# Work assignment overtime

**Q** *1.* **My supervisor told me that the Work Assignment Overtime Agreement is no longer in effect since it is not printed in the EL-901, the management version of the 1994 National Agreement. Is this correct?**

**A** No. The fact that management has not printed a memorandum or agreement in the EL-901 is of no significance. All the memorandums printed in the NALC edition of the 1994 National Agreement are currently in effect. If you have any questions concerning the status of any additional memorandums or agreements that are not printed in the NALC edition of the contract, you should contact your national business agent for guidance.

More specifically, management acknowledged in a Step 4 decision dated December 3, 1996 (M-01252) that the Work Assignment Overtime Agreement is currently in effect. The Work Assignment Agreement appears on page 188 of the NALC edition of the contract.

**Q** *2.* **Can management ever give overtime to a carrier on the regular overtime desired list rather than to a carrier on the work assignment list?**

**A** Yes. The work assignment agreement states that management can schedule an employee from the regular overtime desired list to avoid paying penalty overtime to the carrier on his/her own work assignment. This exception does not apply during the December exclusion period when penalty overtime is not paid.

**Q** *3.* **How many hours can a carrier on the work assignment list be required to work in a day?**

**A** Ordinarily only 10 hours. The Work Assignment Overtime Agreement addresses this issue as follows:

*Full-time carriers signing up for "work assignment" overtime are to be considered available for up to 12 hours per day on regularly scheduled days. However, the parties recognize that it is normally in their best interests not to require employees to work beyond 10 hours per day, and managers should not require "work assignment" volunteers to work beyond 10 hours unless there is no equally prompt and efficient way in which to have the work performed.*

Thus, although management may not "normally" require a carrier on the work assignment list to work more than 10 hours, the carrier has a right to work the overtime voluntarily.

**Q** *4.* **Is a T-6 letter carrier on the work assignment list considered available only on his/her regularly scheduled route?**

**A** No. The work assignment agreement provides that T-6 carriers on the work assignment list are considered available for overtime on any of the routes in their string. It is NALC's position that, subject to the penalty overtime exceptions discussed above, this provision should be applied as follows:

- **A T-6 carrier who has signed** for work assignment overtime has both a right and an obligation to work any overtime that occurs on any of the five component routes on a regularly scheduled day.
- **When overtime is required** on the regularly scheduled day of the route of a carrier who is on the OTDL and whose T-6 is on the work assignment list, the T-6 is entitled to work the overtime.
- **When overtime is required** on the regularly scheduled day of the route of a carrier who is on the work assignment list and whose T-6 carrier is also on the work assignment list, the regular carrier on the route is entitled to work the overtime.

**Q** *5.* **What are the obligations of carriers on the work assignment carrier list on their non-scheduled days?**

**A** On their non-scheduled days, carriers on the work assignment list are treated the same as full-time regular carriers not on any overtime list. They may only be required to work overtime under the provisions of Article 8, Section 5.D which provides:

*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.* ✉


## Contract Administration Unit

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# Functional capacity tests

Letter carriers who have partially overcome a compensable disability and who are assigned limited-duty work are protected by the provisions of Section 546.141 of the *Employee and Labor Relations Manual (ELM)*. These provisions, which were negotiated by NALC (See M-01010), ensure that the limited-duty work is consistent with the employee's medically defined work limitation tolerances and that the Postal Service minimizes any adverse or disruptive impact on the employee. Despite these protections, overly aggressive Postal Service policies continue to cause significant problems for letter carriers on limited duty.

**Recently, the Contract Administration Unit has been encountering** the problem of letter carriers on limited duty being ordered to undergo "functional capacity testing" as part of fitness-for-duty evaluations. This type of test may also be known as "physical capacity testing," "static strength testing" or "isokinetic testing." While the specific local terminology and instructions vary to some extent, the purpose of these tests is clear: an evaluation of an employee's physical strength capacities and pain levels—particularly in regard to the back, shoulder, elbows or knees. Often the testing may involve the use of equipment that is similar in appearance to body-building equipment at physical fitness facilities. We are particularly concerned about this issue because some letter carriers have been injured while undergoing these tests.

When this issue first emerged, NALC filed a national-level grievance concerning letter carriers' being required to undergo "isokinetic testing." The NALC and the Postal Service signed a pre-arbitration settlement on November 10, 1993 (M-01175) in which the Postal Service agreed to discontinue use of the testing in all areas except those involved in a limited pilot study. That should have been the end of the matter.

**However, the Postal Service subsequently revised *Handbook*** *EL-505, Injury Compensation* to specifically authorize the use of "functional capacity evaluation," a term that encompasses and is intended to include isokinetic testing. NALC has appealed these handbook changes to national-level arbitration. It is NALC's position that only passive (and also non-invasive) testing may be given during fitness-for-duty examinations in such circumstances. However, until this issue is resolved by an arbitrator, we anticipate that the problem of letter carriers' being ordered to submit to such tests will continue. In the interim, we offer the following advice.

