

WORKING TOGETHER IN THE WESTERN AREA

ARTICLE 1

Union Recognition

1. Are supervisors in offices with less than 100 bargaining unit employees (Article 1.6.B) permitted to case mail into letter carrier cases?

Response: No. If the phrase "distribution tasks" or "may personally perform non-supervisory tasks" is found in a supervisor's position description, this does not mean the casing of mail into letter carrier cases.

Source: Step 4 (H7N-2M-C 26452), May 17, 1988.

2. What is the remedy when supervisors perform craft work in violation of Article 1.6.A or B of the National Agreement?

Response: The employee identified by the parties will be compensated at the appropriate rate for an amount of time equal to the amount of time the supervisor spent performing bargaining unit work. The employee could be a part-time flexible (PTF) on straight or overtime, a transitional employee (TE) on straight or overtime, a full-time regular on overtime, or a full-time regular on penalty overtime, depending on the circumstances.

Source: Western Area NALC/USPS Leadership Committee.

3. Can supervisors deliver or transport Express Mail?

Response: Generally, no. While the delivery of Express Mail has not been designated exclusively to any craft, it does constitute bargaining unit work.

Source: Prearbitration settlement (H4N-3U-C 25828), November 1, 1988.

4. What is an "emergency" as referred to in Article 1.6.A?

Response: An emergency is "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."

Source: Article 3.F.

ARTICLE 2

Non-Discrimination and Civil Rights

1. May the Postal Service be required to reasonably accommodate an employee due to religious reasons?

Response: The Postal Service has agreed that accommodation 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 may not violate the National Agreement.

Source: Postmaster General (PMG) policy letter of November 25, 1981; EL-311 Section 313.6.

2. If an Equal Employment Opportunity (EEO) claim and grievance are filed on the same issue, does the settlement of the EEO claim automatically make the grievance moot?

Response: No. If the grievance has moved past the Step 1 level, then the Union must be signatory to any settlement which would include a waiver of the grievance.

The parties have agreed nationally that an EEO settlement does not bar further processing of a grievance.

Source: Step 4 (H4N-3U-D 25076), April 15, 1987.

3. May an EEO settlement vary the terms of the collective bargaining agreement?

Response: No.

Source: Western Area NALC/USPS Leadership Committee.

ARTICLE 3

Management Rights

1. Do the management rights stated in Article 3 allow management to violate the other provisions of the National Agreement?

Response: No. Management rights are limited by other provisions of the National Agreement.

For example, management's right to assign employees across craft lines is limited by the terms and conditions of Article 7.

Source: Article 3.

ARTICLE 5

Prohibition of Unilateral Action

1. What is "past practice"?

Response: The most clear definition of past practice was stated by Arbitrator Clair V. Duff in this way:

"Past practice may be described as a pattern of conduct which has existed over an extended period of time and which has been known to the parties and has not been objected to." [(American St. Gobain Corp., 46 LA 920, 921).]

Source: Western Area NALC/USPS Leadership Committee.

2. When does a past practice become binding on the parties?

Response: Arbitrator Richard Mittenthal concluded that in order for a past practice to rise to the level of a binding past practice, one ordinarily would expect it to be clear, consistently followed, followed over a long period of time and to have been mutually accepted by the parties.

Source: Western Area NALC/USPS Leadership Committee.

3. What do we mean by a "clear" past practice?

Response: With respect to clarity, arbitrators have found that the party claiming the past practice should show that, given a set of similar circumstances, the past practice was followed in nearly every situation where there were not extenuating circumstances. That is, where the circumstances did not change, the practice was followed on a consistent basis.

Source: Western Area NALC/USPS Leadership Committee.

4. What do we mean by "consistently followed"?

Response: To determine if a past practice has been consistently followed, it is not required that in every case the results be the same. The criteria required, given the same set of circumstances, is that the parties could reasonably expect a similar outcome.

Source: Western Area NALC/USPS Leadership Committee.

5. What length of time establishes a past practice as a binding one?

Response: Some arbitrators have found that one week is sufficient to establish a past practice and some have required a period of years.

If a certain practice occurs every hour for a period of one week, some arbitrators have found that a past practice would be binding, while a practice which occurs once a year would require a period of years to find that a past practice was established.

The key element arising out of these arbitration decisions is how many times a certain incident has occurred when the underlying circumstances were the same or similar.

Source: Western Area NALC/USPS Leadership Committee.

6. How do we determine if a past practice has been "mutually accepted by the parties"?

Response: This particular criteria is the most difficult to determine. It is clear that to prove that a practice was mutually accepted a showing must be made that both parties were cognizant of the practice and accepted it.

As Arbitrator Harry Shulman said:

"The union's witnesses remember only the occasion on which the work was done in a manner they urge. Supervision remembers the occasions on which the work was done otherwise. Each remembers details the other does not; each is surprised at the other's perversity; and both forget or omit important circumstances. Rarely is alleged past practice clear, detailed and undisputed; commonly, inquiry into past practice of the type that is not the result of joint determination of agreement produced immersion in a bog of contradictions, fragments, doubts, and one-sided views." (Ford Motor Company 19 LA 237, 242.)

The determination of whether parties had knowledge of the practice lies with the arbitrator. It should be noted, however, that in many cases arbitrators have upheld the validity of past practice, finding that mutuality was determined implicitly by the action or inaction of either party. That is, where it can be shown that a particular practice was widespread, clearly utilized and done over a reasonable length of time, an arbitrator will hold both parties to such a practice, even if they claim at the arbitration hearing they had no knowledge that such a practice was occurring. In those cases, mutuality is implied by the meeting of the other criteria of past practice.

Source: Western Area NALC/USPS Leadership Committee.

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7. When have arbitrators used past practice to resolve a dispute?

Response: Past practice has been used to resolve disputes involving ambiguous language; to implement general contract language; to amend and clarify clear contract language; and to implement enforceable conditions of employment.

Source: Western Area NALC/USPS Leadership Committee.

8. How is past practice used to clarify ambiguous language?

Response: In those cases where arbitrators are called upon to interpret provisions of contracts, the first step that an arbitrator must take is to determine whether or not there is ambiguity within the language to be interpreted.

If the arbitrator finds that such language is unambiguous and clear, then the arbitrator will go no further and will apply that language as written by the parties.

It is noted that a minority of arbitrators will sometimes allow past practices to even supplant the clear and unambiguous contract language.

A commonly held definition of ambiguity was used by Arbitrator Thomas Levak in Rogue Valley Memorial Hospital, Inc., 77 LA 1220, 1223, when he said:

"The arbitrator follows the principle that a provision of an agreement is unclear and ambiguous where plausible contentions may be made by both parties for varying interpretations. Of course, the fact that contentions are made is not enough; the contentions must be truly logical and plausible."

In those circumstances where the arbitrator finds that ambiguity exists within the collective bargaining agreement language, then the arbitrator may apply the past practice to define the mutual intent of the parties.

Additionally, once an arbitrator finds that the past practice has defined the mutual intent of the parties relative to ambiguous language, such a past practice may not be changed unilaterally without collective bargaining with the affected party.

Source: Western Area NALC/USPS Leadership Committee.

9. How is past practice used to implement general contract language?

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Response: Certain terms of a contract may be intentionally left nonspecific in the hope of being able to encompass all conditions that will arise. This is seen most clearly in contractual provisions which allow the employer the right to discipline an employee for just cause. It would be impossible for the parties to sit down and determine all possible reasons or causes for discipline in a contract. Through the use of general language, they form the method for handling any situation that may arise.

Source: Western Area NALC/USPS Leadership Committee.

10. How is past practice used to amend and clarify clear language in the Agreement?

Response: Some arbitrators take the view that even though a specific contract provision is clear and unambiguous, the parties, by their history, may amend and even change the intent of that language. The clear majority, however, believe that evidence of past practice is inadmissible where the contract contains no ambiguity. (AMF Western Tool, Inc. 49 LA 719, 720.)

Source: Western Area NALC/USPS Leadership Committee.

11. How is past practice used to implement enforceable conditions of employment when the contract is silent regarding these conditions?

Response: This is most commonly seen in the circumstances when the employer, over a period of time, supplies a benefit such as a company picnic, gifts or perhaps even stock in a particular company. In those circumstances, some arbitrators have found that such a past practice which has been developed and includes the criteria as set forth earlier in this document, becomes a part of the employee's basic wage and compensation package.

Source: Western Area NALC/USPS Leadership Committee.

12. When may a past practice be changed?

Response: When a past practice exists and has not been used by an arbitrator to define ambiguous language, then such a practice may be changed if the nature of the practice and the circumstances under which it arose have been altered.

As Arbitrator Richard Mittenenthal has stated in Houston Electronics Corporation, 70 LA 887:

"One must consider the underlying circumstances that give a practice its true dimensions. A practice is not broader than the circumstances out of

which it has arisen."

Source: Western Area NALC/USPS Leadership Committee.

13. What are some changes to the "underlying circumstances" that could permit a change in past practice?

Response: There are basically four ways that underlying conditions can be changed, thereby causing the past practice to fall by the wayside.

The first is by showing that the practice has become inefficient or uneconomical. Such a statement must be accompanied by empirical evidence which supports the position by the party indicating that the past practice should be stopped.

A second factor that may invalidate the past practice occurs when there would be an underlying change in the way the company does its business.

The third way that a past practice may be altered is in those situations where the bargaining unit changes. If either the company changes owners or the union that represents the employee changes, then the past practice falls by the wayside. Arbitrators are sharply divided in these situations and may retain the practice if one of the parties remain. (When we speak about the bargaining unit changing, or the company changing owners or unions, we do not mean a change in postmaster general, postmaster, branch president, etc.)

The fourth way that a past practice may be changed is if the party that would like to discontinue the practice makes its desire known during the course of negotiating a new contract. If either party fails to do this during negotiations, the practice may not be unilaterally revoked during the life of the contract.

Source: Western Area NALC/USPS Leadership Committee.

14. Can all of this past practice discussion be summed up?

Response: Arbitrators generally consider past practice where it exists in the interpretation of "rights" issues.
For a past practice to exist, it must be clear, consistently followed, followed over a reasonable length of time and shown by the record to have been accepted by the parties.

Arbitrators consider past practice to clarify ambiguous language and will uphold past practice unless the existing language which contains the ambiguous language is changed during collective bargaining. If the ambiguous language is not changed, the past practice will continue to

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define mutual intent.

It is crucial to note that where a past practice has developed between the parties, and is not used to define ambiguous language, the practice can be changed or nullified in circumstances where: (1) the practice is no longer economical or efficient; (2) the company changes owners or the bargaining unit changes; (3) the company changes operations or the nature of the business changes; or (4) one party informs the other during the negotiation of a new contract that it is not bringing forth into the new contract the specific past practice that had developed.

Absent these factors, past practice is given great weight in grievance arbitration and should be duly noted by the parties when they prepare for arbitration.

Source: Western Area NALC/USPS Leadership Committee.

ARTICLE 6

No Layoffs or Reduction in Force

1. Is maternity leave considered work for the purpose of achieving protected status pursuant to the provisions of Article 6.A.3?

Response: The Postal Service denied a grievance wherein the Union argued that leave without pay for maternity reasons should be included in the 20 pay-period work requirement in each anniversary year to qualify for protected status.

In denying the grievance, the Postal Service concluded that Article 6.A.3 lists three specific provisions which would be considered work for the purposes of meeting this requirement, with maternity leave not being one of those.

The National Union did not appeal this decision and thus concurred with the conclusion.

Source: Step 4 (H4N-3S-C 31204), May 22, 1987.

2. Prior to laying off career employees, must management offer the impacted employees the opportunity to work any existing letter carrier craft transitional assignments within the installation?

Response: Yes.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992.

3. Does Article 6 apply to TEs?

Response: No. The use of TEs will be phased out within 90 days of when Advanced Bar Coding (ABC) is on line and cost effective in terms of bar coding goals in the specific five digit delivery unit.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992.

