

## Formulating remedies to redress wrongs

**N**ALC stewards and representatives understand the importance of carefully documenting and arguing the merits of grievances. However, they often forget that crafting a remedy request is an essential part of every grievance.

Remedies are not automatic once a violation is established. Nor does the National Agreement, in most cases, provide any clear guidance on the appropriate remedy for violations.

Yet in contract cases the union carries the burden of demonstrating that the remedy requested is appropriate and necessary. Even in arbitration, NALC advocates all too often succeed in convincing an arbitrator that management violated the contract, only to fail to obtain a substantial remedy.

This article reviews the general principles for formulating and arguing for remedy requests. General principles that apply to remedy requests include:

- **Remedies are not automatic.** Appropriate remedies must be requested and rationalized.
- **The remedy should make the grievant whole.** Arbitrators agree

that a normal remedy should include placing a harmed grievant in the same financial position he or she would have been in, absent the contract violation.

- **The remedy should fix the problem.** Often, there is an underlying problem that causes a contract violation. Ideally, a remedy will not only make a grievant whole, but will safeguard potential future grievants from similar harm and at the same time protect management from future financial liability, by eliminating the root cause of the violation.

- **The remedy should fit the violation.** There must be a logical connection between the violation and the remedy requested. For example, if a supervisor violates Article 14 by operating a postal vehicle without using a seatbelt, the steward would not request an hour of overtime for each ODL employee, because there is no rational connection. Rather, the steward might request as a remedy that the supervisor receive eight hours of safety training and the Union receive a copy of the supervisor's training record.

- **The remedy should be reasonable.** Requested remedies that

are unreasonable usually have the opposite of the intended effect. Arbitrators will normally be negatively influenced by a remedy that is unreasonable. For example, if a supervisor improperly requires a non-ODL to work a scheduled day off, and the steward requests as a remedy that the supervisor be fired, an arbitrator is likely to be wondering what is wrong with the steward, rather than focusing on whether there was a violation by management.

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## Formulating remedies

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rather than focusing on whether there was a violation by management.

## Understanding arbitrators

Almost all grievances are resolved short of arbitration. Nevertheless, the key to formulating remedy arguments is to understand how arbitrators approach the issue of remedies. Most rights arbitrators view their function—as they should—as enforcing the terms of the National Agreement, a contract between the parties. They generally do not believe it is their function to police the relationship between the parties. Consequently, they view the proper function of remedies as “making the grievant whole,” that is, restoring any rights or entitlements that were lost because of a contract violation. For example, if a casual is worked instead of a part-time flexible in violation of Article 7.1.B.2, most arbitrators would accept that the appropriate remedy is to pay the part-time flexible for the hours he or she would have worked but for the violation. However, as discussed below, in many contract grievances the remedy issue is not so simple. For example, if a full-time letter carrier is denied a special route inspection that should have been given under the provisions of M-39 Section 271.g, almost all arbitrators will order that a special inspection be conducted forthwith. Where arbitrators differ is over whether any further remedy is due. After all, some have reasoned, the grievant was paid for any overtime hours that were worked as a result of the route being overburdened and

there is nothing in the contract that requires anything more. In such cases, it is the NALC representative’s responsibility to formulate a convincing argument that an additional monetary remedy is required.

## No rights

There is a legal maxim, “Without remedies there are no rights.” National Arbitrator Mittenthal elegantly restated this in C-03234:

The grievance procedure is a system not only for adjudicating rights but also for redressing wrongs.

Arbitrator Mittenthal also discussed arbitrators’ remedial authority in C-06238 (June 9, 1986). Citing the applicable U.S. Supreme Court decision, he wrote:

One of the inherent powers of an arbitrator is to construct a remedy for a breach of a collective bargaining agreement. The U.S. Supreme Court recognized this reality in the Enterprise Wheel case:

... When an arbitrator is commissioned to interpret and apply the collective bargaining agreement he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particu-

lar contingency. *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 80 S.Ct. 1358, 1361 (1960).