It is important to understand that the refusal to undergo Postal Service-requested testing of this type is not a bar to receipt of compensation benefits or continuation-of-pay (COP). (Note however, that refusal to undergo OWCP-requested testing will very likely result in loss of benefits.) The problems in such cases are not caused by OWCP. Rather, they are caused by over-zealous Postal Service managers who threaten to initiate disciplinary action against employees who refuse to undergo the tests.

We suggest that any employee requested or ordered to undergo physical capacity testing immediately contact his or her attending physician to determine if the testing could be injurious. If the attending physician believes the tests could be harmful or injurious to the employee, a medical report from the physician should be presented to the Postal Service (and a copy sent to OWCP for informational purposes). If the Postal Service persists in ordering an employee to undergo such testing after receipt of a letter from the attending physician, the employee should immediately contact an NALC branch officer or the national business agent for further advice and assistance—whether or not the employee is actually threatened with disciplinary action for refusing to undergo the testing.

> **"Refusal to undergo Postal Service-requested functional capacity testing is not a bar to receipt of compensation benefits or continuation-of-pay."**

**Finally, under no circumstance should an employee sign a** consent form or waiver in which the employee agrees in writing to the testing. A consent form may release the equipment manufacturer or testing facility from liability should the testing result in injury to the employee. ✉


CONTRACT ADMINISTRATION UNIT

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# Basic and base salary, COLA roll-in and APP

The 1994-1998 National Agreement brought an end to a decades-long practice in letter carriers' compensation—it eliminated the difference between "basic" salary increases and cost-of-living adjustment (COLA) raises, which had been known as "base" salary increases. As a result, all COLA increases in the current agreement, including the one taking effect this month, are immediately made part of "basic" salary used to figure retirement benefits.

**Since the 1970s, National Agreements had differentiated be-**tween negotiated *general wage increases* of a fixed percentage or flat amount, and *COLA increases*, which are variable based on the rise in the Consumer Price Index (CPI). The general wage increases were added to so-called "basic" salary (a term that appeared in 1978) which is the basis for *calculating retirement benefits*. That is, the "high-3 average" salary is calculated from "basic" pay and both letter carriers and USPS pay retirement contributions calculated on "basic" pay.

Before the current National Agreement, COLA increases, on the other hand, were added to "base" salary but not to "basic," at the time they became effective. So each letter carrier had two salary rates—a "basic rate" that excluded COLA increases accumulated during the term of an agreement, and a "base rate" that included the COLA increases. The "base" salary rate was used to figure overtime and shift premiums, call-in pay, leave pay and holiday pay, but not to figure retirement benefits.

During the 1970s the parties agreed that, at the start of each new National Agreement, the total of accumulated COLA increases paid during the preceding Agreement would be "rolled-in"—added to what became known in 1978 as the "basic" salary rate. In this way the credit for COLA raises would start to apply toward raising the "high-3" for retirement purposes.

**This system changed with the 1981 contract, which *delayed*** the roll-in of previously accumulated COLA by another full contract term for most employees. So, for instance, the roll-in of $3,619 in COLA increases accumulated during the 1978-1981 National Agreement was delayed; rather than occurring near the start of the 1981 Agreement, the roll-in occurred for most employees in October 1984.

An exception was made for employees who were eligible for optional retirement or who would become eligible for it within six years after the start of the 1981 Agreement. Those employees exercised an *option* that permitted them to roll-in their COLA in November 1981. This *roll-in option* protected carriers whose high-3 salary and retirement benefits otherwise would have been reduced as a result of the three-year roll-in delay.

The roll-in delay was a way for the parties to avoid contributing certain monies to retirement funds and to use the savings to fund current wage increases. In actual practice, the Office of Personnel Management charged USPS extra contributions to prevent any losses to the CSRS or FERS retirement funds.

## Annuity Protection Program

The delayed roll-in had one additional consequence. It resulted in reduced annuities and life insurance benefits for a small number of people who were not eligible for the early roll-in option—i.e., carriers who retired on disability and the survivors of carriers who died while on the rolls.

So as part of its agreement to the delayed roll-in, NALC insisted upon contractual provisions guaranteeing equal treatment for those disability retirees and survivors. The guarantees were contained in the "Annuity Protection Program," created by National Memorandums of Understanding in the 1981, 1984, 1987 and 1990 National Agreements.

**Under the Annuity Protection Program (APP), the Postal Serv-**ice took responsibility for "make-up" payments to replace the lost annuity and life insurance amounts resulting from the delayed COLA roll-in. The Postal Service's original plan for the APP was deficient in several respects, and the Joint Bargaining Committee (NALC and APWU) forced USPS to pay the full "make-up" APP payments by prevailing in a national-level arbitration case decided by Arbitrator Clark Kerr in August 1986 (C-06382).

The Annuity Protection Program guaranteed protection for employees during the entire lifespan of the delayed COLA roll-in provisions. Beginning with the 1994-1998 National Agreement and its first COLA payment in early 1996, cost-of-living adjustments have been rolled in immediately and APP protection has become unnecessary with regard to these payments.

