

204Bs

Letter carriers temporarily detailed to a Supervisory Position (204b) have an ambiguous status. Their hybrid nature—being neither fish nor fowl—inevitably causes problems. Article 41, Section 1.A.3 seeks to mitigate these problems by requiring that management inform the local union whenever a letter carrier serves as a 204b. It states:

Form 1723, Notice of Assignment, shall be used in detailing letter carriers to temporary supervisor positions (204b). The Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

While serving as supervisors, 204Bs are prohibited from performing any bargaining unit work except in the limited circumstances specified in Article 1, Section 6 and the emergency provisions of Article 3, Section F. While the application of these provisions has often been a contentious issue, most issues concerning 204Bs have been resolved. The lead case is the national level settlement M-00891 which provides that:

1) An employee serving as a temporary supervisor (204b) is prohibited from performing bargaining unit work, except to the extent otherwise provided in Article 1, Section 6, of the National Agreement. Therefore, a temporary supervisor is ineligible to work overtime in the bargaining unit while detailed, even if the overtime occurs on a non-scheduled day.

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

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

Significantly, the settlement M-00891 provided that the available overtime-desired-list carrier receive eight hours of pay at the overtime rate as a remedy for allowing a 204b to perform bargaining unit work on the non-scheduled day of the 204b assignment. See also the pre-arbitration settlement M-00213 which provides for a similar remedy.

The October 22, 1998 Step 4 settlement M-01351: Step 4 makes clear that these provisions apply to any supervisory detail, whether or not management characterizes it as a 204b assignment. It states:

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

The November 18, 1999 Step 4 settlement M-01397 clarified the long-standing issue over the information that must be provided on Form 1723. Management had sought merely to list the “beginning and ending” of the detail, stating that the carrier would serve as a 204b “as needed” during the specified time period. This is not sufficient. The settlement provides that “[t]he Form 1723 will accurately reflect the dates the employee will be in a 204B status.”

Occasionally managers have sought to use letter carriers to perform bargaining unit overtime immediately after they have concluded a 204b assignment. This is not permitted. The Step 4 decision M-01177 provides that:

The issue in this case is whether management violated the national agreement when an employee who had been working in a 204b assignment earlier in the day worked bargaining unit overtime at the conclusion of his shift. During our discussion, we agreed to the following:

1. An acting supervisor (204b) will not be utilized in lieu of a bargaining-unit employee for the purpose of bargaining-unit overtime.

2. The PS Form 1723 shall determine the time and date an employee begins and ends the detail.

3. An employee detailed to an acting supervisory position will not perform bargaining-unit overtime immediately prior to or immediately after such detail unless all available bargaining-unit employees are utilized.

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

The phrase “immediately prior to or immediately after such detail” in this settlement refers to overtime on a day the carrier was in a 204b status. It does not prohibit overtime, otherwise consistent with the provisions of Article 8, on the day before or the day after a 204b detail.

A separate set of issues arises from NALC’s constitutional prohibition against supervisors, including 204Bs, holding union office for a period of two years after serving as a supervisor. Those issues are discussed at length in the Fall 1999 issue of the *NALC Activist*. ☒

CONTRACT ADMINISTRATION UNIT

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Maximization

The provisions of Article 7, Section 3 of the National Agreement were negotiated to maximize the number of full-time employees. The recent national level pre-arbitration settlement M-01398 resolved a dispute concerning the application of one of these provisions, Article 7, Section 3.C, which applies to all size offices. Article 7, Section 3.C provides that:

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

Some background is necessary to understand the issues resolved by M-01398. In a July 8, 1985 award, National Arbitrator Richard Mittenthal fully sustained NALC's position in case C-05070. That case concerned a PTF who had remained on the same Article 41.2.B.4 hold-down assignment (opt) for the entire six-month period. The Postal Service had argued that since the PTF was already holding down a vacant "assignment" there was no "need for converting the assignment to a full-time position" Mittenthal flatly rejected the Postal Service's argument and held that "How a PTF happened to be placed on that assignment was not a factor. Whether he 'opted' for it under 41.2.B.4 or whether he was given it as a matter of Management convenience, the result should be the same. I am not prepared, under the guise of interpretation, to write a practicality exception into the language of 7.3.C."