ARTICLE 7

Employee Classifications

1. When is management required to convert a PTF carrier to a full-time position?

Response: The conversion from PTF to regular status in the letter carrier craft is controlled by the provisions of Article 7, Sections 2 and 3.

All PTFs, on the rolls as of December 21, 1992 will be offered an opportunity to convert to full-time regular status by November 20, 1994.

Source: Article 7; Memorandum of Understanding, December 21, 1992.

2. Does the following situation constitute a contractual violation? On Monday, a casual works 8 hours, while on the same day a PTF who is available is not scheduled. However, the posted schedule shows the PTF scheduled for 40 hours.

Response: Arbitrator Gamser concluded that the National Agreement does not require that all PTFs at an installation must receive 40 hours before any casual is scheduled.

Source: National Arbitration Award (AC-C-13148 and 14767), December 20, 1979.

3. Do PTFs have priority over TEs in work scheduling?

Response: Yes. The employer will make every effort to ensure that available part-time flexible employees are utilized at the straight time rate prior to assigning such work to transitional employees working in the same work location and on the same tour provided the reporting guarantee is met for transitional employees.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992.

4. In offices with less than 125 employees, is management obligated to maximize full-time employees?

Response: Yes. Management is required to maximize full-time employment in all offices. This section does not differentiate between the size of offices.

Source: Article 7.3.B.

5. May management unilaterally establish a full-time flexible position in offices with less than 125 man years of employment?

Response: No.

Source: Article 7 Memorandum of Understanding, July 21, 1987.

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6. Does the December 21, 1992 Memorandum allow for the conversion to full-time flexible regular?

Response: No.

Source: Memorandum of December 21, 1992 and Western Area NALC/USPS Leadership Committee.

7. In an office with more than 200 man years of employment, do full-time flexible regular positions count in the 88% full-time employees required pursuant to Article 7.3.A?

Response: Yes. Full-time flexible regulars are counted as part of the 88% for purposes of satisfying the 88% full-time staffing requirement under Article 7.3.A. When PTFs are entitled to conversion to full-time under both Article 7.3.A and the maximization memo, management must first convert employees to full-time regular until the 88% staffing requirement has been met, then any additional employees meeting the maximization memorandum criteria should be converted to full-time flexible regular.

Source: National Arbitration Award (H1C-NA-C-120), September 5, 1989, Arbitrator Richard Mittenthal; Article 7.3.A.

8. May management work employees across craft lines without restriction in offices of less than 100 employees?

Response: No. The restrictions found in Article 7 on management's right to work employees across craft lines apply regardless of the size of the office or any past practice to the contrary.

Source: Western Area NALC/USPS Leadership Committee; Article 7.2.

9. At what point is a letter carrier responsible for the sorting of segmentations?

Response: Segmentation is the sortation or preparation of mail into clusters or groupings for the purpose of achieving greater processing and/or carrier sortation efficiency. Segmentation of mail on automated or mechanized equipment is done by the craft designated to operate the equipment. Segmentation of mail at an incoming primary and/or secondary operation is performed by the craft designated to perform distribution of mail in the operation. A manual, tertiary or delivery preparation operation is the manual sortation or preparation of mail that occurs after an incoming secondary operation and does not require memorization of the scheme items. Manual, tertiary, or delivery preparation operation(s) will be done by city letter carriers, provided the mail is for city delivery routes or post office box sections served by these routes and provided there is space available at the delivery unit. If space is not available and such sortation or preparation is done at another facility, city letter carriers will perform the work at that facility.

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Source: Prearbitration settlement (H4N-NA-C 35), March 7, 1987.

10. Is time worked by a PTF on an opted assignment creditable for purposes of meeting the maximization criteria of Article 7.3.C?

Response: Yes. National Arbitrator Mittenthal concluded that the time spent by a PTF on an opt would count in the Article 7.3.C maximization criteria.

Source: National Arbitration Award (H1N-2B-C 4314), July 8, 1985.

11. Can the Postal Service reassign an employee to another craft due to their inability to work safely?

Response: No. The parties have agreed that an employee may volunteer for reassignment to another craft, but the Postal Service may not unilaterally make such a reassignment for safety reasons.

Source: Prearbitration settlement (H8N-4J-C 33933), December 6, 1982.

12. Is a full-time flexible regular established pursuant to the Article 7 Memorandum the same as an unassigned regular defined in Article 41.1.A?

Response: No. The parties have agreed that flexible schedule regulars are not considered unassigned regulars and cannot be assigned under Article 41.1.A.7.

Individuals who are assigned into flexible schedule regular positions remain in those positions until such time as they elect to bid for other vacant duty assignments under Article 41.1.A.

Source: Step 4 (H1N-5D-C 17507), April 27, 1984; Step 4 (H1N-1Q-C 37157), March 22, 1985.

13. May a vacated full-time flexible regular position be posted for bid if the full-time flexible regular secures a full-time bid assignment per Article 41?

Response: No. The full-time flexible regular position is an "incumbent only" position and may not be bid.

Source: Western Area NALC/USPS Leadership Committee.

14. If it is locally agreed to create X-Routes, will PTFs be allowed to make regular on these routes?

Response: X-Routes are assignments held pending revision and normally should not be considered as vacancies for purposes of PTF conversions. However, regular carriers, including recently converted PTFs may bid on these assignments.

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Source: Questions and Answers Concerning the September 1992 Memorandums.

15. In the "unilateral" process, if more routes are created, will PTFs make regular on these routes?

Response: If more routes are created, these would be considered as available assignments for bidding. As a result, PTF conversions to regular are allowable as in the past.

Source: Questions and Answers Concerning the September 1992 Memorandums.

16. May a delivery unit hire TEs after December 21, 1992, if they have not established a TE ceiling using the DPS impact analysis?

Response: If the delivery unit has not established a TE ceiling using the DPS impact analysis they could hire TEs after December 21, 1992, only to backfill PTF conversions or to cover residual vacancies withheld per Article 12.

Source: Questions and Answers Concerning the September 1992 Memorandums.

17. Are TEs figured in with the 88/12 calculations?

Response: No.

Source: Questions and Answers Concerning the September 1992 Memorandums.

18. Does the Memorandum of Understanding require immediate conversion of PTFs to regular where vacancies exist?

Response: No. The Memorandum requires that each PTF be offered the opportunity to convert to regular not later than November 20, 1994. PTFs who are the subject of pending national conversion grievances which have been remanded are to be converted on a priority basis.

Source: Questions and Answers Concerning the September 1992 Memorandums.

19. Can a PTF refuse conversion to regular within the installation?

Response: No. If the PTF is given an opportunity for conversion in the installation, it cannot be refused. However, a PTF may refuse to accept a conversion opportunity outside the installation.

Source: Questions and Answers Concerning the September 1992 Memorandums.

20. If a PTF refuses to accept a conversion opportunity outside the installation, will the

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PTF be given another conversion opportunity if there is subsequently a vacancy in the installation?

Response: No. Management need only offer one conversion opportunity under this Memorandum.

Source: Questions and Answers Concerning the September 1992 Memorandums.

21. An office does not have recent route inspection data (within 18 months). The old DSSA allowed for 10 TEs (400 hours per week). Management has not hired/used TEs to date or has been utilizing less than that full entitlement. Is it correct that, after December 21, 1992, the TE hours in this office could not be increased using the allowance established under the old DSSA formula?

Response: Yes.

Source: Questions and Answers Concerning the September 1992 Memorandums.

22. Is it also correct that, in the same example as in Question 21, TE hours could be increased by 40 hours per week for each PTF converted to regular pursuant to the PTF conversion agreement?

Response: Yes.

Source: Questions and Answers Concerning the September 1992 Memorandums.

23. An office has no recent route inspection data. The old DSSA allowed for 10 TEs (400 hours per week). The 400 hours are being used. Can these hours continue to be used and, in addition, can the allowable TE hours be increased 40 hours per week for each PTF converted to regular pursuant to the PTF conversion agreement?

Response: Yes.

Source: Questions and Answers Concerning the September 1992 Memorandums.

24. In the same example as Question 23, what is the effect on the old DSSA TE hours once a DPS ceiling is established? What is the effect on the PTF conversion hours once a DPS ceiling is established?

Response: The effect of the ceiling would be in the termination date of TE hours. Those TE hours utilized under the established ceiling will be terminated when automation is on line and operative while TE hours over the ceiling attributable to PTF conversions need to be terminated no later than November 20, 1994.

Source: Questions and Answers Concerning the September 1992 Memorandums.

ARTICLE 8

Hours of Work

Section 4

1. If an employee informs management that their assignment cannot be finished in 8 hours, and management orders the letter carrier to finish, is the overtime authorized?

Response: Yes.

Source: Step 4 [N-C-711(47)], October 2, 1972.

2. When is penalty overtime applicable?

Response: Penalty overtime is paid at two times the base hourly straight time rate for full-time letter carriers in the following circumstances:

- A. More than 8 hours on a non-scheduled day;
- B. More than 10 hours on a regularly scheduled day;
- C. When working overtime on more than 4 of 5 scheduled days within a service week.

Penalty overtime is not paid for work in the month of December. The national parties yearly define this four-week period. PTFs and TEs are eligible for penalty overtime pay at two times the base hourly rate for work in excess of 10 hours in a service day or 56 hours in a service week.

Source: Article 8.4; NALC Transitional Employee Arbitration Award, January 16, 1992.

Section 5

1. What is an Overtime Desired List (ODL)?

Response: The ODL was negotiated to include those full-time employees who, by placing their name on the Regular ODL, indicate a desire to work overtime.

The purpose of the ODL is to provide auxiliary assistance to full-time regulars who do not want to work overtime. It is not a process to insure overtime for those on the list.

Source: Western Area NALC/USPS Leadership Committee.

2. May an ODL employee be bypassed because they do not know a route other than their own?

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Response: No.

Source: Step 4 [NB-N-1572(N25)], June 28, 1974.

3. May ODL employees on annual leave immediately preceding or following non-scheduled days be required to work on their off days?

Response: 1. Normally, employees on the ODL who have annual leave immediately preceding and/or following non-scheduled days will not be required to work overtime on their off days.

2. However, if they do desire, employees on the ODL may advise their supervisor in writing, of their availability to work a non-scheduled day that is in conjunction with approved leave.

Source: Western Area NALC/USPS Leadership Committee.

4. If a route in the "X-Route" process during an interim adjustment is built up and 20 minutes is added to the route, is that 20 minutes counted in equalization and opportunities for overtime?

Response: No. The route would be considered an eight hour route for the purpose of administering the provisions of Article 8.

Source: Questions and Answers Concerning the September 1992 Memorandums.

5. What is the "Letter Carrier Paragraph"?

Response: The "Letter Carrier Paragraph" is found in the Article 8 memorandum signed by the parties and incorporated into the National Agreement on December 24, 1984.

The "Letter Carrier Paragraph" states as follows:

"In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the ODL, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime."

Source: Article 8 Memorandum.

6. Since Article 8.5.C.2.d is still in existence and the "Letter Carrier Paragraph" is also a binding contractual provision, don't they contradict one another?

Response: Yes. Arbitrator Mittenthal said in a national award:

"A close comparison of Article 8, Section 5C2d and the 'letter carrier paragraph' of the Memorandum is most revealing. Section 5C2d says Management may work a non-ODL carrier overtime on his own route on his regularly scheduled day without having to resort to the ODL. Or, should Management so choose, it may work this overtime with someone from the ODL. Article 8 thus gives Management substantial discretion in assigning a carrier to overtime in this situation. The 'letter carrier paragraph' when read along with the May 1985 supplemental agreement, establishes a quite different set of priorities. It requires Management to work a non-ODL carrier overtime on his own route on his regularly scheduled day if he has signed up for such 'work assignment' overtime. If he has not signed up, then the Memorandum requires Management to 'seek' people from the ODL before 'requiring' the carrier in question to work 'mandatory overtime' on his own route. In short, the very discretion granted management by Section 5C2d is taken away by the 'letter carrier paragraph.'"