The automatic, immediate roll-in of COLA to basic salary means that carriers begin to earn retirement credit on their COLA increases as soon as they are paid. So the basic wage upon which the "high-3" salary is based will rise eight times during the term of the current National Agreement—twice due to general wage increases and six times due to COLA raises. ✉

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# *Ex parte* communication

The Contract Administration Unit continues to receive reports of improper unilateral communication with arbitrators by management representatives. Such unilateral, or what is known as *ex parte,* communication with arbitrators is strictly prohibited. In order to enforce this restriction the national parties signed a memorandum of understanding (M-00815) dated April 11, 1988, which provides that:

> The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that in order to maintain the integrity of the arbitral process, the parties and their agents, employees and representatives should avoid the least appearance of impropriety when making contact with an arbitrator. The parties must maintain an arms-length relationship with the arbitrator at all times.
>
> *Ex parte* communication with an arbitrator regarding the merits of a dispute, whether oral or written, shall not be permitted. Whenever it is necessary to contact an arbitrator relative to the merits of a matter in a dispute, the contact must in all instances be made jointly or with the concurrence of both parties. *Ex parte* communications made in the ordinary course of business regarding necessary, routine scheduling matters are permissible.

Management representatives often seek to evade these prohibitions by merely providing the Union with a copy of their written communication with an arbitrator—for example with a "cc." This does not suffice to make a communication "joint." Communications with an arbitrator are "joint" only if they have been fully discussed and agreed to in advance.

In order to protect the integrity of the arbitration process, all NALC members and advocates should strictly observe these rules. Any violation of the rules by the Postal Service that come to your attention should immediately be brought to the attention of your national business agent.

## Arbitration transcripts

Article 15, Section 4.B.7 of the national agreement provides that:

> Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular Arbitration, except either party at the National level may request a transcript, and either party at the hearing may request to file a post-hearing brief.

This contract provision clearly prohibits either party to an arbitration from seeking a transcript without notifying the other party *in advance* at the headquarters level. Whenever the Postal Service obtains advance headquarters approval for a transcript, the Contract Administration Unit ensures that the national business agent and NALC arbitration advocate are so advised. In cases where the union requests a copy of the transcript, the expenses will be shared. Otherwise, the Postal Service will bear the entire cost. NALC arbitration advocates should rigorously enforce this requirement. In the case of any violations by the Postal Service, our advocates should ask the arbitrator for a recess of the hearing and immediately contact the CAU for guidance.

## DPS work methods

Under the terms of the September 1992 Memorandum on DPS Work Methods, the local parties are required to make a joint decision to adopt one of the two authorized DPS work methods. The two authorized DPS work methods are:

- "Case residual letter mail separately into delivery sequence order, pull down and carry as a composite (third) bundle."
- "Case the residual letters in the same separations with vertically cased flat mail, pull down and carry as one bundle."

Neither of these authorized work methods can be performed in a DPS environment using a one bundle system with a six-shelf letter case. If local management requires the use of a one bundle system in a six-shelf case, an immediate grievance should be filed.

You should note in this regard that the work method dispute-resolution process described in the Work Methods Memorandum is only applicable in cases where the local parties are unable to agree which of the two *authorized* methods to use. It is not to be used in cases concerning unauthorized work methods. Those cases can only be resolved through the regular grievance/arbitration procedure. ✉

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# Excessing rules

**Excessing from a section**: Article 12, Section 5.C.4 provides for special rules when employees are excessed from a section. These rules are only applicable when a local memorandum of understanding (LMU) identifies separate sections within an installation for excessing purposes as authorized by Article 30, Section B.18. If an LMU *does not identify separate sections* for excessing purposes, then Article 12, Section 5.C.4(a) applies and the entire installation is considered a section. In such cases, the excessing provisions of Article 12 do not come into play unless letter carriers are excessed out of the craft, letter carriers are excessed out of the installation or employees from other crafts or installations are excessed into the letter carrier craft.

If an LMU *does identify separate sections* for excessing purposes, then the special rules in Article 12, Sections 5.C.4(b) and (c) will apply whenever management proposes to reassign letter carriers within an installation who are excess to the needs of one of the defined sections. These rules give excessed letter carriers "retreat rights" to the first residual vacancy in the same grade that occurs in the section. Failure to bid on the first available vacancy at the former grade level in the section ends such retreat rights.

In order to implement these retreat rights, Article 12, Section 5.C.4 provides that as long as an excessed employee has retreat rights to the section, bidding for vacant duty assignments *in the grade level* from which the employee was excessed is subject to the following rules:

- Bidding is limited to employees in the section even if, for example, the LMU ordinarily provides for installation-wide bidding.
- Bidding for positions in the grade from which the employee was excessed is limited to employees in that grade. For example, if a letter carrier is excessed from a T-6 position, only Grade 6 carriers may bid on T-6 vacancies in the section.

