish local delivery procedures that differ from published regulations. Management agreed in the Step 4 decision M-01239 that tests of modified delivery procedures may only occur after the NALC has been notified at the national level. They further agreed that permanent adoption of new delivery practices may only occur after appropriate changes are made to handbooks and manuals as required by Article 19 of the National Agreement.

**Q 7. Our Postmaster has authorized the use of a locally made cardboard tray device that attaches to the fixed tray in LLVs. He claims that it makes the delivery of DPS mail more efficient. We believe it poses a safety hazard, but management insists that our agreement is not required. Is this correct?**

**A** No. The Step 4 decision M-01240 reaffirms that the September 17, 1992 Memorandum on Work Methods and the USPS/NALC Joint training Guide *Building Our Future by Working Together* do not authorize changes in work methods for the delivery of DPS mail without local agreement. Unauthorized changes in work methods include the use of locally modified equipment or vehicles.

**Q 8. Management in our office has developed a new procedure called "Workload Assessment" which they claim provides a measurement of daily workload. Is this procedure authorized?**

**A** Management may collect numbers and produce reports for use as internal management tools without violating the National Agreement. A violation occurs when such numbers or reports are put to improper use. Numerous Step 4 decisions, including M-00364 and M-01233, have established that management *may not* use these numbers or reports as a basis for discipline or to evaluate and adjust letter carrier routes. The only authorized methods to determine letter carrier efficiency or to evaluate and adjust routes are those contained in the M-39 and M-41 Handbooks. ☐

# Route Adjustments

**Q 1. What are casing standards? Can I be disciplined if I fail to meet them?**

**A** The so-called office standards of 18 per minute for letters and eight per minute for flats have only one purpose. They are two of the many factors that the M-39 requires management to use in order to calculate "standard office" time during a route inspection. The office time allowance for a route is established as the lesser of the carrier's average office time during the inspection period, or the average standard office time.

Standard office time is based on the totality of a letter carriers office performance. It may not be broken down into subcomponents—for example, by determining only how long it takes a letter carrier to case a known number of letters. Even when conducting a special one day mail count under the provisions of M-39 Section 141.2 management must use and complete a Form 1838-C.

Simple failure to meet office standards is never just cause for discipline. Under the terms of a September 3, 1976 Memorandum of Understanding the M-39 Handbook was modified to underscore this point. Section 242.332 states:

*No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet standards.*

This principle was further reinforced in the July 11, 1977 Step 4 settlement, NC-NAT-6811 (M-00386) which states:

*Management may not charge or impose discipline upon a carrier merely for failing to meet the 18 and 8 casing standards. Any such charge is insufficient. Under the Memorandum of Understanding of September 3, 1976, the only proper charge for disciplining a carrier is "unsatisfactory effort."*

In summary, as long as you do the best you can and do not engage in "unacceptable conduct," you shouldn't worry about being disciplined for failure to make casing standards.

**Q 2. I am a career part-time flexible letter carrier. May management assign work to a transitional employee rather than to me?**

**A** Article 7, Section 1.D.1.b of the National Agreement gives you scheduling priority over transitional employees. It states that:

*Over the course of a pay period, the employer will make every effort to ensure that qualified and available part-time*

*flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees.*

The recent Step 4 settlement of case E90N-4E-C 94026528 (M-01241) further strengthened this provision by changing it to apply "during the course of a service week" rather than "over the course of a pay period." This will both give greater protection to career PTF employees and apply essentially the same rule that now controls the scheduling priority of PTFs over casuals.

**Q 3. I understand that arbitrator Mittenthal recently denied NALCs grievance concerning the TE work hour ceiling. Does that mean that management now has an unrestricted right to use TEs?**

**A** Absolutely not. The award did not change the strict limitations on TE hiring. It only concerned the number of hours TEs could be worked after they are hired. Furthermore, the arbitrator added the following warning to management:

*My ruling here is that the Transitional Employee Award and MOUs do not limit the number of hours TEs may work per week after they have been properly hired. But the number of hours TEs work may nevertheless be significant in determining whether they were properly hired in the first place. Suppose, for instance, that the "projected hourly impact" under the relevant hiring formula is 40 hours and that Management hires two TEs for 20 hours each. Suppose further that within a matter of weeks, perhaps months, both TEs are working no less than 40 hours each and often more. A strong argument could be made that this TE hiring was excessive. If the estimated "impact" is 40 hours and the early usage is at least 80 hours, more TEs were employed than could be justified by the hiring formula.*

