

# JCAM update

**N**ew material updating the September 2000 edition of the *Joint Contract Administration Manual (JCAM)* has been prepared and distributed. NALC and the Postal Service jointly sent a copy of the new material to every facility in the country where letter carriers work. The JCAM's jointly sent to stations and branches are jointly owned and for use by both NALC shop stewards and management. They should be available to both parties at all times. NALC has also mailed a copy of the JCAM update to every NALC branch. Additional copies of the update can be ordered through the NALC Supply Department.

The old JCAM pages being replaced by the new update should be discarded and not relied upon for any purpose. Anyone using the September 2000 edition of the JCAM should check to ensure that it has been properly updated.

The new material does not change any of the positions previously agreed to in the JCAM. Rather, it incorporates new national level settlements and arbitration awards and explains new areas of agreement. In addition, there are expanded explanations in many sections to further explain and clarify established areas of agreement. Highlighted below are some of the more significant additions.

- Article 5 (Prohibition of Unilateral Action) contains an entirely new section on past practice which explains the national parties' general agreement concerning this subject. While the explanation can not cover all possible areas of dispute, it provides the local parties valuable guidance. The new material makes clear that Article 5 may limit the employer's ability to take unilateral action where a valid past practice exists. It defines past practice, explains its function and explains the circumstances under which past practices can be changed.

- National Arbitrator Das' August 29, 2001 award in C-22465 has been incorporated. Arbitrator Das held that Article 7.1.B.I establishes a separate restriction on the employment of casual employees, in addition to the other restrictions set forth in other paragraphs of Article 7.1.B. The Postal Service may only employ (hire) casual employees to be utilized as a

limited term supplemental work force and not in lieu of (instead of, in place of, or in substitution of) career employees.

- The explanation of the Article 8 overtime provisions has been further clarified and new agreements incorporated. For example, a new section explains the formulation of remedies when violations of both the twelve and sixty hour limits in Article 8.5.G occur in the same service week. Another new section explains the equitable distribution of overtime for full-time flexible letter carriers who may have flexible work locations.

- Article 10 was extensively revised to clarify Postal Service regulations pertaining to FMLA leave and to incorporate recent decisions by the Department of Labor

- Article 12 was modified to incorporate National Arbitrator Das' August 29, 2001 award C-22547. He held that: 1) Article 12.1.A denies a probationary employee access to the grievance procedure to challenge his or her separation on the grounds of alleged noncompliance with the procedures set forth in Section 365 of the ELM, and 2) A dispute as to whether the Postal Service's action separating the employee occurred during his or her probationary period is arbitrable because that is a precondition to the applicability of Article 12.1.A.

- A new section has been added to Article 28 making clear that letter carriers can seek a waiver under the provisions of ELM 437 for employer claims resulting from a failure to make proper deductions for insurance premiums.

- Earlier editions of the JCAM explained that under the provisions of Article 41.1.C.4 management has discretion to move a carrier technician off the assignment he or she is working in the regular rotation to another route on the string. The update makes clear that management's right to move Carrier Technicians in this manner can be limited by either Local Memorandum of Understanding provisions or a *binding past practice* concerning this issue.

- Clarifies that in the letter carrier craft, unlike some other crafts, conversions from part-time flexible to full-time status are made in strict seniority order even if an employee is on limited or light duty. There are no exceptions for any reason, either voluntary or involuntary.

An updated version of the JCAM can be found in the Contract Administration section of the NALC web site at [www.nalc.org](http://www.nalc.org). The updated JCAM, in pdf format, can either be used online or downloaded to a local computer. ☒

## CONTRACT ADMINISTRATION UNIT

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# USERRA rights

In response to the terrorist acts of September 11, over 25,000 military reservists and National Guard members have been called to active duty. Since many of those called up were letter carriers, the Contract Administration Unit prepared a publication entitled USERRA Rights to review employees' rights during and after military service. The entire publication is available at the Contract Administration section of the NALC web site at [www.nalc.org](http://www.nalc.org).

Veterans and reservists employed by the Postal Service have always had strong legal rights and protections. However, in response to experience during and after the Gulf War in 1991, Congress revised and strengthened these protections in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) signed on October 13, 1994. The statute became effective on December 12, 1994. However, certain aspects of the statute relating to benefits were made retroactive to August 1990. Questions most frequently arise concerning military reservists and National Guard members called to active duty. However, the USERRA regulations also address the rights of letter carriers who enlist in the military. Currently the primary source for Postal Service regulations implementing USERRA rights is Section 77 of the Handbook EL-312, Employment and Placement. This publication is also available at the Contract Administration section of the NALC web site.

The new Contract Administration Unit publication reviews the entire subject of USERRA rights and regulations, including eligibility, status while on military duty, rights while on military duty, reemployment rights, health benefits, life insurance, pension benefits, Thrift Savings Plan and use of accrued leave. This column is limited to discussing the status and contractual rights of letter carriers on active military duty.