The scope of postings under the provisions of Article 41.3.O can also be affected when an LMU identifies sections for excessing purposes. National Arbitrator Snow ruled in C-15248 that if a branch has installation-wide bidding for vacant or newly created duty assignments, then assignments made available for bids under the provisions of Article 41.3.O should also be posted on an installation-wide basis. An exception to this general rule occurs if a branch has defined separate sections for excessing purposes and if an employee has been excessed from the section under the provisions of Article 12 Section 5.C.4. Since Article 12.5.C.4(c) provides the reassigned employee with retreat rights in such cases, as long as an employee has such retreat rights to the section, bidding under the provisions of Article 41.3.O is also limited to employees from the section at the same salary level as the vacancy.

**Excessing by grade:** When management proposes to excess full-time employees under the provisions of Article 12, Section 5.C, the contract provides that the junior full-time employee in the same grade level as the excess position should be excessed. Thus, if management proposes to excess a Grade 5 letter carrier, the junior full-time Grade 5 letter carrier must be excessed, even if there is a more junior carrier in a T-6 position. During contract bargaining, NALC sought to have this provision changed in order to provide that excessing be done by strict juniority, regardless of grade. Unfortunately, management rejected our attempts to modify these provisions, so we must apply the rules as they now stand.

**Full-time flexibles:** The memorandum of understanding entitled "Maximization/Full-time Flexibles" provides that where a part-time flexible has performed letter carrier duties in an installation at least 40 hours a week, 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time carrier status. The letter of intent implementing this memorandum states:

> *In those installations where conversions have been made under this Memorandum of Understanding, and there are subsequent reversions or excessing, any reductions in full-time letter carrier positions shall be from among those position(s) converted pursuant to this Memorandum of Understanding until they are exhausted.*

This means that when management proposes to excess full-time employees under the provisions of Article 12, Section 5.C, all full-time flexibles must be excessed before management may excess any full-time regulars. This rule applies even in cases where a full-time regular is junior to a full-time flexible. In order to avoid the possibility of being excessed before more junior employees, full-time flexibles should be sure to bid on all full-time letter carrier assignments that are posted for bids. ✉

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# Recent issues

**Q1. Does the leave sharing program permit a pregnant letter carrier to solicit and use donated leave if it is anticipated that the leave usage will be intermittent and occasionally for less than eight-hour increments?**

A Yes. Modifications to the Leave Sharing Memorandum negotiated as part of the 1994 National Agreement allow pregnant letter carriers to solicit and use donated leave as long as the other qualifying conditions are met. To be eligible, the employee must be known or expected to miss at least 40 more hours from work than her own annual leave and/or sick leave balances will cover. However, the changes negotiated to the memorandum now permit donated leave to be used to cover the 40 hours of LWOP required to be eligible for leave sharing. If required, donated leave may be used on an intermittent basis or for less than eight-hour increments.

**Q2. Our office is under the X-Route procedure. We would like to use the regular M-39 inspection procedures rather than the Hempstead formula to calculate DPS savings. If we do this will we still be in the X-Route process?**

A Yes. The September 17, 1992 X-Route Memorandum was deliberately written to give local offices broad latitude to develop solutions when implementing the delivery point sequencing of mail. If the local parties mutually agree to use regular M-39 inspections rather than the Hempstead formula to calculate DPS savings, they will still be in the X-Route process.

**Q3. I am a part-time flexible letter carrier. I have just learned that I may be transferred to another station. There is also a transitional employee in my station working on an assignment that is being held pending reversion due to automation. Can I opt on the held pending reversion assignment?**

A Yes. Under these circumstances you may opt on the held-pending-reversion assignment and displace the transitional employee. The January 16, 1992 transitional employee arbitration award specifically states in Section 7.a that "prior to reassigning career employees outside of a section, the craft, or installation, management will offer impacted career employees, on a seniority basis, the opportunity to work any existing letter carrier craft transitional assignments within the installation."

**Q4. If management anticipates the need to excess clerk-craft employees to another installation, must it seek to withhold clerk craft positions in RBCS units prior to withholding letter carrier craft positions?**

A Yes. Management must first seek to withhold sufficient RBCS positions because Article 12, Section 5.C.5 requires that prior to excessing employees to other crafts in other installations, it must first:

> *Involuntarily reassign such excess full-time employees starting with the junior with their seniority for duty assignments to vacancies in the same or lower level in the same craft or occupational group in installations within 100 miles of the losing installation, or in more distant installations if after consultation with the affected Union it is determined that it is necessary.* (Emphasis added)

■ **Limited duty:** The provisions of Section 546.14 of the *Employee and Labor Relations Manual* (ELM) provide strong, enforceable protections for letter carriers performing limited-duty work.

These provisions, which were originally drafted by NALC and incorporated into the ELM by a settlement agreement signed by President Sombrotto on October 26, 1979 (see M-01010), are incorporated into the National Agreement through the provisions of Article 19.