As National Arbitrator Gamser observed in C-03200 (April 3, 1979):

... to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the

nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator.

This excerpt from National Arbitrator Gamser’s award continues as follows:

No lengthy citations or discussion of the nature of the dispute resolution process which

**There is a legal maxim: Without remedies there are no rights.**

# ACTIVIST

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS

VOL. 17, NO. 2

SUMMER 2004

Published quarterly by:

National Association of Letter Carriers  
100 Indiana Avenue, NW  
Washington, D.C. 20001-2144

William H. Young, President



these parties have mutually agreed to is necessary to support such a conclusion.

## Additional compensatory remedies are not “punitive”

It is almost always a mistake to ask for a “punitive remedy” or to “punish” management for violating the contract. These concepts are more suited to civil proceedings in a court of law than to labor arbitration. In most cases, arbitrators will resolve and remedy the case before them and avoid any remedy that smacks of punishment.

This does not mean the union should restrict its remedy requests to the make-whole minimum— payment for demonstrated lost pay or benefits. As discussed below, NALC has been very successful in obtaining remedies in arbitration that more fully compensate grievants and the union for contract violations. However, this does mean that NALC representatives need to provide carefully thought-out arguments in support of remedy requests.

## Arguing for additional compensatory remedies

The union makes the strongest case for additional compensatory remedies by demonstrating that the violations were deliberate, repeated or egregious. Both the JCAM and national level arbitration awards provide support for additional compensatory remedies in such situations. The JCAM’s discussion of remedies for violating the opting provisions of Article 41.2.B (JCAM page 41-14) is particularly helpful because, as arbitrators should be reminded, it expresses the joint,

agreed-upon position of both NALC and the Postal Service. The JCAM states:

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.

(Emphasis added.)

So the JCAM specifically suggests and authorizes compensatory remedies beyond mere payment for lost hours and benefits in appropriate circumstances. It should be emphasized that this is a general principle that can, and should, be applied to other kinds of contract violations.

Similarly, National Arbitrator Howard Gamser discussed remedies for failure to distribute over-

time equitably among full-time letter carriers on the overtime list. He held that in ordinary cases the appropriate make-whole remedy was simply to provide an equalizing makeup opportunity in the next immediate quarter. However, he went on to say that the Postal

**The JCAM specifically authorizes compensatory remedies beyond mere pay and benefits.**

Service must pay employees deprived of “equitable opportunities” for the overtime hours they did not work if management’s failure to comply with its contractual obligations under Article 8.5.C.2 shows a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded

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within the next quarter. C-03200, April 3, 1979.

## Persuasive precedent

Management labor relations representatives or, in the last resort, arbitrators may differ in background, training and attitudes. As a generalization, however, most of them seek to be guided by precedent. They are more likely to grant the union's remedy if it can be shown that arbitrators have granted similar remedy requests in similar circumstances. By showing that there is precedent for a requested remedy, union advocates can increase the likelihood of obtaining it. This underscores the need to conduct careful research to find support for remedy requests.

## Avoid excessive remedy requests

Occasionally, shop stewards request unreasonable remedies that go far beyond what is required to make the grievant or union whole. This may be the result of reading an arbitration award in a case involving extreme circumstances and incorrectly believing that it fits the facts in their particular case. Sometime it results from an ill advised attempt to draw attention to a problem or to punish management. Whatever the reason, unreasonable or excessive remedy requests should be avoided. They can delay the settlement of grievances, delay making grievants whole, and worse. See "Excessive Remedy Requests—Why Stewards Should Avoid Them," on page 11.

## Research strategies

NALC has a wide range of resources available for advocates researching remedy issues. Here are the most important ones.

- **The NALC Materials Reference System (MRS)** contains summaries—and in some cases the full text—of many important national-level materials including settlements of Step 4 grievances, other national-level settlements and memorandums, USPS policy statements and so forth. The MRS also contains cross-references to significant national and regional arbitration awards. It contains specific discussions and extensive arbitration citations concerning many recurring issues such as Special Route Examinations and Opting. Also be sure to check the "Arbitration" section which covers many remedy issues. The MRS is available on the NALC website, [www.nalc.org](http://www.nalc.org).