As Mittenthal made clear, the award does not mean that all cases concerning the TE work hour ceiling lack merit. Rather, it requires that such grievances be examined on a case-by-case basis to determine whether the TE hours are so excessive that there is an issue concerning "whether they were properly hired in the first place." ☒

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# Article 41.3.0

**A**rticle 41, Section 3.0 provides that during local negotiations branches may make the following clause, without modification, a part of a local agreement. Branches may also, on a one-time basis during the life of the agreement, elect to delete the provision from their local agreement:

When a letter carrier route or full-time duty assignment, other than the letter carrier route(s) or full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway and housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time duty assignment(s) was abolished shall be posted for bid *in accordance with the posting procedures in this Article. [Emphasis added.]*

In a decision dated March 22, 1996 (C-15248), National Arbitrator Snow sustained NALC's position in a dispute concerning the posting of routes when this provision is triggered. The Postal Service had argued that when routes in a delivery unit are posted under the provisions of Article 41.3.0, only carriers in that delivery unit are eligible to bid. Arbitrator Snow agreed with NALC that where Article 41.3.0 states that assignments should be posted for bid "in accordance with the posting procedures in this Article," it was referring to Article 41 Section 1.B.2.

That section provides that the posting and bidding for duty assignments shall be installation-wide, unless local agreements or established past practice provide otherwise. Accordingly, if a branch has installation-wide bidding for vacant or newly created duty assignments, then assignments made available for bids under the provisions of Article 41.3.0 should also be posted on an installation-wide basis.

There is a narrow exception to this general rule concerning the scope of postings under Article 41.3.0. This exception occurs if a local memorandum of understanding defines sections for the purpose of reassigning within an installation employees excess to the needs of a section. Such provisions are authorized by Article 30, Section B, Item 18. If a branch has defined sections under this provision, and if an employee has been excessed from the section under the provisions of Article 12.5.C.4.b, then Article 12.5.C.4.c provides the re-assigned employee with retreat rights to the first residual vacancy in the salary level after employees in the section have completed bidding. Article 12.5.C.4.C requires that as long as an employee has such retreat rights to the section, bidding for vacant assignments in the section is limited to employees from the section at the same salary level as the vacancy.

**Q**1. Our branch has the Article 41.3.0 language incorporated into our local agreement. A router assignment held by a letter carrier who is not the junior employee in the unit has been abolished. Does this trigger the Article 41.3.0 provisions?

**A** Yes. Article 41.3.0 is triggered whenever "a letter carrier route or full-time duty assignment" held by other than the junior employee is abolished. This includes T-6 assignments, router positions and reserve regular positions.

**Q**2. Our branch has the Article 41.3.0 language incorporated into our local agreement. The senior carrier's route in our unit is going to be abolished. One of the routes in our unit is held by a full-time branch officer who is on leave-of-absence for union business. It is currently filled by a part-time flexible carrier on a hold-down assignment. Should his route be included in the Article 41.3.0 posting?

**A** Yes. Article 41.3.0 specifically provides that "all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time duty assignment(s) was abolished shall be posted for bid." It does not provide for any exception in situations such as you described.

**Q**3. As a result of recent route inspections in my office the T-6 strings were changed and now cover different routes. Should the routes in the unit be reposted under the provisions of Article 41.3.0?

**A** It depends on the extent of the changes. This issue was addressed in the Step 4 settlement M-00694 which provided the following:

If a local Memorandum of Understanding contains the Article 41.3.0 language and changes in T-6 strings are so great that the assignments are abolished, they should be reposted in accordance with Article 41.3.0. If a local Memorandum of Understanding does not contain 41.3.0 language, reposting is not required. Changing one route in a T-6 string is not a cause for reposting regardless of local Memorandum of Understanding provisions. ☐

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# Maximization

**Q 1. Article 7, Section 3.A of the National Agreement requires that offices with 200 or more man years of employment be staffed with 88 percent full-time employees in the letter carrier craft. How do we determine whether we are a 200 man year office?**

**A** Whether an office is categorized as a 200 man-year office is determined as of the date of the current National Agreement. This categorization does not change for the duration of the Agreement. If you need to know whether you are a 200 man year office, you should contact your national business agent. Your NBA can also provide you with a copy of the current *On Rolls Complement Report* for your office to assist you in monitoring compliance with Article 7, Section 3.A. This report shows the actual number of full-time and part-time letter carriers in 200 man-year installations on an accounting period basis.