Nevertheless, some Postal Service regional representatives have recently been arguing that these ELM provisions are not enforceable through the grievance/arbitration procedure. In a few cases they have actually convinced arbitrators that OWCP has exclusive authority to determine whether limited duty assignments are suitable and that any grievances disputing such assignments are not arbitrable.

This issue was resolved in the recent Step 4 Settlement G90N-4G-C 95026885 (M-01264) which states:

> *The issue in these cases is whether management violated ELM Section 546.14 in moving the grievants' limited duty assignments. During our discussion, we mutually agreed that the provisions of ELM 546.14 are enforceable through the provisions of the grievance/arbitration process. Whether an actual violation occurred is fact based and suitable for regular arbitration if unresolved.* ✉

# Letters of demand

**Q I recently received a Letter of Demand in which the Postal Service claimed I had been overpaid as a result of a promotion pay problem. I do not understand exactly why I owe the money, but the letter stated that as a result of a Memorandum of Understanding with the NALC dated June 28, 1995 I must immediately begin to repay the claim. Is this correct?**

A Absolutely not. The June 28, 1995 Memorandum referenced in the letter concerned the distribution of funds remaining in the promotion pay fund that was established to compensate letter carriers for promotion pay losses incurred before November 20, 1990. It specifically provided that any cases of alleged overpayment must be handled in accordance with the contractually established procedures for the collection of erroneous payments. This includes both the right to grieve a claim and the right to file for a waiver of a claim.

You appear to be one of many letter carriers who were assigned to the incorrect step or assigned the wrong waiting period by the Postal Service following promotion to Grade 6. Most of these cases resulted in the affected carriers being underpaid. Those carriers who were underpaid have been made whole through a lump sum payment. In a minority of cases, such as yours, the Postal Service now claims that the carriers have been overpaid.

We suggest that you immediately grieve the claim of overpayment. It's very important to file this grievance as soon as the demand is received, because new language incorporated in Article 28 of the 1994 National Agreement requires the Postal Service to cease and desist from any attempts to collect money from a carrier until all grievances concerning the matter are resolved. Do not forget, *it is not* your responsibility to show that you do not owe the money. Rather, it is the Postal Service's responsibility to prove that you do.

You should demand that the Postal Service prove the alleged overpayment by providing you with a complete accounting and all the relevant records. Since the promotion pay regulations are quite complicated, you may need to seek the assistance of one of your branch officers to help you determine the legitimacy of the claim. Of course, it may turn out that you were overpaid. Or, for a variety of reasons, the situation may be more difficult to figure out. In any case, the whole collection machinery of the Postal Service must grind to a halt until the issue of the alleged overpayment is resolved.

Even if the Postal Service is successful in demonstrating that you were overpaid, there is another option available. Section 437 of the *Employee and Labor Relations Manual (ELM)* gives carriers the right to file for waiver of a claim for overpayment. This section, titled "Waiver of Claims for Erroneous Payment of Pay," outlines the steps that carriers must follow to request a waiver.

In brief, this process requires that upon receipt of the Postal Service letter of demand for "recovery of pay which was erroneously paid," the carrier files Form 3074, Request for a Waiver of Claim for Erroneous Payment of Pay.

This form contains all the information the carrier may have concerning the overpayment, including a statement of the circumstances that the carrier feels would justify a waiver of the claim—basically, that the mistake was the Postal Service's and was not connected in any way to what the carrier did or did not do.

The waiver is reviewed by the installation head who adds any relevant facts or circumstances, including the reason for the overpayment. The installation head then makes a recommendation for approval or disapproval of the waiver, and forwards the Form 3074 to the appropriate compensation unit, which adds any pertinent comments and forwards the entire file to the Postal Data Center (PDC).

According to Section 437.6 of the ELM, the PDC will waive the claim if all of the following conditions are met:

*1. The overpayment was a result of administrative error of the USPS that was not caught and corrected at any point of the pay process.*

*2. Everyone involved in the request for the waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation or lack of good faith.*

*3. Collection of the claim would be against equity and good conscience and would not be in the best interests of the USPS.*

As can be seen from the above conditions, many requests for waivers should be approved by the PDC. Sometimes, however, the waiver request is denied. In such cases, the carrier may file a second grievance. In this grievance, the issue would be whether the Postal Service acted reasonably in denying the waiver. There are many NALC arbitration decisions in which arbitrators have upheld such grievances. ✉

# DPS route adjustments

**Q Our station is under the unilateral method. Management recently implemented DPS adjustments using the methodology prescribed by the September 17, 1992 Memorandum. Even though the methodology was correctly applied, the resulting routes are badly out of adjustment. What recourse do we have?**

A The September 17, 1992 Memorandum not only prescribes a methodology for making DPS adjustments, it also mandates that the resulting DPS adjustments be reexamined in consultation with the union and corrected where necessary. This requirement is a contractual obligation enforceable through the grievance/arbitration procedure. The memorandum states:

> *Within 60 days of implementing the planned adjustments for future automated events, the parties will revisit those adjustments to ensure that routes are as near to 8 hours daily as possible. Both the planned adjustments and subsequent minor adjustments that may be necessary to ensure compliance will be based on the most recent route inspection data for the route. However, if the future event occurs [i.e DPS adjustments are made] after the 18-month time limit expires, a new mail count, route inspection and evaluation must occur, unless the local parties agree otherwise.*

This 60 day review requirement is absolute. It must be conducted jointly with the union and is not contingent upon the union being able to demonstrate that the routes are out of adjustment. Furthermore, if the route inspection data is current (i.e., less than 18 months old) at this time, any required adjustments must also be completed within 60 days. If the route data is more than 18 months old and the parties do not mutually agree to extend its use, new counts and inspections must be scheduled as soon as possible.