Arbitration awards are final and binding. For over a decade following Mittenthal's decision there were no major interpretive disputes concerning the application of this provision. Thus NALC was shocked when the Postal Service suddenly announced in a 1997 Step 4 denial that it would no longer comply with Mittenthal's award since it was "nonsensical and unintelligible." To make matters worse, the Postal Service communicated its change of position to the field so imprecisely that USPS labor relations' representatives began denying Article 7.3.C grievances if a PTF had been on a hold down assignment at any time during the six-month period.

The 1985 case decided by Arbitrator Mittenthal had concerned an office with rotating day's off. Despite this, the

Postal Service's 1997 denial raised another argument that it had not even bothered to make in 1985. It argued that since the conversion criteria of Article 7.3.C required that a PTF work "on the same five (5) days each week," that criterion, if applied literally, could almost never be met in an office with rotating days off. Since most larger offices have rotating days off, this was clearly an attempt to make the provisions of Article 7.3.C all but meaningless.

After NALC tentatively scheduled the case for national level arbitration, the Postal Service finally came to its senses and recognized the absurdity of its position. On January 7, 2000, the parties signed the following prearbitration settlement of cases A94N-4A-C 97040950 and F90N 4F-C 96002171 (M-01398).

The issue in these grievances is whether the time worked over a six-month period by a PTF letter carrier on an "opt" pursuant to Article 41.2.B.4, with rotating non-scheduled days, demonstrates the need for converting the assignment to a full-time position pursuant to Article 7.3.C.

After reviewing this matter, the parties mutually agreed that this case requires the application of Arbitrator Richard Mittenthal's July 28, 1985 decision in case No. H1N-2B-C 4314. Accordingly, the fact that the entire six-month period was spent on one "hold-down" assignment is not an exception to the maximization provisions of Article 7.3.C of the National Agreement.

We further agreed that in offices where the Local Memorandum of Understanding provides for rotating days off, a PTF employee who works the same rotating schedule, eight hours within ten, five days each week on the same uninterrupted temporary vacant duty assignment over a six-month period has met the criteria of Article 7.3.C. of the National Agreement.

Additionally, we agreed that the provisions of Article 7.3.C will be applied to an uninterrupted temporary vacant duty assignment only once.

All grievances that have been held pending the resolution of this national level dispute should now be rediscussed and, if possible, resolved in a manner consistent with this settlement. NALC representatives are also reminded of the Step 4 Settlement M-00913 which provides that:

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

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Maximum work hours

There are two separate restrictions on the maximum number of hours a letter carrier craft employee may be required to work. One is found in Article 8, Section 5.G and the other in *ELM* Section 432.32.

Article 8, Section 5.G applies to full-time regular and full-time flexible employees only. Excluding December, it limits them to no more than twelve hours of work in a day and no more than sixty hours of work in a service week. National Arbitrator Mittenenthal ruled in C-06238 (H4C-NA-C-21 “Fourth Issue.” June 9, 1986) that the 12- and 60-hour limits are absolutes—a full-time employee may neither volunteer nor be required to work beyond those limits. He held that no single, uniform remedy is appropriate for violations of the twelve- and sixty-hour limits; instead, the appropriate remedy must be decided on a case-by-case basis according to the specific circumstances present. In C-07323 (H4C-NA-C 21 “Third Issue”, September 11, 1987) Arbitrator Mittenenthal ruled that a full-time employee sent home in the middle of a scheduled day, because of the bar against employees working more than 60 hours in a service week, is entitled to be paid the applicable guarantee for the remainder of his or her scheduled day.

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

The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4N-NA-C 21 (3rd issue) and H4N-NA-C 27.

Arbitrator Snow ruled in C-18926 (November 30, 1998) that the Memorandum of Understanding M-00859 limits the remedy for any violations of the Article 8.5.G to an additional premium of 50 percent of the base hourly straight time rate.

ELM 432.32 The overtime limits in Article 8, Section 5.G apply only to full-time regular and full-time flexible employees. However, Part 432.32 of the Employee & Labor Relations Manual provides the following rule that applies to all employees, including casuals and transitional employees (See C-15699, National Arbitrator Snow, August 20, 1996).