- **CAU Publications.** The Contract Administration Unit periodically publishes papers on selected contract topics of interest. For example, the recent CAU publication concerning the "in lieu of" provisions of Article 7.1.B.1 contains an extensive discussion of remedy issues in such cases and cites many useful national and regional arbitration awards. These publications are available on the NALC website.

- **NALC Contract CD 2004.** The Contract CD contains a huge collection of resource documents that NALC representatives can use to research contract issues. The collection includes: the National Agreement, the 2004 JCAM; the MRS Index and source documents; collections of NALC publications including the *Activist*, *Contract Talk* and *CAU White Papers*; numerous

USPS handbooks, manuals and publications; NALC and government resources on safety and health, including the NALC Guide to Safety and Health; and FMLA forms and regulations.

A simple and attractive push-button interface provides easy access to all of the documents and enables users to search all 12,000 pages almost instantaneously. All of the files are in Acrobat PDF format, so a user needs only the free Reader version 5 or 6 to use the CD. The Contract CD 2004 may be ordered from the from the NALC supply department for \$2.00.

- **The NALC Arbitration Search Program**—now available in a 3-DVD set as an alternative to 14 CD-ROMs—has robust search capabilities and copies of almost 25,000 national and regional arbitration awards. It is also the best place to get actual copies of any arbitration awards discussed in the publications above. Because it contains so much material, the arbitration search program is seldom the best place to begin research. In most cases the JCAM, MRS and other publications should be reviewed first.

To find cases supporting remedy requests, simply search under the applicable subject. In situations where the program finds a large number of cases, it is often useful to narrow the search to "key cases." Try to find cases that most closely match the facts and arguments in the case you are researching. Remember also that cases where the arbitrator explains the reasons for granting a remedy can be especially persuasive. ■

# Remedies for overtime violations

**T**he requested remedy is an important element in every grievance. It should be carefully crafted. Doing so increases the chances of obtaining a settlement or decision that achieves justice for injured carriers and fixes underlying problems. Conversely, failing to craft an appropriate remedy can actually decrease the chances of a meaningful settlement or decision.

This article presents information concerning appropriate remedies in three of the most common types of violations of the overtime provisions of the National Agreement: exceeding overtime limits, inequitable distribution of overtime, and overtime bypass/mandate.

## Exceeding overtime limits

Article 8.5.G of the National Agreement provides that employees on the overtime desired list

... 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.

National Arbitrator Mittenthal ruled in H4C-NA-C-21 (C-06238) that the 12- and 60-hour limits are absolutes - a full-time employee may neither volunteer nor be required to work beyond those limits.

The appropriate requested remedy in a grievance protesting management violation of these limits is straightforward. The parties agreed in a National MOU on October 19, 1988 (M-00859):

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 Mittenthal'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 (C-07323).

National Arbitrator Snow held in A90N-4A-C 94042668 (C-18926) that the October 19, 1988 Memorandum of Understanding provides the exclusive remedy for violations of the 12 and 60 hour work limits in Article 8.5.G.2.

Therefore, the **only** appropriate remedy for violations of working full-time letter carriers more than 12 hours in a service day and/or 60 hours in a service week is payment to those with a timely grievance of an additional 50% of the base hourly rate for the hours worked beyond the 12 or 60 hour limitation.

The parties have further agreed that the additional 50% applies for each hour worked in excess of twelve on a service day or sixty in a service week, provided that when the same work hours simultaneously violate the twelve hour and sixty hour limits, only a single remedy of an additional 50% applies. The parties explained in the JCAM at pages 8-17 and 8-18:

**Article 8.5.G violations during a service week.** The remedy of 50% of the base hourly straight time rate provided in the Memorandum applies for each hour worked in excess of twelve on a service day (excluding December) by a full-time employee. The remedy of 50% of the base hourly straight time rate also applies for each hour worked by a full-time employee in excess of the sixty during the same service week (excluding December) in which the full-time employee has exceeded twelve hours in a service day. For example, if during the same service week a full-time employee worked 14 hours on Monday and ended up with 62 hours for the week on Friday, four hours would have been worked in violation of the Article 8.5.G restrictions. The appropriate remedy in this example would be four hours of pay at

## Overtime remedies

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50% of the base hourly straight time rate—two for Monday and two for Friday. In this example, management should have instructed the carrier to “clock off” and go home on Friday when sixtieth hour was reached. The employee would then be paid any applicable guarantee time for the remainder of the service day.