The obligation to conduct a 60 day review was enforced with a monetary remedy in the recent regional arbitration award C-16688. In that case management argued that the 60-day review was unnecessary since the union had failed to prove that the routes were out of adjustment. The arbitrator rejected this argument. He ordered the Postal Service to immediately conduct the required reviews and remedy the past violation by paying every letter carriers in the unit $500.

Finally, you should remember that the Special Route Examination provisions of M-39, Section 271g remain in full force and effect during DPS implementation. Letter carriers who meet the qualifying criteria may always demand a Special Inspection in accordance with these provisions.

**Q Our unit recently met the DPS target percentage. Management is preparing to implement the planned DPS adjustments. We have been told that the adjustments will be based on the percentage of DPS mail received by each route rather than using the "unit" target percentage. Management argues that this is permitted by the applicable memorandums and will result in more accurate adjustments. Is this correct?**

A No. This issue was resolved in the Step 4 Settlement M-01265, dated July 3, 1997, which states that:

> *The issue in this grievance is whether, in implementing planned adjustments in a DPS environment, the "Methodology" requires adjustments based on the unit's DPS target percentage or each individual route's DPS percentage.*
>
> *It was agreed that there is no dispute between the parties that, when using the established "Methodology" to estimate the total hourly impact of DPS on city delivery routes, as described in the Joint Training Guide, Chapter 3, Building Our Future by Working Together, the "unit" target percentage is calculated and is applied to each individual route.*

**Q Our Local Memorandum of Understanding has incorporated Article 41.3.O. The senior part-time regular's assignment in our office was recently abolished. Can management be required to repost the remaining part-time regular assignments in the delivery unit?**

A No. The language of Article 41.3.O specifically limits its application to situations where "a letter carrier route or full-time duty assignment" is abolished. It has no application in cases where part-time regular assign-

# Limited duty issues

**Q I am a PTF letter carrier and have opted on a vacant duty assignment under the provisions of Article 41, Section 2.B.4. The route belongs to a carrier who was injured on duty and has been out on worker's compensation for an extended period of time. He will soon be returning on limited duty. Part of his proposed limited duty work will be to case his route in the morning. Since he will be unable to complete his entire route, don't I have a right to remain on the hold-down?**

A No. Article 41, Section 2.B.5 provides that part-time letter carriers may opt for "available full-time duty assignments of anticipated duration of five (5) days or more." Once the full-time regular carrier on a route is able to perform any of the duties of the assignment, it is no longer considered "available" for a hold-down assignment. This is true even in cases where the regular carrier is only able to complete a portion of the assignment as part of a limited or light duty assignment.

**Q I was injured on-the-job and am currently in a non-pay status and receiving workers' compensation. Am I still eligible to make contributions to the Thrift Savings Plan?**

A No. Neither the Federal Employees' Retirement System Act of 1986, which created the Thrift Savings Plan, nor the Internal Revenue Code allow contributions to the Thrift Savings Plan when employees are not receiving basic pay. Employees receiving workers' compensation are not receiving basic pay within the meaning of the law and thus are barred from making contributions to the Thrift Savings Plan. Furthermore, under current law employees in the Thrift Savings Plan do not receive the one percent agency contribution while they are on compensation.

**Q I was injured on the job just over a year ago. I have recovered enough to perform some limited duty work, but am still unable to perform my full duties. My doctor says that the injury will not cause a permanent disability and that I should eventually recover. However, the Postal Service says that since it has now been over a year, my disability is considered permanent and I will be removed from my bid assignment and offered a rehab job in the clerk craft. They say that this is authorized by the *Handbook EL-505, Injury Compensation*. Is this correct?**

A No. National Arbitrator Mittenthal held in C-03885 that there is no fixed period of time after which an injury may be considered permanent. Whether an injury is permanent is a medical matter that can only be determined by medical evidence, not by the imposition of some arbitrary time limit. Furthermore, the Handbook EL-505 has been appealed to national level arbitration under the provisions of Article 19 since it contains numerous provisions that are in conflict with the National Agreement and the ELM.