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

Because this ELM provision limits total daily service hours, including work and mealtime, to 12 hours, an employee is effectively limited to 11½ hours per day of work plus a ½ hour meal. However, the ELM also permits the collective bargaining agreement to create exceptions to this general rule. The only exceptions to this rule in the NALC National Agreement are for full-time regular employees on the overtime desired list who, in accordance with Article 8.5.G, “may be required to work up to twelve (12) hours in a day.” Since “work,” within the meaning of Article 8.5.G does not include mealtime, the “total hours of daily service” for carriers on the overtime desired list may extend over a period of 12½ consecutive hours. Additionally, Article 8.5.G provides that the limits do not apply during December when full-time employees on the overtime desired list may be required to work more than twelve hours. These exceptions do not apply to casuals, transitional employees, part-time employees or full-time employees who are not on the overtime desired list, all of whom are effectively limited to 11½ hours of work per day, even during December.

It is NALC's position that the Snow decision in C-18926 limiting the remedies to an additional premium of 50 percent of the base hourly straight time rate only applies to violations of the Article 8.5.G. It does not limit remedies for repeated or deliberate violations of ELM 432.32. ☒

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Hold-down assignments

The contract provides a special procedure for exercising seniority to fill temporary vacancies in full-time duty assignments. This procedure, called “opting,” allows carriers to “hold down” the vacant duty assignments of regular carriers who are on leave or otherwise unavailable to work for five or more days. Full-time reserve letter carriers, full-time flexible schedule letter carriers, unassigned full-time carriers, and part-time flexible carriers may all opt for hold-down assignments. The opting provisions are found in Article 41, Sections 3, 4 and 5 which provide:

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

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

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

Vacancies in full-time Grade 5 assignments, including Reserve Regular assignments, are available for opting. However, not all anticipated temporary vacancies create opting opportunities. T-6 positions are not available for opting because they are higher level assignments which are filled under Article 25 of the National Agreement. Auxiliary routes are not available as hold-downs because they are not full-time. Full-time flexible positions are not subject to opting because they are not bid assignments. Vacancies anticipated to last less than five work days need not be filled as hold-downs. However, the anticipated five work days may include a holiday. An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns.

Article 41, Section 2.B.5 provides that once an available hold-down position is awarded, the opting employee “shall work that duty assignment for its duration.” This means that employees on hold-downs are entitled to work the regularly scheduled *days* and *the daily hours of duty* of the assignment.

In the past, the contract’s opting provisions have raised many contentious issues. NALC has been forced to take

grievances concerning the application of these provisions to national level arbitration on four different occasions. Fortunately, the national parties have resolved most of their disputes. Pages 41-8 through 41-13 of the *Joint Contract Administration Manual (JCAM)* provides a more detailed explanation of how the opting provisions are to be applied. The parties have even agreed, in writing, how violations of the opting provisions are to be remedied. The *JCAM* states that:

Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a “make whole” remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.

In those circumstances in which a PTF worked 40 hours per week during the opting period (or 48 hours in the case of a six day opt), an instructional “cease and desist” resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a “cease and desist” remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

The National Agreement does not set forth specific procedures for announcing or applying for available vacancies. However, procedures for announcing vacancies and procedures for opting on hold-down assignments may be governed by your Local Memorandum of Understanding provisions, a mutually agreed-upon local policy or local past practice. You should consult with your shop steward if you need more information about how vacancies available for opting are made known in your office. ☒

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Vacant Carrier Technician Positions

Carrier Technician (T-6) positions are not subject to opting under the provision of Article 41, Section 2.B. Rather, temporarily vacant Carrier Technician positions are higher level assignments and thus must be filled in accordance with the provisions of Article 25, Section 4, which sets forth the following rules:

25.4 Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists. However, for details of an anticipated duration of one week (five working days within seven calendar days) or longer to those higher level craft positions enumerated in the craft Article of this Agreement as being permanently filled on the basis of promotion of the senior qualified employee, the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected.

These rules depend upon the duration of the vacancy. For a vacancy of less than five working days, any employee may be selected from those who are “eligible, qualified and available” in the immediate work area in which the vacancy occurs. For a vacancy of five working days or more, the “senior qualified, eligible and available” [emphasis added] employee in the immediate work area must be selected.

The technical distinction between opting and filling assignments under the provisions of Article 25 is often misunderstood. Its primary significance is for full-time regular employees who already have their own bid assignments. They cannot opt for vacant routes since Article 41.2.B restricts opting to part-time flexibles, reserve regulars, and unassigned regulars. Higher level assignments are different. Full-time regulars can temporarily vacate their own bid assignments in order fill a higher level assignment under the provisions of Article 25. Contrary to what some supervisors seem to believe, part-time flexibles are also eligible to fill higher level assignments under the provisions of Article 25.