**Employees in the reserves or National Guard who are called for active duty** are placed in a leave without pay (LWOP) status until their return from active duty. Employees enlisting in the military must be given the following options.

- They may be placed in an LWOP status for up to five years; or,
- They may exercise a written option to resign with the intention of not returning to the Postal Service. In such cases they must be advised that their restoration rights are not affected by the resignation.

Employees on LWOP for military service have the following contractual rights:

- While on LWOP for military service, employees continue to accrue uninterrupted seniority.
- Full-time letter carriers on LWOP for military service are covered by the provisions of Article 41.1.B.1 which provides in pertinent part that:

"When an absent employee has so requested in writing, stating a mailing address, a copy of any notice inviting bids from craft employees shall be mailed to the employee by the installation head."

- Full-time letter carriers on LWOP for military service may bid under the provisions of Article 41, Section 1 for positions that become vacant during the employees absence. The applicable Postal Service regulations state that "a written or electronic notice must be submitted by the employee to human resources, or if appropriate, to the manager-in-charge, such as Postmaster, indicating the employee's interest to bid on specific positions" (EL-312, Section 772.1.a.1).
- Employees on LWOP for military are an exception to the memorandum on telephone and computer bidding since they may not have access to telephones or computers. They may submit written bids even if telephone or computer bidding is otherwise required in an installation. Remember, however, that the Article 41 time limits for the submission of bids still apply and could become a problem.
- Any bids submitted should be processed and awarded under the provisions of Article 41, just as if the employee were actively employed. If a bid is awarded, a personnel action must be initiated to place the employee in the newly gained position and pay scale and to assure that seniority is credited as in accordance with Article 41 until the employee resumes active employment upon return from the military service.
- Bid positions held by or awarded to employees on LWOP for military service are not posted for bids under the provisions of Article 41.1.A.1. Rather, they are considered to be temporary vacancies and may be filled under the opting provisions of Article 41.2.B.3-5 or the provisions of Article 25, as applicable.
- While on LWOP for military service, employees remain members of the bargaining unit. They may file grievances or have grievances filed and processed on their behalf.

**Employees who enlist and elect to resign from the Postal Service**, in contrast to those who elect to be placed in an LWOP status, are no longer members of the bargaining unit. They relinquish their bid assignments, which become vacant and should be posted for bids under the provisions of Article 41.1.A.1. They do not have bidding rights while on active military duty. However, they still have the strong reemployment rights established by USERRA.

**2001 JCAM update.** The 2001 revisions to the JCAM are now available for ordering from NALC's supply department. The full JCAM with 2001 revisions costs \$20 per copy. The 2001 revisions alone cost \$4. The JCAM with 2001 revisions also may be downloaded from the Web at <http://www.nalc.org/depart/cau/jcam.html>. ☒

# Restored uniform allowances

**T**he recent pre-arbitration settlement M-01454, January 24, concerned an employee who was reinstated by an arbitrator after having been in an LWOP status for an extended period of time pending resolution of a removal. The arbitrator ordered that “the Service is directed to rescind the Removal, convert the disciplinary action to an extended suspension of three months, reinstate the Grievant and make him whole for the wages and benefits lost as a result of the improper removal.” The Postal Service restored the grievant to duty, but refused to restore the lost uniform allowance. In a Step 4 denial Postal Service Headquarters stated its position as follows: “In the instant case, the employee was off work for an extended period of time in which uniform items would not have been used for official business.... There are no provisions for the replacement of uniform items which have not been used in the performance of official duties.” As often happens in such cases, the Postal Service reconsidered its position at the court house steps and the parties were able to resolve the issue as follows:

**ELM 436.1, Corrective Entitlement**, provides for back pay calculations for unwarranted personnel actions, including not only compensation but also allowances. ELM 935.23 provides for a reduction of 10 percent for LWOP in excess of 89 calendar days. In the instant case the removal action was reduced to a ninety-day suspension. Accordingly, the uniform allowance in effect during the 1994-1998 CBA (\$277) must be reduced by 10 percent.

The provisions of the *Employee and Labor Relations Manual* (ELM) cited in the settlement provide the following:

#### **436.1 Corrective Entitlement**

An employee or former employee is entitled to receive back pay for the period during which an unjustified or unwarranted personnel action was in effect that terminated or reduced the basic compensation, allowances, differentials, and employment benefits that the employee normally would have earned during the period. For purposes of entitlement to employment benefits, the employee is considered as having rendered service for the period during which the unjustified or unwarranted personnel action was in effect.