In those circumstances where the **same work hours** of a full-time employee simultaneously violate both the twelve hour and sixty hour limits, only a single remedy of 50% of the base hourly straight time rate is applied. For example if a full-time employee worked 14 hours on Friday, resulting in a 62 hour workweek, only two hours would have been worked in violation of the Article 8.5.G restrictions. The appropriate remedy in this example would be two hours of pay at 50% of the base hourly straight time rate. See Step 4, J94N-4L-C 99050117, September 6, 2001 (M-01445).

## Inequitable distribution of overtime

Article 8.5.C.2.b of the National Agreement places the following obligation on management:

[D]uring the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the “Overtime Desired” list.

National Arbitrator Bernstein ruled in H1N-5G-C-2988 (C-06364) that in determining equitable distribution of overtime, the number of hours of overtime as well as the number of opportunities for overtime must be considered.

The appropriate requested remedy in grievances protesting management violation of the obligation to make every effort to equitably distribute overtime is more complex than in cases involving exceeding the 12 hour and 60 hour limits.

National Arbitrator Howard

Gamser ruled in NC-S-5426 (C-3200) that the Postal Service must pay employees deprived of “equitable opportunities” for the overtime hours they did not work only if management’s failure to comply with its contractual obligations under Article 8.5.C.2 shows

... a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.

In all other cases, Gamser held, the proper remedy is to provide

... an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done.

This language is found in the JCAM at page 8-11. Its inclusion in the JCAM establishes a joint agreement regarding the remedy for inequitable overtime distribution grievances. The remedy is an equalizing opportunity in the next immediate quarter, except in three circumstances:

1) the failure to make every effort to equitably distribute shows a willful disregard or defiance of the contractual provision;

2) the failure to make every effort to equitably distribute shows a deliberate attempt to grant disparate or favorite treatment to an employee

or group of employees;

3) the failure to make every effort to equitably distribute caused a situation in which the equalizing opportunity could not be afforded within the next quarter.

In these three circumstances, the remedy is to pay a compensatory monetary award.

Regional arbitrators rely on the language of Arbitrator Gamser’s award.

Arbitrator Sickles, in E7N-2G-C 19215 (C-11429), analyzed and relied on the Gamser award. He found that since almost two years had elapsed since the violation, it was not possible to give an equalizing opportunity in the next immediate quarter and that therefore a monetary award was required, in accord with the Gamser award. He wrote:

I continue to return to the dilemma posed by the Gamser award. I have adopted it as the appropriate manner of determining the method of providing a remedy. I can not then disregard it as to that method in this case... (H)ere virtually two years will have elapsed, and clearly I cannot award an opportunity for work within the “next immediate

**Regional arbitrators rely on the Gamser award to determine equitability remedies.**

quarter” to the “specific quarter”. I will award monetary compensation in this particular case for the reasons stated above.

Arbitrator Hutt, in F98N-4F-C 01167559 (C-23550), stated:

The Gamser award plainly lists disregard or defiance as just one of three circumstances in which a monetary award is appropriate. The third listed circumstance that Management “caused a situation in which the equalizing opportunity could not be afforded within the next quarter” is applicable to the present case. As we are now more than a quarter past the first quarter of 2001, it would be unfair and in violation of the National Agreement to reward the grievants with anything other than monetary compensation.

Arbitrator Roberts, in D94N-4D-C 97083503 (C-20759), stated:

The issue now becomes one of remedy. To that end, the Employer argues appropriate precedent directs any errors in overtime distribution be corrected through work opportunities in the next quarter, rather than a monetary award. I agree with that concept.