Temporarily vacant Carrier Technician positions must be

made available. National Arbitrator Snow held in C-10254, September 10, 1990, that management may not assign different employees on an “as needed” basis to carry a route on a T-6 string when a vacancy of five or more days is involved; instead such vacancies must be filled according to Article 25.

Letter carriers who fill temporarily vacant T-6 positions assume the hours of the vacancy as provided by the pre-arbitration settlement M-00431, which states:

Details of anticipated duration of one week (five working days within seven calendar days) or longer to temporarily vacant Carrier Technician (T-6) positions shall be filled per Article 25, 1981 National Agreement. When such temporary details involve a schedule change for the detailed employee, that employee will assume the hours of the vacancy without obligation to the employer for out-of-schedule overtime.

Pay for work while in a higher level position is governed by Article 25, Section 4 which provides in relevant part that:

25.4 An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position.

Additionally, the Step 4 Settlement M-00902, provides that the following language from the November 5, 1973 management document known as the “Brown Memo” (M-00452,) is a contractual commitment and remains in effect:

When a carrier technician (T-6) is absent for an extended period and another employee serves the series of 5 routes assigned to the absent T-6, the replacement employee shall be considered as replacing the T-6, and he shall be paid at the T-6 level of pay for the entire time he serves those routes, whether or not he performs all of the duties of the T-6. When a carrier technician's absence is of sufficiently brief duration so that his replacement does not serve the full series of routes assigned to the absent T-6, the replacement employee is not entitled to the T-6 level of pay. In addition, when a T-6 employee is on extended absence, but different carriers serve the different routes assigned to the T-6, those replacements are not entitled to the T-6 level of pay. The foregoing should be implemented in a straight-forward and equitable manner. Thus, for example, an employee who has carried an absent T-6 carrier's routes for four days should not be replaced by another employee on the fifth day merely in order to avoid paying the replacement higher level pay. ☒

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Holiday overtime

It is easy to misunderstand the relationship between the holiday scheduling provisions of Article 11 and the overtime scheduling provisions of Article 8. It is important to make a clear distinction between the two separate phases of scheduling holiday work: 1) the advance scheduling of employees needed for holiday work; and 2) the assignment of overtime work on an actual holiday or designated holiday among employees who were properly scheduled.

Holiday scheduling is governed by the provisions of Article 11, Section 6 and any applicable Local Memorandum of Understanding (LMU). These provisions require management to determine the number and category of employees needed for holiday work and post a holiday schedule as of the Tuesday preceding the week in which the holiday falls. Advance holiday scheduling is done without regard to which full-time employees are on the overtime desired list or work assignment list. For example, in the absence of LMU provisions or a past practice concerning holiday assignments, the default “pecking order” for holiday scheduling specified in the JCAM is:

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

Once the scheduled employees have actually reported to work on a holiday or designated holiday, the situation is different. National Arbitrator Mittenthal held in a January 19, 1987 decision (C-06775) that full-time holiday volunteers “are contractually expected to work eight hours, nothing more.” He also wrote that a “regular [holiday] volunteer cannot


work beyond the eight hours without supervision first exhausting the ODL.” Thus, on the actual holiday or designated holiday the overtime provisions of Article 8, including the “letter carrier paragraph” of the Overtime Memorandum, are in effect and govern the assignment of overtime among full-time letter carriers.

Non-ODL letter carriers working on a holiday or designated holiday are considered to be working on their scheduled day (Mittenthal C-06775, page 13). Thus, they may only be required to work overtime under the provisions of Article 8, Section 5.C.2.d as modified by the “letter carrier paragraph” (See JCAM page 8-10). Non-ODL letter carriers working on their non-scheduled day can only be required to work beyond eight hours after the overtime desired list has been exhausted as required by Article 8, Section 5.G.

Similarly, since letter carriers on the Work Assignment List working on a holiday or designated holiday are considered to be working on their scheduled day, they must be assigned overtime on their own routes as required by the Work Assignment Memorandum (see JCAM 8-15). In contrast, if letter carriers on the Work Assignment List are working on their non-scheduled day the provisions of the Work Assignment Memorandum do not apply.

Article 8 Section 5.C.2.b provides that “during the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the ‘Overtime Desired’ list.” When full-time carriers on the Overtime Desired list are scheduled for holiday work under the provisions of Article 11, questions often arise concerning what overtime is considered in determining whether overtime has been equitably distributed.