**Q 2. If management fails to comply with the 88 percent full-time staffing requirement under Article 7, Section 3.A, what is the appropriate remedy?**

**A** The appropriate remedy for violations of Article 7, Section 3.A was specified in a memorandum of understanding dated April 14, 1989 (M-00920). The memorandum provides the following prospective remedy:

Any installation with 200 or more man years of employment in the regular work force which fails to maintain the staffing ratio in any accounting period, shall immediately convert and compensate the affected part-time employee(s) retroactively to the date which they should have been converted as follows:

- A.** Paid the straight time rate for any hours less than 40 hours (five 8 hour days) worked in a particular week.
- B.** Paid the 8 hour guarantee for any day of work beyond five (5) days.
- C.** If appropriate, based upon the aforementioned, paid the applicable overtime rates.
- D.** Further, the schedule to which the employee is assigned when converted will be applied retroactively to the date the employee should have been converted and the employee will be paid out-of-schedule pay.
- E.** Where application of Items A-D above shows an employee is entitled to two or more rates of pay for the same work or time, management shall pay the highest of the rates.

**Q 3. May management convert part-time flexibles to full-time flexible in order to bring a 200 man-year office into compliance with the 88 percent full-time staffing requirement in Article 7, Section 3.A.?**

**A** No. Conversions to full-time flexible are only made under the terms of the July 21, 1987 maximization memorandum. Full-time flexibles are full-time letter carriers with flexible reporting times and nonscheduled days depending upon operational requirements as established on the proceeding Wednesday. Conversions to full-time flexible may not be made to comply with the 88 percent full-time staffing requirement in Article 7, Section 3.A.

Furthermore, National Arbitrator Mittenthal held in H1C-NA-C-120 (C-09340) that when part-time employees are entitled to conversion to full-time status under both the memorandum and Article 7, Section 3.A at the end of a given accounting period, the Postal Service must first convert to full-time regular pursuant to the 88 percent staffing requirement in Section 3.A and thereafter convert pursuant to the memorandum. However, Arbitrator Mittenthal held that a part-time flexible properly converted to full-time flexible under the 1987 memorandum is thereafter properly counted as a "full-time employee" for purposes of satisfying the 88 percent staffing requirement under Article 7, Section 3.A.

**Q 4. Are there any exceptions to the 88 percent full-time staffing requirement in Article 7, Section 3.A of the National Agreement?**

**A** Yes. National Arbitrator Mittenthal held in C-10343 that management may fall below the full-time staffing requirement in Article 7, Section 3.A when properly withholding positions under the provisions of Article 12, Section 5.B.2. If management asserts that this exception applies in your office, you should contact your national business agent for additional information and guidance.

**Q 5. Does approved annual leave constitute an interruption in assignment for the purpose of meeting the six-month requirement in Article 7, Section 3.C?**

**A** No. The Step 4 settlement M-00913 resolved this issue as follows:

For the purposes of meeting the six month requirements of Article 7.3.C, approved annual leave does not constitute an interruption in assignment, except where the annual leave is used solely for purposes of rounding out the workweek when the employee would otherwise not have worked. ☒

## Current topics

**Q1. May management assign overtime to a carrier on the regular OTDL rather than to a carrier on the Work Assignment List on whose route the overtime occurs?**

**A** If regular (time-and-a-half) overtime is necessary on a regularly scheduled day on the assignment of a carrier who has signed the Work Assignment List, it must be assigned to that carrier rather than to another carrier from the regular OTDL. However, management may use a carrier who has signed the regular OTDL to work regular overtime rather than assigning work at the penalty overtime rate to a carrier who signed the Work Assignment List.

**Q2. May management initiated special route inspections, conducted under the provisions of M-39, Sections 271.af, be performed during the months of June, July or August?**

**A** No. M-39 Section 211.1 specifically states that route inspections must be conducted between the first week of September and May 31, excluding December. Management-initiated route inspections during the low-volume summer months are prohibited. However, National Arbitrator Raymond Britton held in case C-11099 that, if a letter carrier requests special route inspection, and the criteria set forth in M-39, Section 271.g are met, then management must complete the inspection within four weeks of the request even if the inspection must be conducted during the months of June, July, or August. Of course, qualifying letter carriers should carefully consider whether it is to their advantage to request a special route inspection at a time that would result in its being conducted during the summer months.