The recommended correction of any overtime disparity is to make the adjustment in the following quarter. In this case, the

Employer, failed to offer any evidence that would show any attempt was made in the following quarter to correct any discrepancies in overtime disbursement made during the fourth quarter of 1996.

\*\*\*\*\*

Any attempt to author “work opportunity” remedies to this violation would only negate the spirit and intent of the precedent prescribed make whole remedy.

The only prescribed remedy, is that of monetary reimbursement. I agree with Arbitrator Gamser. The only appropriate remedy at this point in time is a make whole remedy in the form of a monetary award.

Arbitrator Roberts, in K94N-4K-C 99192910 (C-20543), wrote:

... the evidence shows the Employer was notified early on by the Union, of

discrepancies in overtime distribution for that particular quarter. The record also shows the Employer made little attempt to correct the equitableness in distribution. Rather, the overtime disbursement during the final month of the quarter fell further out of adjustment.

\*\*\*\*\*

In this case, the Employer failed to offer any evidence that

would show any attempt was made in the following quarter to correct any discrepancies in overtime disbursement made during the first quarter of 1999.

In cases where the Union can show that management’s failure to make every effort to equitably distribute overtime was willful or deliberate, the appropriate remedy to request is to pay ODL employees deprived of equitable opportunities for the overtime hours they should have been assigned. Evidence that the Union shop steward notified management repeatedly during the quarter of problems with distribution, and failure by management to heed that notice, may be compelling in this regard. Evidence of prior cease and desist grievance settlements might also be persuasive.

In other cases, the Union should request as remedy an equalizing opportunity during the quarter immediately after the violation, unless such an equalizing opportunity is not possible. If equalizing opportunities in the following quarter are not possible, and if the Union can show that the delay is management’s fault, the appropriate remedy to request is to pay ODL employees deprived of equitable opportunities for the overtime hours they should have been assigned.

### **Overtime bypass/ overtime mandate**

Article 8 of the National Agreement allows carriers to indicate a desire for overtime by signing an Overtime Desired List (ODL) and generally requires management, when the need for overtime arises, to assign it to employees who have signed the ODL rather than employees who have not, subject to certain

**A monetary remedy is appropriate when a violation is deliberate or a makeup opportunity cannot be given in the next quarter.**

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conditions and rules. Those rules include:

**Article 8.5. Overtime Assignments.** When needed, overtime work for full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

**Article 8.5.A.** Employees desiring to work overtime shall place their names on either the "Overtime Desired" list or the "Work Assignment" list during the two weeks prior to the start of the calendar quarter, and their names shall remain on the list until such time as they remove their names from the list. Employees may switch from one list to the other during the two weeks prior to the start of the calendar quarter, and the change will be effective beginning that new calendar quarter.

**Article 8.5.C.2.a.** When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.

**Article 8.5.C.2.d.** Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.

**Article 8.5.D.** If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

**Article 8.5.G.** Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week.

**JCAM page 8-13:** The "Letter Carrier Paragraph." For many years Section 8.5.C.2.d also gave management the right to require a letter carrier working on his/her own route on a regularly scheduled day to work mandatory overtime rather than assigning the overtime to a carrier from the Overtime Desired List. However, in the Overtime Memorandum first negotiated as part of the 1984 National Agreement, the Postal Service and the NALC added the following qualification, known as the "letter carrier paragraph."

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 overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

National Arbitrator Mittenthal ruled in H4N-NA-C-21, June 26, 1986 (C-06297), that this paragraph was an enforceable obligation.

In cases where management requires a non-ODL employee to work overtime when an ODL employee was available we refer to the improper **bypass** of the ODL employee and the improper **mandate** of the non-ODL employee.

The appropriate remedy to request in an improper bypass/mandate case is generally two-part: first, to make the bypassed ODL employee whole for the overtime hours she should have received and second, to redress the harm done to the non-ODL employee who was improperly required to work.

The remedy for an improperly bypassed ODL employee will normally be straightforward - pay at the overtime rate and for the amount of time the employee would have received had he or she been properly worked.