The "Letter Carrier Paragraph" has modified Article 8.5.C.2.d and created the obligation for the USPS to provide auxiliary assistance.

Source: National Arbitration Award (H4C-NA-C 21 "Fifth Issue"), June 26, 1986.

7. Can management require employees to work overtime on their own route on their regularly scheduled day if not on any ODL?

Response: Yes. Employees may be required to work overtime on their own route on a regularly scheduled day if management has exhausted all available auxiliary assistance as required by the "Letter Carrier Paragraph" with the exception that interim adjustments under the X-route concept may require overtime work up to 20 minutes daily.

Source: National Joint Statement on Overtime, June 8, 1988; Memorandum of Understanding, September 19, 1992.

8. Can management be required to provide auxiliary assistance to a letter carrier on their own route by mandating overtime for other individuals on a juniority basis?

Response: No. Article 8.5.D, which requires the Postal Service to draft by juniority when the ODL has been exhausted, is only applied to circumstances when an individual is forced off their own assignment to work overtime on another assignment. If the overtime is on their own route, the Postal Service may require that the employee work overtime without drafting by juniority.

Source: Western Area NALC/USPS Leadership Committee; NALC Vice-President Lawrence Hutchins Letter of April 28, 1988.

9. What is auxiliary assistance as defined in the "Letter Carrier Paragraph"?

Response: Auxiliary assistance in accordance with the "Letter Carrier Paragraph",

should be provided on an availability basis as follows:

This is not a pecking order.

- A. Casual employees on straight or overtime;
- B. PTF employees on straight time or at the regular overtime rate;
- C. Transitional Employees in accordance with the TE Agreements;
- D. Carriers on the ODL at the regular overtime rate;
- E. Regular Carriers on undertime;
- F. Unassigned Regulars with no hold down on straight time;
- G. Reserve Letter Carriers with no hold down on straight time.

If available auxiliary assistance is not found, then the non-ODL carrier may be required to work overtime on their own route on their regularly scheduled day.

Source: National Arbitration Award (H4C-NA-C 21 "First Issue" and "Fifth Issue"), June 26, 1986, Arbitrator Richard Mittenthal; NALC Transitional Employee Arbitration Award, January 16, 1992; Western Area NALC/USPS Leadership Committee.

10. Can management require a full-time letter carrier who is not on the ODL to work overtime the week of count and inspection?

Response: Yes, under the following conditions:

- 1. On the day or days during the week of inspection when the carrier is accompanied by a route examiner, management may require a carrier not on the ODL or Work Assignment List to work overtime on his/her own route in order to allow for a completion of the inspection.
- 2. On the other days during the week of inspection when the carrier counts mail, management may require a carrier not on the Overtime Desired List or Work Assignment List to work overtime on his/her own route for the amount of time used to count the mail.

Source: National Pre-Arbitration Settlement (H7N-1N-C 34068/34114), November 24, 1992.

11. What is the Work Assignment ODL?

Response: The Work Assignment ODL was established on May 28, 1985 when the

Postal Service and the NALC signed a memorandum which established, separate from any other contractual provision, an ODL for those full-time carriers to indicate a desire for available overtime on their own work assignment on their regularly scheduled days. This is called the Work Assignment List.

Those lists are signed at the same time that the Regular ODL is signed, that is, two weeks prior to the beginning of each quarter. Work assignment overtime differs from the regular ODL in the following ways:

- A. Overtime worked by individuals on the Work Assignment List, that is, overtime on their own assignment if they have signed such, is not to be counted for purposes of determining equitable distribution on a quarterly basis.
- B. Those individuals on the Work Assignment List may be required to work up to 12 hours per day. The Postal Service has the discretion, however, to restrict an individual on Work Assignment overtime to 10 hours and utilize someone on the regular ODL so that penalty overtime is not utilized.
- C. The penalty pay provisions of Article 8.5.F are still in effect.
- D. The Work Assignment List provisions are not applicable to overtime scheduled on the carrier's day off.

Source: Memorandum of Understanding, May 28, 1985; Joint Statement on Overtime, June 8, 1988.

12. Must management give consideration to both hours and opportunities in determining equitability of overtime work between regular ODL employees?

Response: Yes.

Source: National Arbitration Award (H1N-5G-C 2988), September 14, 1986, Arbitrator Neil Bernstein.

13. When a letter carrier who is not on either ODL is required to work overtime on their own route on a regularly scheduled day while an ODL carrier on their non-scheduled day is sent home after working 8 hours to avoid paying him/her penalty overtime, is there a violation?

Response: No. In the Memorandum signed by President Sombrotto on December 20, 1988, item 3 is quite explicit in that the Postal Service is not obligated to use an ODL carrier to provide auxiliary assistance if that letter carrier would be in a penalty overtime status.

This would mean that in circumstances found in Article 8.5.F, the ODL carrier would not be available because Article 8.4.D provides for penalty

overtime for any overtime work in contravention of the restrictions in Article 8.5.F.

Source: Memorandum of Understanding, December 20, 1988.

14. If a regular carrier requests auxiliary assistance on their own route on a regularly scheduled day and both PTF and ODL employees are available on overtime, does the ODL individual have precedence over the PTF?

Response: No. The ODL individual may be assigned that overtime but there is no violation if management assigns the overtime to a PTF or casual employee.

Source: Joint Statement on Overtime, June 8, 1988; National Arbitration Award (M3-W-0027), November 26, 1988, Arbitrator Richard Mittenthal.

15. May a letter carrier sign both the Work Assignment and the Regular ODLs?

Response: No.

Source: Joint Statement on Overtime, June 8, 1988.

16. If a T-6 has signed the Work Assignment List, are they available for all routes on their string on a daily basis?

Response: Yes. The Memorandum establishing the Work Assignment List dated May 28, 1985, says the following:

"T-6 or utility letter carriers would be considered available for overtime on any of the routes on their string."

Source: Memorandum of Understanding, May 28, 1985; Joint Statement on Overtime, June 8, 1988.

17. If a PTF becomes a regular in the middle of a quarter as defined in Article 8. 5.A, may they sign the ODL?

Response: Normally, no. However, in a Memorandum, dated May 6, 1993, the parties have agreed to the following:

"The Postal Service and the NALC agree to afford part-time flexibles who are converted to full-time regular under the December 21, 1992 Memorandum of Understanding the following access to the overtime desired list (ODL) as a one-time exception to Article 8.5.

Specifically, part-time flexibles who are converted to

regular after the quarterly overtime desired list sign-up period has expired may be allowed to sign the ODL within two weeks of the effective date of their conversion or this agreement, whichever comes later. From the time of their sign-up to the end of that quarter, every effort will be made to give these employees an equitable number of overtime opportunities, except to the extent that management needs to give employees who were on the list from the beginning of the quarter additional overtime hours in order to achieve equitable distribution for those employees."

Source: Article 8.5; Memorandum of Understanding, May 6, 1993.

18. May management remove an employee's name from the ODL?

Response: No.

Source: Prearbitration settlement (H4N-5K-C 4489), September 12, 1988.

19. May an employee remove their name from an ODL?

Response: Yes. However, management does not have to immediately honor the request if the employee is needed for overtime on the day the request is made or has previously been scheduled for the immediate future. "Immediate future" is defined as no longer than 5 calendar days after notification.

Source: Joint Statement on Overtime, June 8, 1988; Step 4 (H1N-2D-C 5524), June 7, 1983.

20. May the Postal Service work individuals more than 60 hours in a service week?

Response: No. Arbitrator Mittenthal found that the 60-hour limit is absolute and when that is reached, the employee should not be required to work further.

Source: National Arbitration Award (H4C-NA-C 21 "Third Issue"), September 11, 1987, Arbitrator Richard Mittenthal.

21. Is there a remedy where employees are forced to work more than 12 hours in a day or 60 hours in a week?

Response: Yes. The parties have agreed that in the above circumstances an additional 50% of the base hourly straight time rate will be paid.

Additionally, the parties agree that when the 60-hour limit is reached, the employee will be sent home, even if it is in the middle of a work day, and guaranteed pay at the applicable rate for the rest of the tour.

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Source: Memorandum of Understanding, October 19, 1988; National Arbitration Award (H4C-NA-C 21 "Third Issue") Arbitrator Richard Mittenthal; Step 4 (H4N-1K-C 34118) April 13, 1989.

22. Can a non-ODL carrier volunteer to work on their own route when auxiliary assistance is available?

Response: No. Volunteers are those who sign the ODLs.

Source: Memorandum of Understanding, December 20, 1988.

23. May management seek volunteers to work overtime?

Response: After complying with Article 8.5.G, management may, but is not required to, seek volunteers in those situations when non-ODL employees are needed to work on other than their own assignment or on a non-scheduled day under Article 8.5.D.

Source: Joint Statement on Overtime, June 8, 1988.

24. What is the remedy for a carrier on their own route when management improperly requires that employee to work overtime on their own route?

Response: The effects of any remedy should be to correct the harm to the employee who was improperly required to work and to prevent future violations from occurring. Management believes that an appropriate remedy in these instances would be to compensate the employee an additional 50% straight time pay for the overtime worked. Union believes that an additional 50% is appropriate for isolated or initial violations, however, repeated violations may require higher monetary remedy. Arbitrators have ruled that administrative leave, additional time and a half or double time are viable remedies in these instances.

Source: Western Area NALC/USPS Leadership Committee.

25. What is the remedy for bypassing an employee on an office-wide ODL?

Response: The appropriate remedy for a bypass is to pay the employee the actual amount of time worked by the other employee at the bypassed employee's appropriate rate.

Source: Memorandum of Understanding, December 20, 1988.

26. Both the T-6 and the regular carrier are on the Work Assignment ODL. Who works the OT on the regular's route on the swing?

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Response: The regular carrier on the route if it is their regularly scheduled day and they would not be in a penalty overtime status.

Source: Western Area NALC/USPS Leadership Committee.

27. May management require PTFs to work overtime prior to using full-time regulars?

Response: Yes.

Source: National Arbitration Award (M8-W 0032), November 26, 1980, Arbitrator Richard Mittenthal.

28. Can casuals be required to work overtime prior to using PTFs on overtime?

Response: Yes.

Source: National Arbitration Award (M8-W 0032), November 26, 1980, Arbitrator Richard Mittenthal.

29. What is "reasonable time" in determining whether an ODL carrier is available for overtime?

Response: To determine "reasonable time" in these circumstances, factors such as travel time, the time management became aware or reasonably should have been aware of the need, should be taken into consideration.

Source: Western Area NALC/USPS Leadership Committee.

30. May an acting supervisor (204-B) be utilized in lieu of a bargaining unit employee for the purpose of bargaining unit overtime?

Response: The parties have agreed that an acting supervisor (204-B) will not be utilized in lieu of a bargaining unit employee for the purpose of bargaining unit overtime.

It was agreed as well, that the PS Form 1723 will determine the time and date an employee begins and ends a detail and that an employee detailed to an acting supervisory position will not perform bargaining unit overtime immediately prior to or immediately after such a detail, unless all available bargaining unit employees are utilized.

Source: Prearbitration settlement (H1C-5G-C 5929), March 2, 1983.

31. May individuals on light or limited duty sign the ODL?

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Response: An individual on light or limited duty may sign the ODL, but whether or not the individual can actually perform the work will be based upon their physical condition and the facts involved.

Source: Step 4 (H4N-5B-C 9731), July 11, 1986.

32. May an employee on the ODL have the option of accepting or declining overtime on any day?

Response: No. An employee on the ODL does not have that option.

Article 8, Section 5.E allows for some discretionary exceptions where local management may allow an individual to be relieved of that responsibility due to situations such as anniversaries, birthdays, illness and deaths, etc.

