



regard to the Automated Parcel Bundle Sorter, and additional jurisdictional determinations are pending for the latest version of Advanced Facer Cancellor System (AFCS 200) and for various universal sorter systems.

To be sure, the RI-399 dispute resolution process remains extremely frustrating, often because it operates so slowly. But the FSS determination on jurisdiction is an excellent example that hard work and patience more often than not produce positive results for all Mail Handlers.

**National-level Arbitration:** The past four years also have seen substantial progress on the National arbitration docket. A host of issues have been resolved in pre-arbitration settlements, and other unresolved issues have been arbitrated at the National level.

Here is a sampling of final arbitration awards issued during the past four years:

- the NPMHU prevailed in a case determining that the USPS may not force mail handlers and other postal employees to use only Department of Labor forms to submit medical certifications for leave under the Family and Medical Leave; to the contrary, the Postal Service cannot prohibit mail handlers from using forms developed and designed by the NPMHU, provided that the required information is contained on those forms;
- an earlier case on the FMLA, decided in late 2008, determined that a host of form letters developed by the Postal Service were improper under the governing statute, and also strictly confined the actions that the USPS may pursue when it determines that there are potential problems with an employee's medical certifications;
- the Postal Service prevailed in a decision concluding that Section 12.6C5a2 of the National Agreement means that the separation of casuals prior to excessing, which must be accomplished "to the extent possible" to minimize impact on bargaining unit mail handlers, is only required in the affected craft, and not in other crafts within the installation;
- the Postal Service prevailed in the so-called casual "flip-flop" case, determining that the durational limitation in Article 7.1B of the NPMHU-USPS National Agreement "applies only to those 90-day periods in which an individual casual employee is des-

ignated as a mail handler casual or performs mail handler work assignments"; at the same time, the decision recognized that the 90-day limitation applies with full force to work performed in the mail handler craft, over which the NPMHU has exclusive bargaining authority, and thus, if an individual casual employee is either "designated as a mail handler casual" or is designated as a casual in another craft but "performs mail handler work assignments," then the casual's work during that 90-day period counts toward the overall durational limitations set forth in Article 7.1B;

- the NPMHU challenged the Postal Service's refusal to allow employees to use voting leave to attend the 2008 presidential party caucuses that were used in several states to choose delegates to the Republican and Democratic National Conventions, but right before the hearing the unions and the USPS settled their dispute with an agreement to pay the individual employees involved, and to preserve the underlying legal issue for another day;
- the NPMHU intervened in a National-level arbitration on whether postal employees should receive Sunday premium pay when they are placed on administrative leave for a tour on which they would otherwise receive Sunday pay. Although the NPMHU previously had prevailed on whether postal employees receive night differential when they are placed on administrative leave for a shift for which they would otherwise receive night differential, this arbitration resulted in a contrary decision, based on different language in the ELM provision regarding Sunday premium pay;
- the NPMHU prevailed in another National-level arbitration, concerning the impact of an untimely Step 2 decision issued by the Postal Service after it failed to schedule or hold a Step 2 meeting with the appropriate union representative within the time provided under the National Agreement. The arbitrator agreed with the NPMHU arguments, and concluded that where a grievance challenging a 14-day suspension is properly moved to Step 3 under Article 15.3C of the National Agreement based on a procedural default by the USPS at Step 2, the USPS may not thereafter issue a belated Step 2 decision for the purpose of triggering the griev-

ant's service of the 14-day suspension under Article 16.5. The Arbitrator did not rule on whether a USPS procedural default at Step 2 was a waiver by the USPS—pursuant to Article 15.3B—of any timeliness objection to the grievance that the USPS had failed to assert in a proper manner while the grievance was still at Step 2.

Here is a listing of arbitration cases currently being heard, and awaiting either the completion of briefs or the issuance of a decision:

- hearings started in March 2011 on the long-standing dispute between the NPMHU and the Postal Service concerning whether employees on light-duty, after they are placed in a light-duty assignment, have work hour guarantees.
- whether the MOU on Layoff Protection allows employees in other crafts to be reassigned to or transfer into the mail handler craft and retain their no-layoff protection from another bargaining agreement, when mail handlers are not themselves covered by a no-layoff clause.

**National-level MOUs and Step 4 Agreements:** The National CAD also plays a major and continuous role in the handling and settlement of Step 4 grievances, and the development of new National agreements and memoranda of understanding. The volume of such agreements during each four-year period makes it difficult to mention all of these activities, but key subjects addressed by the National Union included the following:

- the expansion of transfer opportunities for mail handlers facing potential excessing from their installation.
- an MOU on excessing issues under Article 12, giving mail handlers who are subject to involuntary reassignment to mail handler positions in other installations, as well as senior volunteers, the opportunity to be reassigned as unassigned Full-Time Regulars to installations nearer to their current installations rather than being reassigned only into those installations that have residual vacancies. The MOU also provides that all excessing will be by strict inverse seniority within the employee category (Full Time Regular, Part Time Regular, and Part Time Flexible) rather than by inverse seniority within pay levels.