The remedy for an improperly mandated non-ODL employee is more complicated. Management often argues, even while admitting a violation, that no remedy is appropriate because the employee has been paid at the overtime rate. The Union often requests administrative leave in an amount equal to the hours improperly mandated. Regional arbitration decisions are mixed.

Arbitrator Talmadge, in case A94N-4A-C 97059988 (C-18602), wrote:

I find that this is an exceptional case, where the Service knowingly engaged in this contractual violation repetitively and in an ongoing manner...The Service has offered no arbitral authority to support its assertion that administrative leave is not an appropriate remedy in the case of a repeated contractual violation. Accordingly, I find that the appropriate remedy in this case is for the carriers not on the Overtime Desired list to receive administrative leave equal to the amount of time they worked overtime...

And Arbitrator Shea, in B94N-4B-C 99130675 (C-19972), wrote:



# New contract research disks

**N**ALC has released two kinds of new contract resources on optical disk. Each contains a wealth of information for activists who enforce the National Agreement.

## Contract CD 2004

The contract CD contains a huge collection of resource documents that NALC representatives can use to research contract issues. The collection includes: the National Agreement, the 2004 JCAM; the MRS Index and source documents; collections of NALC publications including the Activist, Contract Talk and CAU White Papers; numerous USPS handbooks, manuals and publications; NALC and government resources on safety and health, in-

cluding the NALC Guide to Safety and Health; and FMLA forms and regulations.



A simple and attractive push-button interface provides easy access to all of the documents and en-

ables users to search all 12,000+ pages almost instantaneously. All of the files are in Acrobat PDF format, so a user needs only the free Reader version 5 or 6 to use the CD. The Contract CD 2004 may be ordered from the NALC supply department for \$2.00.

## Arbitration Search on 3 DVDs

NALC has also released Arbitration on DVD-ROM, a set of three DVDs containing the latest Arbitration Search Program and all of the arbitration awards contained in CDs 1-14. The updated search program is the same as the one distributed on the recently-released CD 14.

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The Service's violation of the Agreement deprived these aggrieved employees of their right not to be subject to employment obligations outside their regularly assigned hours. This loss was a foreseeable and predictable result of the Service's improper assignment of overtime to the aggrieved employees... the Arbitrator awards each of the Grievants...who were required to work overtime, one hour of leave with pay for each hour or major fraction of an hour he/she was required to work overtime in violation of the Agreement. The awarded leave will be taken at the Grievant's option. The Griev-

ant will provide the Service with thirty days advance notice of the day or days he/she wishes to take the awarded paid leave.

But Arbitrator Duda, in case 92100C (C-13293), held:

... several sections of the Agreement were violated and the Arbitrator has a duty to impose appropriate remedy. In the Arbitrator's opinion however, the remedy sought by the Union – administrative leave equivalent to the number of hours mandated – is excessive. Justice may be satisfied by a more reasonable remedy.

Each of the six grievances is sustained. In respect to each case the Postal Service willfully violated Articles 8, 17 and 31 of the

Agreement after having been repeatedly apprised by the Union of similar prior violations. Under these circumstances the Arbitrator believes a fair and reasonable remedy is to award each of the six Grievants in the subject six cases a gross amount of One Hundred Dollars (\$100.00).

While the appropriate requested remedy in bypass cases is normally straightforward, it is more complicated in mandate cases. When requesting administrative leave as a remedy in mandate cases, stewards should be prepared to show that management's violation was repetitive, ongoing, willful, or otherwise similarly egregious. ■

NALC moved to the DVD format to take advantage of its greater storage capacity. A CD-ROM can store around 500 megabytes of data, while a single-layer DVD holds about 4 gigabytes or 8 times as much.

NALC has also made some important improvements in the Arbitration Search Program. The search program now includes awards C-00001 through C-24850, the same as the new program on CD 14.