Source: Article 8; National Arbitration Award (H4C-NA-C 21 "1st Issue"), April 11, 1986, Arbitrator Richard Mittenthal.

33. Are employees allowed to sign the ODL after the quarter has begun?

Response: No. Normally an employee is not allowed to sign the ODL after the beginning of the quarter, except in two circumstances.

The first has to do with the individuals who were on military leave during the two-week sign-up period prior to the quarter. The second is in circumstances where an employee bids or transfers between units during a calendar quarter. They may sign the ODL in the gaining unit if they were properly on the ODL in the losing unit provided the Local Memorandum of Understanding (LMOU) does not prohibit such.

Source: Joint Statement on Overtime, June 8, 1988.

34. Is the assignment of overtime based on a criteria of best-qualified?

Response: No. A full-time letter carrier is considered to be a qualified craft employee and the Postal Service may not assign overtime on the basis of who is best qualified.

Source: Step 4 (H1N-5D-C 16445), February 8, 1984.

35. Is overtime worked by a letter carrier on the ODL on their own route counted as an overtime opportunity for the purposes of equitability?

Response: The parties agree that overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an overtime opportunity nor is it counted as an opportunity missed for purposes of administration of the ODL.

Source: Prearbitration settlement (H8N-5D-C 18624), July 1, 1982.

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36. May Vehicle Operations Maintenance Assistants (VOMA) sign the ODL in the letter carrier craft?

Response: No. VOMAs are not eligible to place their names on the letter carrier ODL.

Source: Step 4 (H1N-4B-C 11747), April 5, 1983.

37. May management require an employee to work post-tour overtime when the employee has an approved PS Form 3189 authorizing an early leaving time?

Response: The intent of filing a PS Form 3189 which requests an earlier leaving time is to obtain approval for an employee to leave at that earlier time. Consequently, it is inappropriate for management to approve such a form and then require the employee to work post-tour overtime in other than an emergency situation.

When a PS Form 3189 is approved, the requesting employee will be passed over for any overtime work on that day as being unavailable. Thus, no grievances may be filed if employees with an approved PS Form 3189 are passed over. Likewise, no grievances will be filed on behalf of employees required to work overtime as a result of passing over an employee with an approved PS Form 3189.

Source: Prearbitration settlement (H7N-3W-C 36013) May 25, 1992.

38. With the "build up" of routes in the X-Route process, if we build up a route and the carrier is on the work assignment ODL, will that carrier have to carry the overtime even if they then remove their name from the list at the beginning of the next quarter?

Response: Yes. When the parties agree to split the remaining hours of an X-Route after an interim adjustment and distribute these hours to surviving routes by building them up to no more than 8:20, the parties must first decide how efficiency can best be maintained when building up surviving routes and make their decision based on data at the time planning takes place. Carriers moving on or off work assignment/OT lists becomes irrelevant after the parties agree to implement already planned build-ups.

Source: Questions and Answers Concerning the September 1992 Memorandums.

39. Why is the ODL a consideration when "building up" routes?

Response: By utilizing the ODL when building up routes, the built up routes go to carriers who have indicated a preference for working overtime.

Source: Questions and Answers Concerning the September 1992 Memorandums.

Section 8

1. When an employee undergoes a fitness-for-duty examination on a non-scheduled day, must the Postal Service guarantee them the guarantees in Article 8?

Response: No. The parties have agreed that the Service is required to pay those individuals only for the time taking the examination, including travel time.

Source: Step 4 (H1N-5F-C 29072), May 23, 1985.

2. When an employee is called in on a non-scheduled day, can the Article 8 guarantees be negated?

Response: An employee may waive the guarantee only in cases of illness or personal emergency.

However, it should be noted that management may not solicit employees to work less than their call-in guarantee nor may employees be scheduled to work if they are not available to work the entire guarantee period.

Source: Step 4 (H4N-2D-C 40885), November 14, 1988.

3. What are the guarantees for PTFs who work a split-shift or are called back?

Response: The parties agree that when a part-time flexible employee is notified prior to clocking out that they should return within two hours, that will be considered a split-shift and no new guarantee applies.

When a part-time flexible employee, prior to clocking out, is told to return after two hours, that employee must be given a minimum guarantee of two hours work or pay.

In those situations where the part-time flexible employee has completed their assignment, clocked out and left the premises, if they are called back they are guaranteed four hours of work or pay regardless of the size of the office.

Source: Step 4 (H1N-3W-C 4804), July 8, 1982.

4. Is it a requirement that PTF employees remain by their telephone and available to receive a call from the post office on a daily basis to see whether their services are needed?

Response: No. There is no contractual provision to require PTFs to remain at home to receive a phone call on a daily basis.

Source: Step 4 (NC-W 9013), November 8, 1977; Western Area NALC/USPS Leadership Committee. (NOTE: This applies also to TEs.)

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ARTICLE 9

Salaries and Wages

1. How is an employee's grade and step adjusted moving from a Level 5 to a Level 6 position?

Response: When an employee moves from level 5 to level 6, the new salary is fixed at the lowest step which exceeds their former basic salary by an amount not less than the equivalent of two full step increases in level 5. That Level 5 step increase amount is calculated using the most prevalent step increase amount within the grade.

Source: National Arbitration Award (H4C-NA-C 20 and 30), December 8, 1988, Arbitrator Richard Mittenthal.

ARTICLE 10

Leave

1. If a local memorandum either specifically or by percentage provides for a certain number of employees off in choice and non-choice periods, must management grant leave when the slots are not filled?

Response: Yes, in accordance with the language of the local memorandum. If a local memorandum sets percentages or numbers off during the choice and non-choice periods, those slots remain available up to the limitations provided throughout the leave year, unless a specific provision of the local memorandum places a limitation on such a selection.

In a national level case, the arbitrator ruled that local memorandum provisions are binding on the parties and allow for the above interpretation. These provisions are not in conflict or inconsistent with the National Agreement.

Source: National Arbitration Award (H1C-NA-C 59 and 61) January 29, 1986, Arbitrator Richard Mittenthal; Western Area NALC/USPS Leadership Committee.

2. Can management exclude vacation weeks from the leave chart in order to conduct counts and inspections?

Response: Yes, under the following conditions:

1. All advanced commitments for granting annual leave must be honored except in serious emergency situations.
2. Management may block out vacation time in order to perform route inspections, provided that the dates in question are blocked out prior to vacation selection.
3. When management blocks out vacation time, an equivalent number of additional slots must immediately be made available for vacation selection. Unless the local union agrees otherwise, the slots will be added to the number of slots required by the Local Memorandum during the 30 day period immediately before or after the dates of the inspection.

Source: Prearbitration settlement (H0N-1F-C 2731), November 24, 1992.

3. How do PTF employees earn annual leave?

Response: PTF employees earn annual leave based on the number of hours in a pay status during the pay period.

For example, if the PTF has less than three years service, they earn one hour of annual leave for each 20 hours of work or paid leave to a maximum of four hours of annual leave per pay period.

If the PTF has 3 to 15 years of service, they receive one hour of annual leave for each 13 hours of work or paid leave to a maximum of 6 hours per pay period. If employed for 15 or more years, they receive one hour of annual leave for each 10 hours of work or paid leave to a maximum of 8 hours of annual leave per pay period.

Source: ELM 512.312.

4. Which sign-up sheet must a VOMA use when signing for vacation?

Response: The VOMA signs for vacation leave within the craft from which they came, with the seniority of the VOMA being listed in the appropriate place since they accrue seniority within the craft from which they came as well.

Source: Step 4 (H4N-3U-C 19607), April 23, 1987.

5. Is a TE covered by Article 10 or Article 30 pertaining to leave provision?

Response: TEs earn annual leave based on the number of hours they are in a pay status in each pay period. TEs earn 1 hour of annual leave for each unit of 20 hours in a pay status in each pay period with a maximum of 4 hours earned per pay period.

NALC TEs are specifically excluded from Article 30 of the National Agreement, and, therefore, are not counted in the percentages off during choice and non-choice periods.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992.

6. Are PTF employees guaranteed 8 hours of sick leave in a day in which they call-in sick?

Response: No. A PTF 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: Step 4 (NC-S 5591), May 27, 1977.

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7. If a PTF is scheduled to work and calls in sick, may their day off be changed and no sick leave be paid?

Response: No. If the PTF is scheduled and calls in sick, then sick leave is paid based on the number of hours the PTF would have worked. If the PTF has already been credited with 40 hours or more of paid service, then sick leave may not be granted for the rest of the week.

Source: ELM 513.421.

8. Under what conditions may requests for advance sick leave be approved?

Response: Advance sick leave may be granted if there is reason to believe the employee will return to duty and medical documentation accompanies the request.

Source: ELM 513.511.

9. Under what conditions may management require that an employee document their incapacitation for work when requesting sick leave?

Response: For absences of three days or less, management may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity is required only when the employee is on restricted sick leave or when the supervisor deems documentation desirable for the protection of the interest of the Postal Service.

If an employee is absent for more than three days, such documentation is a requirement.

Source: ELM 513.36; Step 4 (H1N-5B-C 3428), November 3, 1983.

10. Who furnishes the required medical documentation?

Response: Such documentation must be furnished by the employee's attending physician or other attending practitioner. An attending practitioner may be a chiropractor, naturopath, or an authorized staff member.

Source: Step 4 (H1N-5D-C 29943), June 18, 1985; Step 4 (H1V-NA-C 113), September 6, 1984.

11. What is deemed to be acceptable medical documentation or evidence?

Response: The document should provide 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 their normal duties for the period of absence. It is not a contractual requirement that a prognosis or diagnosis be included on the document.

If a doctor or attending practitioner certifies that the employee was unable to perform their duties, the employee has met their contractual obligation. If the Service requires further information, they may contact the physician.

An employee returning to work after an absence of 21 days or more due to illness or serious injury, or regardless of the length of absence returning to work after an absence for communicable or contagious disease, mental and nervous condition, diabetes, cardiovascular diseases, epilepsy or following hospitalization must submit a detailed medical report.

Source: ELM 513.36; EL-311, Section 342.

12. Is it required that the signature of the doctor or attending practitioner appear on the medical certificate?

Response: No. It is agreed at the national level, that rubber stamped and/or facsimile signatures are acceptable, subject to verification by the Postal Service on a case-by-case basis.

Source: Prearbitration settlement (H1C-3T-C 40742), May 2, 1985.

13. Do TEs earn sick leave?

Response: No. An exception to the advance approval requirement for annual leave is made for emergencies and illness or injury.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992.

14. Are employees entitled to a schedule change to allow their work schedules to coincide with their scheduled hours of jury duty?

Response: The parties agree that the past practice used in each local office must be continued.

Source: National Arbitration Award (N8-NE 0088), October 3, 1980, Arbitrator Howard Gamser.

15. Are only full-time employees eligible for military leave?

Response: No. Full-time employees are granted up to 15 days of military leave per year and part-time employees are granted one hour of military leave for each 26 hours in a pay status in the preceding fiscal year.

Part-time employees must be in a pay status for a minimum of 1040 hours in the preceding fiscal year and the employee's pay for military leave cannot exceed 80 hours.

Source: ELM 517.51.

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16. Can full-time employees take more than 15 days of military leave within a particular year?

Response: 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 517.63.

17. Must LWOP be granted if requested by the employee to attend national, state and/or regional union conventions (assemblies)?

Response: Yes, provided a request for leave has been submitted as soon as practicable and provided that approval of such does not seriously adversely impact the service needs of the installation.

Source: Article 24.2.A.

ARTICLE 11

Holidays

1. When scheduling for a holiday, is management required to use the ODL?

Response: No. The ODL is not used for holiday scheduling. However, if additional employees are needed after the schedule has been posted, management may utilize the ODL.

Source: Step 4 (N8-C 0191), January 10, 1980; National Arbitration Award (H8N-5D-C 14577), April 15, 1983, Arbitrator Richard Mittenthal.