Initially, remember that much of what is often incorrectly considered “overtime” worked by full-time employees on their holidays or designated holidays is technically not overtime. Rather it is “Holiday Worked Pay” or “Holiday Scheduling Premium.” The only work that is contractually considered to be overtime for full-time employees working on their holiday or designated holiday is work beyond eight hours in a day (see ELM 432.531).

Furthermore, while the first eight hours of holiday work performed by full-time ODL letter carriers properly scheduled for holiday work on their non-scheduled day is technically “overtime,” it is also excluded from consideration. This is because it was not assigned under the overtime provisions of Article 8, but rather under the holiday scheduling provisions of Article 11 (see Mittenthal C-06775). Thus the only holiday overtime that is considered or counted in determining equitability at the end of the quarter is overtime for work beyond eight hours in a day. 

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Out-of-schedule pay

Management may make temporary schedule changes to a full-time carrier's regularly scheduled workday or workweek. However, when this occurs, the out-of-schedule premium provisions of ELM 434.6 are applicable, but *only in cases where management has given advance notice* of the change of schedule by Wednesday of the preceding service week. In all other cases a full-time employee is entitled to work the hours of his or her regular schedule or receive pay in lieu thereof. In such cases, the regular overtime rules apply—not the out-of-schedule premium rules. This means that:

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

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

Daily Schedule Examples

Example No.	Hours Worked	Total Hours	Straight Time	Premium Hours	Overtime Hours
1*	8:00-4:30	8	8	0	0
2	6:00-2:30	8	6	2	0
3	6:00-3:30	9	7	1	1
4	6:00-4:30	10	8	0	2

* Original permanent schedule

Example 1. This is the employee's original, permanent schedule of 8:00 a.m. - 4:30 p.m. and an eight-hour workday. The employee receives eight hours of straight-time pay.


Example 2. For examples 2 through 4, the employee has received advance notice by Wednesday of the preceding service week of a schedule change to 6:00 a.m. - 2:30 p.m. In this example the employee works the revised schedule's hours only, and receives two hours of out-of-schedule premium for the hours 6:00-8:00 a.m., which were worked outside of and instead of the regular schedule.

Example 3. The employee works the revised schedule plus one additional hour. The employee receives one hour of out-of-schedule premium pay, because of time worked outside of and instead of his or her regular schedule. However, out-of-schedule premium hours cannot exceed the unworked hours of the employee's permanent schedule (there is only one such hour here), so the extra work hour is paid as contract overtime rather than out-of-schedule premium.

Example 4. In this example the employee works the revised schedule plus two hours of overtime. Two hours of postal overtime are paid but no out-of-schedule premium, because the employee has worked his full, permanent schedule.

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

Remember that only full-time carriers may receive out-of-schedule pay. Furthermore, an employee does not receive out-of-schedule pay when his or her schedule is changed to provide limited or light duty, when the employee is attending a recognized training session, or when the employee is allowed to make up time due to tardiness in reporting for duty. Note also that letter carriers who fill temporarily vacant Carrier Technician positions under the provisions of Article 25 assume the hours of the vacancy (See M-00431).

Shop stewards should carefully monitor the pay of any full-time carriers whose schedules are temporarily changed. The Postal Data Center has no way of knowing when notice of the schedule change was given, so proper pay will only be received if supervisors make the correct time-keeping entries. Additional information concerning the out-of-schedule pay provisions can be found beginning on page 8-4 of the JCAM. 

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Contract Materials CD 2000

The Contract Administration Unit is proud to announce a new CD-ROM chock-full of useful information for union activists throughout NALC whose job it is to represent letter carriers and enforce the National Agreement.

The new CD, dubbed the “Contract Materials CD,” contains both the MRS materials and a host of NALC publications, USPS handbooks and manuals, and legal documents that together comprise an extensive library of essential materials for shop stewards and branch officers.

One of the contract unit’s jobs is to collect, organize and distribute useful information to contract enforcers, and this latest product effort is a massive update and expansion of our last MRS CD, published in September 1999.