#### **935.23 Absences From Duty While in Uniform Category**

An employee on LWOP, OWCP absence, extended sick leave, higher level detail, or military LWOP not in excess

of 89 calendar days during a year of eligibility receives full allowance if otherwise eligible. If such leave exceeds 89 calendar days (not necessarily consecutive, but accumulative) during any uniform allowance year, the maximum allowance is reduced 10 percent for the 90 calendar days of LWOP and 10 percent for each full 30 calendar days of accumulative leave beyond the 90-day period. Recovery of earlier grants of allowance is not required, however, in achieving this reduction.

**The Contract Administration Unit has just issued an updated version of the NALC Materials Reference System (MRS) Index and Summaries Volume, dated January 2002.** The 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 regular arbitration awards. The entire MRS in pdf format, linked to original signed copies of all the M-numbered materials can be found at the Contract Administration Section of the NALC web site at [www.nalc.org](http://www.nalc.org). The Contract Administration Section of the web site also contains hundreds of other documents, including most major USPS Handbooks and Manuals, the Joint Contract Administration Manual (JCAM) and various CAU publications. Give us a visit.

**Letter carriers are issued credit cards to make authorized uniform purchases.** Unfortunately, the cards currently being issued visually resemble ordinary consumer credit cards. Consequently, some letter carriers have inadvertently used them to make unauthorized purchases of non-uniform items. The Contract Administration Unit recommends that letter carriers not keep the cards in their wallets except when they actually plan on using them to make uniform purchases. This will prevent the problems that can result if they are mistakenly pulled out and used. We are currently discussing with the Postal Service ways to make the uniform cards more visually distinctive. Any letter carriers who accidentally use the cards for unauthorized purchases should immediately bring the problem to their supervisor’s attention and arrange to make restitution. The Postal Service has agreed that no discipline should be issued in such cases. ☒

# Managed Service Points

**O**n March 11, 2002, the parties resolved a long-standing national level dispute concerning the Managed Service Points (MSP) program. The settlement M-01458 (Q98N-4Q-C 01045840) provides the following:

*The Managed Service Points (MSP) initiative is a national program intended to facilitate management's ability to assess and monitor city delivery route structure and consistency of delivery service. The following reflects the parties' understanding of MSP:*

*The parties agree that management will determine the number of scans on a city delivery route. Time credit will continue to be given during route count and inspections and will be credited in total street time.*

*MSP does not set performance standards, either in the office or on the street. With current technology, MSP records of scan times are not to be used as timecard data for pay purposes. MSP data may not constitute the sole basis for disciplinary action. However, it may be used by the parties in conjunction with other records to support or refute disciplinary action issued pursuant to Article 16 of the National Agreement.*

*City letter carriers have the option of using a personal identification number (PIN) other than the last four digits of their social security number.*

*Section 432.33 of the Employee and Labor Relations Manual (ELM) remains in full force and effect when MSP is implemented. It provides that "Except in emergency situations, or where service conditions preclude compliance, no employee may be required to work more than 6 continuous hours without a meal or rest period of at least 1/2 hour."*

*Lunch locations for both the incumbent and carrier technician on a city delivery route continue to be determined in compliance with Section 126.5.b(2) of the M-39. PS Form 1564A "Delivery Instructions" lists the place and time that city letter carriers are authorized to leave the route for lunch. However, the parties recognize*

*that, consistent with local instructions and operational conditions, city letter carriers may be authorized to leave at a different time and/or place. Notwithstanding this, the parties agree that city letter carriers will scan MSP scan points as they reach them during the course of their assigned duties.*

**A major issue resolved concerned the so-called "lunch" scans**—the last scan before and/or the first scan after the lunch period. Many local managers had been insisting that letter carriers drive to the "lunch" scan points, if they were not already there, for the sole purpose of scanning out and in from lunch. The settlement makes clear that this practice is to be discontinued. "City letter carriers will scan MSP scan points as they reach them during the course of their assigned duties." This means that the "lunch" scans are to be treated no differently than any other scans on a route. You simply scan them whenever you get there. That is consistent with management's professed purpose for the MSP program which is to "facilitate management's ability to assess and monitor city delivery route structure and consistency of delivery service" and not to serve as a high-tech time-clock to punch out and in from lunch.

Of course, the nature of letter carrier work has not changed. PS Form 1564A "Delivery Instructions" lists the place and time that city letter carriers are authorized to leave the route for lunch. But every day is different. So "the parties recognize that, consistent with local instructions and operational conditions, city letter carriers may be authorized to leave at a different time and/or place."

Just as with the POST and DOIS programs, some local managers have had the misguided notion that computers can decide if discipline is warranted. They cannot. They simply provide raw data, without any analysis or explanation. The settlement makes this understanding clear as follows: "MSP data may not constitute the sole basis for disciplinary action. However, it may be used by the parties in conjunction with other records to support or refute disciplinary action issued pursuant to Article 16 of the National Agreement."