**Q I was injured on duty and have been on compensation for nine months. However, I expect to be able to return to work within the next few months. Management just disallowed my bid for a new route on the grounds that I was currently unable to meet the qualifications for the assignment. Can my bidding rights be denied in this manner?**

A No. The Memorandum of Understanding, M-00752, dated March 16, 1987, protects letter carriers in your situation. You should review the entire Memorandum with one of your branch officers, but the most relevant part states:

> *A regular letter carrier who is temporarily disabled will be allowed to bid for and be awarded a letter carrier bid assignment in accordance with Article 41, Section 1.C.1, or, where applicable, in accordance with the provisions of a local memorandum of understanding, provided that the letter carrier will be able to assume the position within the six (6) months from the time at which the bid is placed.*
>
> *Management may, at the time of submission of the bid or at any time thereafter, request that the letter carrier provide medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within six (6) months of the bid. If the letter carrier fails to provide such certification, the bid shall be disallowed, and, if the assignment was awarded, it shall be reposted for bidding. Under such circumstances, the letter carrier shall not be permitted to re-bid the next posting of that assignment.*

# Fourth bundle issues

**Q We were unable to agree locally by September 6 on a method for handling unaddressed flats on park-and-loop routes using the composite bundle method. My manager states that because the local union was unwilling to agree to his proposed solution of the issue, he will now unilaterally decide how that mail will be carried until the national joint study has been completed. Can he do this?**

A No. In accordance with the September 12, 1997 memorandum the deadline for local parties to negotiate has been extended to September 26. Failure to reach agreement on that date will result in the imposition of guidelines developed at the national level.

**Q Can a letter carrier on a park and loop route using the composite bundle method volunteer to deliver unaddressed mailings by carrying a fourth bundle?**

A Yes. The Snow award prohibits management from requiring letter carriers to carry a fourth bundle on a park and loop route. However, those letter carriers who are comfortable carrying a fourth bundle may continue to do so on a voluntary basis.

**Q How will the national study be conducted, who will determine which sites will be included, what methods will be tested, and what criteria will be used to evaluate the results?**

A It will be a joint study. The national parties will jointly determine which sites to include in the study and which methods and accommodations to analyze. If you have any suggestions as to unique accommodations or methods and their applicability, you should write to Director of City Delivery Jim Edgemon at NALC Headquarters and share that information with him for possible inclusion in the national study. The results of the study will be determined in accordance with the September 1992 memorandum that requires that efficiency be the basis of the decision.



**Q After completion of the national study, will the parties jointly agree upon one particular work method?**

A It is impossible to say at this time. We must first perform the study and then analyze the results before we can determine what the study establishes. It is significant to note that this is the first study in which we are full partners. From its inception, we will play a co-equal role in this endeavor.

**Q Many of the business routes in my station have deliveries that are closed on Saturdays. It would be helpful if the mail for these businesses were withheld from the DPS sort plan on Saturdays. If this were done, it would not be necessary to take the mail for a ride and then bring it back to the station to recase. My manager says that any such 'unauthorized" modification to the sort plan would be impossible. Is this true?**

A No—your manager is mistaken. To be sure, the failure to use the station input process to modify the sort plan in such cases is generally not a grievable matter. However, in the recent settlement, M-01266, the Postal Service agreed that such modifications should be encouraged. The settlement provides that:

> The issue in this case involved whether local management violated the National Agreement by not utilizing the station input process to change the DPS sort plan in order that mail for businesses closed on Saturdays would be held out from the DPS sort plan on Saturdays.
>
> After reviewing this matter it was agreed that no contractual violation was present in this case; however, the Postal Service will provide information to the field which encourages and provides guidance on the station input process. This process allows for DPS sort plan changes which would include holding out Saturday non-delivery day mail when management determines that it makes operational sense to do so. It was further determined that all DPS candidate mail which is diverted from going directly to the street via the station input process will be counted as DPS volume for the purpose of determining whether the DPS target percentage has been reached.✉

# Overtime issues

In the latest of an unprecedented string of national-level arbitration victories, Arbitrator Carlton Snow, in C-17270, September 8, 1997, fully sustained NALC's position that transitional and casual employees must be considered as a source of auxiliary assistance in applying the Letter Carrier Paragraph of the 1984 overtime memorandum. NALC's grievance had its origin in Article 8, Section 5.C.2.d of the National Agreement which states:

> 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.

For many years this provision gave management the right to require non-OTDL letter carriers working on their own routes on regularly scheduled days to work mandatory overtime. However, in the Overtime Memorandum first negotiated as part of the 1984 National Agreement, the Postal Service and NALC added the following qualification, known as the letter carrier paragraph, to Section 5.2.d:

> 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.

After negotiating this provision, management initially took the position that it did not establish an enforceable limit on its rights to require mandatory overtime. However, National Arbitrator Mittenthal ruled in C-06297 (June 26, 1986), that this paragraph was an enforceable obligation and virtually nullified management's rights under Article 8.5.C.2.d.