**Q3. Our office is under the X-Route process. The only route inspection data is now two years old. Management insists that this data is "reasonable current" and may be used as a basis for route adjustments. Is this correct?**

**A** No, the September 1992 Memorandums of Understanding explained in *Building Our Future by Working Together*, specifically provide that the route inspection data used to plan or make route adjustments may be no more than 18 months old. Since your office is under the X-Route process, you may agree to extend the life of the data if you believe it is useful. However, just as with all other decisions under the X-Route process, this requires mutual agreement.

**Q4. I recently used sick leave to care for my sick child. I understand this was my right under the new Memorandum of Understanding on Sick Leave for Dependent Care negotiated as part of the 1994 National Agreement. When I returned from leave, my supervisor told me that the Postal Service implementation guidelines said that I could be disciplined for being irregular in attendance as a result of using sick leave for dependent care. Who issued these instructions and are they correct?**

**A** Postal Service Headquarters issued a document entitled *Sick Leave for Dependent Care Implementation Guidelines* in October 1995. Unfortunately, the guidelines are so poorly written that they can easily be misinterpreted by persons such as your supervisor. This unilaterally promulgated document in no way diminishes your rights under the new memorandum. If you need to use sick leave to care for a dependent in circumstances authorized by the memorandum, it is your right to do so. It does not constitute just cause for discipline, and you shouldn't worry about an arbitrator upholding discipline issued for that reason.

**Q5. I was recently asked to participate in a telephone survey of postal employees. Can I be required to participate and, if not, do you advise that I do so?**

**A** You can not be required to participate in the survey; participation is entirely voluntarily. NALC strongly suggests that you decline. The survey consists of management questions written in a manner calculated to solicit answers furthering management objectives. Management is not seeking the truth in such surveys, it is looking for ammunition. During collective bargaining, management has always sought to use such survey results in a manner detrimental to letter carriers. Management also uses these survey results as a public relations tool and to influence Congress to further its legislative agenda. ☒

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# Hold-down assignments

**Q 1. I am a PTF letter carrier. Management constantly bounces me from route to route in a completely capricious manner. Can I use my seniority to work on the vacant assignments of my choice?**

**A** Yes. Article 41, Section 2.B establishes the right of full-time reserve letter carriers, unassigned full-time letter carriers and part-time flexible letter carriers to exercise their seniority in filling temporarily vacant full-time duty assignments. The procedure, called "opting," allows carriers to "hold down" vacant assignments or the assignments of regular carriers who are on leave or otherwise unable to work for five days or more. The applicable sections state:

**3.** Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

**4.** Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

**5.** A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

**Q 2. I was recently denied a hold-down assignment for a week that included a holiday. My supervisor said that the resulting vacancy was only of four days' duration and thus not available for opting. Is this correct?**

**A** No. Your supervisor was probably confused by the award of National Arbitrator Kerr in case C-5865. Arbitrator Kerr held that the phrase "five (5) days or more" in Article 41.2.B means five days of work and not five calendar days. However, this award must be read in conjunction with the prearbitration settlement M-00237 which provides that management must make an assignment available for opting when "one of the five days is a holiday."

**Q 3. I recently completed a hold-down with the final week having Tuesday as the non-scheduled day. This resulted in my working a five-day schedule that included work on Saturday. When I tried to opt on another vacant route for the following week,**

**management said I was not eligible because the new assignment was for Monday through Friday. They said that since this would result in a six day week and "automatic overtime", I would have to agree to be non-scheduled on one work day in order to be considered eligible for the assignment. Is this correct?**

**A** No. National Arbitrator Bernstein held in case C-6461 that there are no exceptions or qualifications in the Article 41.2.B provisions which restrict their application to carriers who can work a hold-down without departing from a straight time pay status. Even if the schedule of the hold-down requires you to work six days during a service week and results in eight hours of overtime, you must be awarded the hold-down assignment if you are the senior applicant. If you were not scheduled on one of the days you should have been allowed to work, the proper remedy is eight hours' pay for that non-scheduled day. This remedy will result in a 48-hour week and eight hours of overtime.

**Q 4. Recently I opted on the assignment of a letter carrier who was temporarily unable to work because of a job related injury. He is now partially recovered and will be returning to case, but not carry his route. Will I be allowed to remain on the hold-down assignment?**

**A** No. It is NALC's position that, once the regular carrier on a route is sufficiently recovered to perform part of the duties of the assignment, the assignment is no longer vacant and any hold-down assignments are terminated.