**No national level settlement can, by itself, curb the excesses of overzealous supervisors.** However, we are confident that this settlement will provide an additional tool to help letter carriers and their representative put most of the contentious MSP issues to rest so that we can get on with our real jobs—delivering the nation's mail. A complete signed copy of the MSP settlement is available in the Contract Administration section of the NALC website at [www.NALC.org](http://www.NALC.org). ☒

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# Local forms

**T**he Postal Service's mission is to deliver the nation's mail. But we all recognize that the Postal Service has a complex administrative structure and large bureaucracy. One of the consequences is that it develops and uses a plethora of different forms to accomplish its mission. Problems often arise when local managers take it upon themselves to develop new forms or modify existing forms. Article 19 of the contract and the Postal Service regulations implementing the Privacy Act of 1974 both provide major limitations on the authority of managers to develop and use local forms.

Article 19 prohibits any local modifications or substitutions for nationally developed forms referenced in those handbooks or manuals covered by the provisions of Article 19. Most of the forms commonly encountered by letter carriers fall into this category. For example: PS Forms 1838-C, 1840, 1564, 3996, 3971, etc. National Arbitrator Garrett squarely addressed this issue in his January 19, 1977 award in case C-00427. His decision stated that:

“The development of a new form locally to deal with Stewards’ absences from assigned duties on Union business—as a substitute for a national form embodied in an existing Manual (and thus in conflict with that Manual)—thus falls within the second paragraph of Article 19. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn.”

The second limitation on the authority of managers to develop and use local forms is a consequence of the Postal Service being covered by the Privacy Act of 1974. The Act established rules concerning the collection, use, disclosure, storage and safekeeping of information about individuals. The primary Postal Service regulations implementing the requirements of the Privacy Act are found in Sections 324, 353 and Appendix A of the Administrative Support Manual (ASM). Under the Privacy Act all information about individuals must be part of an authorized system of records which the ASM defines as follows:

### 353.121 System of Records

A system of records that contains information about individuals means any group of records under the control of the Postal Service, including mailing lists, from which infor-

mation is retrieved by the name of an individual or by some personal identifier assigned to the individual, such as a Social Security number.

ASM Section 353.241 specifically provides that the forms used to collect information about individuals are subject to Postal Service Privacy Act regulations:

### 353.241 New or Changed Systems of Records—Approval

The following apply:

a. Headquarters/Field. Any Headquarters or field organization that wants to establish a new system of records with information about individuals, change an existing system, or **introduce new forms** to collect personal information from an individual, must obtain approval from the Postal Service Freedom of Information/Privacy Acts officer. (Emphasis added)

ASM Section 324 also provides instructions on what levels of management are required to approve forms collecting specific types of information. It should be noted that some older national level settlements refer to a requirement that locally developed forms have a USPS Area authorization number. That requirement was eliminated in Issue 13 of the ASM published in July 1999.

Finally there are many national level settlements limiting the authority of local managers to require letter carriers to sign various types of local forms, information sheets, attendance sheets and the like. These settlements can be found under “signing forms” in the NALC Materials Reference System (MRS).

A recent example of how these issues play out is the March 1, 2002 Step 4 settlement M-01456 (E98N-4E-C 02040097) which concerned the use of PS Form 4583, Physical Fitness Inquiry for Motor Vehicle Operators. The form is used both for job applicants and current employees. In the settlement the Postal Service agreed that current employees driving vehicles of less than 10,000 pounds GVW are not required to complete all items in the form. The settlement provides that on PS Form 4583 Question 18, sections c. through g. and i. through q. are not to be completed by current employees. A signed copy of this settlement as well as the entire NALC MRS is available at the Contract Administration section of the NALC website at [www.nalc.org](http://www.nalc.org).

Some issues concerning local forms are relatively straightforward and easy to resolve. For example, if your supervisor cooks up a new and improved PS Form 1840 for use in route examinations, the violation is easy to establish. Other issues concerning the application of Privacy Act regulations can become quite complex. In such cases, branches should seek help and guidance from their national business agent. ☐

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# Special route inspections

**M**ail volume is down and postal managers are under increasing pressure to reduce costs. They are using every available method to reduce letter carrier hours. All too often their response is to conduct regular route examinations that do not follow the established M-39 procedures or to misapply the minor route adjustment procedures in M-39, Section 141. The result is often badly adjusted routes that cannot be completed in eight hours.

