

Contract Administration Unit

Paul Barner, Executive Vice President
James D. Henry, Vice President
Christopher Jackson, Director of City Delivery
Manuel L. Peralta Jr., Director of Safety and Health
Dan Toth, Director of Retired Members
Jim Yates, Director of Life Insurance

Violations of the maximum work-hour limits, non-compliance, remedies and grievance starters

Across the country, letter carriers are being forced to work in excess of the work-hour limitations found in the National Agreement as well as in the *Employee and Labor Relations Manual (ELM)*. This month's Contract Talk will explain these provisions and provide advice for branches when filing grievances on repetitive work-hour violations. There are two separate restrictions on the maximum number of hours a letter carrier craft employee may be required to work. These work-hour limits are stated in Article 8 of the National Agreement and the *ELM*.

One provision relating to work-hour limits is found in Section 432.32 of the *ELM*, which provides the following rule that applies to all employees, including city carrier assistants (CCAs):

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.

Because this *ELM* provision limits total daily service hours, including work and mealtime, to 12 hours, an employee is effectively limited to 12 hours of work minus his or her meal period—normally 30 minutes. However, the *ELM* also permits the collective-bargaining agreement to create exceptions to this general rule, which was bargained for overtime desired list (ODL) employees as follows:

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

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and
2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

The exception in Article 8, Section 5.G applies to full-time employees on both the ODL and work assignment list.

Excluding December, the above provision limits those employees to no more than 12 hours of work in a day and

no more than 60 hours of work in a service week. However, since the term "work" within the meaning of Article 8.5.G does not include mealtime, the 12 total hours of work in a day for carriers on the ODL 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 ODL may be required to work more than 12 hours.

These exceptions do not apply to CCAs, part-time employees or full-time employees who are not on the ODL, all of whom are effectively limited to 11½ hours of work per day by *ELM* Section 432.32, even during December.

National Arbitrator Richard Mittenthal ruled in Case No. H4N-NA-C 21 "Fourth Issue" (C-06238) that the 12- and 60-hour limits are absolutes. Excluding December, a full-time employee may neither volunteer nor be required to work beyond those limits. This rule applies to all full-time employees on the ODL or work assignment list except during the penalty overtime exclusion period (December).

In Case No. H4N-NA-C 21 "Third Issue" (C-07323), National Arbitrator Mittenthal ruled that when a full-time employee reaches 60 hours in a service week, management is required to send the employee home—even in the middle of a scheduled day. He further held that in such cases, the employee is entitled to be paid the applicable eight-hour guarantee for the remainder of his or her scheduled day.

On Oct. 19, 1988, the national parties signed a memorandum of understanding (M-00859) to implement the above-mentioned Mittenthal awards. Part of that memorandum states:

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. Fur-

(continued on page 40)

Violations of the maximum work hour limits (continued)

(continued from page 39)

thermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work.

In Case No. A90N-4A-C 94042668 (C-18926), National Arbitrator Carlton J. Snow ruled that the language in M-00859 limits the remedy for any violations of the Article 8.5.G maximum hour limits to an additional premium of 50 percent of the base hourly straight time rate. Even though this MOU explicitly states that letter carriers who have reached their 12 and/or 60-hour limit must have their tour terminated, management frequently attempts to shield themselves from liability for the violation based on National Arbitrator Snow's decision. This attempt by management ignores their obligation to instruct letter carriers who have reached the work hour limitations to end their tour. Any grievance filed alleging a violation of M-00859 should address management's failure to live up to this language.

Union representatives should keep in mind that Arbitrator Snow's award only addresses the additional remedies sought by the NALC. His award did not modify the terms of our agreement in M-00859 and the terms remain fully enforceable.

The Contract Administration Unit has created multiple new grievance starters, reflecting each category of employee, to assist branches when filing grievances on repetitive violations of the daily and weekly work hour limits. Additionally, an interview questionnaire has been developed so each affected carrier can provide an individualized im-

pact statement. Shop stewards should include these statements in the grievance file to demonstrate the reasons and the need to request remedies that enforce the right of letter carriers to not work past these work-hour limits.

There have been several regional arbitration awards that addressed the repeat and deliberate violation of work-hour limits and the impact on letter carriers. While the remedies that have been awarded vary, numerous arbitrators agree that management has a contractual obligation to send carriers home once they reach the work-hour limits and/or allow the carrier the right to refuse without fear of discipline.

The awards in favor of the above remedies may be due to the ability of the union to show the negative impact these violations have on the letter carriers through statements and testimony. Local branches should file timely grievances on each circumstance where a carrier is forced to work beyond the hour limits as stated above. Until your office has a precedential award saying otherwise, you should follow whatever instructions your supervisor or manager gives you.

The parties have agreed to mandatory work-hour limits, and the Postal Service must honor them. In the end, time is a precious resource that cannot be recreated, and a remedy must be fashioned to prevent the violation from recurring.

To access the grievance starters, which include the interview questionnaire, from the NALC website, log on to the Members Only portal, and click the "Member documents" button, where you will find the *Shop Steward's Guide* and the grievance starters in a drop-down menu.

Director, Health Benefits

Telehealth (continued)

(continued from page 38)

you to this program. Telehealth visits are available for women 18 years of age or older, and like the prior program discussed, the telehealth women's health services program does not have a copayment.

How to start your telehealth journey

Go to nalchbptelehealth.org on your desktop computer or download the NALCHBP telehealth app from your phone or

tablet's Google Play™ or Apple App Store. Once the app is downloaded and opened, enter your name and email and create a password. Next, enter your health plan ID. Lastly, choose the reason for the visit, whether "Urgent Care," "Women's Health," "Lactation Support" or "Nutrition Counseling." Once your selection is made, an online doctor is just a click away.

Keep in mind that you can also download the free NALC Health Benefit Plan Member Access Portal that also includes a single sign-on feature for the NALCHBP Telehealth program.