**Q 5. A PTF letter carrier in my station who was holding down a vacant reserve letter carrier assignment recently opted on a vacant route. Is the reserve letter carrier assignment now considered vacant and available for opting?**

**A** No. The situation you describe is no different from when a full-time reserve letter carrier opts on a vacant duty assignment under the provisions of Article 41.2.B.3. A carrier who opts in these circumstances will be assigned the work schedule of the vacant route for the duration of the vacancy. However, the reserve regular position is not considered to have been vacated. ☒

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# Transitional employee decisions

**O**n August 20, 1996, National Arbitrator Carlton Snow issued two awards concerning the rights of transitional employees. In case C-15699 he sustained NALC's position that the work hour limitation in Section 432.32 of the Employee and Labor Relations Manual (ELM) applies to transitional employees. This provision states:

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

When applying this provision it is important to remember that lunch is included in the 12 hour maximum. Since all employees are required to take at least a half hour lunch if they work more than six hours, the actual effective limit on actual work for covered employees is 11½ hours.

Furthermore, this provision specifically states that it applies "except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG." Although Arbitrator Snow did not specifically address this issue, it is NALC's position that the only exception provided for in the national agreement is in Article 8, Section 5.G which provides that:

*G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:*

*1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.1); and*

*2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.*

Note that the term "work," as used in Article 8, means all paid hours, excluding lunch. Read together Article 8.5.G and ELM 432.32 establish the following:

ELM 432.32 applies to all casuals, transitional employees, part-

time employees and full-time employees not on the Overtime Desired List. The national agreement does not contain any language creating an exception. They may not be required to work more than 12 hours in one service day, even during December. This 12-hour period includes mealtime and *may not* be extended over a period longer than 12 consecutive hours.

Full-time employees on the Overtime Desired List may be required to "work" up to 12 hours in a service day. This 12-hour period does not include lunch and thus may be extended over a period longer than 12 consecutive hours.

The Step 4 decision M-00224 provides that all part-time flexible employees who complete their assignment, clock out and leave the premises without being scheduled are guaranteed four hours of work or pay if called back to work, regardless of the intervals between shifts. In case C-15698 Arbitrator Snow denied an NALC grievance seeking a similar four-hour call-back guarantee for transitional employees under the provisions of Article 8, Section 8.D. However, it is important to note that the June 29, 1994 prearbitration settlement M-01191 does provide protection for transitional employees working split shifts. The settlement states:

*The issue in this case is whether a NALC Transitional Employee (TE) is entitled to more than one four (4) hour work guarantee when assigned to work a split shift. After reviewing the matter, we mutually agreed that:*

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

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

## CONTRACT ADMINISTRATION UNIT

**William H. Young, Vice President**  
**Jim Edgemon, Director of City Delivery**  
**William M. Dunn Jr., Director of Safety and Health**  
**Michael J. O'Connor, Director of Life Insurance**  
**Thomas H. Young Jr., Director, Health Benefit Plan**

# Former supervisors

**T**he Contract Administration Unit has been receiving questions concerning the seniority and status of former supervisors who return to the carrier craft. Since seniority and full- or part-time status are distinct but related issues, they will be addressed separately below.

Both Article 12, Section 2.B.2 and Article 41, Section 2.F must be examined to determine the seniority of former supervisors. It should be noted that these provisions apply to any letter carriers who leave for a best-qualified position outside the craft, whether or not the position is "supervisory." They provide the following:

*12.2.B. An employee who left the bargaining unit on or after July 21, 1973 and returns to the same craft:*

*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.*

*41.2.F. Return From Any Position for Which Selection Was Based on Best Qualified. Effective July 21, 1978, when an employee, either voluntarily or involuntarily returns to the Letter Carrier Craft at the same installation, seniority shall be established after reassignment as the seniority the employee had when leaving the Letter Carrier Craft without seniority credit for service outside the craft.*

When these two sections are read together, they provide for three different situations concerning the seniority of carriers who leave the bargaining unit and then return to the carrier craft on or after July 21, 1978.

■ **If the carrier left the unit prior to July 21, 1973**, then Article 41, Section 2.F would apply and the carrier would pick up whatever seniority he or she had at the time of departure from the unit, but would not receive credit for time spent out of the unit.

■ **If the carrier left the unit on or after July 21, 1973**, and returned within 2 years, then Article 41, Section 2.F again applies and the carrier would receive credit for the seniority he or she had prior to leaving the unit.

■ **If the carrier left the unit prior to July 21, 1973**, and returns later than 2 years following the date of departure, Article 41, Section 2.F does not apply. Rather, Article 12 Section 2.B.2 controls and requires the carrier to begin a new period of seniority.