Of course, any such violations of handbook and manual provisions should be grieved. However, there is an additional method to force managers to live up to the Postal Service's commitment to adjust all letter carrier routes to as near to eight hours as possible. The M-39 Handbook, which is incorporated into the National Agreement by Article 19, requires that a special route inspection be conducted whenever the regular carrier on a route requests it and qualifies under M-39 Section 271g which states in pertinent part:

*271g. If over any six consecutive week period (when work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of three days or more in each week during this period, the regular carrier assigned to such a route shall, upon request, receive a special mail count and inspection within four weeks of the request.*

The special route inspections provided for in M-39 Section 271g must be conducted in exactly the same manner as regular counts and inspections conducted under the provisions of M-39, Chapter 2. The provisions of Section 271 refer to the route and not the carrier on the route, despite the fact that the purpose of any such inspection is to adjust the route to the individual carrier. Thus the fact that the regular carrier on a route may have been absent for any part of the six-week period is irrelevant (see M-01262, M-01263, M-00688).

National Arbitrator Britton held in C-11099 that, if the route otherwise qualifies, management must complete a special route examination within four weeks of the request even

if the inspection must be conducted in June, July or August. Of course, the summer months are usually a low volume period, but if your route is severely overburdened it may make sense to request a special route examination immediately. After all, if management makes an unrealistic adjustment, it can be forced to do it again—and again, until it is done right.

**Managers frequently try to evade these obligations by manufacturing various excuses for not complying with the special route inspection provisions.** One frequent excuse has been that management already adjusted the route unilaterally since the request so there is no longer a problem. Another excuse has been that a carrier only met the criteria for a special inspection because performance was not “satisfactory.” Fortunately, the September 2001 edition of the JCAM puts these old arguments to rest. Its explanation of the M-39 special route inspection provisions (page 41-24) states that:

*Once a route qualifies and the incumbent requests a special route inspection it can not be avoided by unilaterally providing relief, or making an adjustment. Special route inspections are not unit and route reviews. The right to a special route inspection is unaffected by the fact that the office involved may be undergoing, or be scheduled for, a unit and route review.*

*Performance deficiencies should be addressed in a timely manner. Once the request is made by the incumbent letter carrier, management should not try to avoid conducting the special route inspection by attempting to identify performance deficiencies after-the-fact. Unsatisfactory performance can be a reason for denying a special route inspection if reasonable efforts towards improving performance to a satisfactory level have not been successful and the reasons have been documented and discussed with the carrier during the six week period. Additionally, “Unsatisfactory conditions such as ‘poor case labels,’ ‘poor work methods,’ or ‘no route examiners available,’ should not be used as an excuse not to conduct the inspection within the 4 week time frame.”*

**Special route examinations are not a pointless exercise.** M-39, Section 242.122 requires that inspections result in routes being adjusted to “as nearly eight hours daily work as possible.” Furthermore, as explained in NALC Director of City Delivery Fred Rolando’s column in this issue, new language in the proposed National Agreement further strengthens the requirement that, if a special inspection demonstrates that a route is overburdened, adjustments must ordinarily be made within 52 days of the completion of the mail count. ☒

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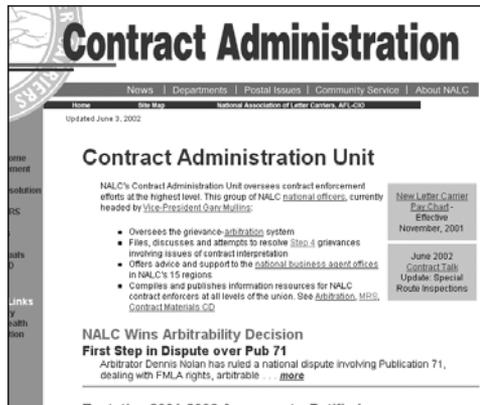
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# A wealth of resources

If information is power, then NALC's contract enforcers are truly powerful. Over the last several years NALC has built a huge library of electronic information resources for use by the union's contract enforcers. As a result, a computer with an Internet connection is now an essential tool for shop stewards, branch officers and others who enforce the National Agreement. Branches and members can obtain and use these resources mostly for free, and in some cases for a small fee.



**Contract Administration web pages.** The Contract Administration Unit's Web site debuted in December, 2000 and has grown steadily since then. Pictured here, the main CAU page is a major portal in its own right, containing links to thousands of pages of NALC publications and USPS handbooks and manuals. It is also complemented by separate pages covering city delivery and safety and health issues.

All of the documents in the site's library are in Acrobat PDF® format—an electronic format which duplicates the look of paper documents. Anybody can read, search and print PDF documents using the free Acrobat Reader from [www.adobe.com](http://www.adobe.com).

Here are some highlights from the contract administration Web pages:

- **National Agreement.** The 2001-2006 National Agreement is available in PDF format for browsing or download.
- **JCAM.** Users may view or download the latest Joint Contract Administration Manual, along with the NALC Supplement to the JCAM.
- **Pay Chart.** Letter carriers can view a current chart showing Carrier Grade 1 and Grade 2 pay, along with the schedule of future increases under the new contract.
- **Arbitration.** The Arbitration section reports on all new national-level arbitration decisions and some significant regional awards as well, which are also available for download as PDF files.
- **Step 4 and MRS.** The Step 4-MRS pages include the entire MRS Index and Summaries volume, with hyperlinks to all 1450-plus M-number documents. This rich collection of national settlements and other important contract administration documents is available in its entirety, searchable by M-number and updated when new documents are added to the MRS collection.