2. When the wrong employee is required to work a holiday, what is the remedy for the employee who worked?

Response: An additional 50% at the straight-time rate for all hours worked.

Source: Memorandum of Understanding, October 19, 1988.

3. What is the remedy for the employee who did not work the holiday but should have?

Response: The amount they would have earned had they worked on the day in question.

Source: Western Area NALC/USPS Leadership Committee; National Arbitration Award (NC-C 6085), August 16, 1978, Arbitrator Paul J. Fasser, Jr.

4. When management assigns holiday work to non-volunteer full-time employees, in what order are non-volunteers scheduled?

Response: Full-time employees in inverse seniority order who have not volunteered to work on the designated holiday and who would be working on what otherwise would be a non-scheduled day, are scheduled first. The last group of employees who may be assigned are full-time employees in inverse seniority who have not volunteered to work on the holiday or designated holiday and whose holiday it is.

Source: Article 11.6.B.

5. When is management required to post the holiday schedule?

Response: It is required that the Postal Service post the schedule by the Tuesday preceding the service week in which the holiday falls.

Source: Article 11.6.A.

6. If a full-time regular employee is properly scheduled to work on their holiday or designated holiday and they are unable or fail to do so, may the Postal Service

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replace that employee and not be liable for holiday scheduling premium?

Response: Yes.

Source: ELM 434.533(c); Step 4 (NC-C 9687), February 29, 1978.

7. May management assign individuals to work on a holiday or designated holiday because they are better qualified than another carrier?

Response: No. Management must follow the pecking order as set forth in the local memorandums and the National Agreement.

Source: Step 4 (NB-S 1739), July 16, 1974.

8. Do PTFs receive holiday pay?

Response: No. 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.

Source: Article 11.7.

9. If a PTF who is properly scheduled on a holiday fails to report and a full-time employee is called in, is the full-time employee compensated at straight time?

Response: No. In those circumstances when a full-time employee replaces a PTF on a holiday, the full-time employee would receive an additional 50% for each hour up to eight hours.

Source: Step 4 (NC-C 4322), April 14, 1972.

10. Should the names of PTF employees appear on the holiday schedule?

Response: The posting of a holiday schedule on the Tuesday preceding the service week in which the holiday falls will include part-time flexible employees who at that point in time are scheduled to work on the holiday in question.

When additional part-time flexible employees are scheduled subsequent to the Tuesday posting, there is no entitlement to additional compensation for those part-time flexible employees who are subsequently scheduled. Further, part-time flexible employees are not entitled to holiday scheduling premium.

Source: Prearbitration settlement (H7N-3W-C 37383), June 9, 1992.

11. May management disregard the Article 11 holiday scheduling pecking order or local memorandums to avoid the payment of penalty overtime?

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Response: No.

Source: National Arbitration Award (H4C-NA-C 21 "Second Issue"), January 19, 1987, Arbitrator Richard Mittenthal.

12. Are TEs part of the holiday pecking order?

Response: Qualified transitional employees will be scheduled for work on a holiday or designated holiday after all full-time volunteers are scheduled to work on their holiday or designated holiday. They will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a nonscheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. If the parties have locally negotiated a pecking order that would schedule full-time volunteers on a nonscheduled day, the Local Memorandum of Understanding will apply.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992; Article 11.6.D.

ARTICLE 12

Principles of Seniority, Posting and Reassignments

1. If an employee completes their probationary period and at a later time is separated from the Postal Service and rehired, are they again required to serve a new probationary period?

Response: Yes. If an employee separates from the Postal Service for any reason and is rehired, they must serve a new probationary period. The only exception is when an employee is rehired after being separated due to disability.

Source: Article 12.1.D.

2. If an employee transfers from one installation to another, must a new probationary period be served?

Response: No. A transfer is defined as the movement of a career employee between postal installations without a break in service.

Source: ELM 323.1.

3. If an employee believes their transfer request has been denied improperly, where must a grievance be filed?

Response: The National Agreement is clear that an employee who believes their contractual rights have been violated must file their grievance with their immediate supervisor in the installation to which they are assigned.

Source: Article 15.2, Step 1; Western Area NALC/USPS Leadership Committee.

4. Can TEs be hired for positions being withheld for excessing per Article 12?

Response: Yes.

Source: Questions and Answers Concerning the September 1992 Memorandums.

5. If a regular carrier on a route identified as a X-Route becomes unassigned as a result of the X-Route abolishment, does the next bid count against the five bid restriction in Article 12.3.A?

Response: No. The next bid in such circumstances would be in addition to the five bids allowed in Article 12.3.A.

Source: Questions and Answers Concerning the September 1992 Memorandums.

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6. Are TE hours used to cover residual withheld vacancies counted towards the established TE ceiling?

Response: No. These hours are over and above the established TE ceiling.

Source: Questions and Answers Concerning the September 1992 Memorandums.

7. Is a regular who transfers into an office and becomes the junior PTF after December 21, 1992 "on-the-rolls" for the purpose of making regular under the terms of the new memo?

Response: Only letter carriers who were PTFs on December 21, 1992 are entitled to conversion under the terms of this memo.

Source: Questions and Answers Concerning the September 1992 Memorandum.

8. Management accepts a transfer into the installation as a PTF. Later a vacancy occurs at that installation. What prevails: the provisions of Article 41 concerning the transferee, or the Memorandum of Understanding dated December 21, 1992?

Response: The parties agree that the rights to conversion under the Memorandum dated December 21, 1992 take precedence over normal Article 41 rights.

Source: Questions and Answers Concerning the September 1992 Memorandums.

9. How are full-time vacancies filled under the provisions of the December 21, 1992 Memorandum of Understanding?

Response: Before any full-time position can be filled, the postmaster is required to notify the office of the appropriate National Business Agent.

Source: Western Area NALC/USPS Leadership Committee.

ARTICLE 13

Assignment of Ill or Injured Regular Work Force Employees

1. What is the difference between light and limited duty?

Response: Light duty is for injuries or illness which are not job related and is covered under Article 13. Limited duty is for individuals injured on-the-job and is governed by ELM 546.121.

Source: Western Area NALC/USPS Leadership Committee.

2. Must an individual who is requesting temporary reassignment due to a serious illness or injury, submit their request for light duty in writing?

Response: Yes. It is noted that management has an obligation to inform employees of a need for written notice. 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.

Source: Article 13.2.A, Regional Arbitration Award (W4C-5F-C 13070), November 18, 1987, Arbitrator Carlton Snow.

3. Can a regular letter carrier who is temporarily disabled bid for, and be awarded, a full-time letter carrier bid assignment?

Response: Yes. An individual who is either on light or limited duty may be awarded a full-time bid assignment. If they are unable to immediately assume the duties, the Postal Service may require medical certification which would indicate whether or not that individual will be physically able to carry the route within the first six-month period.

If after six months the individual is still physically unable, medical certification may also be required for another six-month period which would indicate whether or not the individual would be physically able to do the duties of the position.

After a year, if the individual is still physically unable to carry their assignment, then the bid is vacated and reposted per Article 41, that individual may not bid for the job.

Source: Memorandum of Understanding (H1N-NA-C 119), March 16, 1987.

4. Do employees who are on light duty have a right to work their normal work schedule?

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Response: No. The parties agree that an employee's normal schedule does not apply when that employee requests light duty.

Additionally, Article 13.3.C allows that the availability of the light duty assignment will determine the schedule of the employee, irrespective of the previous duty assignment.

Source: Step 4 (NC-W 8182), November 14, 1977.

5. Absent a voluntary written request for light duty, may management require an employee to work light duty?

Response: No. If an employee is injured off the job and requests sick leave, the employee may not be required to work light duty if incapacitated for the performance of normal duties.

Source: ELM 513.32; Article 13.2.A.

6. May a carrier on limited duty disadvantage an employee already on light duty?

Response: No. While employees on limited duty are given priority for assignment over those requiring light duty, they should not disadvantage the person on light duty if already assigned.

Source: Step 4 (H8N-5A-C 53), February 7, 1983.

7. Is there a responsibility to schedule and work an individual on limited duty?

Response: Yes. An individual who is partially recovered from an on-the-job injury must be returned to the work force in such a way that would minimize any disruptive impact on the employee. Limited duty employees should be assigned work using the following "pecking order":

- a. 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 that the employee regularly works; that work constitutes the limited duty to which the employee is assigned.
- b. 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.
- c. 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

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shall 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.

- d. 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 will 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.

Source: ELM 546.141.

8. Will senior PTFs who are on light or limited duty be converted to full-time vacancies in accordance with the Memorandum of Understanding dated December 21, 1992?

Response: Yes.

Source: Questions and Answers Concerning the September 1992 Memorandums.

9. Will PTFs on light or limited duty be afforded the opportunity to transfer to available full-time assignments?

Response: Yes.

Source: Questions and Answers Concerning the September 1992 Memorandums.

ARTICLE 14

Safety and Health

1. Is there an automatic discipline policy for accidents?

Response: No. There should be no automatic discipline for employees involved in accidents (motor vehicle or industrial).

Source: Memorandum of Understanding Regarding Reinstatement of OF-346, July 21, 1987.

2. When is it appropriate to discipline for safety-related accidents?

Response: Normally, employees can be disciplined for minor safety infractions only when specific safety deficiencies have been previously addressed with the employee.

Source: Western Area Labor Relations Specialist Ray Maldonado Letter, July 1, 1993.

3. Is it a management responsibility to make Form 1767 available at each installation for reporting unsafe or unhealthy conditions?

Response: Yes.

Source: Article 14.2.

4. Must city letter carriers wear their seatbelts at all times when the vehicle is in motion?

Response: Yes.

Source: Postal Bulletin, November 21, 1984; M-41, Section 812.7.

5. Is it a requirement that letter carriers place their vehicles in park with their foot firmly on the brake pedal while collecting mail or placing mail in mailboxes on hills?

Response: Yes.

Source: Prearbitration settlement (N-W 3928), March 24, 1974.

6. Are employees required to finger mail?

Response: Yes.

Source: M-39, Section 125.6; Article 41.3.I.

7. Are employees prohibited from fingering mail while driving or holding mail in their hands while the vehicle is in motion?

Response: Yes.

Source: Prearbitration settlement (N-W 3928), March 24, 1974; Article 41.3.I.

ARTICLE 15

Grievance-Arbitration Procedure

1. Who has authority to settle a grievance?

Response: The parties' representatives at each step of the grievance procedure have full authority to settle or resolve grievances.

Source: Article 15.

2. Whose responsibility is it to build a complete case file?

Response: Both union and management have an affirmative responsibility to develop and share all pertinent facts and issues during the grievance procedure. There should not be any withholding of pertinent information by either party.

Source: Article 15.3.A; Western Area NALC/USPS Leadership Committee.

3. May 204-B supervisors serve as the management representative in Step 1 grievances?

Response: Yes. The parties agree that the term "immediate supervisor" as written in Article 15.2, Step 1.A of the National Agreement, may be an acting supervisor (204-B).

Source: Step 4 (H4N-5E-C 36561), February 26, 1988.

4. Does the Union have a right to Forms 2608 (Step 1 grievance summary) and 2609 (Step 2 grievance summary) during the grievance procedure?

Response: Yes. The parties agree that both of these documents should be provided the Union if they are part of the case file at Steps 2 and/or 3.

Source: Step 4 (H1C-3U-C 6106), November 5, 1982.

5. If an individual employee files a grievance and then leaves the Service by either resignation, retirement or death, is the grievance then barred from further processing?

Response: No. The parties have agreed that such a grievance is not barred. However, these circumstances may affect the remedy.

Source: Memorandum of Understanding, October 16, 1981.

6. Are postal employees who are witnesses at arbitration hearings paid for the time spent

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testifying at the hearing?