The Contract Materials CD contains a wealth of searchable information:

- ✦ 1998 NALC-USPS National Agreement, with national Memorandums of Understanding;
- ✦ The NALC-USPS *Joint Contract Administration Manual* and NALC Supplement to the JCAM, June 1998;
- ✦ The MRS Index and Summaries, July 2000, with links to all M-number settlements, memorandums, management directives and so forth (M-01375 through M-01428 are new);
- ✦ More NALC publications: Local Negotiations 2000, NALC *Activist* (Spring 1997-Spring 2000), Contract Talk columns from *The Postal Record* (1996-July 2000);
- ✦ USPS manuals: the ELM, M-39, M-41, and many more Postal Service handbooks, manuals and publications;
- ✦ Compensation materials: NALC Compensation Department columns from *The Postal Record* (January 1998-July 2000), plus the FECA law, federal OWCP regulations and CA- forms;
- ✦ FMLA materials, including the NALC *Guide to the Family and Medical Leave Act*, a separate file of the USPS-approved NALC forms that letter carriers may use to apply for FMLA leave, plus the currently effective federal regulations governing the FMLA;

- ✦ OSHA: The PESEA law providing full OSHA coverage to USPS, plus OSHA regulations and standards from the Code of Federal Regulations;
- ✦ The latest Adobe Acrobat Reader programs for Windows 95/98 and for Windows 3.1, as well as clear, thorough documentation for new Acrobat users. The documentation explains step-by-step how users can open Acrobat files, navigate around them, cut and paste text from them and perform one-file and full-CD searches.

For the first time, all of the documents on the CD are in Adobe Acrobat format—including all of the MRS documents. Users will no longer use the Bbdisplay program to load, view and print the M-number documents. Instead, the M-number image files have all been converted to Acrobat PDF format.

Although many tech-savvy NALC representatives have been using Acrobat documents for years, others may be new to this portable-document technology. Acrobat is a program created by Adobe Systems, Inc., a maker of printing, graphic arts and desktop publishing software. Acrobat has become the de facto standard for portable electronic documents in government and business and on the Internet.

Acrobat documents retain their original appearance—they look the same and print the same—on just about any type of computer and operating system. This is because Acrobat documents contain their own fonts (typefaces) and their own page layout information. In addition, Adobe makes its Acrobat Reader program in flavors for virtually every operating system around freely available on its web site.

Index searches are another great feature of Acrobat documents. All of the text documents on the new CD (that is, everything but the M-number image files) have been indexed for incredibly quick searches. Users can search through the CD’s thousands of pages of material for a word or phrase in a couple of seconds. A single mouse-click brings up the search function in the CD’s attractive, user-friendly graphical interface.

NALC’s Contract Administration Unit is committed to providing NALC representatives with the latest, most important information available. We have worked for several years to create powerful electronic resources such as the MRS CDs and Arbitration Collection CDs. It is hoped that NALC activists will find the new Contract Materials CD 2000 an essential resource in the battle to represent letter carriers and enforce the National Agreement. You deserve no less. ☐

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Paper suspensions begin October 15

NALC and the Postal Service have agreed to eliminate traditional time-off, lost-pay suspensions during the term of the 1998-2001 Agreement. In a national memorandum of understanding dated August 31 (see below), the parties agreed to replace lost-time suspensions of 14 days or less with paper suspensions starting October 15 and continuing through the end of the current contract on November 20, 2001.

NALC believes this move to paper suspensions is a major step forward in the modernization of the postal grievance resolution and disciplinary systems. However, the change comes with a caution.

All letter carriers, and union representatives in particular, must understand that a paper suspension is just as serious as a traditional lost-time, lost-pay suspension. Management may use a paper suspension to build a case of progressive discipline. A paper suspension can be an element cited in later discipline, up to and including discharge.

Union representatives must work hard to ensure that disciplined carriers understand the seriousness of paper suspensions. Shop stewards should find out about all disciplinary action against carriers in their units, paper or otherwise, and investigate them thoroughly. Unjust discipline must be grieved regardless of its form, because it can affect a letter carrier's ultimate job security.

Stewards and other union representatives should counsel letter carriers who receive paper suspensions. Some disciplined carriers may feel a paper suspension is no more serious than a letter of warning because it has no immediate, painful consequences. That is wrong, and that kind of attitude can endanger a carrier's job. A suspension is often a warning sign that a carrier's future with the Postal Service is in jeopardy. Shop stewards can help ensure that discipline serves a corrective purpose, as the contract intends, by explaining the seriousness of suspensions to all carriers in the unit.

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Note on phone/computer bidding. Please note that the recently negotiated national memorandum of understanding on phone/computer bidding does not affect locally-negotiated time frames for posting, bidding, or awarding assignments. Nor does it affect the scope of bidding—for example, by station or installation. ☒

MOU BETWEEN THE USPS AND THE NALC, AFL-CIO

Re: Article 16

The parties agree that the following modifies the provision of Article 16.4 for the term of the 1998 National Agreement.