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● **Contract Talk.** The NALC Publications page collects, among other documents, the monthly Contract Talk columns from *The Postal Record*, and now contains all of the Contract Talk columns published since January 1996.

● **CAU White Papers.** Contract Administration Unit "White Papers" on the publications page explore special issues in considerable depth. See the recent papers on minor route adjustments, Article 12 withholding, USERRA rights, and the hiring of casuals "in lieu of" career employees (Article 7.1.B.1).

● **Dispute Resolution Process.** There is a special page for the Dispute Resolution Process—now incorporated into Article 15, Grievance-Arbitration Procedure—where members can download a fill-in-the-blank Joint Step A Grievance Form, as well as a process chart and training materials explaining the process.

● **USPS Manuals.** NALC maintains a huge collection of current USPS manuals, publications and handbooks, all available for browsing or download.

● **Family and Medical Leave Act.** Information about letter carriers' rights under this federal law, and forms letter carriers can use to apply for FMLA leave.

NALC adds news and publications almost continuously to the contract administration Web pages. New settlements, arbitration decisions and publications are announced on the main contract page, as well as on the news scroller on the front page of [www.nalc.org](http://www.nalc.org), NALC's main home page.

**Contract Materials CD.** NALC also offers the NALC Contract Materials CD, a CD-based collection of NALC and USPS documents in Acrobat PDF format. The current CD, issued in September, 2000, is scheduled to be updated this fall. The new CD will contain almost all of the contract-related PDF documents on the Web site, accessible through a custom interface and a high-speed, indexed-text search engine. If you need to find something fast—even a single word or phrase—among the thousands of pages of NALC publications and USPS handbooks and manuals—the Contract Materials CD is the right tool.

**Arbitration search.** For those contract enforcers who need to perform in-depth arbitration research, NALC offers branches the Arbitration Search CDs, a collection of more than 20,000 arbitration awards. A high-speed database front-end enables users to search for awards by subject, contract year, arbitrator, and many other criteria.

With the creation of these electronic information tools, NALC hopes to empower all of the dedicated contract enforcers who labor daily throughout the union. Union representatives can now find all the information they need to give letter carriers the best representation possible. ☐

# Inconsistent or in conflict

**Local memorandums of understanding (LMOUs) must agree with the National Agreement—that is, no LMOU provision may be “inconsistent or in conflict” with the National Agreement.**

Prior to the changes in the 2001 National Agreement, management had the right to declare LMOU provisions inconsistent or in conflict at any time and to cease compliance with the disputed provisions until the issue was resolved by an arbitrator. Of course, management did run the risk of a substantial remedy if it turned out to be wrong in such cases, but branches could not force compliance with the disputed provisions until the issue was resolved.

This has been completely changed in the 2001 National Agreement. New language in Article 30 and the Article 30 Memorandum significantly limits management’s right to challenge existing LMOU provisions on the grounds that they are inconsistent or in conflict with the National Agreement. The new rule in Article 30 is that management can only challenge LMOU provisions added or modified during one local implementation period during the local implementation period of the successor National Agreement. The only exception to this general rule is if related provisions of the National Agreement are amended or modified subsequent to the local implementation period. Even in such cases **management must now continue to comply with the provisions it believes are inconsistent or in conflict** unless they are modified or eliminated through an arbitration decision or by mutual agreement. The changed language in Article 30 is as follows:

*The parties may challenge a provision(s) of an LMOU as inconsistent or in conflict with the National Agreement only under the following circumstances:*

1. Any LMOU provision(s) added or modified during one local implementation period may be challenged as inconsistent or in conflict with the National Agreement only during the local implementation period of the successor National Agreement.
2. At any time a provision(s) of an LMOU becomes inconsis-

*tent or in conflict as the result of a new or modified provision(s) of the National Agreement.*

3. At any time a provision(s) of an LMOU becomes inconsistent or in conflict as the result of the amendment or modification of the National Agreement subsequent to the local implementation period.