Subsequently, the parties negotiated another Memorandum of Understanding dated December 20, 1988 (M-00884) which underscores management's obligation to fulfill the conditions of the letter carrier paragraph by seeking to utilize auxiliary assistance before requiring a carrier not on the OTDL or work assignment list to work overtime. The memorandum clarifies that management does not have to use OTDL carriers to provide auxiliary assistance if such an assignment would mean that the OTDL carriers would be working *penalty overtime*. In that limited situation—if no auxiliary assistance is available without going into penalty overtime—management can force full-time regular carriers not on the overtime desired list to work overtime on their own routes on a regularly scheduled day. The memorandum further states that the determination of whether management must use a carrier from the OTDL to provide auxiliary assistance must be made on the basis of the rule of reason. For example, management is not required to use a carrier from the OTDL when the travel time would be excessive for the amount of assistance being given.

In his recent decision, Arbitrator Snow flatly rejected management's position that casuals and transitional employees are not an available source of auxiliary assistance. He wrote:

> Transitional Employees shall be considered a source of auxiliary assistance under the Letter Carrier Paragraph of the December 1984 Memorandum of Understanding on Article 8 of the parties' National Agreement. This interpretation is consistent with the principle purpose of the parties on entering into the Memorandum of Understanding. To the extent that available Transitional Employees are not used for auxiliary assistance before requiring involuntary overtime for full-time Letter Carriers, it is a violation of the parties' agreement.

Read together, the memorandums and arbitration awards require that management must seek to use all of the following to provide auxiliary assistance before requiring non-OTDL letter carriers working on their own routes on regularly scheduled days to work mandatory overtime :

- Casual employees up to the 12-hour daily maximum established in ELM 432.32. Note that casual employees are never eligible for penalty overtime.
- Transitional employees at the straight-time or regular overtime rate.
- Part-time flexibles at the straight-time or regular overtime rate.
- All available full-time regular employees such as unassigned or reserve regulars at the straight-time rate.
- Full-time carriers from the overtime desired list at the regular overtime rate.

# Overtime and excessing

**Q Can a full-time regular letter carrier not on the regular overtime or work assignment list be required to work overtime during a route examination if auxiliary assistance is available?**

A Under certain circumstances, yes. This is because of M-39 Section 221.137 which states that:

> Only in very unusual circumstances or emergencies when excessive late delivery would result should auxiliary assistance be granted the regularly assigned carrier during the week of the count.

However, management's rights under this provision were limited to two specific situations by the pre-arbitration settlement M-01106, dated November 24, 1992, which provides that:

> The issue in these cases is whether management violated the National Agreement by requiring a carrier who was not on the overtime desired list to work overtime during the week of count and inspection. During our discussions, we mutually agreed to the following:
>
> 1) The overtime provisions of Article 8 and the associated Memorandums of Understanding remain in full force and effect during the week of count and inspection except that henceforth:
>
> a) On the day during the week of inspection when the carrier is accompanied by a route examiner, management may require a carrier not on the overtime desired list or work assignment list to work overtime on his/her own route in order to allow for completion of the inspection.
>
> b) On the other days during the week of inspection when the carrier counts mail, management may require a carrier not on the overtime desired list or work assignment list to work overtime on his/her own route for the amount of time used to count the mail.

Thus management may require a non-OTDL carrier to work overtime, including penalty overtime, under the limited conditions described above. However, both the provisions of ELM 432.32 which prevents management from requiring employees to work over twelve hours in a service day (including lunch) and the 60-hour weekly limit in Article 8, Section 5.G, do apply during the week of count and inspection.

**Q Our installation has six full-time letter carrier routes and one T-6 assignment. Management has informed us that one route is going to be abolished and a full-time letter carrier excessed to another installation under the provisions of Article 12. We were told that the junior Grade 5 letter carrier will be excessed rather than the most junior full-time carrier who is the T-6. Is this correct?**

A When management proposes to excess full-time employees under the provisions of Article 12, Section 5.C, the contract provides that the junior full-time employee in the same grade level as the excess position should be excessed. Thus, as in your case, if management proposes to excess a Grade 5 letter carrier, the junior full-time Grade 5 letter carrier must be excessed, even if there is a more junior carrier in a T-6 position. During contract bargaining, NALC sought to have this provision changed in order to provide that excessing be done by strict juniority, regardless of grade. Unfortunately, management rejected our attempts to modify these provisions, so we must apply the rules as they now stand.

However, if your branch has incorporated Article 41.3.O into your local agreement, the situation you are concerned about will probably not arise. Once a route is abolished, management must first comply with the reposting provisions of Article 41.3.O before any excessing occurs. This will undoubtedly result in the current T-6 becoming the unassigned Grade 5 letter carrier and subject to the excessing.

**Q I am a full-time union president. Our postmaster claims that I cannot be designated a steward to handle a grievance since I am not 'actively employed" in the installation. Is this correct?**

A No. This novel and disingenuous argument was repudiated by the Postal Service in the recent prearbitration settlement M-01267 which provided the following:

> The issue in these grievances is whether a full-time union official who is on the employer's rolls is "actively employed" for the purposes of Article 17.2.B
>
> During our discussion, it was agreed to resolve the interpretive issue with an understanding that full-time union officers on the employer's rolls are considered "actively employed" for the purposes of Article 17.2.B. ✉