Employees issued discipline involving suspensions of fourteen days or less will remain on duty during the term of the suspension with no loss in pay. These disciplinary actions shall, however, be considered to be of the same degree of seriousness and satisfy the same corrective steps in the pattern of progressive discipline as the time-off suspensions. Such suspensions are equivalent to time-off suspensions and may be cited as elements of past discipline in subsequent discipline in accordance with Article 16.10.

Seven and fourteen day suspensions issued pursuant to this memorandum shall contain the following language:

While this suspension does not result in a loss of time or pay, it is equivalent to and is of the same degree of seriousness as a time-off suspension. It satisfies the same requirement for progressive discipline as a time-off suspension, and may be cited as an element of past discipline in subsequent discipline pursuant to Article 16.10. You have the right to appeal this action under the grievance-arbitration procedure set forth in Article 15, Section 2 of the National Agreement within 14 days of your receipt of this notice.

Nothing in this Memorandum of Understanding shall be construed to preclude the employer from placing an employee in a non-pay, non-duty status in accordance with Article 16.6 or 16.7 or to affect the procedures for allegations or misconduct that are considered appropriate for immediate removal. In addition, the parties understand that this Memorandum of Understanding does not preclude time-off suspensions where modification of a discharge is agreed to by the parties as a settlement or a third party (e.g., arbitrator, administrative law judge) determines to reduce the penalty of discharge to a time-off suspension.

This Memorandum of Understanding is effective with corrective action with an issue date of Oct. 15, 2000 or after, and will expire at midnight on Nov. 20, 2001.

Anthony J. Vegliante
Vice President, Labor Relations
United States Postal Service

Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO

Date: 8/31/00

Form 2488—not

The Office of Workers' Compensation Programs (OWCP) determines whether an employee has a compensable injury or illness—not the Postal Service. However, the Postal Service does have a legitimate need for medical information concerning an injured employee's job-related medical condition and work restrictions. Use of the Form CA-17 "Duty Status Report" developed by OWCP for employing agencies to obtain such information is usually adequate. However, problems often arise when the Postal Service, for either legitimate or illegitimate reasons, seeks additional information or clarification.

Some of these problems were resolved when new regulations for the administration of the Federal Employees' Compensation Act became effective on January 4, 1999. Among the changes were those at 20 CFR 10.506, which changed the regulations to prohibit management contacting an attending physician "by telephone or through personal visit" both during and after the 45-day COP period. The regulations state:

§0.506 May the employer monitor the employee's medical care?

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA-17 is usually adequate for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. (However, the employer shall not contact the physician by telephone or through personal visit.) When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

Procedural violations of these OWCP regulations by the Postal Service, as opposed to disputes concerning eligibility determinations by OWCP, are grievable matters. This was acknowledged by the Postal Service in the following Step 4 settlement (M-01385, E94N-4E-C 98037067, June 15, 1999):

The first issue contained in this case is whether management violated the National Agreement when it telephonically contacted limited duty employees' physicians to receive information and/or clarification on a carrier's medical progress. The second issue is whether management violated the National Agreement when it contacted limited duty employees' physicians to receive information and/or clarification on a carrier's medical progress by letter and did not send a copy of the letter to the carrier.

During our discussion, it was mutually agreed to close this case at this level with the following understanding.

The Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the Federal Employees' Compensation Act (FECA) effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician. The EL-505 Section 6.3 specifically states that the employee will be sent copies of such correspondence.

PS Form 2488 was developed to obtain the release of medical information concerning persons seeking employment with the Postal Service. It was not originally intended to obtain medical information concerning current employees. Nevertheless, the Postal Service has begun using it for that purpose. Unfortunately, OWCP has taken the position that the use of Form 2488 is not inconsistent with the provisions of 20 CFR 10.506. However, employees may not be required to complete the form. This is reflected in the Step 4 settlement Q98N-4Q-C 00116558, September 13, 2000, M-01430, which states that:

“The Contract Administration Unit strongly recommends that letter carriers never sign a Form 2488.”

The issue in this case is whether management violated the National Agreement by use of a PS Form 2488, Authorization for Medical Report, to obtain an employee's written authorization to obtain medical evidence from the employee's attending physician.