*In such case, the party declaring a provision(s) inconsistent or in conflict must provide the other party a detailed written explanation of its position during the period of local implementation, but no later than seven (7) days prior to the expiration of that period. If the local parties are unable to resolve the issue(s) during the period of local implementation, the union may appeal the impasse to arbitration pursuant to the procedures outlines above. If appealed, a provision(s) of an LMOU declared inconsistent or in conflict will remain in effect unless modified or eliminated through arbitration decision or by mutual agreement. (Emphasis added).*

**The new Article 30 Memorandum establishes an even stronger special rule for 2002 local negotiations and for the rest of the term of the 2001 National Agreement.** It provides that “LMOU items existing prior to the 2001 local implementation period may not be challenged as inconsistent or in conflict, unless already subject to a pending arbitration appeal.” So management can no longer use the argument that an LMOU provision inconsistent or in conflict with the National Agreement to impasse or cease compliance with an LMOU provision. If management wishes to impasse one of the 22 Items during 2002 local negotiations, it can only be on the grounds that the provision is an “unreasonable burden.”

Of course, despite the clear new rules, there may be cases where management refuses to continue to comply with LMOU provisions on the grounds that they are in conflict or inconsistent. In such cases the branch should challenge management’s action through the grievance procedure and request a financial remedy for the first and all subsequent violations.

During local negotiations this October be cautious because management’s arguments about whether specific LMOU provisions are “inconsistent or in conflict” or merely an “unreasonable burden” may be confused, intermixed and not clearly distinguished. Branches should keep careful and detailed negotiations notes in case there is a later dispute about what issues were discussed and what arguments were actually made. If any disputes or problems concerning these issues develop, branches should contact their national business agent immediately for advice and assistance. ☒

## CONTRACT ADMINISTRATION UNIT

- Gary H. Mullins, Vice President
- Myra Warren, Assistant Secretary-Treasurer
- Fredric Rolando, Director of City Delivery
- Alan C. Ferranto, Director of Safety and Health
- Thomas H. Young Jr., Director, Health Benefit Plan
- Brian Hellman, Director, Mutual Benefit Association

# Letter of Warning purge

The following Memorandum of Understanding is included in the 2001-2006 National Agreement:

*MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO*

*Re: Purge of Warning Letters*

*The parties agree that there will be a one-time purge of Official Disciplinary Letters of Warning from the personnel folders of all employees represented by the National Association of Letter Carriers, AFL-CIO. To qualify to be purged, a Letter of Warning must meet the following conditions:*

- 1. An issue date prior to the effective date of 2001 National Agreement between the parties;*
- 2. The Letter of Warning has been in effect for 6 months and has not been cited as an element of prior discipline in any subsequent disciplinary action;*
- 3. The Letter of Warning was not issued in lieu of a suspension or a removal action;*

*4. All grievances associated with discipline purged as a result of this memorandum shall be withdrawn.*

*Date: April 25, 2002*

To summarize the parties' agreement concerning the letter of warning purge memorandum, when a letter of warning with an issue date prior to April 25, 2002 has been in effect for six months, it is purged if it has not been cited as an element of prior discipline in any subsequent disciplinary action, and if it was not issued in lieu of a suspension or a removal action. In addition, all grievances associated with discipline purged as a result of this memorandum shall then be withdrawn. ☒

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## Choice of forums for preference-eligible employees

Pursuant to the Veteran's Preference Act, preference eligible employees have a choice of forums to appeal certain adverse employer actions, which include suspensions of more than 14 days and discharges under Article 16 as well as reduction in grade or separation under Article 6.

The relevant common language of Articles 6.F3 and 16.9 states, "If the employee appeals under the Veterans' Preference Act, the time limits for appeal to arbitration and the normal contractual arbitration scheduling procedures are not to be delayed as a consequence of that appeal; if there is an MSPB appeal pending as of the date the arbitration is scheduled by the parties, the grievant waives access to the grievance-arbitration procedure beyond Step B."

The purpose of Articles 6.F3 and 16.9 is to afford pref-

erence eligible employees the choice of forums, and to prevent situations where the employer is required to defend the same adverse action in both forums, i.e., the Grievance-Arbitration Procedure and the Merit System Protection Board.

Prior to the 2001-2006 National Agreement, the union was deemed to have waived access to arbitration if, at the time the union **appealed** the grievance to arbitration, the grievant also had an appeal pending before the MSPB. Consistent with the streamlining of the grievance-arbitration procedure under the Dispute Resolution Process, the new language in Articles 6.F3 and 16.9 provides that the grievant waives access to the grievance-arbitration procedure beyond step B if there is an MSPB appeal pending as of the date the parties mutually agreed to **schedule** the case for a hearing at a later date. ☒

# Leave grievance settled

**N**ALC and the Postal Service have settled an Interpretive-level grievance concerning the Resource Management Database (RMD) and the enterprise Resource Management System (eRMS). Both of these management systems are computer programs used to track leave usage by postal employees. An electronic copy of the signed settlement, M-01468, is available on NALC's website at [www.nalc.org](http://www.nalc.org), under Contract Administration.