In addition, on CD 14 and on the entire DVD set all of the arbitration award files are now in text-and-graphic Adobe Acrobat PDF® format. This special file format contains the text of the award as well as the scanned image, so users can highlight and copy text directly from the awards. Each PDF file contains an entire award, enabling users to save, copy or e-mail an award. To view an award a user needs only the free Adobe Reader,® included on CD 14 and the DVD set and available free on the Adobe Systems website, www.adobe.com.



Another powerful new feature—text searching through all of the awards—is available only with the 3-DVD set. A user who has 9.3 gigabytes of extra hard drive space can use the configuration menu to copy all of the PDF award files onto the hard drive. Following the rather lengthy copying process, the main search page will contain a button leading to a PDF search page.

For DVD users who choose this option, the text of all of the awards has been indexed for quick searches in the Adobe Reader. Even so, more complex searches may require waits of a minute or more even on a fast PC. This is not surprising, given that the awards contain more than 239,000 pages of text. Advocates will find this new search feature valuable, however, for it enables very powerful, specialized searches within the collection of awards.

The 3-DVD set is available for \$10.00 from the NALC supply department.

# USPS

**BY THE NUMBERS**

<u>USPS Operations—May 2004</u>	<u>Number</u>	<u>Chg from SPLY*</u>
<b>Total mail volume year-to-date (YTD)</b> (Billions of pieces)	138.7	0.7%
<b>Mail volume by class (YTD in billions)</b>		
<i>First-Class</i>	66.4	-1.7%
<i>Priority Mail</i>	0.6	-2.4%
<i>Express</i>	0.1	-4.2%
<i>Periodicals</i>	6.1	-4.4%
<i>Standard (bulk mail)</i>	63.8	3.8%
<i>Packages</i>	0.8	-0.2%
<i>International</i>	0.6	6.9%
<b>Daily delivery points</b>	142.3 mil.	1.1%
<i>Percent city</i>	74.0%	—
<i>Percent rural</i>	26.0%	—
<b>City carrier routes</b>	164,438	-0.7%
<b>Rural carrier routes</b>	70,158	0.9%
<b>Estimated Net Income (\$mil.)</b>	\$2,897	-30.5%
<i>Total Revenue</i>	\$46,650	-0.6%
<i>Total Expense</i>	\$43,753	2.3%
<b>USPS Operations—May 2004</b>		
<b>City carrier employment</b>	227,352	-1.2%
<i>Percent union members</i>	92.5%	—
<b>City Carrier Casuals</b>	6,561	-8.5%
<i>Percent of bargaining unit</i>	2.9%	—
<b>Transitional</b>	2	-77.8%
<i>Percent of bargaining unit</i>	0.0%	—
<b>City carriers per delivery supervisor</b>	18.3	2.8%
<b>Career USPS employment</b>	710,676	-3.4%
<b>City carrier avg. straight-time wage</b>	\$21.03/hr	2.2%
<b>City carrier overtime ratio</b> (OT hrs/total work hours)	13.5%	—
<i>Ratio SPLY</i>	12.4%	—

\*SPLY = Same Period Last Year

The NALC Research Department compiled this information from U.S. Postal Service Reports.

# Excessive remedy requests— why stewards should avoid them

**S**tewards sometimes become so disturbed by management abuses of authority that they request remedies in their grievances that are excessive when measured against arbitral norms. While it is understandable that stewards want their remedies to bring management's abuses to a halt, they should resist requesting excessive remedies, because doing so is counterproductive to the goal of stopping the abuses.

Consider the words of Arbitrator Axon in F94N-4F-C 98061767, a case involving management's failure to adjust a route within 52 days :

The Union in this case must share part of the fault for the inability of the parties to settle the Becerra grievance. In the initial written grievance and throughout the grievance procedure, the Union claimed \$100 per day for Becerra until management corrected the errors and readjusted his route to eight hours...In the judgment of this Arbitrator, \$100 per day for the violation at issue in the case at bar would be excessive and punitive...