Form CA-17 "Duty Status Report" is usually adequate to obtain medical information concerning an injured employee's job-related medical condition and work restrictions. If a medical provider will not release the Form CA-17, without a medical release, PS Form 2488 may be used to secure the release. Completion of PS Form 2488 by the injured employee is voluntary, and Section 10.506 of the regulations governing claims under the Federal Employees' Compensation Act sets forth the rules under which employing agencies may request medical reports from the attending physicians of injured employees.

The Contract Administration unit strongly recommends that letter carriers never sign a Form 2488. There is simply too much potential for abuse and the Postal Service may seek to obtain information unrelated to the current illness or injury. Of course, an employee's treating physician may be reluctant to release a Form CA-17 to the Postal Service without written authorization. However, the more prudent course of action in such a situation is for the employee simply to write a note to the physician authorizing release of the Form CA-17, and nothing more. ☒

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JCAM 2000

Recently NALC and the Postal Service shared the expense of mailing a copy of the new September 2000 edition of the *Joint Contract Administration Manual* (JCAM) to each of the 10,560 facilities where city letter carriers are employed. In a cover letter addressed to both the NALC Shop Steward and the Delivery Unit Manager, the national parties made clear that the copy was provided for use by both the Union and management and must be accessible to both at all times.

In a separate mailing, NALC also provided a copy of the revised JCAM to every NALC branch. Additional copies of the new JCAM may be ordered through the NALC Supply Department for \$15.00.

The revised JCAM represents the definitive interpretation of the 1998-2001 National Agreement for both the National Association of Letter Carriers and the United States Postal Service. Management has agreed not to dispute any of the interpretations in the JCAM. We are extremely gratified that neither party has backed away from any of the positions previously agreed to in the June 1998 edition of the JCAM. There have been no substantive deletions or changes to previously agreed-upon positions. The newly revised JCAM incorporates almost all the National Level Arbitration awards and substantive national level settlements and agreements from the last two years. Additionally, the parties have agreed to use the revised JCAM to resolve a number of long-standing issues.

The NALC Supplement to the Joint Contract Administration Manual contains additional interpretive and advocacy material created solely by the National Association of Letter Carriers at the national level. The supplement is an NALC-only publication. The Postal Service has neither approved nor agreed to any of the material in the supplement. The supplement has not changed since its initial publication in June 1998 so its date has not been changed.

The part-time flexible call-in guarantee provisions of Article 8, Section 8.C provide a good example of how the JCAM clarifies the application of contract language. The bare language of that section provides that:

8.8.C The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more workyears of employment per year. All

employees at other post offices and facilities will be guaranteed two (2) hours work or pay when requested or scheduled to work.

The new edition of the JCAM incorporates the relevant national level arbitration awards, settlements and ELM provisions to fully explain the mutually agreed-upon application of this section as follows:

- A part-time flexible requested or scheduled to work in a post office or facility with 200 or more workyears of employment is guaranteed 4 hours of work (or pay in lieu of work). If branch officers need to determine if their post office has 200 or more workyears of employment, they should contact their national business agent.
- A part-time flexible requested or scheduled to work in a post office or facility with fewer than 200 workyears of employment is guaranteed 2 hours of work (or pay in lieu of work).
- ELM 432.62 further provides that a part-time flexible who is called back to work on a day the employee has completed an assignment and clocked out is guaranteed 4 hours of work or pay regardless of the size of the office.
- National Arbitrator Britton held in H1N-3U-C-28621, December 13, 1988 (C-08530) that the two (2) or four (4) hour guarantee provided for in Article 8 Section 8.C does not apply to PTF employees who are initially scheduled to work, but called at home and directed not to report to work prior to leaving for work.
- Split Shifts: When PTF employees work a split shift or are called back, the following rules apply. See the Step 4 settlement H8N-1N-C 23559, January 27, 1982 (M-00224):

1) When a part-time flexible employee is notified prior to clocking out that he or she should return within two hours, this will be considered as a split shift and no new guarantee applies.

2) When a part-time flexible employee, prior to clocking out, is told to return after two (2) hours:

- The employee must receive the applicable guarantee of two or four hours work or pay for the first shift, and;
- The employee must be given another minimum guarantee of two hours work or pay for the second shift. This guarantee is applicable to any size office.

3) All part-time flexible employees who complete their assignment, clock out and leave the premises regardless of intervals between shifts, are guaranteed four (4) hours of pay if called back to work. This guarantee is applicable to any size office. ☒

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