It should be emphasized that these seniority provisions only apply to former letter carriers returning to the craft in the same installation they left. Former letter carriers returning to or from a different installation must always begin a new period of seniority as required by Article 41, Section 2.A.2.

In an August 13, 1990 decision (C-10147) National Arbitrator Snow held that when a former supervisor is reassigned to the

letter carrier craft, his or her full-time or part-time *status* is to be determined by reference to the seniority provisions of the Agreement. Thus, the status of a former supervisor returning to the carrier craft can only be determined after the correct seniority has been established. They may not be assigned to a full-time regular status if it impairs the seniority rights of more senior part-time flexible employees. Accordingly:

■ **If a letter carrier becomes a supervisor** and returns to the letter carrier craft in the same office within two years—thus retaining his or her seniority—he may be assigned to a full-time position.

■ **If a letter carrier becomes a supervisor** on or after July 21, 1973 and returns to the letter carrier craft after two years have passed, he or she loses seniority and thus may only be assigned to a part-time flexible position.

■ **If a letter carrier becomes a supervisor** and returns to the letter carrier craft in a different office, he will have accumulated no seniority and thus may only be reassigned to a part-time flexible position.

## Seniority and full-or part-time status are distinct but related issues.

Finally, it should be noted that these provisions do not apply to letter carriers temporarily detailed to a supervisory position (204-B). In such cases, the letter carrier is not considered to have left the bargaining unit and thus seniority continues uninterrupted under the provisions of Article 41, Section 2.B.2. However, Article 41, Section 1.A.2 does provide that the duty assignment for a carrier detailed to a 204-B position in excess of four months shall be declared vacant and posted for bids even though there is no loss of seniority in such cases. ☒

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# Bidding restrictions

**Q** 1. The routes in my station are being reposted under the provisions of Article 41.3.O. Will my bid count toward the limit of five bids during the duration of the contract?

**A** No. Article 12, Section 3.A contains specific language providing for an exception when routes are reposted. Section 3.A states:

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

1. is to a job in a higher wage level;
2. is due to elimination or reposting of the employee's duty assignment; or
3. enables an employee to become assigned to a station closer to the employee's place of residence.

There are other exceptions to the five-bid limit in addition to those expressly provided for in Article 12, Section 3.A. For example, when the regular carrier on a route identified as an X-route becomes unassigned as a result of the X-route being abolished, the next successful bid does not count toward the five-bid limit.

Another exception concerns letter carriers who are excessed from a section under the provisions of Article 12, Section 5.C.4.b. Article 12 Section 5.C.4.c provides that in such circumstances:

*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.*

Bids made under this provision do not count toward the five bid limit.

**Q** 2. May T-6 positions be withheld under the provisions of Article 12, Section 5.B.2 in anticipation of the need to excess employees from other crafts?

**A** No. Article 12, Sections 5.C.5.a(4) and 5.C.5.b(2) require that when employees are excessed into another craft, they must meet the minimum qualifications for the position. It is the Contract Administration Unit's position that since employees from other crafts can not meet the minimum experience requirements for T-6 positions, management has no authority to withhold the positions in such cases.

**Q** 3. May letter carrier positions be withheld under the provisions of Article 12, Section 5.B.2 in anticipation of the need to excess employees from the mailhandler craft?

**A** Letter carrier positions may not be withheld for Grade 4 mailhandlers. The provisions of Article 12, Sections 5.C.5.a(4) and 5.C.5.b(2) specifically require that when employees are excessed to other crafts it must be to positions in the *same or lower level*. There is no authority to withhold Grade 5 or 6 positions in anticipation of excessing Grade 4 employees.

**Q** 4. May the Postal service convert existing door-to-door delivery to curbside delivery?

**A** Postal Operations Manual Section 631.6 prohibits postmasters from unilaterally discontinuing door-to-door delivery service. Delivery can be changed from door-to-door service only if the postal customers involved agree in writing to the change.

**Q** 5. Our office is in the X-route process. The local parties agreed to the UMPS procedure to be our local X-route dispute resolution process. Management has recently withdrawn from UMPS and now asserts that any X-route disputes must be handled through the Article 15 grievance/arbitration procedure. Is this correct?

**A** No. Absent local agreement to establish a new dispute resolution process, the parties must continue to use the one that they initially selected when entering the X-route procedure. This means that even if UMPS is discontinued for other purposes, management must agree to its continued use for the limited purpose of resolving X-route disputes. 

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