There is precedent for the \$10 per day remedy for failure to properly adjust a letter carrier route. Management has 52 days to implement route adjustments under the M-39. Because of the Union's unreasonable initial demand for a monetary award of \$100 per day during the entire period Grievant's route was out

of adjustment, the Arbitrator will limit the days the remedy is to be applied. Therefore, the Arbitrator will set a time frame covered by this Award to one hundred twenty (120) calendar days

Experienced stewards know that a remedy of \$10 per day for delay of route adjustments beyond the contractual 52 days is within the standard range of remedies often granted by arbitrators. As Axon noted, "there is precedent" for such a remedy. Experienced stewards also know that no Arbitrator has ever granted a remedy of \$100 per day for a similar violation. The problem with requesting excessive remedies goes beyond the reality that the request will not be achieved. As can be seen by Axon's decision, requesting excessive remedies can backfire.

Review of the facts in the Axon case shows that the 53rd day occurred about mid-April 1997 and the correct route adjustment was not made until about March 1998. Therefore, the actual period of the violation was almost a full year. If the union had requested a remedy of \$10 per day instead of \$100 per day, it seems likely that Axon would have granted the remedy for the entire period.

## Find the norm

Stewards are well-advised to determine what the arbitral remedy norms are in any given type of case

prior to formulating a requested remedy. This can be done in a number of ways.

The most direct method is to read arbitration decisions that are on-point. The NALC arbitration database software is easily acquired and has a powerful search function by categories such as subject, contract citation, and handbook/manual provision. A steward can search, for example, the subject of Route Examinations: Failure to Adjust Within the Time Limits, read a sampling of arbitration decisions, and learn firsthand what arbitrators have to say about remedies in similar cases.

Another method is to simply talk to a more experienced steward, a branch officer, or someone at the National Business Agent's office. Stewards can easily learn about arbitral remedy norms by asking the right person.

Consider the results of the remedy request in the Axon case above. The steward may have been attempting to deter management from delaying required route adjustments in the future by requesting \$100 per day. It stands to reason that if management has to pay enough for a mistake, it will be less likely to make the same mistake again. However, the remedy achieved was less than if the request had been within arbitral norms. Stewards should avoid remedy requests that make it less likely to achieve the desired results.

# Regional Training Seminars

**C**ontact your national business agent for more information about these scheduled regional training seminars.

## **Pacific Northwest Region 2**

(Alaska, Utah, Idaho, Montana, Oregon, Washington)

Sept 22-25, 2004, Regional Assembly, Snowbird Ski Resort, UT.

November 16-18, 2004, Train the Trainers, McKenzie Conference Center, Blueriver, OR.

National Business Agent Paul Price, 360-892-6545.

## **Chicago Region 3** (Illinois)

September 26-28, 2004, ISA Fall Statewide Training Seminar, Hotel Pere Marquette, Peoria, IL.

National Business Agent Neal Tisdale, 309-762-0273.

**Minneapolis Region 7** (Minnesota, North Dakota, South Dakota, Wisconsin)

September 18-19, 2004, SDSALC Fall Training Seminar, Cedar Shores Hotel, Chamberlain, SD.

October 3-5, 2004, MNSALC State Association Convention, Cragan's Conference Center, Brainerd, MN.

October 22-24, 2004, NDSALC Fall Training Seminar, Expressway Inn, Fargo, ND.

October 29-30, 2004, WSALC Fall Training Seminar, Heidelberg House, Green Lake, WI.

National Business Agent Barry Weiner, 612-378-3035.

**Atlanta Region 9** (Florida, Georgia, North Carolina, SC).

October 14-17, Florida State Training Seminar, Radisson Hotel, St. Petersburg, FL.

October 22-23, 2004, North Carolina State Training Seminar, Holiday Inn, Durham, NC.

November 6-7, 2004, South Carolina State Training Seminar Radisson Hotel Charleston Airport, Charleston, SC.

National Business Agent Judith R. Willoughby, 954-964-2116.

**Dallas Region 10** (New Mexico, Texas)

October 9-11, 2004, Region 10 Fall Training School, Hyatt Regency IAH, Houston, TX.

National Business Agent Gene Goodwin, 281-540-5627.

# ACTIVIST

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