Response: Yes. The parties agree that Article 15.3 requires that employee witnesses shall be on employer time when appearing at the arbitration hearing if the appearance is during the employee's regular working hours. Travel time is not included.

Source: Step 4 (NC-N 2064), September 20, 1976; National Arbitration Award (H1N-NA-C 7), February 15, 1985, Arbitrator Richard Mittenthal.

7. May a steward be allowed to conduct interviews of customers if the customer's complaint in some way will affect the hours, wages and working conditions of an employee?

Response: Yes.

Source: Step 4 (NC-W 9980), July 3, 1978.

8. Since a VOMA is a multi-craft position, who represents them in the grievance procedure?

Response: A VOMA is represented by the craft to which they belonged at the time of their selection.

Source: Step 4 (H4N-EU-C 19607), April 23, 1987.

9. Should settlement offers be stated in appeals, decision letters or letters of addition and correction?

Response: No. Settlement offers should not become part of the official documents moving a grievance through the procedure or at arbitration.

Source: Western Area NALC/USPS Leadership Committee.

10. Does the grievant have a right to attend the Step 2 meeting with a Union representative?

Response: The necessity of the presence of the grievant at the Step 2 meeting is determined by the Union.

Source: Step 4 (H7N-3W-C 37670) March 30, 1992.

11. Are TEs entitled to file a grievance?

Response: Yes.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992.

ARTICLE 16

Discipline Procedure

1. Are suspensions issued for less than 5 working days in violation of postal policy?

Response: Yes. It is postal policy that letters of warning should be issued to employees in lieu of suspensions of less than 5 days. If, however, the suspension of less than 5 days is the result of a negotiated settlement in the grievance procedure, it is proper.

Source: Senior Assistant PMG Darrel Brown Memorandum, November 7, 1973.

2. Are discussions with employees considered discipline?

Response: No. Discussions are not discipline and are not grievable.

Source: Article 16.2.

3. May a one day count and inspection be used as the sole basis to establish a standard against which a carrier's performance may be measured for disciplinary purposes?

Response: No.

Source: Step 4 (H1N-5B-C 29131), April 15, 1986.

4. May linear measurement evaluations be the basis for discussions concerning carrier efficiency pursuant to Article 16.2?

Response: No. Any discussions using linear measurement as a basis may not be held pursuant Article 16.2.

Source: Step 4 (H1N-5D-C 18726), March 28, 1984.

5. Should linear measurement be utilized as the sole basis for determination of discipline?

Response: No. While linear measurement is a management tool, it will not constitute the sole basis for disciplinary action for failure to meet minimum casing standards by an individual letter carrier.

Source: Memorandum of Understanding, August 22, 1979; Step 4 (H1N-5H-C 23752), May 1, 1985; Western Area NALC/USPS Leadership Committee.

6. Under what circumstances may the union be deemed to have waived access to

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arbitration for adverse actions affecting preference eligible employees?

Response: The parties agree that the Union will be deemed to have waived access to arbitration in the following circumstances:

1. If, at the time of appeal to arbitration, the grievant also at the same time has an appeal pending before the Merit Systems Protection Board (MSPB);
2. If the grievant appeals the matter to MSPB at any time after the union appeals the matter to arbitration;
3. If the MSPB issues a decision on the merits;
4. If at any time the MSPB begins a hearing on the merits;
5. If at any time the employee requests the MSPB to issue a decision on the record without a hearing and the MSPB has closed the record;
6. If at any time the employee and the employer resolve the MSPB appeal through settlement.

Source: Memorandum of Understanding, March 3, 1988.

7. May supervisors exchange written notes with other supervisors regarding discussions held with an employee?

Response: No. The parties agree that a supervisor will not exchange written notes regarding discussions. However, supervisors may orally exchange discussion information.

Source: Step 4 (H4C-5K-C 290), August 23, 1985.

ARTICLE 17

Representation

1. Is there a remedy when a steward is improperly denied steward duty time?

Response: Yes. Appropriate remedies will vary depending upon the circumstances. However, settlements have been reached where the steward has been compensated for a reasonable amount of time used off-the-clock performing grievance work. This compensation was granted for the first occurrence and was accompanied by a cease and desist instruction. Further violations by the same supervisor/office after a cease and desist could result in overtime payments at the applicable rate of pay.

Source: Western Area NALC/USPS Leadership Committee.

2. When should stewards be released to perform steward duties?

Response: Normally, a steward should be released upon request. However, if that is not possible, management and the steward should mutually determine when they can be released. Under normal conditions, the steward should be released the day of the request, but no later than the next work day.

Source: Step 4 (NS-2777), April 5, 1973.

3. How do you determine the amount of time a steward needs?

Response: The amount of time necessary will be granted to investigate and adjust grievances. The steward and supervisor will arrive at a reasonable amount of time.

Source: Article 17.4.

4. Are union stewards entitled to copies of bargaining unit employee medical records when such records are relevant to a grievance?

Response: Yes. Medical records should be released under these circumstances.

Source: EL-806, Section 223.

5. Must union stewards have written authorization for access to a grievant's medical records?

Response: No. The procedures in Section 223.3 of the EL-806 must be followed.

Source: Western Area NALC/USPS Leadership Committee.

6. Can PS Form 1187 (Form for Dues Withholding) be filled out by employees on-the-

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clock?

Response: Yes, provided the form is completed during the initial orientation in an area designated by management, or elsewhere if past practice dictates.

Source: Step 4 (H4N-4J-C 2536), August 19, 1985.

7. If requested, is it required that the union be allowed to participate in new employee orientation?

Response: Yes. This includes TEs.

Source: Article 17.6; NALC Transitional Employee Arbitration Award, January 16, 1992.

8. May a union member in one post office be designated as the union's representative to process a grievance at another post office?

Response: Yes. Such an employee must be certified in writing to the employer at the regional level. The employee so certified will not be on the employer's official time and will be compensated by the union.

Source: Prearbitration settlement (H8N-2B-C 12054), May 20, 1982; Article 17.2.

9. What role, if any, does a shop steward play if an employee has chosen to represent their self at Step 1?

Response: 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 5 days following the discussion. A settlement would be considered part of the adjustment phase of the procedure.

A grievant has the option to exclude a steward from the discussion portion where the merits of a 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 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.

Source: Prearbitration settlement (H7N-5R-C 26829), April 2, 1992.

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ARTICLE 18

No Strike

1. If members of a local branch strike or attempt an obvious slow down, must union officers inform the members they are in violation of the National Agreement and order them back to work?

Response: Yes.

Source: Article 18.2.

ARTICLE 19

Handbooks and Manuals

1. May a 204-B voluntarily waive out-of-schedule pay while they are on detail to a higher level assignment and worked outside of their bid schedule?

Response: No. No exemption exists for working these individuals out-of-schedule at a higher level detail. In the clerk craft, employees detailed to nonbargaining unit positions are not entitled to out-of-schedule pay during such details (per Article 37.3.A.8.).

Source: National Arbitration Award (AB-C 341), July 27, 1975, Arbitrator Howard Gamser.

2. May street breaks be taken in the office?

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

Source: M-39, Section 242.34; Step 4 (N8-W 0312), June 11, 1980.

3. May lunch and street breaks be combined with permission of the manager?

Response: No.

Source: M-39, Section 242.341.

4. May the Postal Service require random drug testing of present employees?

Response: Across-the-board drug testing and/or random drug testing of present employees is prohibited under any circumstances. However, on a case-by-case basis, during fitness-for-duty examinations, drug tests may be administered, if there is reasonable cause to do so in the judgment of the examining medical official. Additionally, drug testing in conjunction with medical assessments and evaluations are part of the Employee Assistance Program (EAP) which is within established procedures.

Source: USPS Memorandum, August 6, 1986; Prearbitration settlement (H4N-5C-C 15273), October 26, 1988.

5. May employees who are detailed as Employee Involvement Facilitators bid for full-time craft duty assignments while they are so assigned?

Response: Yes. The parties agree that Employee Involvement Facilitators are entitled to exercise bidding rights as set forth in Article 41.

Source: Step 4 (H4N-5L-C 4223), December 4, 1985.

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6. May management issue forms locally or revise existing forms?

Response: Yes, provided the local form or locally revised PS Form meets the criteria set by Subchapter 324 of the Administrative Support Manual for the development, coordination and clearance of the document.

Source: Administrative Support Manual, Subchapter 324; Step 4 (H4N-5T-C 29994), July 1, 1988.

7. If an employee requests a PS Form 3996, must it be provided?

Response: Yes. The employee, upon request, will be provided the PS Form 3996, and a duplicate will be provided, if requested.

Source: M-39, Section 122.33.

8. When an employee is in a training situation, is there a contractual obligation to pay out-of-schedule premium if the training occurs in a schedule other than their bid assignment?

Response: No. There is no contractual obligation to pay out-of-schedule premium to an employee in a training situation.

An employee should be notified of any schedule change by Wednesday of the preceding week if possible.

Source: Step 4 (H1N-1K-C 39739), August 27, 1985; Step 4 (H1C-4B-C 37025), May 2, 1985.

9. May employees be allowed to use portable radios in their vehicles?

Response: Yes. If the past practice would allow the use of portable radios, such should be allowed.

Source: Step 4 (H1N-3D-C 38508), February 1, 1988; Step 4 (H1N-3U-C 25856), April 18, 1984.

10. Does an unassigned regular have a set schedule?

Response: Yes. The schedule of an unassigned regular is set based on what the unassigned regular worked during the first week of the unassigned status, including hours and non-scheduled days.

Source: National Arbitration Award (H1C-5F-C 1004), September 10, 1982, Arbitrator Howard Gamser.

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11. When a letter carrier is given a piece count, are they allowed to verify the mail count?

Response: Yes.

Source: M-39, Section 221.131.

12. Is management required to adjust routes to as nearly an eight hour basis as is possible?

Response: Yes.

Source: M-39, Sections 242.122 and 243.11.

13. Is concurrence of the local union official necessary to allow schedule changes for an employee's personal convenience?

Response: Yes.

Source: ELM 434.622(i); EL-401, Chapter 3, Section 4(b).

14. When an opt (Article 41) or temporary higher level bargaining unit detail (Article 25) is filled voluntarily, is out-of-schedule overtime paid to regular employees?

Response: No.

Source: Prearbitration settlement (H8N-3P-C 32705), January 27, 1982.

15. Under what circumstances would a reserve letter carrier be eligible for out-of-schedule premium?

Response: When reserve letter carriers voluntarily opt on hold-down assignments, they waive any entitlement to out-of-schedule premium pay.

In those circumstances where the reserve letter carrier fails to opt a vacant duty assignment, the Postal Service may assign those individuals into a hold-down assignment nonetheless. Additionally, the assigned reserve letter carrier would assume the schedule of that assignment. However, the reserve letter carrier would still be eligible for out-of-schedule premium for all hours outside of his/her regular schedule. For example, if a reserve letter carrier with a normal schedule of 7:00 a.m. to 3:30 p.m. is notified by Wednesday of the preceding service week that he/she would be temporarily placed on a vacant assignment with the hours 8:00 a.m. to 4:30 p.m., the employee would (1) not be entitled to pay from 7:00 a.m. to 8:00 a.m. and (2) be entitled to out-of-schedule premium from 3:30 p.m. to 4:30 p.m. in accordance with ELM 434.612.

If, however, the same employee is not notified by Wednesday of the preceding service week of the temporary change of schedule, the

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employee would (1) be entitled to pay from 7:00 a.m. to 8:00 a.m. when he did not work, since that was part of his regular schedule and the advance notice required by ELM Section 434.612 was not provided; and (2) be entitled to out-of-schedule premium pay from 3:30 p.m. to 4:30 p.m.

Source: Step 4 (H1N-5G-C 24094), May 25, 1985; ELM 434.612; F-21, Section 232; F-22, Section 233.

16. If an employee has an extended absence due to illness or injury and presents adequate medical documentation returning them to work, how much of a delay after the submission of the documentation is appropriate?