Under RMD, letter carriers must call an Attendance Control Supervisor rather than the immediate supervisor when taking unscheduled leave. The new settlement provides that the Attendance Control Supervisors must follow the same handbooks, manuals, contract language and legal rules (e.g.,

Privacy Act and FMLA) as immediate supervisors under the old system. In other words, letter carriers retain the same rights and protections under RMD that they have always enjoyed.

The settlement contains several related protections, for example, a requirement that the employer will handle the data in these systems in accordance with Privacy Act guarantees. When the Postal Service removes a disciplinary record from the official personnel file in response to an employee's written request under Article 16.10, it will also remove any records of the discipline from the RMD database. In addition, the union will have access to records from this system in any attendance-related actions. 

Mr. Vincent R. Sombrotto, President  
National Association of Letter Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2144

RE:Q98N-4Q-C 01051141  
Class Action  
Washington, DC 20260-4100

Dear Mr. Sombrotto:

On several occasions I met with your representative to discuss the Resource Management Database (RMD) at the Interpretive step of the grievance procedure.

The Interpretive issue is whether or not the RMD or its web-based counterpart enterprise Resource Management System (eRMS), violates the National Agreement.

It is mutually agreed that no national interpretive issue is fairly presented. The parties agreed to settle this case based on the following understandings:

- The eRMS will be the web-based version of RMD, located on the Postal Service intranet. The eRMS will have the same functional characteristics as RMD.
- The RMD/eRMS is a computer program. It does not constitute a new rule, regulation or policy, nor does it change or modify existing leave and attendance rules and regulations. When requested in accordance with Articles 17.3 and 31.3, relevant RMD/eRMS records will be provided to local shop stewards.
- The RMD/eRMS was developed to automate leave management, provide a centralized database for leave-related data and ensure compliance with various leave rules and regulations, including the FMLA and Sick Leave for Dependent Care Memorandum of Understanding. The RMD/eRMS records may be used by both parties to support/dispute contentions raised in attendance-related actions.

- When requested, the locally set business rule, which triggers a supervisor's review of an employee's leave record, will be shared with the NALC branch.
- Just as with the current process, it is management's responsibility to consider only those elements of past record in disciplinary action that comply with Article 16.10 of the National Agreement. The RMD/eRMS may track all current discipline, and must reflect the final settlement/decision reached in the grievance-arbitration procedure.
- An employee's written request to have discipline removed from their record, pursuant to Article 16.10 of the collective bargaining agreement, shall also serve as the request to remove the record of discipline from RMD/eRMS.
- Supervisor's notes of discussions pursuant to Article 16.2 are not to be entered in the "supervisor's notes" section of RMD/eRMS.
- RMD/eRMS users must comply with the privacy act, as well as handbooks, manuals and published regulations relating to leave and attendance.
- RMD/eRMS security meets or exceeds security requirements mandated by AS-818.
- It is understood that no function performed by RMD/eRMS now or in the future may violate the National Agreement.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

/s  
Sandra J. Savoie  
Labor Relations Specialist  
Labor Relations Policies  
and Programs

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

Date: 9-09-02

# Form 2488—Again!

**T**he PS Form 2488, *Authorization for Medical Report*, has once again resurfaced. As a result of a Postal Service initiated program called Safety Shared Services, supervisors are now equipped with a *Supervisor's Checklist for Handling Traumatic Injuries*. The object of the checklist is to serve as a guide to assist the manager or supervisor with the proper completion of job-related injury forms, and to ensure all required processes related to the injury are completed timely. Included in the checklist is a PS Form 2488.

If an employee is injured during the course of duties and requires medical treatment, the supervisor should complete the front of Form CA-16, *Authorization for Examination and/or Treatment*. The CA-16 is given/sent to the physician for completion. **The CAU strongly advises an employee not to give a Form 2488 to the physician for completion.** A CA-16 is the proper form and should be used. The CA-16 authorizes an injured employee to obtain immediate examination and/or treatment from a physician chosen by the employee for an on-the-job injury and provides OWCP with initial medical report. If an employee signs a Form 2488 for the physician to complete it opens a door for the Postal Service to obtain information concerning **any and all medical problems** the employee may have and not just the information concerning the on-the-job injury or illness.

Since the PS Form 2488 has become a hot bed of contention between the NALC and the Postal Service we believe a repeat message of a Contract Talk that was published in the *Postal Record* in November of 2000 is in order.

**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 form employing agencies to obtain such information is usually adequate. However, problems often arise when the Postal Service, for either legitimate or illegitimate reasons, seek 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. Procedural violations of these OWCP regulations by the Postal Service, as opposed to disputes concerning eligibility determinations by OWCP, are grievable matters.

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-4QC 00116558, September 13, 2000, M-01430, which states that:

*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.

So if you receive a PS Form 2488 (Authorization for Medical Report) from the Postal Service just remember your signature could result in a medical free-for-all. ☒