Response: There should be no undue delay. Normally the employee should be returned to work by the next work day.

Source: Step 4 (H1N-5D-C 29673), September 5, 1985.

17. Are TEs entitled to higher level pay when performing level 6 duties?

Response: Yes.

Source: USPS policy letter of November 24, 1992.

18. Who is authorized to make a local agreement to adopt a 4 or 5 shelf letter case?

Response: The USPS installation head and the NALC local union president, or their designees.

Source: Questions and Answers Concerning the September 1992 Memorandums.

19. What happens if there is no local agreement to use a 4 or 5 shelf letter case?

Response: The standard 6-shelf letter case must be used.

Source: Questions and Answers Concerning the September 1992 Memorandums.

20. What if a 4 or 5 shelf letter case is currently being used? Is a local agreement necessary?

Response: Yes. Either the parties must have, or make, a local agreement to use such letter cases, or the equipment must be reconfigured to 6 shelves.

Source: Questions and Answers Concerning the September 1992 Memorandums.

21. Is management permitted to delay route adjustments as a result of the September

1992 Memorandums of Understanding?

Response: Yes, in certain cases. These new memorandums constitute a "valid operational reason" for extending 52 day limits on implementing route adjustments on routes which involve future events (see M-39, Section 211.3). These adjustments are not implemented until automation is on-line and operative. Management notice to the local union should come from the District Manager of Customer Services under the new USPS structure, rather than the Division Director (in the old structure).

Source: Questions and Answers Concerning the September 1992 Memorandums.

22. In applying the methodology for estimating the impact of delivery point sequencing on carrier work hours, what route inspection data should be used if the carrier recently transferred to their route and has not been inspected on the new route?

Response: In such circumstances, the percentage of standard office time used by the carrier during the route inspection on their former route should be used. The impact estimate must be based on the demonstrated office time performance of that carrier and nobody else.

Source: Questions and Answers Concerning the September 1992 Memorandums.

23. If USPS managers in an installation decide to use the "unilateral" method to plan for and implement the realignment of routes, can they later change their minds and use the joint X-route process instead?

Response: Yes, with joint agreement. Further, the expectation is that any change from the unilateral process to the X-Route process will necessitate that the X-Route process be implemented from the beginning, as though the unilateral process had never been used. In other words, unless jointly agreed to, the X-Route process will not start from the point that management left off via the unilateral process.

Source: Questions and Answers Concerning the September 1992 Memorandums.

24. How can the local parties develop a new DPS work method beyond the two provided by the Memorandum and get the national joint body to approve it?

Response: The national parties contemplate that the local parties may jointly formulate a new work method and conduct a limited test of the method on one or a few routes. If the test is successful, the local parties may apply to the national joint body for approval of the method.

Source: Questions and Answers Concerning the September 1992 Memorandums.

25. Who are the local parties responsible for making the local agreement as to the two DPS work methods?

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Response: The USPS installation head and the NALC local union president, or their designees, are responsible for selecting one of the two DPS methods for each route.

Source: Questions and Answers Concerning the September 1992 Memorandums.

26. How many bundles will a letter carrier have to carry under delivery point sequencing? What about marriage mail, ADVOC cards, etc.?

Response: Under the DPS work method scenarios curblin delivery territories may carry more than the customary three bundles on a given day if a "marriage mail" type mailing(s) is (are) to be delivered on that day. Under the DPS work method scenarios foot delivery territories may carry three bundles.

Source: Questions and Answers Concerning the September 1992 Memorandums.

27. Is it possible to have 4, 5, and 6 shelf cases in the same office?

Response: Yes, case configurations are a local joint decision based on efficiency and local circumstances.

Source: Questions and Answers Concerning the September 1992 Memorandums.

28. If inspections show routes that are out of adjustment, can territory be moved from an adjacent route that is 8 hours?

Response: Yes, there is no change to the manner in which territory is transferred.

Source: Questions and Answers Concerning the September 1992 Memorandums.

29. May a carrier working on a route change the method of handling residual letter mail (T-6, PTF, TEs, Reserves)?

Response: No. Once the authorized work method for a route has been determined, it must be used by replacement carriers.

Source: Questions and Answers Concerning the September 1992 Memorandums.

30. May route adjustments be delayed if some of the routes have not yet receive the targeted percentage of DPS?

Response: No. The target percentage is developed on a unit basis; therefore, when the unit reaches the target, routes should be considered for adjustment.

Source: Questions and Answers Concerning the September 1992 Memorandums.

31. Once DPS is implemented, but the target is not yet reached, may management pivot to capture undertime?

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Response: Yes.

Source: Questions and Answers Concerning the September 1992 Memorandums.

ARTICLE 21

Benefit Plans

1. Is there a responsibility to schedule and work an individual on limited duty?

Response: Yes. An individual who is partially recovered from an on-the-job injury must be returned to the work force in such a way that would minimize an disruptive impact on the employee. Limited duty employees should be assigned work using the following "pecking order":

- a. 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.
- b. 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.
- c. 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 shall 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.
- d. 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 will 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.

Source: ELM 546.141.

2. May a supervisor visit the office of the physician treating an employee injured on the

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job at the time of the initial treatment?

Response: According to ELM 543.14, in the case of an employee needing emergency treatment, "when appropriate, a supervisor accompanies the employee to the doctor's office or hospital to make certain that the employee receives prompt medical treatment", however, ELM 543.223 provides that "in non-emergency situations, a postal supervisor is not authorized to accompany an employee to a medical facility or physician's office". (emphasis added)

A supervisor should not accompany the employee on the initial visit, nor visit the physician's office at the time of the initial visit in non-emergency situations.

Source: Step 4, (H7N-3N-C-38389), March 30, 1992.

ARTICLE 23

Rights of Union Officials to Enter Postal Installations

1. What notification must a union official provide when visiting a postal installation?

Response: Reasonableness is the key. National union officers should give reasonable notice to the Postal Service at the national level when desiring to visit postal installations, and regional union officials should give reasonable notice at the Area level when desiring to visit postal installations. Local union officials should give reasonable notice to the Postal Service at the local level when desiring to visit postal installations.

Source: Western Area NALC/USPS Leadership Committee.

ARTICLE 24

Employees on Leave with Regard to Union Business

1. How much advance notice is required to release an employee for convention leave?

Response: The union should advise management of the number of people who will be attending as soon as it is determined. This is true even if the people are not yet identified. Once specific people are identified, the union should advise management immediately. Management has an affirmative obligation to release these individuals from work to attend the conventions provided that service needs are not seriously adversely affected. Overtime, per se, is not reason for denying requests for convention leave.

Source: Western Area NALC/USPS Leadership Committee.

ARTICLE 25

Higher Level Assignments

1. How are temporary T-6 carrier positions filled?

Response: Temporary T-6 carrier positions are filled pursuant to the provisions of Article 25. These positions are not opted under the provisions of Article 41.2.B.

Source: Prearbitration settlement (H8N-3P-C 32705), January 27, 1982.

2. Are on-the-job instructors for new employees compensated at Level 6?

Response: Yes. The parties agree that employees who are utilized as on-the-job instructors for new employees shall be compensated at the Level 6 rate for time actually spent on the job.

Source: Step 4 (H4C-1E-C 6348), December 17, 1985.

3. Are individuals who have exercised their rights under Article 41.2.B, 3, 4 or 5 to opt for an assignment, available to be detailed to higher level bargaining unit work under Article 25?

Response: No. The parties agree that an individual who has exercised the right to opt is not available for higher level bargaining unit work under Article 25.

Source: Step 4 (H1N-5G-C 14177), November 3, 1983; Article 41.2.B.

4. Must management fill a T-6 assignment which is temporarily vacant for five (5) days or more?

Response: Yes. Management may not refuse to fill a T-6 assignment which is temporarily vacant for five (5) days or more in order to reserve that assignment for other purposes, such as pivoting.

Source: Prearbitration settlement (H7N-5R-C 32010), December 24, 1992.

ARTICLE 26

Uniforms and Work Clothes

1. Where is the uniform program administered?

Response: The uniform program is administered at the District level. Only exceptions or waiver requests are processed at the Area level.

Source: ELM 580.

2. Are letter carriers serving in ad hoc positions such as EI Facilitators, UMPS, or Safety Captains, entitled to continue their uniform allowance during their assignment?

Response: Yes.

Source: ELM 585.

3. Can local management authorize a deviation from the authorized uniform for medical reasons?

Response: Yes.

Source: USPS Letter, March 16, 1983.

4. Are TEs entitled to letter carrier uniforms?

Response: Yes.

Source: NALC Transitional Employee Arbitration Award, January 16, 1992; Article 26.

ARTICLE 27

Employee Claims

1. May an employee seek reimbursement for loss or damage to personal property while on duty or while on postal premises?

Response: Yes. If seeking such reimbursement, employees must complete PS Form 2146 and seek statements from both their immediate supervisor and the steward so that the claim can be documented and proper recommendations made.

Source: Article 27; ELM 640.

2. Once a claim has been properly filed, what is the process used to determine whether a claim is approved or denied?

Response: Claims should be documented, if possible, and submitted with recommendations by the union steward to the employer at the local level. The employer will submit the claim, with the employer's and the steward's recommendation, within 15 days, to the Area Office for determination. The claim will be adjudicated within 30 days after receipt at the Area Office. An adverse determination on the claim may be appealed pursuant to the procedures for appealing an adverse decision in Step 3 of the grievance-arbitration procedure.

A decision letter denying a claim in whole or in part will include notification to the union's regional representative by a copy of the denial letter referenced above, the claim form, and all documentation submitted in connection with the claim.

A decision will be made by the National Business Agent's (NBA) office to close the file or appeal to arbitration. The local branch does not need to file a Step 3 appeal.

Source: Article 27.

ARTICLE 28

Employer Claims

1. Does the PS Form 1903 from the Postal Data Center constitute a letter of demand?

Response: No. A letter of demand must be issued separate from the PS Form 1903.

Source: Western Area NALC/USPS Leadership Committee.

2. Must management issue a letter of demand for all salary adjustments?

Response: Prior to any demand against an employee's salary, management must issue a letter of demand.

Source: Western Area NALC/USPS Leadership Committee.

3. May management unilaterally withhold/cash salary checks to satisfy a letter of demand?

Response: No. Management must adhere to the procedural requirements governing the collection of debts as specified in Article 28, and part 460 of the ELM.

Source: Prearbitration settlement (H7N-1P-C 14879) December 9, 1991.

ARTICLE 29

Limitation on Revocation of OF-346

1. Must management suspend or revoke an employee's OF-346 when the employee has had two or more at-fault accidents within a 12-month period?

Response: There should be no automatic suspension or revocation of an OF-346 for this reason. Section 464 of the EL-827 requires management to "consider the suspension or revocation". This dictates that discretion be utilized to determine the appropriate action.

Source: EL-827, Section 464.

2. May management unilaterally permanently reassign an employee from one craft to another after an OF-346 has been revoked?

Response: No. "Every reasonable effort will be made to reassign such employee to non-driving duties in the employee's craft or in other crafts." This does not permit unilateral permanent reassignment to another craft.

Source: Article 29.

3. May the report of the Safe Driver Award Committee be utilized as a factor to determine whether to revoke or suspend an employee's OF-346?

Response: No. The use of the Safe Driver Award Committee report as a basis for revoking or suspending a government driver's license is prohibited.

Source: Article 29.

4. Is a decision of the Safe Driver Award Committee grievable?

Response: It is agreed that since the Safe Driver Award Committee decision is an evaluation of an employee's required duties as a driver, an unfavorable determination with respect to performance as a driver is grievable on the merits under the provisions of Article 15.

Source: Step 4 (H1N-5D-C 20610), June 8, 1984.

ARTICLE 30

Local Implementation

1. May a Local Memorandum of Understanding include more than 22 items found in Article 30?

Response: Yes. If the parties locally agree to bargain items not found in Article 30, these agreements are binding provided they are not inconsistent with, or in conflict with, the National Agreement.

Source: National Arbitration Award (N8-W 0406), September 21, 1987, Arbitrator Richard Mittenthal.

2. If the signatories to a local agreement change, do provisions of the local agreement remain in effect?

Response: Yes. A local agreement remains in effect during the life of its agreed time frame. The simple fact that branch presidents or postmasters change does not negate the agreements reached by the parties during the local negotiation process.

Source: Western Area NALC/USPS Leadership Committee.

3. Does management have a right to impasse?

Response: Yes, if management feels that the proposal, if adopted, would present an unreasonable burden.

Source: Article 30.F.

ARTICLE 35

Employee Assistance Program

1. If an employee enrolls in a self-help program, should such enrollment be considered favorably in disciplinary action proceedings?

Response: Yes.

Source: Article 35.1.

2. Under what circumstances may a supervisor refer an employee to EAP?

Response: Supervisors who have identified employees with apparent alcohol or drug-related employment problems are responsible for referring such employees to EAP.

Source: ELM 872.42.

ARTICLE 41

Letter Carrier Craft

1. May letter carriers occupying router assignments be required to perform street duties?

Response: Yes. A router duty assignment may include street duties. If the router assignment does not include street duties, then the router should not be used on street duties except under unanticipated circumstances (Article 41.1.C.4). A router must be treated like any city delivery letter carrier who bids on a duty assignment and must be permitted to work the duty assignment as posted.

Source: Router Memorandum, September 21, 1988.

2. Are router assignments, once established, fixed as to the amount of casing per route per day; or can management expand a section of an assignment and reduce another on a given day?

Response: The supervisor has the flexibility to assign a router to work more time or less time on each route based on local conditions. When the supervisor instructs a router to spend more time than allotted on a given route, appropriate arrangements should be made to handle the workload on the other routes. Routers on undertime may be assigned duties outside their bid assignment. This is no different than handling the workload on a traditional letter route. However, if frequent changes are made on the amount of time allotted on the route in the router's assignment, appropriate permanent adjustments should be made.

Source: Western Area NALC/USPS Leadership Committee; Router Memorandum, September 21, 1988.

3. Are router casing duties restricted to any specific classes of mail?

Response: No. Router assignments may be constructed to case all classes of mail or only one class of mail or any combination of mail classes. Management is not required to designate, but may do so, if it is desirable.

Source: Router Memorandum, September 21, 1988.

4. Are the following examples of specific street duty statements appropriate for placement on a letter carrier router assignment posting?

- A. Collection Route (determined daily as needed).

Response: No.

- B. Auxiliary street assistance (as needed).

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Response: No.

C. Approximately 2 hours of street assistance.

Response: No.

D. Approximately 2 hours of street assistance in Zone 94518.

Response: No.

E. Approximately 2 hours of street assistance on Routes 1, 2, 3, 4, and 5 (as needed).

Response: No.

F. Will perform router duties on city routes with 94518 zip area?

Response: No.

G. Collection Route No. 3.

Response: Yes.

H. Auxiliary Route No. 2.

Response: Yes.

I. Late arriving Express Mail.

Response: Yes.

J. Parcel Post Route No. 1.

Response: Yes.

K. Permanent handoff from Route No. 12 with specific street duties.

Response: Yes.

Source: Western Area NALC/USPS Leadership Committee.

5. How many routes may be identified on a router assignment for casing duties?

Response: The number is at management's discretion providing the adjustment is

done based on data established through Subchapter 140 or Chapter 2 of the M-39 Handbook or by another mutually agreed upon method. The number of routes identified should not exceed an 8-hour assignment.

Source: Western Area NALC/USPS Leadership Committee.

6. Can management include street duties on all router assignments in a unit?

Response: Yes. However, the duties must be specific and defined on the posting.

Source: Router Memorandum, September 21, 1988.

7. If there are over 8 hours of router duties available in a unit each day, must management establish a full-time assignment?

Response: Router positions should be maximized to full-time, 8-hour positions to the extent practicable. For example, if a unit has 35 routes, and through the evaluation of workload it is determined that the router workload is 30 daily hours, three 8-hour router positions should be created -- provided the work can practicably be assigned in 8-hour increments. The establishment of full-time router positions should be considered in the unit overall 88/12 and maximization requirements.

Source: Router Memorandum, September 21, 1988.

8. If the office router is in a T-6 office and there is relief router need, what level is the router position, Level 5 or Level 6?

Response: Level 5.

Source: National Memorandum of Understanding Re: Router, Carrier Craft, July 21, 1987.

9. Are full-time router assignments subject to opting?

Response: Yes.

Source: Article 41.2.B.

10. When a letter carrier requests a special mail count and inspection and the criteria set forth in part 271(g) of the M-39 Handbook have been met, how long does management have to complete the inspection and make any necessary adjustments?

Response: When special inspections are conducted pursuant to requests made under M-39 part 271(g), they must be conducted in the same manner as the formal count and inspection and completed within four weeks of the request. Unless a written exception has been granted by the District Manager, per Section 211.3 of the M-39 Handbook, any necessary adjustments must be placed in effect within 52 calendar days of the

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completion of the mail count.

Source: M-39 Handbook, Sections 211.3.

11. Must management provide the Union with a detailed written statement describing the operational circumstances which caused route adjustments not to be completed within 52 days of the inspection?

Response: 1. If the results of any route inspection indicate that the route is to be adjusted, such adjustment must be placed in effect within 52 days of the completion of the mail count in accordance with Section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a District Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union within 7 days of the grant of the exception.

2. Only following carrier-initiated inspections, under 271.G of the M-39 Handbook, may the granting of an exception be appealed directly to Step 3 of the grievance procedure.

Grievances concerning other exceptions may be filed at Step 2 of the grievance procedure.

Source: Prearbitration settlement (H7N-3A-C 39011), June 23, 1992.

12. What is the remedy when management fails to complete a special route inspection within 28 calendar days, per 271(g) of the M-39 Handbook, and the route has qualified?

Response: \$10 per day/6 days per week to be paid to the regular carrier holding the bid, beginning the 29th day and ending with the completion of the inspection.

Source: Western Area NALC/USPS Leadership Committee.

13. What is the remedy when a route is not adjusted within 52 calendar days of the inspection?

Response: \$10 per day/6 days per week to be paid to the regular carrier holding the bid, beginning the 53rd day and ending when the adjustment has been implemented.

Source: Western Area NALC/USPS Leadership Committee.

14. What craft is assigned the duty of spreading mail to carrier cases?

Response: This work is mailhandler craft work, if there are mailhandlers assigned to the unit. In the absence of a mailhandler and absent a valid past practice, this duty is assigned at management's discretion.

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Source: Western Area NALC/USPS Leadership Committee.

15. If a PTF on a hold-down completes the assignment in less than 8 hours, may they be sent home?

Response: Yes. A PTF is not guaranteed 8 hours under any circumstances.

Source: Articles 8 and 41.

16. If a PTF is loaned to another office, do they opt for hold-down assignments in the installation where they are working?

Response: No. A PTF on loan to another office must be allowed to opt in the installation from which they were loaned.

Source: Step 4 (H4N-5R-C 46648), May 24, 1988.

17. May auxiliary routes be opted for per Article 41.2.B.3, 4 and 5?

Response: No.

Source: Step 4 (H8N-5B-C 14553), May 7, 1981.

18. Can a temporary vacancy of five days or more that includes a holiday be opted?

Response: Yes. The parties agree that a vacancy of five days or more that includes a holiday may be opted per Article 41.2.B.

Source: Prearbitration settlement (H8N-4E-D 14090), July 1, 1982.

19. May management refuse to allow opting in order to reserve an assignment for training purposes?

Response: No. The parties agree that training is not a reason to disallow opting under Article 41.2.B.

Source: Step 4 (N8-W 0278), April 10, 1980.

20. If an employee has opted for and received a vacancy of five days or more and then goes on vacation, do they lose the right to continue the opt upon their return?

Response: No. In the above situation, the original opting employee would go on vacation for five days or more and the assignment would be opted for

solely that amount of time that the original opter is on vacation.

Upon return of the individual from annual leave, they should be returned to the hold-down for completion of the original vacancy.

Source: Step 4 (H4N-3U-C 26297), April 23, 1987.

21. If a Local Memorandum contains Article 41.3.0 language, may a T-6 string be deemed abolished if it is substantially changed?

Response: Yes. If a T-6 string has a change of more than two routes, it will be considered abolished.

Source: Step 4 (H1N-3A-C 30176, 30177, 30186), February 6, 1987.

22. Are assignments to letter carrier duties at the Level 5 position ever granted on a best qualified basis?

Response: No. By virtue of being a letter carrier, an individual is qualified to perform duties on city delivery routes.

Source: Step 4 (H8B-5D-C 12936), January 13, 1981.

23. Can full-time flexibles opt per Article 41.2.B.3 or 4?

Response: Yes.

Source: Prearbitration settlement (H4N-3F-C 45541), October 29, 1987.

24. What is the criteria for bidding a vacant T-6 assignment?

Response: To bid a vacant T-6 assignment, a letter carrier must have either two years of postal experience of which at least one year must have been as a city carrier; or a high school diploma with one year experience as a city carrier. These requirements may be waived by management.

Source: Step 4 (NC-W 5282), November 30, 1977.

25. On which seniority list is a VOMA carried?

Response: It is agreed that the successful bidder of a VOMA position carries with them the seniority of the craft of which they are a member.

Source: Step 4 (H1N-5B-C 11224), July 6, 1983.

26. Is a VOMA employee selected on the basis of senior or best qualified?

Response: The VOMA is a multi-craft position and is selected on the basis of senior qualified.

Source: Step 4 (H1N-5D-C 2509), July 14, 1982.

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27. Are full-time flexible assignments subject to reversion or re-posting?

Response: No. Full-time flexible assignments are not bid positions and, therefore, are not subject to reversion or re-posting.

Source: Western Area NALC/USPS Leadership Committee.

28. What happens to an opted assignment when the opter becomes a 204-B?

Response: If an employee becomes a 204-B while on an opted assignment, the assignment is posted for opt for other employees.

If the employee (204-B) returns to the opt prior to it being awarded, the posting is cancelled.

Source: National Arbitration Award (H4N-1W-C 34928), July 21, 1989, Arbitrator Raymond Britton.

29. Under the "unilateral" process, does the local union retain its one-time right to waive Article 41.3.O of the National Agreement?

Response: The one-time right to waive Article 41.3.O is not affected by the Memorandums of Understanding.

Source: Questions and Answers Concerning the September 1992 Memorandums.

30. Does a router, or other carrier without an actual "route", whose assignment is abolished have the same right to bid on other assignments as another carrier whose actual "route" is abolished?

Response: When the joint training guide uses the term "route" in addressing such issues, that means all full-time assignments including routers, reserve regulars, T-6s, etc. The same rights apply regardless of the type of assignment that is abolished.

Source: Questions and Answers Concerning the September 1992 Memorandums.

31. If a branch has an LMU that provides that provides that, if 50% of a route's territory is moved to another route, and the previous carrier follows the territory, how is this impacted by the MOUs?

Response: If the installation elects to use the "unilateral" method, this LMU provisions would remain in full force and effect. However, if the installation is using the X-Route process, Article 41.3.O would not be triggered when the routes are realigned.

Source: Questions and Answers Concerning the September 1992 Memorandums.

32. Are residual vacancies withheld for excessing, or held pending reversion, reposted for bid when PTFs are converted to regular?

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Response: The parties agree that these vacancies are not reposted for bid unless a change to the route of over one hour has occurred on that assignment since the last posting. If changes of less than one hour have occurred, the recently converted PTFs will fill those vacancies on the basis of seniority.

Source: Questions and Answers Concerning the September 1992 Memorandums.